

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Waiver and Review of Decisions of the Universal Service Administrator by	)	
	)	
Argos Public Library	)	File Nos. SLD-737946, <i>et al.</i>
Argos, Indiana, <i>et al.</i>	)	
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	

ORDER

Adopted: November 23, 2010

Released: November 23, 2010

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

1. In this order, we address 52 requests from petitioners seeking waivers of the FCC Form 471 application filing window deadline for funding years 2005-2010 under the E-rate program (formally known as the schools and libraries universal service support program).<sup>1</sup> Consistent with the Commission’s *Academy of Math and Science Order*,<sup>2</sup> and based on our review of the record, we find that 20 petitioners have demonstrated that special circumstances exist to justify a waiver of the E-rate program’s filing deadline. We grant those requests for waivers and remand the underlying applications to the Universal Service Administrative Company (USAC) for further action consistent with this order.<sup>3</sup> We also deny 32 requests because we find that the petitioners failed to present special circumstances to justify a waiver of the Commission’s rules.<sup>4</sup>

2. Section 54.407(c) of the Commission’s rules maintains that E-rate funds shall be available on a first-come-first-served basis but requires USAC to implement an initial funding window that treats all applicants filing within that window as if their applications were simultaneously received.<sup>5</sup> We first grant 10 petitioners waivers of our filing deadline for appeals because we find they submitted their

<sup>1</sup> The requests for waiver and review are listed in appendices A and B. 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). Although some petitioners did not explicitly request a waiver of the FCC Form 471 filing window deadline, we treat their requests for review as requests for waiver because, in each case, USAC denied their funding requests because their FCC Forms 471 were submitted after the relevant filing window deadline.

<sup>2</sup> See *Request for Review of the Decision of the Universal Service Administrator by Academy of Math and Science, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487009, *et al.*, CC Docket No. 02-6, Order, FCC 10-122 (released July 8, 2010) (*Academy of Math and Science Order*).

<sup>3</sup> See appendix A; 47 C.F.R. § 54.507(c).

<sup>4</sup> See appendix B.

<sup>5</sup> See 47 C.F.R. § 54.507(c).

appeals to the Commission within a reasonable period of time or, in one instance, because USAC erred.<sup>6</sup> Having determined that all 52 petitioners submitted valid appeals, we apply the standards of the *Academy of Math and Science Order* and grant 20 requests seeking waivers of the FCC Form 471 filing window deadline for funding years 2009 and 2010.<sup>7</sup> We first grant 17 waiver requests where the petitioners filed their FCC Forms 471 or their waiver request within 14 days after the FCC Form 471 filing window deadline closed.<sup>8</sup> We also grant two waiver requests where the petitioners were delayed in filing their FCC Forms 471 by an emergency but still managed to file within 30 days of the filing window deadline.<sup>9</sup> We also grant a final waiver request where the petitioner filed a timely FCC Form 471 but neglected to file its FCC Form 471 certification on time.<sup>10</sup> At this time, we find no evidence of waste, fraud, or abuse. Therefore, we find that good cause exists to grant the 20 petitioners' requests for waiver and remand the applications listed in appendix A to USAC for further action consistent with this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.<sup>11</sup> Finally, we deny the remaining 32 requests seeking waivers of the FCC Form 471 filing window deadline for various funding years because we find that the petitioners failed to present special circumstances justifying a waiver of section 54.507(c) of the Commission's rules.<sup>12</sup>

3. 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 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 requests for review or requests for waiver filed by the petitioners listed in appendix A ARE

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<sup>6</sup> See 47 C.F.R. § 54.720. Seven petitioners filed appeals with the Commission within 60 days of receiving actual notice of USAC's adverse decision (Galloway Charter School, Granada-Huntley-East Chain School District #2536, Henderson Memorial Public Library, Lake County High Schools, North Star Academy, Peavey Memorial Library, and Tunstall Middle School). Two other applicants filed their appeals within 14 days (Bethel-Tate Local School District and for St. Michael's Country Day School). USAC appears to have overlooked an earlier, timely filing by the Saint Simon Stock School.

<sup>7</sup> See appendices A and B. 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). 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; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

<sup>8</sup> See *Academy of Math and Science Order* at 4-5, para. 8; Auburn Union School District, Common Ground High School, Elizabeth Seton Academy, John Paul II Academy, Laurel School District, Lubbock City-County Library, Mifflin County Library, Monroe County Library System, Oberlin Public Library, Peavey Memorial Library, Peoria Public Library, Rogers Independent School District, Saint Elizabeth School, St. James Elementary School, St. Mary Elementary School, Stewart County Public Library, Zuni Christian Mission School.

<sup>9</sup> See *Academy of Math and Science Order* at 4-5, para. 8; Immaculate Heart Academy, Thousand Island Central School District.

<sup>10</sup> See *Academy of Math and Science Order* at 4-5, para. 8; Saint Simon Stock School.

<sup>11</sup> 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.

<sup>12</sup> See appendix B.

GRANTED and their applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

4. IT IS FURTHER 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 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), that the requests for review filed by the petitioners listed in appendix B ARE DENIED.

