

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

In the Matter of)	
)	
Requests for Waiver and/or Review of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Baltimore County Public Schools)	SLD Nos. 703513, <i>et al.</i>
Towson, Maryland, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: August 3, 2012

Released: August 3, 2012

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

1. Consistent with precedent,¹ we deny 13 requests 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 We find that the petitioners failed to submit their requests for review and/or waiver either to the Commission or to USAC within 60 days as required by the Commission's rules.⁴ Based on our review of the record, we deny the 13 requests because the petitioners have failed to show special circumstances necessary for the Commission to waive the deadline.⁵ We also deny a petition for reconsideration by Spring Cove School

¹See *Request for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-134, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-363747, *et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684 (Wireline Comp. Bur. 2010) (denying 104 appeals on the grounds that the petitioners failed to submit their appeals either to the Commission or to USAC within 60 days as required by the Commission's rules without showing special circumstances necessary for the Commission to waive the deadline); *Requests for Review and/or Requests for Waiver of Decisions of the Universal Service Administrator by Bonnie Brae Educational Center School, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-625470, *et al.*, CC Docket No. 02-6, Order, 27 FCC Rcd 1344 (Wireline Comp. Bur. 2012) (denying 22 appeals on the grounds that the petitioners failed to submit their appeals either to the Commission or to USAC within 60 days as required by the Commission's rules and without showing special circumstances necessary for the Commission to waive the deadline).

² The requests for waiver and/or review are listed in Appendix A.

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 47 C.F.R. § 54.720.

⁵ The Commission may waive any provision of its rules for good cause 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 (Continued...)

District (Spring Cove) seeking review of an earlier Wireline Competition Bureau order to the extent that it rejected a challenge by Spring Cove to a USAC commitment adjustment decision.⁶ Spring Cove argues in its petition for reconsideration that its original appeal to the Commission was filed within 60 days of receiving a demand payment letter sent by USAC, and thus was not in violation of our rules.⁷ We find, however, that the letter actually rendering USAC's decision was dated May 7, 2010 and Spring Cove's appeal was filed 84 days later on July 30, 2010.⁸

2. 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 and/or requests for waiver filed by the petitioners listed in Appendix A ARE DENIED.

(continued from previous page)

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.

⁶ Letter from Nathaniel Hawthorne, counsel for Spring Cove School District, to Federal Communications Commission, CC Docket 02-6, filed Aug. 3, 2011 (seeking partial reconsideration of *Requests for Review and/or Requests for Waiver Boston Renaissance School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD- 735147, *et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 10405 (Wireline Comp. Bur. 2011)) (Spring Cove Petition for Reconsideration); *see also* Letter from Nathaniel Hawthorne, counsel for Spring Cove School District, to Federal Communications Commission, CC Docket 02-6, filed Sept. 12, 2011 (Spring Cove Addendum to Petition for Reconsideration). The Bureau has the authority to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority. 47 C.F.R. § 1.106(a)(1).

⁷ Spring Cove Petition for Reconsideration at 4. In its request for reconsideration, Spring Cove also takes issue with our initial decision to treat its filing as an appeal of a USAC commitment adjustment (COMAD) decision, because Spring Cove's original application was captioned as a "motion to stay" the USAC COMAD decision and a request for "declaratory judgment" overturning the basis behind USAC's decision. Spring Cove Petition for Reconsideration at 1; Spring Cove Addendum to Petition for Reconsideration at 1-2. We find that argument to be meritless. Regardless of how an applicant captions a request for review, an application seeking to have the Commission overturn a USAC decision is functionally an appeal of that decision, and as such must be filed within 60 days of the date of the decision. To allow applicants to extend the deadline for appeals beyond 60 days by changing the title of the document they use to make the request would place form over substance and invite countless late filed appeals masquerading under the façade of a different pleading title.

⁸ *See* Letter from USAC, Schools and Libraries Division, to Linda Alexander, Spring Cove School District, dated May 7, 2010 (Notification of Commitment Adjustment Letter) (noting that any appeal "must be received by the FCC or postmarked within 60 days of the date of [this] letter"); Letter from Nathaniel Hawthorne, counsel for Spring Cove School District, to Federal Communications Commission, CC Docket 02-6, filed July 30, 2010 (Spring Cove Appeal). Our rules state that parties seeking review of a USAC decision must file within 60 days of the issuance of the decision. 47 C.F.R. § 54.720.

3. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. § 15 1-154 and 254, and pursuant to authority in sections 0.91, 0.291, 1.3, 1.106, and 54.722(a) of the Commission's rules, 47 C.F.R. § 0.91, 0.291, 1.3, 1.106, and 54.722(a), that the petition for reconsideration filed by Spring Cove School District IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX A

List of Petitioners

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Baltimore County Public Schools Towson, Maryland	703513	2010	Jun. 26, 2012
Cicero School District 99 Cicero, Illinois	762978	2010	Jun. 8, 2012
Elbert County Library District Elizabeth, Colorado	618164	2009	Dec. 14, 2009
El-Hajj Malik El-Shabazz Academy Lansing, Michigan	620984	2008	Jul. 2, 2012
Fund Ed Consulting Group (<i>See Appendix B</i>)		2010	Feb. 28, 2011
Harlingen Construction Independent School District Harlingen, Texas	574609	2007	Apr. 10, 2008
Mt. Vernon Township High School Mt. Vernon, Illinois	777692	2011	July 27, 2012
Northwest Lutheran School Association Milwaukee, Wisconsin	815748	2011	Jun. 20, 2012
Sampson County School District Clinton, North Carolina	561507	2007	Jun. 12, 2012
Shades Mountain Christian School Clayton, Missouri	800947	2011	Jun. 11, 2012
Sheffield City School District Sheffield, Alabama	776192	2011	July 30, 2012
SS. Peter and Paul School Lexington, Kentucky	781679	2011	Jul. 12, 2012
United Systems, Inc. (Blackwell Independent School District 45) Oklahoma City, Oklahoma	401266	2004	Jun. 28, 2012

APPENDIX B

Applicants in the Request for Review filed by Fund Ed Consulting Group

Applicant	Application Number
Antelope Valley Learning Academy Palmdale, California	715419
Crescent View South Charter High School Fresno, California	715394
Crescent View West Charter School Fresno, California	715416
Desert Sands Charter High School Palmdale, California	715423
Diego Hills Public Charter San Diego, California	730788
Vista Real Charter High School Oxnard, California	715405