

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)
Monroe 1 BOCES) File Nos. SLD-441315, et al.
Pittsford, New York, et al.)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: November 26, 2012

Released: November 26, 2012

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

1. Consistent with precedent,¹ we address requests from eight 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) for violating the then-existing requirement that applicants seeking E-rate support for services other than basic telecommunications services develop a technology plan.² All of the petitioners identified in Appendices

1 Requests for Review or Waiver of the Decisions of the Universal Service Administrator by Brownsville Independent School District, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 6045 (2007) (Brownsville Order) (granting the appeals and waiving technology plan rules for: (1) petitioners that made clerical errors or missed deadlines for reasons including: (i) basing their funding applications on approved technology plans from prior years while they updated those plans; or (ii) failing to show, in response to initial inquiries by USAC, that they had an approved technology plan in place for the relevant funding year, or that the plan was in the process of being approved yet subsequently demonstrating that they had an approved technology plan in place for the relevant funding year; and (2) petitioners that did not develop a technology plan because they sought discounts for services that they thought were basic telecommunications and did not require technology planning); Requests for Review and Waiver of Decisions of the Universal Service Administrator by Al-Ihsan Academy, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 17744 (Wireline Comp. Bur. 2010) (waiving technology plan rules for petitioners that made the same errors as addressed in the Brownsville Order, as well as several other petitioners that did not create technology plans in accordance with E-rate program rules yet in good faith planned for the implementation of new technology in their schools in accordance with state, local, or other internal requirements).

2 In 2010, the Commission eliminated the technology plan requirement for applicants seeking only Priority One services; previously, the Commission required all applicants for E-rate funding, except those applying only for support for basic telecommunications services, to have technology plans. See 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), 54.504(c)(1)(iv)-(v), and 54.508 (2009); Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18789-18793, paras. 58-65 (2010) (6th Report and Order). The amended technology plan rules are codified at 47 C.F.R. §§ 54.503(c)(2)(iii)-(iv), 54.504(a)(1)(iv)-(v), and 54.508 (2011). However, all of the appeals at issue in this order involve applications for funding that preceded the 6th Report and Order. Section 54.719(c) of the (continued...)

A and B sought support for E-rate services that required them to first develop a technology plan.³ Based on our review of the record, we find that the three petitioners identified in Appendix A have demonstrated that special circumstances exist to justify a waiver of the Commission's E-rate program technology plan rules, but the four identified in Appendix B have not demonstrated that good cause exists for such a waiver.⁴ The petitioner identified in Appendix C sought E-rate support for some services that did require a technology plan, and some that did not. With respect to the services that required a technology plan, that petitioner has not demonstrated good cause exists to justify a waiver of the Commission's technology plan rules. Therefore, we grant in part and deny in part that request.

2. The three petitioners identified in Appendix A have demonstrated that special circumstances exist to justify a waiver of the Commission's E-rate program technology plan rules. Specifically, one petitioner has demonstrated that it had a technology plan in place for the relevant funding year, but made a clerical or ministerial error when responding to USAC's initial inquiry seeking information about its technology plan.⁵ Two others have demonstrated that they made a good faith effort to plan for technology.⁶ By this order, we also dispose of Parlier Unified School District's appeal of USAC's determination that Parlier failed to provide invoice documentation.⁷ On appeal to the Commission, Parlier demonstrated that it retained the invoicing documentation related to funding request number 1306005. Therefore, we grant Parlier's request for review on that issue and direct USAC not to seek reimbursement from Parlier for failure to retain documentation.

3. By contrast, the four petitioners identified in Appendix B did not provide documentation that they created technology plans, nor did they demonstrate special circumstances meriting a waiver of the Commission's technology plan requirements.⁸ With respect to the petition by Carolina Friends
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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).

³ See *supra* n.2; see also *infra* Apps. A, B.

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 waiver of 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. Appendix A lists the petitions we are granting for having shown good cause justifying a waiver. Appendix B lists the petitions we are denying for failure to show good cause justifying a waiver. Appendix C lists one petition we are granting in part and denying in part as explained below.

⁵ Letter from Robert Cooper, Monroe 1 BOCES, to Federal Communications Commission, CC Docket No. 02-6 (filed with USAC on Dec. 20, 2006; received by the Federal Communications Commission, Office of the Secretary on Jan. 11, 2007).

⁶ Request for Waiver by Parlier Unified School District (Parlier), to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 8, 2010) (Parlier Request for Waiver); Letter from Christopher M. Carvalho, Director of Technology and Information Systems, Yonkers Public Schools, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 02-6 (filed Apr. 20, 2011).

⁷ Parlier Request for Waiver.

