

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)
Albany City School District) File Nos. SLD-821561, et al.
Albany, New York, et al.)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: July 6, 2012

Released: July 6, 2012

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

1. Consistent with precedent,1 we grant five requests and deny one request from petitioners2 seeking review of decisions made by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program).3 In each of these cases, USAC refused to permit petitioners to make changes to their applications after they had submitted them. Based on the facts and circumstances of these specific cases, we find that the five petitioners listed in Appendix A have demonstrated that good cause exists to justify a waiver of section 54.504(a) of the Commission’s rules to permit them to correct clerical or ministerial errors with respect to those applications listed in Appendix A.4 On our own motion, for those five petitioners, we also waive

1 See Request for Waivers and Review of the Decisions of the Universal Service Administrator by Assabet Valley Regional Vocational District, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-628454, et al., CC Docket No. 02-6, Order, 27 FCC Rcd 1924 (Wireline Comp. Bur. 2012) (permitting 12 applicants to correct clerical or ministerial errors in their E-rate applications and five requests to make more substantive changes to their applications); see also Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, 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 (2006) (granting applicants 15 calendar days to submit corrections of clerical or ministerial errors, or to refile their FCC Form 470, FCC Form 471 application, or associated documentation).

2 In some instances, the requests also sought waiver of our rules. The requests for waiver or waiver and review are listed in appendices A and B.

3 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).

4 Generally, the Commission’s rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule 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, 1159 (D.C. Cir. 1969); Northeast Cellular, 897 F.2d at 1166. Waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. NetworkIP, LLC v. FCC, 548 F.3d 116, 125-128 (D.C. Cir. 2008); Northeast Cellular, 897 F.2d at 1166.

section 54.507(d) of the Commission's rules and direct USAC to waive any procedural deadline, such as the invoicing deadline, that might be necessary to effectuate our ruling.⁵ We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause petitioners to miss the program's subsequent procedural deadlines in that funding year. Consistent with precedent, we also grant Morgan County School District's request for waiver of the appeal filing deadline because we find it submitted its appeal to us only a few days late.⁶ We also find that Long Branch School District is seeking to make changes to its application that would not merely correct clerical or ministerial errors, but that it has not demonstrated that good cause exists to justify a waiver of our rules to allow it to do so.

2. We therefore remand the underlying applications listed in Appendix A to USAC for further action consistent with this order. To ensure that those applications are resolved expeditiously, we direct USAC to complete its review of each application listed in Appendix A and issue a funding commitment or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

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 Appendix A 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, 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 54.504(a), 54.507(d), and 54.720 of the Commission's rules, 47 C.F.R. §§ 54.504(a), 54.507(d), and 54.720 ARE WAIVED for the petitioners listed in Appendix A to the limited extent provided herein.

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 the request for review filed by the petitioner listed in Appendix B IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

⁵ 47 C.F.R. § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

⁶ See 47 C.F.R. § 54.520 (requiring appeals to be filed within 60 days of a decision by USAC); *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-584091, Order, 26 FCC Rcd 11019, 11019, para. 2 (Wireline Comp. Bur. 2011) (granting petitioners waivers of our filing deadline for appeals because they submitted their appeals to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decision or file their appeals only a few days late).

APPENDIX A**Requests Granted**

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Albany City School District Albany, NY	821561	2011	May 30, 2012 supplemented June 18, 2012
Anson County School District Wadesboro, NC	745414	2010	Mar. 12, 2012
Cuyahoga Falls School District Cuyahoga Falls, OH	788856	2011	Oct. 26, 2011
Morgan County School District Decatur, AL	743177	2010	Feb. 13, 2012
Zapata County Independent School District Zapate, TX	609903	2008	Mar. 5, 2012

APPENDIX B**Request Denied**

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Long Branch School District Long Branch, NJ	627407	2008	May 4, 2009 amended June 17, 2009