

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of a Decision of the Universal Service Administrator by)	
)	
Radford City Schools)	File No. SLD-267616
Radford, Virginia)	
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

ORDER

Adopted: October 30, 2008

Released: October 30, 2008

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request by Radford City Schools (Radford) for review of a decision by the Universal Service Administrative Company (USAC) that denied funding to Radford under the schools and libraries universal service support mechanism, also known as the E-rate program, on the grounds that Radford did not submit its FCC Form 470 signed certification page prior to filing its FCC Form 471 for Funding Year 2001.¹ Specifically, we waive section 54.504(b)(2) of the Commission's rules, which requires that an applicant's FCC Form 470 be certified prior to the filing of its FCC Form 471.² We remand the appeal to USAC for action consistent with this order. To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the application and issue an award or denial based upon a complete review and analysis no later than 60 days from release of this order.³

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁴ The Commission's rules provide that an eligible school, library, or consortium

¹ Letter from B. Keith Rowland, Radford City Schools, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (dated Feb. 13, 2002) (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). Funding Year 2001 started on July 1, 2001, and ended on June 30, 2002.

² 47 C.F.R. § 54.504(b)(2).

³ In performing a complete review and analysis of the underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

⁴ 47 C.F.R. §§ 54.501-54.503.

that includes eligible schools or libraries must seek competitive bids for all services eligible for support.⁵ In accordance with the Commission's rules, an applicant must file with USAC, for posting to USAC's website, an FCC Form 470 requesting discounted services.⁶ As part of the FCC Form 470, the Commission's rules require that applicants certify that certain eligibility and program requirements are met.⁷ The applicant must then wait 28 days before entering into an agreement with a service provider for the requested services.⁸ Once the school or library has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify USAC of the services that have been ordered, the service providers with whom the applicant has entered into an agreement, and an estimate of the funds needed to cover the discounts to be given for eligible services.⁹

3. On December 15, 2000, USAC posted Radford's FCC Form 470 to its website for Funding Year 2001.¹⁰ On January 18, 2001, Radford filed its FCC Form 471.¹¹ On September 28, 2001, Radford received a Funding Commitment Decision Letter denying four of its Priority One funding requests because it did not submit its FCC Form 470 signed certification page prior to January 18, 2001, the filing date of its FCC Form 471.¹² On February 13, 2002, it filed an appeal with the Commission, requesting review of USAC's decision to deny funding for the four Priority One funding requests, noting that it made a technical mistake in not submitting the certification.¹³ Radford asserts, moreover, that its mistake is immaterial because the funding requests that were denied were all part of Virginia statewide master contracts for which the Commonwealth of Virginia filed certified FCC Forms 470, either as part of existing contracts or when issuing requests for proposals for new services.¹⁴ Radford also argues that, in each of the funding requests, Virginia has ensured that Radford complied with the required bidding process for these services.¹⁵

⁵ 47 C.F.R. § 54.504. There is one limited exception for existing, binding contracts signed on or before July 10, 1997. *See* 47 C.F.R. § 54.511(c).

⁶ 47 C.F.R. § 54.504(b); *see also* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (FCC Form 470).

⁷ *See* 47 C.F.R. § 54.504(b)(2).

⁸ 47 C.F.R. § 54.504(b)(4). Applicants can enter into agreements of any length, as long as all providers have had the opportunity to compete for the same multi-year contract. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732, 6736, para. 10 (1999).

⁹ 47 C.F.R. § 54.504(c); *see* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

¹⁰ FCC Form 470 No. 563960000334530, Radford City Schools (posted Dec. 15, 2000).

¹¹ FCC Form 471 No. 267616, Radford City Schools (filed Jan. 18, 2001) (Radford FCC Form 471).

¹² Letter from USAC, Schools and Libraries Division, to B. Keith Rowland, Radford City Schools (Sept. 28, 2001) (Radford Funding Commitment Decision Letter). Eight of its other funding requests were also denied because USAC did not fund Priority Two requests below the 80 percent discount level in Funding Year 2001. *See* 47 C.F.R. § 54.507(g). These funding requests are not at issue here.

¹³ Request for Review at 1.

¹⁴ *Id.* at 1-2.

¹⁵ *Id.* at 2.