⁸ See Letter from Carol Stone, City Librarian, City of Anaheim, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed May 20, 2009); Letter from Tom Halfaker, Director of Information Technology, New Education for the Workplace, to Office of the Secretary, Federal Communications Commission,

(continued...)

School, identified in Appendix C, the record shows that six of the eight funding requests at issue in that petition were for basic telecommunications which do not require a technology plan.⁹ However, with respect to Carolina Friends School's two funding requests that were not for basic telecommunications services, the record does not show that Carolina Friends School had a technology plan or that any special circumstances exist justifying a waiver from the technology plan requirement.¹⁰ Therefore, we grant Carolina Friends School's request for review as it pertains to its six funding requests for basic telecommunications, but uphold USAC's decision to reject the school's FCC Form 486 for the other two requests.¹¹

4. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in Appendices A and C and issue an award 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 underlying applications. We direct USAC to discontinue recovery actions relating to requests for review that are granted herein. At this time, we find that there is also no evidence of waste, fraud or abuse in the record.

5. Lastly, on our own motion, we waive 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.¹² We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause the petitioners to miss the program's subsequent procedural deadlines in that funding year.

6. 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 ARE GRANTED and sections 54.504(b)(2)(iii)-(iv), 54.504(c)(1)(iv)-(v), and 54.508 of the Commission's rules, 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv),

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CC Docket No. 02-6 (filed Aug. 20, 2009); Letter from Shirley Johnson, Principal, Resurrection Lutheran School, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 28, 2009); Appeal from YouthBuild Columbus Community School (YouthBuild), to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Sept. 29, 2011) (YouthBuild Columbus Community School Appeal). YouthBuild claims that USAC no longer has jurisdiction with respect to this matter because the Wireline Competition Bureau directed USAC to complete its review and discontinue its recovery actions against the school for application 370891. YouthBuild Columbus Community School Appeal at 2. YouthBuild is incorrect. The 2011 Order to which YouthBuild refers does not address the technology plan rule violation at issue here. *See Decision of the Universal Service Administrator by YouthBuild Columbus Community School*, CC Docket No. 02-6, Order, 26 FCC Red 337 (Wireline Comp. Bur. 2011).

⁹ See Letter from Schools and Libraries Division, USAC, to Robert W. DuBose, Carolina Friends School, FCC Form 486 Rejection Letter (dated May 6, 2010) (finding that for FCC Form 471 application number 677459, funding request numbers 1855001, 1855034, 1855085, 1855102, 1855128, and 1855148 are for basic telecommunications and funding request numbers 1855169 and 1855230 are for non-basic telecommunications).

¹⁰ See Letter of Appeal and Request for Waiver from Robert W. DuBose, Technology Coordinator, Carolina Friends School, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 10, 2010).

¹¹ See *infra* App. C.

¹² 47 C.F.R. § 54.507(d) (2012) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

54.504(c)(1)(iv)-(v), and 54.508 (2009) ARE WAIVED for the petitioners listed in Appendix A to the limited extent provided herein, and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

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), the request for review and waiver of Carolina Friends School listed in Appendix C IS GRANTED IN PART AND DENIED IN PART to the extent provided herein and the underlying funding request numbers 1855001, 1855034, 1855085, 1855102, 1855128, and 1855148 ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

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 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(d) of the Commission's rules, 47 C.F.R. § 54.507(d), IS WAIVED for the petitioners in Appendices A and C to the limited extent provided herein.

9. 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 requests for review or requests for waiver filed by the petitioners listed in Appendix B ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX A

Appeals Granted

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Monroe 1 BOCES Pittsford, New York	441315; 442142; 442148; 442149; 442150; 442151; 442152; 442153; 442155; 442156; 442157; 442158; 442159; 444850; 467438; 470644	2005	Dec. 20, 2006
Parlier Unified School District Parlier, California	473667; 477856	2005	Jun. 8, 2010
Yonkers Public Schools Yonkers, New York	534403; 528953; 535576; 536028	2006	Apr. 20, 2011

APPENDIX B

Appeals Denied

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Anaheim Public Library Anaheim, California	520930	2006	May 20, 2009
New Education for the Workplace Oceanside, California	433254	2004	Aug. 20, 2009
Resurrection Lutheran School Chicago, Illinois	482751; 482694; 482618	2005	Sept. 28, 2009
YouthBuild Columbus Community School Columbus, OH	370891	2003	Sept. 29, 2011

APPENDIX C

Appeal Granted in Part and Denied in Part

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Carolina Friends School Durham, NC	677459: (FRNs Granted: 1855001; 1855034; 1855085; 1855102; 1855128;1855148) (FRNs Denied: 1855169;1855230)	2009	Nov. 12, 2010