

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a
Decision of the
Universal Service Administrator by
Covert Public School District
Covert, Michigan
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-635902
CC Docket No. 02-6

ORDER

Adopted: October 26, 2011

Released: October 26, 2011

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

1. Consistent with precedent, we grant an appeal filed by Covert Public School District (Covert) of a decision by the Universal Service Administrative Company (USAC) to deny funding in funding year 2008 under the E-rate program because Covert’s request for a services implementation deadline extension was late. We remand the underlying applications to USAC for further action consistent with this order, and we direct USAC to grant Covert’s request for a services implementation deadline extension within 90 calendar days from the release of this order.

2. Background. Pursuant to the E-rate program, eligible schools, libraries, and their consortia may apply for discounts for eligible services. 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. An applicant may request an extension of this deadline if one of certain criteria is met. A

1 See Letter from Rick Jones, Principal, Covert Public School District, to Federal Communications Commission, CC Docket Nos. 02-6 (filed May 16, 2011) (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) (2011). The E-rate program is more formally known as the schools and libraries universal service program.

2 47 C.F.R. §§ 54.501-54.502 (2011).

3 47 C.F.R. § 54.507(d) (2011). 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).

4 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 (continued . . .)

request for an extension must be submitted to USAC on or before the September 30 deadline.⁵ All E-rate applicants are also subject to an invoice submission deadline by which they must submit invoices seeking reimbursement for eligible services.⁶

3. Covert received E-rate funding in funding year 2008 for non-recurring services with an implementation deadline of September 30, 2010.⁷ Covert claims in its appeal that its consultant told it the January 28, 2011 invoice submission deadline was also the services implementation deadline for the non-recurring services at issue in this appeal.⁸ As a result, Covert's service provider did not complete installation of the relevant services until January 28, 118 days after the services implementation deadline, even though Covert had not requested an extension of the deadline.⁹ Covert learned of its mistake when USAC denied its invoice because the services were not implemented by September 30, 2010.¹⁰ Covert immediately submitted a request for an extension of the services implementation deadline to USAC.¹¹ On April 19, 2011, USAC denied Covert's request,¹² and Covert then filed the instant appeal with the Commission.¹³

4. Discussion. Based on the facts and circumstances of this case, we grant Covert's request for review and find good cause to justify a waiver of the Commission's rules and procedures. In the *Bishop Perry Order*, the Commission determined a departure from filing deadlines may be warranted upon careful review of the petitioner's case and when doing so will serve the public interest.¹⁴ The Commission granted waivers of the its rules for E-rate applicants that made ministerial, clerical or non-substantive procedural errors, such as missed filing deadlines, and where the mistakes could not have

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because funding disbursements are delayed while USAC investigates the application for program compliance. 47 C.F.R. § 54.507(d) (2011); *Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12.

⁵ See USAC website, Service Delivery Deadlines and Extension Requests, <http://www.universalservice.org/sl/applicants/step11/service-deadlines-extension-requests.aspx> (last visited Oct. 26, 2011); see also *Permanent Extension Order*, 16 FCC Rcd at 13514, para. 15.

⁶ See USAC website, Service Delivery Deadlines and Extension Requests <http://www.universalservice.org/sl/applicants/step11/invoice-deadlines-extension-requests.aspx> (last visited Oct. 26, 2011).

⁷ Letter from USAC, Schools and Libraries Division, to Craig Roby, Covert Public School District, dated May 6, 2009 (Funding Commitment Decision Letter). The services were for internal connections for a telephone system.

⁸ Request for Review.

⁹ *Id.*

¹⁰ Request for Review at Attachment B (Invoice Denial Notice).

¹¹ Letter from Rick Jones, Covert Public School District, to USAC, Schools and Libraries Division, dated Jan. 28, 2011 (Services Implementation Deadline Extension Request).

¹² Letter from USAC, Schools and Libraries Division, to Rick Jones, Covert Public School District, dated Apr. 19, 2011 (Administrator's Decision on Implementation Extension Request).

¹³ Request for Review.

¹⁴ *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5319-20, para. 9 (2006) (*Bishop Perry Order*).

resulted in the applicant's receiving more funding than that to which it was entitled.¹⁵ In addition, the Wireline Competition Bureau previously permitted applicants to receive funding even when they missed the services implementation deadline. In the *Great Rivers Order* and the *Tekoa Academy Order*, the Commission waived its services implementation deadline rule where the applicants made significant efforts to comply and the service provider installed the services as directed.¹⁶

5. We find good cause to waive the Commission's services implementation deadline rule and we grant Covert's request for review. Covert's efforts are similar to those made by the applicants in the *Bishop Perry*, *Great Rivers* and *Tekoa Academy Orders*. Covert's missed the services implementation deadline of September 30, 2010 because it relied on mistaken information from its consultant and thought the invoice submission deadline was also the services implementation deadline.¹⁷ Covert's mistake was procedural and granting its request will not lead to an undue advantage in funding. In addition, the services were delivered by Covert's service provider. We therefore find that special circumstances exist to justify a waiver of the Commission's rules and procedures.¹⁸ We also direct USAC to waive any associated invoice filing deadlines and any other procedural deadlines that were missed while these issues were on appeal with the Commission.

6. ACCORDINGLY, IT IS 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 authority delegated under 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 Request for Review filed by Covert Public School District, Covert, Michigan, IS GRANTED and the underlying application IS REMANDED to USAC for further consideration in accordance with the terms of this order.

7. 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 section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that section 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d) IS WAIVED to the extent provided herein.

¹⁵ *Bishop Perry Order* at 21 FCC Rcd 5321, para. 11.

¹⁶ *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 Order*); *Request for Review of the Decision of the Universal Administrator by Tekoa Academy of Accelerated Studies*, File No. SLD-242830, CC Docket No. 02-6, Order, 23 FCC Rcd 15456, 15458, para. 5 (Wireline Comp. Bur. 2008) (*Tekoa Academy Order*).

¹⁷ Request for Review.

¹⁸ 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).

8. 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 authority delegated under 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 Universal Service Administrative Company SHALL GRANT Covert Public School District's Request for Review no later than 90 calendar days from the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

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