

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

In the Matter of	)	
	)	
Request for Review of a Decision of the Universal Service Administrator by	)	
	)	
Franklin-McKinley School District San Jose, California	)	File No. SLD-477732
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	

**ORDER**

**Adopted: February 8, 2008**

**Released: February 8, 2008**

By the Acting Associate Chief, Wireline Competition Bureau:

1. In this Order, we grant a request by Franklin-McKinley School District (Franklin-McKinley) for review of a decision by the Universal Service Administrative Company (USAC) that rescinded funding already committed to Franklin-McKinley under the schools and libraries universal service support mechanism (E-rate program) for Funding Year (FY) 2005.<sup>1</sup> Specifically, we grant Franklin-McKinley a limited waiver of section 54.504(c) of our rules, which states that the FCC Form 471 requesting support for the services ordered by the applicant shall be submitted “upon signing a contract for eligible services.”<sup>2</sup> We remand the appeal to USAC for action consistent with this Order, and, to ensure that it is resolved expeditiously, we direct USAC to reinstate the funding commitment no later than 60 days from release of this Order.

2. Under the schools and libraries universal service support mechanism, also known as 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.<sup>3</sup> The Commission’s rules provide that an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.<sup>4</sup> In accordance with the Commission’s rules, an applicant must file with USAC, for posting to USAC’s website, an FCC Form

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<sup>1</sup> Letter from Delma Juarez, Franklin-McKinley School District, to Federal Communications Commission, CC Docket No. 02-6 (filed July 19, 2007) (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 2005 started on July 1, 2005, and ended on June 30, 2006.

<sup>2</sup> 47 C.F.R. § 54.504(c).

<sup>3</sup> 47 C.F.R. §§ 54.501-54.503.

<sup>4</sup> 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).

470 requesting discounted services.<sup>5</sup> The applicant must then wait 28 days before entering into an agreement with a service provider for the requested services.<sup>6</sup> 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.<sup>7</sup> The Commission's rules state that the FCC Form 471 requesting support for the services ordered by the applicant shall be submitted "upon signing a contract for eligible services."<sup>8</sup> Specifically, the instructions state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered.<sup>9</sup>

3. Franklin-McKinley has requested review of USAC's decision to rescind funding for its Funding Year 2005 application.<sup>10</sup> On January 16, 2007, USAC rescinded the funding commitment when it found that Franklin-McKinley's submitted documentation did not demonstrate that it had a signed contract with its service provider when it submitted its FCC Form 471.<sup>11</sup> Franklin-McKinley then filed an appeal with USAC arguing that it did have a contract in place at the time it filed its FCC Form 471.<sup>12</sup> Franklin-McKinley noted that it sent USAC its bid form and the documentation detailing equipment and labor costs.<sup>13</sup> The bid form was signed January 6, 2005, before the FCC Form 471 was certified on February 16, 2005.<sup>14</sup> Franklin-McKinley also said it created a new contract with its service provider in October 2006, signed and dated by both parties on October 25, 2006, after having further discussions with USAC personnel about the need for a contract.<sup>15</sup> USAC denied the appeal on procedural grounds on May 22, 2007, because Franklin-McKinley's appeal was postmarked more than 60 days after the Notification

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<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> *Id.* *See also* *Request for Review of Waldwick School District, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket No. 02-6, Order, 18 FCC Rcd 22994, 22995, para. 3 (Wireline Comp. Bur. 2003); *Request for Review of St. Joseph High School, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket Nos. 96-45, 97-21, Order, 17 FCC Rcd 22499, 22500-01, para. 4 (Wireline Comp. Bur. 2002).

<sup>9</sup> Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471 Instructions).

<sup>10</sup> *See* Request for Review at 1.

<sup>11</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Delma Juarez, Franklin-McKinley School District (Jan. 16, 2007) (Notification of Commitment Adjustment Letter).

<sup>12</sup> Request for Review at 4.

<sup>13</sup> Request for Review at 4, Attachment 3.

<sup>14</sup> Request for Review at 4, Attachment 3; FCC Form 471, Franklin-McKinley School District (certified Feb. 16, 2005) (Franklin-McKinley FCC Form 471).

