

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)
Beaver Area Memorial Library) File Nos. SLD-750009, et al.
Beaver, PA, et al.)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: July 27, 2011

Released: July 27, 2011

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

1. In this order, we address 39 requests from petitioners seeking waivers of the FCC Form 471 application filing window deadline for funding years 2009-2011 under the E-rate program (formally known as the schools and libraries universal service support program). Consistent with the Commission's Academy of Math and Science Order, and based on our review of the record, we find that 21 petitioners have demonstrated that special circumstances exist to justify a waiver of the E-rate program's FCC Form 471 application filing window deadline. We grant those requests for waiver and remand the underlying applications to the Universal Service Administrative Company (USAC) for further action consistent with this order. We dismiss four other requests for waiver as moot. We deny, however, the remaining 14 requests for waiver because we find that the petitioners failed to present special circumstances to justify a waiver of the Commission's rules.

1 The requests for waiver and review are listed in appendices A, B, C, and D. 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 application 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 Form 471 applications were submitted after the relevant filing window deadline.

2 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, 25 FCC Rcd 9256 (2010) (Academy of Math and Science Order); see also Request for Waivers and Review of the Decisions of the Universal Service Administrator by Argos Public Library, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-737946, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 16109 (Wireline Comp. Bur. 2010); Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Al-Noor School, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-768866, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 5792 (Wireline Comp. Bur. 2011) (Al-Noor Order).

3 See appendices A and B; 47 C.F.R. § 54.507(c).

4 See appendix C.

5 See appendix D; 47 C.F.R. § 1.3.

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.⁶ In the 2010 *Academy of Math and Science Order*, the Commission granted waivers of the FCC Form 471 application filing window deadline because the applicants filed their FCC Form 471 applications within 14 days of the FCC Form 471 application filing window deadline or presented other special circumstances justifying a waiver.⁷ Applying the standards of the *Academy of Math and Science Order*, we grant 21 requests seeking waivers of the FCC Form 471 application filing window deadline for funding years 2009-2011.⁸ Specifically, 16 petitioners filed their FCC Form 471 applications within 14 days after the filing window deadline closed.⁹ Additionally, we find that one petitioner timely filed an FCC Form 471 application, although it was subsequently withdrawn by the petitioner's former consultant without the petitioner's knowledge or its consent.¹⁰ We also grant three requests by petitioners that timely filed FCC Form 471 applications but neglected to file their FCC Form 471 application certifications on time.¹¹ In addition, we grant one request by a petitioner because USAC withdrew its FCC Form 470 without notifying the petitioner, thus preventing the petitioner from filing its FCC Form 471 application within the application filing window.¹² At this time, we find no evidence of waste, fraud, or abuse. Therefore, we find that good cause exists to grant 21 petitioners' requests for waiver and remand the

⁶ See 47 C.F.R. § 54.507(c).

⁷ See *Academy of Math and Science Order*, 25 FCC Rcd 9256.

⁸ 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).

⁹ See appendix A; *Academy of Math and Science Order*, 25 FCC Rcd at 9259-60, para. 8.

¹⁰ Ben Ross Public School Academy's (Ben Ross) funding request was submitted by a consultant as part of a consortium. See Letter from Valerie A. Nelson, Ben Ross Public School Academy, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 19, 2011). When Ben Ross subsequently terminated its relationship with the consultant, the consultant cancelled Ben Ross's funding request without informing Ben Ross. *Id.*

¹¹ Beaver Area Memorial Library, Friendship Public Charter Schools, and Taunton School District. Taunton School District filed an FCC Form 471 application (application number 690824), but failed to include its certification. When the school district later provided its certification, it submitted it along with a copy of its initial FCC Form 471 application (which USAC labeled as application number 703003). See Letter from Ragen D. Tiliakos, Taunton School District, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 28, 2010). See *Academy of Math and Science Order*, 25 FCC Rcd at 9259-60, para. 8.

¹² See *Al-Noor Order*, 26 FCC Rcd at 5792, n. 6. Contoocook Valley School District (Contoocook) submitted its FCC Form 470 for funding year 2011 on January 7, 2011. USAC subsequently withdrew Contoocook's initial FCC Form 470 without notifying Contoocook, after Contoocook informed USAC that it had failed to check off two of the required certifications. See Letter from Kenneth Campbell, Contoocook Valley School District, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed May 26, 2011). Thus, Contoocook was prevented from resubmitting a corrected FCC Form 470 in time to allow it to observe the 28-day waiting requirement and file its FCC Form 471 application within the application filing window. *Id.* Without an FCC Form 470 number, Contoocook was unable to file its FCC Form 471 application within the application filing window. *Id.* Contoocook subsequently submitted its FCC Form 471 application on May 17, 2011. *Id.*

underlying applications listed in appendices A and B to USAC for further action consistent with this order.¹³ In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We also dismiss as moot four requests for waivers by applicants whose FCC Form 471 applications were all filed within the application filing window deadline.¹⁴ We deny the remaining 14 requests seeking waivers of the FCC Form 471 application filing window deadline for funding years 2010-2011 because we find that the petitioners failed to present special circumstances justifying a waiver of section 54.507(c) of the Commission's rules.¹⁵

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), the requests for review or requests for waiver filed by the petitioners listed in appendices A and B ARE GRANTED and their underlying 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 or requests for waiver filed by the petitioners listed in appendix C ARE DISMISSED.

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, 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 or requests for waiver filed by the petitioners listed in appendix D ARE DENIED.

6. 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,

¹³ See appendices A and B. In performing a complete review and analysis of the underlying applications, USAC shall either grant the underlying applications before it, or, if denying an application, provide the applicant with all grounds for denial.

