

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)	
)	
Acadia Parish School Board Head Start Program)	File Nos. SLD-819077, <i>et al.</i>
Crowley, Louisiana, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	

ORDER AND ORDER ON RECONSIDERATION

Adopted: September 14, 2012

Released: September 14, 2012

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

1. Consistent with precedent,¹ we address 39 requests from petitioners 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) and one petition for reconsideration of an earlier Wireline Competition Bureau (Bureau) decision.² The petitioners are seeking waivers of the FCC Form 471 application filing window deadline for funding years 2009, 2011,

¹ See *Requests for Review of the Decisions 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*) (finding special circumstances exist to justify granting waiver requests where, for example, petitioners filed their FCC Forms 471 within 14 days after the FCC Form 471 filing window deadline or filed their Forms 471 on time, but failed to timely file their certifications); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 354 (Wireline Comp. Bur. 2011) (clarifying that, for the purposes of considering whether an application has been filed on time, late-filed item 21 attachments should be treated like late-filed certifications); *Petitions for Reconsideration by Lincoln Parish School Board, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-344917, *et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 7992 (Wireline Comp. Bur. 2011), at n.1 (stating that the Bureau has the authority under 47 C.F.R § 1.106(p) to dismiss petitions for reconsideration of a Commission action that plainly do not warrant consideration by the Commission, such as petitions that rely on arguments that fail to identify any material error, omission, or reason warranting reconsideration and relies on arguments that have been fully considered and rejected by the Commission within the same proceeding).

² 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). 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). Fairland Local Schools is seeking reconsideration of *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Anderson Elementary School, 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).

and 2012 under the E-rate program.³ We grant 23 requests, grant in part and deny in part two requests,⁴ and deny 15 requests (including the petition for reconsideration).

2. Based on the facts and circumstances of these specific cases, we find good cause exists to grant the appeals of the 25 petitioners listed in Appendices A and B with respect to the applications listed therein.⁵ We grant the 13 waiver requests listed in Appendix A, because those petitioners' applications were filed within 14 days of the close of the filing window.⁶ We also grant the 12 waiver requests listed in Appendix B, because each of those petitioners' applications was submitted on time but for their certifications or item 21 attachments.⁷

3. We deny the waiver requests with respect to the applications listed in Appendix C, because we find that with respect to those applications the 17 petitioners have failed to present special circumstances to justify a waiver of the Commission's rules.⁸ That includes the petition for reconsideration filed by Fairland Local Schools, because it fails to identify any material error, omission, or reason warranting reconsideration and relies on arguments that have been fully considered and rejected by the Bureau within the same proceeding.⁹

³ The requests for waiver and review are listed in Appendices A, B, and C. Section 54.507(c) of the Commission's rules provides for E-rate funds to be made 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. 47 C.F.R. § 54.507(c). Although some petitioners did not explicitly request a waiver of the FCC Form 471 application 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 Form 471 applications were submitted after the relevant filing window deadline. The petitions for reconsideration are listed in Appendices C and E. 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) (2011).

⁴ We grant in part and deny in part the requests of Valley Union High School District 22 and Wagon Mound Schools. Both seek waivers for two different applications. In both cases, we find that one of the applications was filed shortly after the filing window, justifying a waiver, while the other was filed significantly later, without any special circumstances to justify a waiver. The applications we grant are listed in Appendix A, while those that we deny are listed in Appendix C.

⁵ See Appendices A and B. 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.

⁶ See Appendix A.

⁷ See Appendix B.

⁸ See Appendix C; 47 C.F.R. § 1.3; *Academy of Math and Science Order*, 25 FCC Rcd at 9261, para. 13 (denying requests for waiver when the petitioners failed to present special circumstances justifying a waiver of section 54.507(c) of the Commission's rules).

⁹ 47 C.F.R. § 1.106(p)(1), (3); compare Letter from Shari D. Phillips, E-rate Exchange (Consultant for Fairland Local Schools), to the Office of the Secretary, Federal Communications Commission (filed June 15, 2012) (Fairland Petition for Reconsideration) with Letter from Shari Phillips, E-rate Exchange (Consultant for Fairland Local Schools), to the Office of the Secretary, Federal Communications Commission (filed Apr. 24, 2012).

4. At this time, we find no evidence of waste, fraud and abuse in the record with respect to the petitioners for which we grant relief. We therefore remand the underlying applications listed in Appendices A and B to USAC for further action consistent with this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

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

6. 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 Appendices A and B to the limited extent provided herein.

