

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

In the Matter of	)	
	)	
Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by	)	
	)	
Animas School District 6 Animas, New Mexico, <i>et al.</i>	)	File Nos. SLD-427902, <i>et al.</i>
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	

**ORDER**

**Adopted: December 22, 2011**

**Released: December 22, 2011**

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

1. Consistent with our precedent,<sup>1</sup> we grant 46 appeals of decisions made by the Universal Service Administrative Company (USAC) that denied or rescinded funding for various funding years from the E-Rate program (formally known as the universal service schools and libraries program). The applications were denied on the grounds that the petitioners' violated the Commission's rule that a contract or legally binding agreement be in place when the FCC Form 471 application is submitted.<sup>2</sup>

2. Petitioners offer a number of explanations for why they did or did not have a legally binding agreement in place when their FCC Form 471 application was submitted. Some petitioners claim that they could not comply with our rules due to conflicting local or state procurement requirements.<sup>3</sup> Other petitioners claim that they did not have a signed contract at the time of filing because their employees erred or they misunderstood the rules.<sup>4</sup> Other petitioners claim that they technically followed

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<sup>1</sup> *Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-400938, *et al.*, CC Docket No. 02-6, 23 FCC Rcd 15526 (Wireline Comp. Bur. 2008) (*Barberton City Order*) (finding good cause to grant a waiver of the Commission's rules because minor mistakes did not warrant the complete rejection of petitioners' applications for E-rate funding).

<sup>2</sup> The requests for review and/or waiver are listed in the appendix. In this order, we use the term "appeals" to refer generically to requests for review or waiver that are related to decisions issued by USAC. 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).

<sup>3</sup> See Request for Waiver of City Charter High School and Request for Review of Dougherty County Public School; Request for Waiver by McAllen Memorial Library.

<sup>4</sup> See Request for Review of Appleton Area School District; Request for Waiver of Aurora Public Schools; Request for Waiver of Beecher Community School District; Request for Review of Caldwell Independent School District; Request for Review of Chatham County Public District; Request for Review of Churchill County School District; Request for Review of Cuba Independent School District; Request for Review of Easton Area Public Library and District Center (Form 471 Application Numbers 498298 and 498984); Request for Waiver of Hickman Mills School

program rules, even though USAC determined they did not have a legally binding agreement in place when filing their FCC Form 471.<sup>5</sup> Other petitioners said that that USAC erred in its decision and that they had a contract in place at the time of the filing of their FCC Forms 471.<sup>6</sup> Lenox Public Schools said it did not have a contract in place when it submitted its FCC Form 471 because it was waiting on its service provider to finalize plans for its fiber deployment<sup>7</sup> and Plymouth Educational Center Charter Schools signed its contract three days late because its superintendent had a death in the immediate family.<sup>8</sup>

3. Based on our review of the record, the mistakes made by these petitioners do not warrant the complete rejection of these petitioners' applications for E-rate funding.<sup>9</sup> Although the record demonstrates that petitioners' contracts had minor errors, they all had some form of an agreement in place during the relevant funding year prior to the filing of their applications. Therefore, we waive section 54.505(c) of the Commission's rules for 40 petitioners, and we grant seven petitioners' appeals on the merits because these petitioners demonstrated that they had placed contracts that complied with the Commission's rules and procedures when submitting their FCC Forms 471. We remand the underlying applications to USAC for further action consistent with this order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in Appendix 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.<sup>10</sup>

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District C-1; Request for Review of Lifeline Center for Child Development, Inc.; Request for Review of Mount Saint Michael Academy; Request for Review of Mulvane Unified School District 263; Request for Review of New Holstein Elementary School; Request for Review of Passaic County Technical Institute; Request for Waiver of Saddleback Valley Unified School District; Request for Review of Saint John Neumann; Request for Review of Sha'Arei Zion Ohel Bracha Institutions; Request for Review of Smyer Independent School District; Request for Review of Teays Valley Local School District; Request for Review of Vance County School District; Request for Review of Vigo County Public Library; Request for Review of Wyoming Valley West School District; and Request for Review of Zeeland Public School District No. 4.

