

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Tekoa Academy of Accelerated Studies)	File No. SLD-242830
Port Arthur, TX)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

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 for Review of a decision by the Universal Service Administrative Company (USAC) rescinding funding committed to the Tekoa Academy of Accelerated Studies (Tekoa) for discounted services under the schools and libraries universal service mechanism (also known as the E-rate program) for Funding Year 2001.¹ For the reasons discussed below, we find that special circumstances exist to justify a waiver of USAC’s procedural deadlines, and, accordingly, we grant the Request for Review and remand the underlying application to USAC for processing consistent with this Order.² 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 90 calendar days from the release of this Order.³

¹ Letter from Paula Richardson, Tekoa Academy of Accelerated Studies, to Federal Communications Commission (filed Mar. 5, 2004) (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).

² We estimate that the appeal granted in this Order involves an application for approximately \$69,457 in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. *See, e.g.*, Universal Service Administrative 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.

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.

II. BACKGROUND

2. Pursuant to the E-rate program, eligible schools, libraries, and their consortia may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁴ In general, the applicant must use the funded services within the funding year, except that the Commission's rules give applicants three additional months (until September 30 following the close of the funding year) to install one-time services known as non-recurring services.⁵ An applicant may request an extension of this deadline if one of certain criteria is met.⁶ For example, USAC will grant an extension request if the applicant's service provider is unable to complete implementation for reasons beyond the service provider's control.⁷ A request for an extension must be submitted to USAC on or before the September 30 deadline.⁸

3. On September 3, 2001, USAC approved Tekoa's Funding Year 2001 request for non-recurring services.⁹ The deadline for implementation was September 30, 2002.¹⁰ Tekoa sought to extend that deadline by filing an FCC Form 500, the Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form, on July 18, 2003.¹¹ On the FCC Form 500, Tekoa filled out the block specified for changes to the "Contract Expiration Date," changing the date from June 30, 2002, to December 31, 2003.¹² On August 6, 2003, USAC notified Tekoa's service provider that Tekoa's FCC Form 500 had been "received and accepted."¹³ On December 18, 2003, after it realized that the FCC Form 500 filing had not extended the service implementation deadline, Tekoa filed a request to extend such

⁴ 47 C.F.R. §§ 54.501-54.503.

⁵ 47 C.F.R. § 54.507(d). *See also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 13510, 13512, para. 7 (2001) (*Permanent Extension Order*).

⁶ The qualifying criteria are: (1) the applicant's funding commitment decision letter is issued by USAC on or after March 1 of the funding year for which discounts are authorized; (2) the applicant receives a service provider change authorization or service substitution authorization from USAC on or after March 1 of the funding year for which discounts are authorized; (3) the applicant's service provider is unable to complete implementation for reasons beyond the service provider's control; or (4) the applicant's service provider is unwilling to complete installation because funding disbursements are delayed while USAC investigates the application for program compliance. 47 C.F.R. § 54.507(d); *Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12.

⁷ 47 C.F.R. § 54.507(d); *Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12.

⁸ *See* USAC website, Service Delivery Deadlines and Extension Requests, <http://www.universalservice.org/sl/applicants/step11/service-deadlines-extension-requests.aspx> (retrieved Oct. 28, 2008); *see also Permanent Extension Order*, 16 FCC Rcd at 13514, para. 15.

⁹ Letter from Universal Service Administrative Company, Schools and Libraries Division, to Dacx Arcaya, Tekoa Academy School (dated Sept. 3, 2001).

¹⁰ Letter from Universal Service Administrative Company, Schools and Libraries Division, to Paula Richardson, Tekoa Academy School (dated Jan. 19, 2004) (Administrator's Decision on Implementation Extension Request). 47 C.F.R. § 54.507(d).

¹¹ Tekoa Academy Form 500, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form (filed July 18, 2003).

¹² *Id.* at 2.

¹³ Letter from Universal Service Administrative Company, Schools and Libraries Division, to Marcos Gutierrez, QA Systems (dated Aug. 6, 2003) (FCC Form 500 Notification Letter).

deadline.¹⁴ On January 19, 2004, USAC informed Tekoa that its extension request was denied because the request was received after the September 30, 2002, deadline had passed.¹⁵

4. In its Request for Review, Tekoa argues that it filed its extension request after the deadline and in the wrong form “because of the confusing instructions regarding the necessary documents that were needed to request an extension.”¹⁶ Tekoa contends that its services could not be implemented by the deadline because its service provider could not install the equipment until the roof leaks in Tekoa’s building were repaired.¹⁷ In addition, Tekoa argues that, because USAC accepted the FCC Form 500, it believed that it had taken the appropriate steps to obtain the extension.¹⁸