¹⁴ See appendix C. The application filing window deadline for funding year 2011 was March 24, 2011, and for funding year 2010 it was February 19, 2010. See USAC website, Schools and Libraries, Schools and Libraries Deadlines, available at <http://www.usac.org/sl/tools/deadlines/default.aspx> (last visited July 26, 2011). The USAC website now shows that these applications were all filed within the relevant application filing window deadline. Applications may be viewed at http://www.slforms.universalservice.org/Form471Expert/DisplayExt471_StartSearch.aspx (last visited July 26, 2011).

¹⁵ See appendix D; 47 C.F.R. § 54.507(c). With the exception of Bethlehem Area Public Library, all the petitioners in appendix D had circumstances that would have failed to justify a waiver of our rules and would have been classified as denials in the *Academy of Math and Science Order*. We deny Bethlehem Area Public Library's appeal because it did not file its FCC Form 471 application within 14 days of the filing deadline. Although the 2010 *Academy of Math and Science Order* granted waivers in some such cases, that was only because, in those funding years, USAC did not allow applicants to electronically file their FCC Form 471 application after the deadline. Under those conditions, the Commission granted waivers where the petitioner had filed its waiver request within 14 days of the filing deadline. The Commission noted, however, that, in the future, applicants would be able to file an online version of the FCC Form 471 application after the filing window deadline passed, which first became possible in funding year 2011. Thus, applicants are now required to file an FCC Form 471 application within 14 days of the application filing window deadline in order to qualify for the 14-day exception to the deadline. See *Academy of Math and Science Order*, 25 FCC Rcd at 9259, n. 26. Because Bethlehem Area Public Library did not file its FCC Form 471 application within 14 days of the close of the funding window for funding year 2011, it does not fit this exception.

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 appendices A and B to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A

Requests Granted

(FCC Form 471 Applications Filed Within 14 Days of the Close of the Filing Window)

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Calvert County Public Schools Prince Frederick, MD	821710	2011	June 28, 2011
Capitol West Academy Milwaukee, MI	769423	2010	Apr. 25, 2011
Castroville Public Library Castroville, TX	822040	2011	Apr. 7, 2011
Community Consolidated School District 59 Arlington Heights, IL	821497	2011	Mar. 31, 2011
Highland Community Library Johnstown, PA	821316	2011	Mar. 25, 2011
Houston Public Library HALAN/IT Department Houston, TX	821557	2011	Apr. 8, 2011
Manatee Community Action Agency, Inc. Bradenton, FL	805089	2011	Apr. 4, 2011
Marquette Academy Ottawa, IL	819081	2011	Apr. 7, 2011
Merced County Library Merced, CA	812863	2011	Apr. 4, 2011
Montgomery County Board of Education Mount Sterling, KY	779876, 773986	2011	Apr. 20, 2011
New Mexico School for the Deaf Santa Fe, NM	822109, 822110	2011	June 1, 2011
Park Rapid Area Schools Park Rapids, MN	821964, 821967 821974, 821999 822001, 822002	2011	May 2, 2011
Reserve Independent Schools Reserve, NM	813000, 813043	2011	Feb. 28, 2011
St. Felix Elementary School Wabasha, MN	821452	2011	Apr. 26, 2011
St. Philip Neri School Omaha, NE	821764	2011	Apr. 11, 2011
Woodford County Special Education Assoc. Metamora, IL	773920	2011	Apr. 4, 2011

APPENDIX B

Other Requests Granted

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Beaver Area Memorial Library Beaver, PA	750009	2010	May 24, 2011
Ben Ross Public School Academy Warren, MI	790842	2010	Apr. 19, 2011
Contoocook Valley School District Peterborough, NH	822551	2011	May 26, 2011
Friendship Public Charter Schools Washington, DC	774609	2011	June 27, 2011
Taunton School District Taunton, MA	690824 (a/k/a 703003)	2009	June 28, 2010

APPENDIX C

Requests Dismissed

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Biblioteca Abelardo Diaz Alfaro San Juan, PR	807387, 807541	2011	May 20, 2011
Biblioteca Munciple Manati Francisco Alvarez Marrero Manati, PR	819356, 819669	2011	May 20, 2011
Capitol West Academy Milwaukee, WI	759862	2010	Mar. 29, 2011
Jane Stern Dorado Community Library Dorado, PR	796793, 796817	2011	May 20, 2011

APPENDIX D

Requests Denied

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Bethlehem Area Public Library Bethlehem, PA	772186	2011	Apr. 7, 2011
Finkelstein Memorial Library Spring Valley, NY	770543	2010	May 9, 2011
Head Start Child Development Council Stockton, CA	771364	2010	Mar. 15, 2011
Kishwaukee Education Consortium Malta, IL	Form 471 not filed	2011	June 8, 2011
Lancaster Public Library Lancaster, PA	770323	2010	Nov. 15, 2010
Lyons Township High School District 204 La Grange, IL	776169	2010	Mar. 29, 2011
Peabody Charter Elementary School Santa Barbara, CA	771510	2010	June 16, 2011
Rockwood School District Eureka, MO	822485	2011	May 2, 2011
St. Mary's Episcopal School Memphis, TN	Form 471 not filed	2011	June 16, 2011
Slater Public Schools Slater, MO	822553	2011	May 23, 2011
Spencer-Owen Community School Bedford, IN	789581	2010	Apr. 13, 2011
Warrensburg-Latham CUSD 11 Warrensburg, IL	822043	2011	Apr. 25, 2011
Wartburg Public Library Wartburg, TN	Form 471 not filed	2011	May 16, 2011
Yakutat City School District Yakutat, AK	822062	2011	Apr. 12, 2011