<sup>5</sup> See Request for Review of Animas School District 6; Request for Review of Eastern Upper Peninsula Intermediate School District; Request for Review of Florence City School District; Request for Review of Howard County Public School System; Request for Review of Our Lady Help of Christians School, Request for Review of Our Lady of the Lake School; Request for Review of Putnam City Independent School District 1; Request for Waiver of Sheboygan Area School District; Request for Review of South Redford School District; Request for Review of Taylor County Upper Elementary School; Request for Waiver of Teach Wisconsin; and Request for Review Tornillo Independent School District.

<sup>6</sup> See Request for Review of Chicago Public Library; Request for Review of Gooding Public Schools; Request for Review of New Jersey School Construction Corporation; Request for Review of Paterson School District; Request for Review of Saint John Vianney Cure of Ars School; and Request for Review of St. Francis De Sales School.

<sup>7</sup> See Request for Review of Lenox Public Schools.

<sup>8</sup> See Request for Review of Plymouth Educational Center Charter School.

<sup>9</sup> *Barberton City Order*, 23 FCC Rcd 15526, para.7.

<sup>10</sup> During post-funding review, USAC determined that Animas School District 6, Dougherty County Public School, Eastern Upper Peninsula Intermediate School District, Hickman Mills School District C1, Mulvane Unified School District 263, Saddleback Valley Unified School District, Taylor County Upper Elementary School, and Tornillo Independent School District were in violation of the Commission's competitive bidding rules. These applicants were then subject to a funding commitment adjustment by USAC which sought recovery of funds already committed to the petitioners. In light of the decision in this order, we direct USAC to discontinue recovery actions against these petitioners and to process any outstanding invoices.

4. In addition, we grant 14 petitioners waivers of our filing deadline<sup>11</sup> for appeals because we find they submitted their appeals to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decision,<sup>12</sup> or the late-filed appeal would never have been necessary absent an error on the part of USAC.<sup>13</sup>

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), the Requests for Review and/or Requests for Waiver filed by the petitioners as listed in the Appendix ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this order.

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), section 54.504(c) of the Commission's rules, 47 C.F.R. § 54.504(c) IS WAIVED.

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 sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3 of the Commission's rules, that section 54.720(a) of the Commission's rules, 47 C.F.R. § 54.720(a), IS WAIVED for Animas School District 6; Appleton Area School District; Aurora Public School; Beecher Community School District; Caldwell Independent School District; City Charter High School; Gooding Public Schools; Paterson School District; Saint John Vianney Cure of Ars School; Sheboygan Area School District; St. Francis De Sales School; Teach Wisconsin; Tornillo Independent School District; and Vance County School District, to the extent necessary as provided herein.

8. 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, 54.722(a), that USAC SHALL DISCONTINUE its recovery actions against Animas School District 6; Dougherty County Public School; Eastern Upper Peninsula Intermediate School District; Hickman Mills School District C1; Mulvane Unified School District 263; Saddleback Valley Unified School District; Taylor County Upper Elementary School; and Tornillo Independent School District.

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<sup>11</sup> See 47 C.F.R. § 54.720.

<sup>12</sup> See Request for Review of Animas School District 6; Request for Review of Appleton Area School District; Request for Waiver of Aurora Public School; Request for Waiver of Beecher Community School District; Request for Review of Caldwell Independent School District; Request for Waiver of City Charter High School; Request for Waiver of Sheboygan Area School District; Request for Review of St. Francis De Sales School; Request for Waiver of Teach Wisconsin; Request for Review of Tornillo Independent School District; and Request for Review of Vance County School District.

<sup>13</sup> Based on the record, USAC erred in its decision to deny funding for these petitioners for not having a signed contract in place when the Form 471 was submitted. If USAC had not erred, the petitioners would not have had to file an appeal. See Request for Review of Gooding Public Schools; Request for Review of Paterson School District; and Request for Review of Saint John Vianney Cure of Ars School.

