

**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)	
)	
Al-Noor School)	File Nos. SLD-768866, <i>et al.</i>
Brooklyn, NY, <i>et al.</i>)	
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

ORDER

Adopted: April 13, 2011

Released: April 13, 2011

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

1. In this order, we address 11 requests from petitioners seeking waivers of the FCC Form 471 application filing window deadline for funding years 2009 and 2010 under the E-rate program (formally known as the schools and libraries universal service support program).¹ Consistent with the Commission's *Academy of Math and Science Order*,² and based on our review of the record, we find that two 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.³ We deny, however, nine requests for waiver because we find that the petitioners failed to present special circumstances to justify a waiver of the Commission's rules.⁴

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.⁵ We first

¹ 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.

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).

³ See appendix A; 47 C.F.R. § 54.507(c).

⁴ See appendix B; 47 C.F.R. § 1.3.

⁵ See 47 C.F.R. § 54.507(c).

grant one petitioner a waiver of our appeal filing deadline because we find its appeal was necessitated by a technical problem when filing.⁶ Applying the standards of the *Academy of Math and Science Order*, we grant two requests seeking waivers of the FCC Form 471 application filing window deadline for funding year 2010.⁷ One petitioner filed its FCC Form 471 application within 14 days after the FCC Form 471 application filing window deadline closed.⁸ The other petitioner filed a timely FCC Form 471 application but neglected to file its FCC Form 471 application certification on time.⁹ At this time, we find no evidence of waste, fraud, or abuse. Therefore, we find that good cause exists to grant both petitioners' requests for waiver and remand the applications listed in appendix A to USAC for further action consistent with this order.¹⁰ In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We deny the remaining nine requests seeking waivers of the FCC Form 471 application filing window deadline for funding years 2009 and 2010 because we find that the petitioners failed to present special circumstances justifying a waiver of section 54.507(c) of the Commission's rules.¹¹

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

⁶ See 47 C.F.R. § 54.720. Al-Noor School appears to have attempted to file its FCC Form 471 application on time, on Friday, February 19, 2010, but, due to an apparent technical problem with USAC's website, the application was not accepted. Therefore, after speaking with USAC on the following Monday, Al-Noor filed a paper version of its application on Tuesday, February 23, 2010. Letter from Hamid Ahmed, Principal, Al-Noor School, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 at 1 (filed Dec. 16, 2010) (Al-Noor School Request for Review).

⁷ 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).

⁸ See *Academy of Math and Science Order* at 4-5, para. 8; Al-Noor School Request for Review (the application was filed four days late).

⁹ See *Academy of Math and Science Order* at 4-5, para. 8; Letter from Chris Russell, Director of Technology, Maimonides School, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 24, 2011).

¹⁰ See appendix A. 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.

¹¹ See appendix B. 47 C.F.R. § 54.507(c). In one of these cases, Lamar School District filed a timely FCC Form 471 application, but failed to submit its item 21 attachments, even after USAC made repeated requests to Lamar asking it to rectify its omission. See *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 354, 355, para. 4 (Wireline Comp. Bur. 2011) (affirming that FCC Form 471 applications will be treated as filed outside the filing window if applicants do not satisfy USAC requests that they submit omitted item 21 attachments for those applications by the specified deadlines).

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 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.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A

Requests Granted

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Al-Noor School Brooklyn, NY	768866	2010	Dec. 16, 2010
Maimonides School Brookline, MA	739635	2010	Jan. 24, 2011

APPENDIX B

Requests Denied

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Calumet School Treasurer's Office South Holland, IL	771103	2010	Nov. 24, 2010
Finkelstein Memorial Library Spring Valley, NY	770543	2010	Feb. 14, 2011
Goffstown School District Goffstown, NH	771463	2009	Jan. 3, 2011
Lamar Public School District Lamar, AR	693070	2009	Aug. 11, 2009
Las Animas-Bent County Library District Las Animas, CO	771403	2009	Dec. 21, 2010
New Kensington-Arnold District New Kensington, PA	677640, 679008, 678991	2010	Dec. 23, 2010
Schoolcraft Learning Community Bemidji, MN	771283	2010	Jan. 5, 2011
Thornton Township School Treasurer's Office South Holland, IL	7711233	2010	Nov. 23, 2010
Whitefish Township School District Paradise, MI	771383	2010	Nov. 8, 2010