5. IT IS FURTHER 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 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 54.507(c) of the Commission's rules, 47 C.F.R. § 54.507(c), IS WAIVED for the petitioners listed in appendix A to the limited extent provided herein.

6. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade  
Deputy Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

## APPENDIX A

## Waiver Requests Granted

Petitioner	Application Number	Funding Year	Date Request for Review Filed
Auburn Union School District Auburn, CA	769454	2010	July 20, 2010
Common Ground High School New Haven, CT	769603	2010	Aug. 5, 2010
Elizabeth Seton Academy Dorchester, MA	769453	2010	Aug. 24, 2010
Immaculate Heart Academy Washington Township, NJ	770043	2010	June 17, 2010
John Paul II Academy Louisville, KY	769083	2010	July 19, 2010
Laurel School District New Castle, PA	769393	2010	July 14, 2010
Lubbock City-County Library Lubbock, TX	769401	2010	Aug. 6, 2010
Mifflin County Library Lewistown, PA	770023, 770063	2010	Mar. 1, 2010
Monroe County Library System Monroe, MI	769116	2010	Aug. 3, 2010
Oberlin Public Library Oberlin, OH	769399	2010	Mar. 2, 2010
Peavey Memorial Library Eastport, ME	637745	2008	May 22, 2009
Peoria Public Library Peoria, IL	769090	2010	Aug. 6, 2010
Rogers Independent School District Rogers, TX	769457	2010	July 6, 2010
Saint Elizabeth School Kansas City, MO	769084	2010	June 28, 2010
St. James Elementary School Bay City, MI	769456	2010	Aug. 3, 2010
St. Mary Elementary School Mobile, AL	769397	2010	Sept. 16, 2010
Saint Simon Stock School Bronx, NY	606000	2008	June 9, 2009
Stewart County Public Library Dover, TN	769383	2010	July 9, 2010
Thousand Island Central School District Clayton, NY	769843	2010	Aug. 2, 2010
Zuni Christian Mission School Zuni, NM	769384	2010	Feb. 25, 2010

## APPENDIX B

## Waiver Requests Denied

Petitioner	Application Number	Funding Year	Date Request for Review Filed
Argos Public Library Argos, IN	737946	2010	Aug. 25, 2010
Auburndale, School District of Auburndale, WI	702883	2009	Feb. 25, 2010
Bayfield School District 10 JT-R Bayfield, CO	769983	2010	July 7, 2010
Bethel-Tate Local School District Bethel, OH	643666	2008	Feb. 26, 2009
California Public Library California, PA	770703	2010	Mar. 15, 2010
Christian Learning Center Corning, NY	471 not filed	2010	Feb. 24, 2010
Columbia Board of Education Columbia, CT	769863, 769883	2010	Feb. 16, 2010
Concordia Learning Center at St. Joseph's School for the Blind Jersey City, NJ	770723, 770743	2010	June 15, 2010
Danville City Public Library Danville, VA	771203	2010	Sept. 27, 2010
Discovery School of Tulsa Tulsa, OK	770523	2010	Aug. 6, 2010
Dr. Richard Izquierdo Health and Science Charter School Bronx, NY	770643, 770663	2010	July 26, 2010
Fort Plain Central School District Fort Plain, NY	769563	2010	July 22, 2010
Galloway Community Charter School Galloway, NJ	637908	2008	Aug. 4, 2009
Granada-Huntley-East Chain School District #2536 Blue Earth, MN	587655	2007	Sept. 24, 2007
Haddon Township School District Westmont, NJ	770823	2010	Aug. 23, 2010
Henderson Memorial Public Library Jefferson, OH	587155	2007	July 15, 2008
Kenmare High School for Women Jersey City, NJ	770763	2010	June 10, 2010
Lake County High Schools Grayslake, IL	540200	2006	July 16, 2007
Masores Bais Yaakov School Brooklyn, NY	629810, 630083	2008	Jan. 28, 2010
Mississippi Department of Human	771163	2009	Sept. 7, 2010

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Date Request for Review Filed</b>
Services: Division of Youth Services Jackson, MS			
Newman Grove Public Schools Newman Grove, NE	770863	2010	July 20, 2010
Normandy School District Saint Louis, MO	770923	2010	Aug. 10, 2010
North Star Academy Marquette, MI	638928	2008	Aug. 11, 2009
Orcas Island School District Eastsound, WA	769963	2010	Sept. 13, 2010
Pen Argyl Area School District Pen Argyl, PA	770803	2010	July 30, 2010
Quartzsite Public Library Quartzsite, AZ	770183	2010	July 6, 2010
Rock Creek Public Library Rock Creek, OH	587310	2010	July 15, 2008
St. Michael's Country Day School Newport, RI	449105	2005	Nov. 28, 2005
Saint Monica School Sunbury, PA	770883	2010	July 6, 2010
Tunstall Middle School Dry Fork, VA	563275	2007	Oct. 17, 2007
Wessington Public Library Wessington, SD	770083	2010	July 21, 2010
Wright Memorial Library Dayton, OH	770143	2010	June 17, 2010