7. 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 C ARE DENIED.

8. 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, 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 Fairland Local Schools IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX A

Requests Granted
(FCC Form 471 Applications Filed Within 14 Days of the Close of the Filing Window)

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Callisburg Independent School District Callisburg, TX	875748	2012	July 3, 2012
Central Jersey Arts Charter School Plainfield, NJ	875313, 875314	2012	July 18, 2012
Greenwood School District 25 Greenwood, AR	867493	2012	July 3, 2012
Herron Charter High School Indianapolis, IN	875670	2012	May 25, 2012
Locust Grove School District 17 Locust Grove, OK	875585	2012	July 3, 2012
Mason Independent School District 2 Mason, OK	875697	2012	July 3, 2012
Rhett Brown Memorial Library filed under Rocky J Adkins Public Library Sandy Hook, KY	875371	2012	July 27, 2012
Southern California Tribal Head Start Association Pala, CA	875583	2012	July 30, 2012
Stetson School Barre, MA	875591	2012	Jun. 1, 2012
Susan Moore Elementary School Blountsville, AL	868418	2012	Jun. 12, 2012
Valley Union High School District 22 Elfrida, AZ	875356	2012	Jun. 11, 2012
Wagon Mound Schools Wagon Mound, NM	875762	2012	July 3, 2012
Washington State Migrant Council Sunnyside, WA	868806, 869400	2012	May 18, 2012

APPENDIX B

Requests Granted
(Waivers Granted for Other Special Circumstances)

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Acadia Parish School Board Head Start Program Crowley, LA	819077	2011	May 17, 2012
Albany School District Albany, WI	798193	2011	May 16, 2012
Centennial School District R-1 San Luis, CO	797519	2011	July 23, 2012
Chabad Hebrew Academy Ormond Beach, FL	815573	2011	Jun. 1, 2012
Divide County Public Library Crosby, ND	834464	2012	July 23, 2012
Havasupai School Supai, AZ	804336, 804442	2011	May 29, 2012
Pine Springs School Houck, AZ	800866, 800917	2011	Jun. 22, 2012
Regional School District 18 Old Lyme, CT	805671, 806009, 808638	2011	May 3, 2012
St. Peter School Yonkers, NY	811224	2011	Jun. 4, 2012
Washington County Library Chatom, AL	817224	2011	Jun. 7, 2011
Winfield-Mount Union Community School District Winfield, IA	835702	2012	Jun. 1, 2012
Yeshiva Tifereth Moshe Forest Hills, NY	820032, 819060	2011	Jun. 1, 2012, July 12, 2012

APPENDIX C

Requests Denied

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Baxter Community School District Baxter, IA	876887	2012	Jun. 12, 2012
Big Stone City School District Big Stone City, SD	875869	2012	Jun. 21, 2012
Dennis Township School District Cape May Court House, NJ	Did not file	2011	July 10, 2012

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Fairland Local Schools* Proctorville, OH	Did not file with USAC	2012	Jun. 15, 2012 re: Apr. 24, 2012
Foreman Public Schools Foreman, AR	876948	2012	July 2, 2012
Georgetown Community School Georgetown, CO	Did not file	2012	July 3, 2012
Gordon Technical High School Chicago, IL	852616	2011	Jun. 5, 2012
Goshen-Lempster Cooperative School Lempster, NH	875516	2012	May 22, 2012
Holy Family School Bronx, NY	821334, 822046, 822088	2012	Aug. 14, 2012
King Chavez Academy of Excellence, Inc. San Diego, CA	Did not file with USAC	2012	July 16, 2012
KIPP Adelante Preparatory Academy San Diego, CA	875736, 876188	2012	Jun. 11, 2012
Lower Yukon School District Mountain Village, AK	875747	2009	Jun. 18, 2012
Lumpkin County School District Dahlonega, GA	876850	2012	May 16, 2012
Saint Mary School Luxemburg, WI	868617	2012	May 25, 2012
Saint Michael Elementary School Greenville, PA	876947	2012	Jun. 19, 2012
Valley Union High School District 22 Elfrida, AZ	875857	2012	Jun. 11, 2012
Wagon Mound Schools Wagon Mound, NM	875949	2012	July 3, 2012

* Petition for Reconsideration.