

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

In the Matter of)	
)	
Application for Review of a)	
Decision of the)	
Wireline Competition Bureau by)	
)	
Sacred Heart School)	File No. SLD-365343
Shawano, Wisconsin)	
)	
School and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: May 10, 2011

Released: May 10, 2011

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

1. In this order, we reconsider a decision by the Wireline Competition Bureau (Bureau) and grant an application for review filed by Sacred Heart School, Shawano, Wisconsin (Sacred Heart).¹ Sacred Heart seeks review of the Bureau's February 3, 2005 order affirming a decision made by the Schools and Libraries Division of the Universal Service Administrative Company (USAC) to dismiss Sacred Heart's appeal to USAC because it was postmarked more than 60 days after the date on an FCC Form 471 Outside of Window letter.²

2. On our own motion, we reconsider the *SAU 41 Order* and waive the appeal filing deadline for Sacred Heart.³ While 54.720(c) of the Commission's rules stipulates that appeals must be submitted within 60 days of the decision being appealed,⁴ Sacred Heart filed its appeal only a few days late.⁵

¹ Letter from Kara Skarlupka, Sacred Heart School, to the Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed March 11, 2005) (Application for Review).

² See *Request for Review of the Decision of the Universal Service Administrator by School Administrative Unit 41, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-356431, *et al.*, CC Docket Nos. 02-6, Order, 20 FCC Rcd 2175 (Wireline Comp. Bur. 2005) (*SAU 41 Order*); Letter from USAC, Schools and Libraries Division, to Kara Skarlupka, Sacred Heart (dated May 4, 2004) (Administrator's Decision on Appeal).

³ If Sacred Heart does not seek reconsideration of this decision within 15 days, its application for review will be dismissed as moot.

⁴ 47 C.F.R. § 54.720(c).

⁵ Administrator's Decision on Appeal at 1; see, e.g., *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Baker Hall School, et al.*, File Nos. SLD-596432, *et al.*, Order, 25 FCC Rcd 17534, 17535, n.9 (Wireline Comp. Bur. 2010) (waiving the 60-day appeal filing requirement when petitioners either filed their appeals a few days late or as soon they received actual notice of the denial).

3. Turning to the merits, we find that Sacred Heart has demonstrated special circumstances to justify a waiver of the E-rate program's FCC Form 471 filing deadline.⁶ Consistent with the Bureau's decision in *Argos Public Library*, and based on our review of the record, we find that good cause exists to waive 54.507(c) of the Commission's rules, which states that FCC Forms 471 must be filed within the filing window to be considered as simultaneously received.⁷ *Argos Public Library* found that, absent "evidence of waste, fraud or abuse," we may grant waivers in cases where parties "filed their FCC Forms 471 or their waiver request within 14 days after the FCC Form 471 filing window deadline closed."⁸ In the instant case, Sacred Heart states that confusion regarding the filing deadline resulted in it filing its application eight days outside of the filing window.⁹ In addition, we find no evidence of waste, fraud or abuse in the record at this time.

4. ACCORDINGLY, IT IS ORDERED, pursuant to 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 the authority delegated pursuant to authority 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), that sections 54.507(c) and 54.720(c) of the Commission's rules ARE WAIVED.

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 the authority delegated pursuant to 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 COMPLETE its review of this application and ISSUE an award or a denial based on a complete review and analysis no later than 60 days from the release of this order.

6. IT IS FUTHER 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 Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

⁶ 47 C.F.R. § 54.507(c).

⁷ *Request for Waiver and Review of 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 Nos. 02-6, Order, 25 FCC Red 16109 (Wireline Comp. Bur. 2010) (*Argos Public Library*). The annual cap on E-rate funds is \$2.25 billion per funding year, indexed to inflation. 47 C.F.R. § 54.507. Since 1999, E-rate funds have been exhausted before satisfying all of the priority 2 funding requests of those applicants who filed within the filing window. See USAC website, Automated Search of Commitments, <http://www.usac.org/sl/tools/commitments-search/Default.aspx> (last viewed May 10, 2011).

⁸ *Argos Public Library*, 25 FCC Red at 16109-10, para. 2.

⁹ Application for Review at 1.