9. 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

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

## Appendix

## List of Petitioners

Applicant	Application Number	Funding Year	Date Appeal Filed
Animas School District 6 Animas, NM	427902	2004	9/20/2010
Appleton Area School District Appleton, WI	726578	2010	12/13/2010
Aurora Public Schools Aurora, CO	635155	2008	2/25/2009
Beecher Community School District Flint, MI	683181	2009	1/11/2010
Caldwell Independent School District Caldwell, TX	484485	2005	1/30/2006
Chatham County Public District Savannah, GA	585510	2007	9/23/2008
Chicago Public library Chicago, IL	527145	2006	3/1/2007
Churchill County School District Fallon, NV	615103	2008	8/21/2009
City Charter High School Pittsburgh, PA	607503	2008	10/22/2008
Cuba Independent School District Cuba, NM	366834	2003	1/19/2011
Dougherty County Public School Albany, GA	432381	2004	10/20/2009
Eastern Upper Peninsula Intermediate School District Saulte Ste. Marie, MI	363527	2003	6/17/2010
Easton Area Public Library and District Center Easton, PA	498298	2006	12/28/2006

Applicant	Application Number	Funding Year	Date Appeal Filed
Easton Area Public Library and District Center Easton, PA	498984	2006	1/16/2006
Florence City School District Florence, AL	4812389	2005	8/24/2009
Gooding Public Schools Gooding, ID	499157	2006	10/4/2006
Hickman Mills School District C-1 Kansas City, MO	430831, 486714, 537490, 574958	2007	1/8/2009
Howard County Public School System Ellicott, MD	591458	2008	2/12/2010
Lenox Public School Lenox, MA	797913	2011	8/22/2011
Lifeline Center for Child Development, Inc. Queens Village, NY	513905, 515347	2006	3/14/2007
McAllen Memorial Library McAllen, TX	768378, 763740, 768260, 768489	2010	11/22/2011
Mount Saint Michael Academy Bronx, NY	688454	2009	10/16/2009
Mulvane Unified School District 263 Mulvane, KS	583968	2007	10/25/2010
New Holstein Elementary School New Holstein, WI	735267	2010	11/18/2010
New Jersey School Construction Corporation Newark, NJ	446824, 446838, 470533, 470569, 472169, 472325, 473951, 474756, 474811, 475128, 475523, 477379, 482658, 483800	2005	10/20/2006
Our Lady of Help of Christians School East Orange, NJ	519924	2006	5/4/2007

<b>Applicant</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Date Appeal Filed</b>
Our Lady of the Lake School New Haven, CT	539978	2006	2/14/2011
Paterson School District Paterson, NJ	463661	2005	2/15/2007
Plymouth Educational Center Charter School Detroit, MI	683999, 687705	2009	1/28/2010
Putnam City Independent School District 1 Oklahoma City, OK	518354	2006	4/16/2007
Saddleback Valley Unified School District Mission Viejo, CA	509780	2006	10/23/2009
Saint John Neumann Allentown, PA	807345	2011	8/20/2011
Saint John Vianney Cure of Ars School Bronx, NY	510979	2006	7/9/2008
Sha'Arei Zion Ohel Bracha Institutions Forest Hills, NY	469911	2005	11/20/2006
Sheboygan Area School District Sheboygan, WI	525004	2006	8/21/2006
Smyer Independent School District Smyer, TX	570570	2007	5/12/2008
South Redford School District Redford, MI	652921	2009	2/5/2010
St. Francis De Sales School Lake Zurich, IL	743956	2010	10/20/2010
Taylor County Upper Elementary School Butler, GA	461822	2005	7/6/2010

<b>Applicant</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Date Appeal Filed</b>
Teach Wisconsin, Madison, WI	441874	2005	5/6/2011
Teays Valley Local School District Ashville, OH	494694	2006	12/18/2006
Tornillo Independent School District Tornillo, TX	432427	2004	6/8/2010
Vance County School District Henderson, NC	647317	2009	2/23/2010
Vigo County Public Library Sarasota, FL	592629	2008	9/11/2008
Wyoming Valley West School District Newtown, PA	781904	2011	8/4/2011
Zeeland Public School District No.4 Zeeland, ND	648808	2009	8/11/2009