

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of
Decisions of the
Universal Service Administrator by
Integrity Communications
(Brooks Consolidated Independent School District
Falfurrias, Texas), et al.
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-256241, et al.
CC Docket No. 02-6

ORDER

Adopted: July 13, 2012

Released: July 13, 2012

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

1. Consistent with precedent,1 we grant four requests from petitioners2 seeking review of decisions by the Universal Service Administrative Company (USAC) denying requests for funding or seeking recovery of funding provided under the E-rate program (more formally known as the schools and libraries universal service support program) for funding years 2001 and 2002 because the applicants failed to show that they had the necessary resources to effectively use the E-rate purchases they sought.3 We find that none of the four applicants fully responded to USAC's requests during selective review to show that they had budgeted for the resources necessary to make effective use of the eligible services they requested.4 Based on our review of the facts and circumstances of these specific cases, however, we have

1 See Requests for Review of the Decisions of the Universal Service Administrator by Academy of Excellence et al., File Nos. SLD-361209, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8722, 8725-8728, paras. 6-9 (2007) (finding that the petitioners either provided sufficient evidence to demonstrate they had the resources to make effective use of the E-rate services they requested or that they should be given another chance to provide such documentation to USAC); Requests for Review of the Decisions of the Universal Service Administrator by Chester Upland School District, et al, File Nos. SLD-429627, 431150, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15561, 15564-65 paras. 7-10 (Wireline Comp. Bur. 2008) (granting petitioners another chance to provide USAC with sufficient evidence to demonstrate they had the resources to make effective use of the E-rate services they requested).

2 The four applications covered by those requests for review are listed in Appendix A.

3 See Section § 54.504(b)(2)(v) (2001) (requiring applicants to certify that they have secured the necessary funding to use their E-rate services effectively). 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 Integrity contends that the schools at issue, for which it is the service provider, have demonstrated that they had access to adequate resources to make effective use of their E-rate services. Letter from Bill Sugarek, Integrity Communications, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 at 2 (filed Jan. 3, 2002). Lady Liberty also claims that it has provided sufficient documentation to address USAC's data request. Letter from Lady Liberty Academy Charter School to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 at 1 (filed Aug. 21, 2006).

reason to believe that the applicants may not have fully understood the documentation USAC required to complete its review, and thus good cause exists to justify waiver of USAC's filing deadline and allow the applicants listed in Appendix A another opportunity to respond to USAC's requests for further information.<sup>5</sup> We therefore direct USAC to give those four applicants an additional 30-day opportunity to provide USAC with documentation to show that they had budgeted for all of the resources necessary to make effective use of the eligible services they requested, including the costs of the requisite software and teacher training, such as a completed Item 25 worksheet. Consistent with precedent,<sup>6</sup> we also waive, for Lady Liberty Academy Charter School, section 54.720 of the Commission's rules, which requires applicants to seek review of a USAC decision within 60 days, because it only missed that filing deadline by three days.<sup>7</sup> We also dismiss the two appeals listed in Appendix B because the schools at issue subsequently withdrew their funding requests.<sup>8</sup>

2. We therefore remand the underlying applications listed in Appendix A 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 the submitted documentation related to each application listed in Appendix A and issue a funding commitment or denial based on a complete review and analysis no later than 90 calendar days from its receipt of the submitted documentation. 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, 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 filed by the petitioners listed in Appendix A ARE GRANTED and 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, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that section 54.720 of the Commission's rules, 47 C.F.R. § 54.720, IS WAIVED for Lady Liberty Academy Charter School as described 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,

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<sup>5</sup> 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.

<sup>6</sup> *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 only a few days late).

<sup>7</sup> See 47 C.F.R. § 54.720 (requiring appeals to be filed within 60 days of a decision by USAC).

<sup>8</sup> See Appendix B.

and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the requests for review filed by petitioners listed in Appendix B ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

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

## APPENDIX A

## Requests Granted

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Funding Year</b>	<b>Date Request for Review/Waiver Filed</b>
Integrity Communications (Encino School Encino, TX)	250073	2001	Jan. 3, 2002
Integrity Communications (Port Isabel Independent School District Port Isabel, TX)	489138	2001	Jan. 3, 2002
Integrity Communications (Premont Independent School District Premont, TX)	651588	2001	Jan. 3, 2002
Lady Liberty Academy Charter School Newark, NJ	307788	2002	Aug. 21, 2006

## APPENDIX B

## Requests Dismissed

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Funding Year</b>	<b>Date Request for Review/Waiver Filed</b>
Integrity Communications (Brooks Consolidated Independent School District Falfurrias, TX)	790089	2001	Jan. 3, 2002
Integrity Communications (Jim Hogg Consolidated Independent School District Hebbronville, TX)	500811	2001	Jan. 3, 2002