<sup>15</sup> Request for Review at 4, Attachment 5.

of Commitment Adjustment Letter.<sup>16</sup> Franklin-McKinley subsequently filed an appeal with the Commission.<sup>17</sup>

4. Consistent with precedent,<sup>18</sup> we grant Franklin-McKinley's appeal of the decision by USAC to rescind funding for discounted services under the E-rate program and grant Franklin-McKinley a limited waiver of section 54.504(c) of our rules.<sup>19</sup> In the *Adams County Order*, the Commission found that waivers of section 54.504(c) of the Commission's rules were appropriate in situations where Petitioners had legally binding agreements in place but missed the deadline for evidencing a signed contract.<sup>20</sup> Here, as in the *Adams County Order*, Franklin-McKinley had an agreement with its service providers before submitting its FCC Forms 471.<sup>21</sup> The bid form states that both Franklin-McKinley and the service provider "propose and agree to enter into a Contract."<sup>22</sup> The submitted contract further demonstrates that the parties were in a binding contractual arrangement.<sup>23</sup> We note granting this appeal should have a minimal effect on the Universal Service Fund (USF or the Fund).<sup>24</sup> Consequently, we find that good cause exists to grant a limited waiver of section 54.504 of our rules and remand Franklin-McKinley's appeal to USAC for further processing consistent with our decision.<sup>25</sup>

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<sup>16</sup> See *infra* n.25. Letter from Schools and Libraries Division, Universal Service Administrative Company, to Delma Juarez, Franklin-McKinley School District (May 22, 2007) (Administrator's Decision on Appeal).

<sup>17</sup> Request for Review.

<sup>18</sup> See *Request for Review of Adams County School District 14, Schools and Libraries Universal Service Support Mechanisms*, File Nos. SLD-425151, 425211, 425303, 425352, 426285, CC Docket No. 02-6, Order, 22 FCC Rcd 6019 (2007) (*Adams County Order*).

<sup>19</sup> 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), *affirmed 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.

<sup>20</sup> *Adams County Order*, 22 FCC Rcd at 6023, para. 9.

<sup>21</sup> Request for Review at 4, Attachment 3.

<sup>22</sup> Request for Review at Attachment 3.

<sup>23</sup> Request for Review at Attachment 5.

<sup>24</sup> The appeal granted in this Order involves \$458,764 in funding that was rescinded. 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 Second Quarter 2008 (Feb. 1, 2008). Thus, we determine that the action we take today should have minimal impact on the Fund as a whole.

<sup>25</sup> Nothing in this order is intended to authorize or require payment of any claim that has previously been released by a service provider or applicant, including in a civil settlement or criminal plea agreement with the United States. In addition to waiving section 54.504 of our rules, we also find good cause to waive section 54.720 of the Commission's rules that establishes deadlines for affected parties to seek review of decisions issued by USAC. 47 C.F.R. § 54.720. When Franklin-McKinley filed its appeal with USAC seeking review of the decision to rescind the funding commitment, it also sought a waiver of section 54.720 of the Commission's rules because the appeal was filed more than 60 days after the Notification of Commitment Adjustment Letter. 47 C.F.R. § 54.720. The appeal

(continued....)

5. 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), that the Request for Review filed by Franklin-McKinley School District IS GRANTED.

6. 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), that section 47. C.F.R. § 54.504(c) IS WAIVED.

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), that section 47. C.F.R. § 54.720 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 REINSTATE the funding commitment 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

Jeremy D. Marcus  
Acting Associate Chief  
Wireline Competition Bureau

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was denied because Commission rules do not allow USAC to consider waiver requests. *See* Administrator's Decision on Appeal. We find good cause to waive section 54.720 of the Commission's rules for Franklin-McKinley because the person responsible for handling E-rate matters at the school district was out of the office handling two serious family illnesses in January and February of 2007 and did not receive notice of the USAC decision that triggered the 60-day appeal filing deadline. When the E-rate coordinator learned of the denial, an appeal was promptly filed. Consistent with precedent, we find good cause to waive the filing deadline in section 54.720 of the Commission's rules in this instance. *See, e.g., Request for Review by Benavides Independent School District*, File No. SLD-348268, CC Docket No. 02-6, Order, 21 FCC Rcd 12910 (Wireline Comp. Bur. 2006) (granting a waiver request when applicant did not receive notice of the requirements for filing an appeal in accordance with Commission rules); *Request for Waiver by Greenfield Public School District*, File Nos. SLD-431911, SLD-431129, CC Docket No. 02-6, Order, 21 FCC Rcd 2122 (Wireline Comp. Bur. 2006) (granting a waiver request where the district's technology coordinator was unexpectedly called to active military duty in a time of war).