

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

In the Matter of)	
)	
Request for Waiver and Review)	
of a Decision of the)	
Universal Service Administrator by)	
)	
Connecticut Educators' Network)	SLD File No. 418822, <i>et al.</i>
Hartford, Connecticut)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: November 20, 2012

Released: November 20, 2012

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

1. In this order, we address a request by the consortium Connecticut Educators' Network (CTEN)¹ seeking a waiver of the FCC Form 479 requirements² for funding years 2003-2006, and review of the Universal Service Administrative Company's (USAC) decision³ to recover funds already disbursed under the E-rate program (more formally known as the schools and libraries universal service support

¹ See Petition for Waiver and Request for Review of Connecticut Educators' Network, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 16, 2009) (Request for Waiver and Review) (concerning funding year (FY) 2004 FCC Form 471 application number 418822, FY 2003 FCC Form 471 application numbers 377697 and 377722, FY 2005 FCC Form 471 application number 482850, and FY 2006 FCC Form 471 application number 499511).

² See 47 C.F.R. § 54.520(c)(3)(ii). The FCC Form 479 provides notification to a billed entity by an administrative authority of the status of the administrative authority's compliance for the purposes of the Children's Internet Protection Act (CIPA). The billed entity will then certify on its FCC Form 486 (Receipt of Service Confirmation Form) that it has collected duly completed and signed FCC Forms 479 from administrative authorities that the billed entity represents. See USAC website, Schools and Libraries, Instructions to the FCC Form 479 (Certification by Administrative Authority to Billed Entity of Compliance with the Children's Internet Protection Act), available at <http://www.usac.org/res/documents/sl/pdf/forms/479i.pdf> (last visited Nov. 7, 2012).

³ See Letter from Schools and Libraries Division, USAC, to Debi Sovereign, Connecticut Educators' Network (dated Aug. 26, 2009) (Commitment Adjustment (COMAD) Recovery Letter). KPMG LLP (KPMG), an independent accounting firm, audited CTEN for funding year 2004 and found that CTEN collected FCC Forms 479 for funding year 2003 but, for funding year 2004, failed to collect FCC Forms 479 from its consortium members and failed to certify on its FCC Form 486 that it had collected duly completed and signed FCC Forms 479. Independent Accountants' Report from KPMG LLP, to Universal Service Administrative Company - Federal Communications Commission (dated Mar. 5, 2007) (Independent Accountants' Report), at Attachment 2. As a result, KPMG concluded that CTEN was not in compliance with the requirements of CIPA for funding year 2004. See Independent Accountants' Report. USAC subsequently denied CTEN's appeal of the COMAD recovery letter. Letter from USAC, Schools and Libraries Division, to Debi Sovereign, Connecticut Educators' Network (dated Nov. 5, 2009) (Administrator's Decision Letter).

program) because CTEN failed to comply with the Children's Internet Protection Act (CIPA)⁴ certification requirements for funding year 2004.⁵

2. For the sake of clarity, we address the funding years in question in chronological order. As an initial matter, we dismiss, as unnecessary, CTEN's request for a waiver with respect to its funding year 2003 applications.⁶ The record reveals that CTEN collected the FCC Forms 479 from its consortium members and submitted a correct FCC Form 486 for that funding year. Therefore, we dismiss this part of CTEN's request for waiver as moot and conclude no further action on CTEN's part is required with respect to funding year 2003.⁷

3. Upon review of the record, we deny CTEN's request with respect to funding year 2004 because the record does not demonstrate that CTEN collected the FCC Forms 479 from its consortium members for funding year 2004.⁸ The record shows that KPMG LLP conducted an audit of CTEN and determined that CTEN failed to collect the FCC Forms 479 from its consortium members and failed to properly certify on the FCC Form 486 that the FCC Forms 479 were duly completed and signed.⁹ Although CTEN members certified their compliance with CIPA for funding year 2003,¹⁰ the Commission's rules require CIPA certifications to be made in each funding year that an E-rate applicant, or a consortium of applicants, receives discounts on Internet access or internal connections.¹¹ We therefore find that CTEN was not in compliance with CIPA certification requirements for funding year

⁴ 47 U.S.C. § 254(h)(5)-(6) and (l); 47 C.F.R. § 54.520(b); *see also supra* n.2. CIPA prohibits a school or library having computers with Internet access from receiving E-rate support for the provision of Internet access or internal connections unless the school or library certifies that it is in compliance with certain Internet safety requirements. More specifically, for the funding years in question, CIPA required each covered school and library to certify that the school or library is: (1) enforcing a policy of Internet safety that includes the operation of a technology protection measure, with respect to any of its computers with Internet access, that protects against access by both adults and minors through such computers to visual depictions that are, (i) obscene; (ii) child pornography; or, (iii) with respect to use of the computers by minors, harmful to minors; and (2) enforcing the operation of such technology protection measure during any use of such computers. *See* 47 U.S.C. § 254(h)(5)(B), (5)(C), (6)(B), (6)(C) and 254(l).