III. DISCUSSION

4. We grant Radford's Request for Review. Consistent with precedent,¹⁶ and based on the facts and circumstances of this case, we waive the requirement that the FCC Form 470 certification be filed with USAC prior to the filing of the FCC Form 471.¹⁷ As the Commission has previously found, a missing certification does not constitute a substantive violation, but a procedural one.¹⁸ Importantly, in this instance, the funding requests that were denied here were all part of existing Virginia statewide master contracts for which Virginia filed certified FCC Forms 470, either as part of existing contracts or when issuing requests for proposals for new services.¹⁹ If the state files an FCC Form 470, then the applicant may cite the state's FCC Form 470 on its FCC Form 471; no separate bidding documents or contracts are required by an applicant that relies on the state's FCC Form 470, other than what is required by the state master contract and state and local procurement laws.²⁰ Thus, Radford could have cited to Virginia's FCC Forms 470 on its FCC Form 471, rather than posting its own FCC Form 470. Because Radford could have relied on Virginia's FCC Forms 470 without needing a separate certification, we find it appropriate to waive the certification requirement here.²¹ Accordingly, given that the violation at issue is procedural, not substantive, we find that a complete rejection of Radford's application is not warranted. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds or a failure to adhere to core program requirements revealed by the record in this matter. Furthermore, we find that denial of funding in this case would inflict undue hardship on Radford. In this case, Radford has demonstrated that rigid compliance with USAC's application procedures does not further the purposes of section 254(h) of the Communications Act of 1934, as amended, or serve the public interest.²² We therefore grant Radford's appeal and remand the underlying application to USAC for further action consistent with this order.²³ To ensure that the underlying application is resolved expeditiously, we direct USAC to complete

¹⁶ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5324-25, paras. 17-20 (2006) (*Bishop Perry Order*) (waiving the Commission's rules for failure to timely file an FCC Form 471, to timely file a certification related to an FCC Form 470, or to comply with minimum processing standards due to certain clerical or ministerial errors); *Requests for Waiver of Decisions of the Universal Service Administrator by Academy for Academic Excellence, et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 4747, 4749-50, para. 5 (2007) (finding that failure to timely file an FCC Form 471 due to a misunderstanding or personal emergency, or delay in filing or receipt by USAC of the FCC Form 471 due to circumstances out of the applicants' control, constitute special circumstances that warranted a waiver of the FCC Form 471 deadline).

¹⁷ See 47 C.F.R. § 54.504(b)(2). The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ See *Bishop Perry Order*, 21 FCC Rcd at 5326, paras. 18-20.

¹⁹ See *supra* para. 3; Request for Review at 2; see USAC Website, Step 4: Contract Guidance, <http://www.usac.org/sl/applicants/step04/contract-guidance.aspx> (retrieved Aug. 11, 2008) (USAC Contract Guidance).

²⁰ See USAC Contract Guidance.

²¹ 47 C.F.R. § 54.504(b)(2).

²² See 47 U.S.C. § 254(h).

²³ We estimate that the appeal granted in this order involves approximately \$24,956 in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g., Universal Service Administrative

its review of the application and issue an award or denial based upon a complete review and analysis no later than 60 days from release of this order.²⁴ In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.²⁵ We remind USAC of its obligation to independently determine whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, or applicable statutes and to decline to disburse funds where this standard is not met.

5. Finally, we emphasize that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeal addressed here, the Commission reserves the right to conduct audits and investigations to determine compliance with the E-rate program rules and requirements. Because audits and investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules, such proceedings can reveal instances in which universal service funds were improperly disbursed or in a manner inconsistent with the statute or the Commission's rules. To the extent the Commission finds that funds were not used properly, the Commission will require USAC to recover such funds through its normal processes. We emphasize that the Commission retains the discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. The Commission remains committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), the Request for Review filed by Radford City Schools IS GRANTED, as described herein.

7. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), section 54.504(b)(2) of the Commission's rules, 47 C.F.R. § 54.504(b)(2), IS WAIVED.

8. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), USAC SHALL COMPLETE its review of the remanded application and ISSUE an

Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2008 (Aug. 1, 2008). Thus, we determine that the action we take today should have minimal impact on the Universal Service Fund as a whole.

²⁴ In performing a complete review and analysis of the underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

²⁵ Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

award or denial based on a complete review and analysis no later than 60 calendar days from release of this order.

9. IT IS FURTHER ORDERED that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee
Acting Chief
Telecommunications Access Policy Division
Wireline Competition Bureau