III. DISCUSSION

5. Based on the facts and circumstances of this case, and consistent with the Wireline Competition Bureau’s (Bureau) decision in *Great Rivers*, we grant Tekoa’s Request for Review and remand the underlying application to USAC for processing consistent with this Order.¹⁹ In *Great Rivers*, the Bureau granted a waiver to Great Rivers Education Cooperative, an applicant who, like Tekoa, attempted to extend the deadline for non-recurring services by filing an FCC Form 500 rather than an extension request.²⁰ Similarly, in this instance, we find that the facts in this case rise to the level of the “special circumstances” necessary for a waiver of USAC’s procedural deadline.²¹ In reaching this conclusion, we take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²²

6. First, it appears that Tekoa’s request for the extension would have been granted on the merits had Tekoa filed in the proper format and on a timely basis. The leaks in the roof occurred during the funding year, when the equipment normally would have been installed.²³ The service provider

¹⁴ Letter from Paula Richardson, Tekoa Academy of Accelerated Studies to ERATE [Universal Service Administrative Company] (dated Dec. 18, 2003) (Service Delivery Extension Request).

¹⁵ See Administrator’s Decision on Implementation Extension Request.

¹⁶ Request for Review at 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Request for Waiver of the Decision of the Universal Service Administrator by Great Rivers Education Cooperative and I-K Electric Company*, CC Docket No. 02-6, Order, 21 FCC Rcd 14115 (Wireline Comp. Bur. 2006) (*Great Rivers*).

²⁰ *Id.* at 14119, para. 9.

²¹ *Id.* Generally, the Commission’s rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule 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*); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U.S. 1027 (1972). 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*, 418 F.2d at 1157. Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

²² *WAIT Radio*, 418 F.2d at 1157.

²³ See Service Delivery Extension Request.

recommended against installation until the leaks were fixed.²⁴ These circumstances satisfy the criterion that the service provider be unable to complete implementation for reasons beyond the service provider's control.²⁵ Second, Tekoa was confused about the proper procedures to apply for a new service implementation deadline.²⁶ The Commission has acknowledged in past orders that many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated.²⁷ Third, Tekoa made good faith efforts, although belatedly, to comply with the extension requirements by filing both an FCC Form 500 and a request for extension.²⁸ Fourth, once the roof was fixed, and in reliance on USAC's acknowledgment that it had "received and accepted" Tekoa's FCC Form 500, Tekoa instructed its service provider to proceed with installation of the services, which its service provider apparently did.²⁹ Finally, the violation at issue is procedural, not substantive, and there is no evidence of waste, fraud or abuse, misuse of funds or a failure to adhere to core program requirements. Based on the record before us, we thus conclude that the complete rejection of this application is not warranted, and that strict adherence with USAC's procedures in this instance would be inconsistent with the public interest.³⁰ We therefore find that good cause exists to grant and remand the underlying application to USAC for further 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 90 calendar days from the release of this Order.³¹

7. We emphasize the limited nature of this decision. Although we grant the Request for Review addressed here, this Order does not alter the obligation of participants in the E-rate program to comply with the Commission's rules.³² We continue to require E-rate applicants to submit complete, timely, and accurate information to USAC as part of the application review process. Applicants continue to be responsible for requesting deadline extensions on time and in the proper format.

8. In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.³³ We remind USAC of its obligation to independently

²⁴ *Id.*

²⁵ 47 C.F.R. § 54.507(d); *Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12.

²⁶ Request for Review at 1.

²⁷ See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5323, para. 14 (2006) ("We note that the primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to positions dedicated to pursuing federal grants, especially in small school districts.")

²⁸ Request for Review at 1.

²⁹ See FCC Form 500 Notification Letter; Request for Review at 1.

³⁰ *Northeast Cellular*, 897 F.2d at 1166.

³¹ 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.

³² 47 C.F.R. §§ 54.501-503.

³³ 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.

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. The direction we provide USAC will not lessen or preclude any application review procedures of USAC. Indeed, we retain our commitment to detecting and deterring potential instances of waste, fraud, and abuse by ensuring that USAC continues to scrutinize applications and takes steps to educate applicants in a manner that fosters program participation. All existing E-rate program rules and requirements will continue to apply, including the existing forms and documentation, USAC's Program Integrity Assurance review procedures, and other processes designed to ensure applicants meet the applicable program requirements. In addition, we note that, in the *Comprehensive Review NPRM*, the Commission initiated a proceeding to address the concerns raised herein by, among other things, improving the application and disbursement process for the E-rate program.³⁴

9. Finally, we are 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 Request for Review addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits and investigations to determine compliance with the E-rate program rules and requirements. Because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or the Commission's 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, it 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

10. ACCORDINGLY, IT IS ORDERED, 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 authority delegated under 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), that the Request for Review filed by Tekoa Academy of Accelerated Studies, Port Arthur, Texas, on March 5, 2004, IS GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this Order.

11. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under 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), that USAC SHALL COMPLETE its review of this application and ISSUE an award or a denial based on a complete review and analysis no later than 90 days from the release of this Order.

³⁴ See *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308, 11324-25, paras. 37-40 (2005) (*Comprehensive Review NPRM*).

12. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

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