⁵ 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).

⁶ Request for Waiver and Review at 3-4.

⁷ *See* Connecticut Educators' Network, FCC Form 486 (dated Oct. 6, 2003). We note that USAC has not sought to recover funding for CTEN's funding year 2003 applications; therefore we need not provide any direction to USAC with respect to that funding year.

⁸ *See supra* n.3; Request for Waiver and Review at 3 (indicating that the members left the funding year blank and the consortium leader later entered 'Year 6', which corresponds to funding year 2003, instead of '2004' for FY 2004 FCC Forms 479); Independent Accountants' Report at Attachment 2; Responses to Audit Findings from Capitol Region Education Council, to USAC (dated Mar. 12, 2007), at 2. CTEN claims, however, that these forms are actually for funding year 2004 and requests a waiver of the FCC Form 479 requirements for funding years 2003-2006. *See* Request for Waiver and Review at 3-4. CTEN, however, was unable to produce separate FCC Forms 479 for funding years 2003 and 2004. *See* Administrator's Decision Letter at 1; Independent Accountants' Report at Attachment 2. We therefore deem the FCC Forms 479 labeled 'Year 6' to be for funding year 2003.

⁹ *See* Independent Accountants' Report; COMAD Recovery Letter.

¹⁰ *See supra* para. 2.

¹¹ 47 C.F.R. § 54.520(b), (c).

2004.¹² We affirm USAC's decision pertaining to funding year 2004 and direct USAC to continue to seek recovery of funding for that year.

4. Consistent with precedent¹³ and upon review of the record, we grant CTEN's request to waive the requirement that its FCC Forms 486 indicate that it collected completed and signed FCC Forms 479 from its consortium members for funding years 2005 and 2006.¹⁴ The record demonstrates that CTEN's consortium members completed FCC Forms 479 for funding years 2005 and 2006, and that CTEN simply failed to properly indicate receipt of these forms on its FCC Forms 486.¹⁵ We therefore find that good cause exists to waive section 54.520(c)(3)(ii) of the Commission's rules for funding years 2005 and 2006 for CTEN.

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, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that Connecticut Educators' Network's request for waiver pertaining to its funding year 2003 FCC Form 471 application numbers 377697 and 377722 IS DISMISSED.

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

¹² The audit report indicates that before the auditor's exit interview, CTEN's representative explained that FCC Forms 479 for funding year 2003 had been collected but the FCC Forms 479 for funding year 2004 had not been collected, and that it was not his understanding that these forms needed to be collected annually. *See* Independent Accountants' Report at Attachment 2. CTEN, however, changed its explanation in its exit conference with the auditor by stating that the forms it collected were not for funding year 2003 but were for funding year 2004, despite being labeled "Year 6". *Id.* Because it is a consortium's "knowing failure to collect the required certifications from its eligible school and library members or knowing failure to certify that it collected the required certifications" that renders an entire consortium ineligible for discounts under the E-rate program, we deny CTEN's waiver request with regard to funding year 2004. *See* 47 C.F.R. § 54.520(d)(2). Even a school or library that knowingly fails to submit CIPA certifications may reestablish eligibility for discounts by providing the required certifications to USAC and the Commission. 47 C.F.R. § 54.520(d)(3). In this case, however, CTEN had several opportunities to demonstrate that it collected FCC Forms 479 for funding year 2004 – in its work with the auditors, on appeal to USAC, and on appeal to the Commission – and did not provide the required documentation. Therefore, the remedy provided in section 54.520(d)(3) of the Commission's rules is not available to CTEN regarding its failure to provide CIPA certifications for funding year 2004.

¹³ *See Requests for Review and Waiver of the Decision of the Universal Service Administrator by Alaska Gateway School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-412028, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 10182, 10186 (Wireline Comp. Bur. 2006) (waiving the filing deadlines for the FCC Form 486 for applicants because the late filings were the result of immaterial clerical, ministerial or procedural errors, or the late filings were due to circumstances beyond their control); *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, 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).

¹⁴ 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.

¹⁵ Request for Waiver and Review at 3-4, Attachments 3 and 4.

Connecticut Educators' Network's request for review pertaining to its funding year 2004 FCC Form 471 application number 418822 IS DENIED.

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, 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 54.520(c)(3)(ii) of the Commission's rules, 47 C.F.R. § 54.520(c)(3)(ii), IS WAIVED for Connecticut Educators' Network as it pertains to its funding year 2005 and 2006 FCC Form 471 application numbers 482850 and 499511.

FEDERAL COMMUNICATIONS COMMISSION

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