

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review and/or Waiver
of the Decisions of the
Universal Service Administrator by
Bayfield School District
Bayfield, Colorado, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-859096, et al.
CC Docket No. 02-6

ORDER

Adopted: December 20, 2012

Released: December 26, 2012

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

1. Consistent with precedent, we grant four 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). In each case, USAC denied funding on the basis that the petitioner violated the Commission's rule that a signed contract be in place when the FCC Form 471 application is submitted.

2. Based on the facts and circumstances of these specific cases, we find that the four appeals listed in the Appendix have demonstrated that good cause exists to justify waiver of the rule that a signed

1 See Requests for Waiver of the Decision of the Universal Service Administrator by Barberton City School District, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-400938, et al., CC Docket No. 02-6, 23 FCC Rcd 15526 (Wireline Comp. Bur. 2008); Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Animas School District 6, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-427902, et al., CC Docket No. 02-6, 26 FCC Rcd 16903 (Wireline Comp. Bur. 2011); Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Administrative Headquarters, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-478729, et al., CC Docket No. 02-6, 27 FCC Rcd 13509 (Wireline Comp. Bur. 2012) (all granting appeals on the basis that petitioners had agreements in place with their service providers before filing their Forms 471, even though the contracts in question were not signed and dated by both parties before the petitioners filed their FCC Form 471).

2 The requests for review are listed in the Appendix.

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 See 47 C.F.R. § 54.504(a) (2011) (before 2011, the citation for this rule was 47 C.F.R. § 54.504(c)).

contract be in place when the applicant submits its FCC Form 471.<sup>5</sup> Although the record demonstrates that the petitioners had contracts that were not signed and dated by both parties before the petitioners filed their FCC Form 471 applications, all four petitioners had legally binding agreements in place during the relevant funding year prior to the filing of their FCC Forms 471. We therefore waive the Commission's rule that requires applicants to have a signed contract before filing an FCC Form 471 for these four petitioners.<sup>6</sup>

3. With respect to the appeals we grant in this Order, 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.<sup>7</sup> We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause the applicant to miss the program's subsequent procedural deadlines in that funding year. Consistent with precedent,<sup>8</sup> we also find good cause exists to waive, for Bayfield School District (Bayfield), section 54.720(a) of the Commission's rules,<sup>9</sup> which requires applicants to seek review of a USAC decision within 60 days, because we find Bayfield filed its appeal only three days late. We also find that at this time there is no evidence of waste, fraud and abuse in the record.

4. We therefore remand the underlying applications listed in the Appendix 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 each application listed in the Appendix and issue an award or denial based upon a complete review and analysis no later than 90 calendar days from the release 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.

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 pursuant to authority delegated in 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 and/or Requests for Waiver filed by the petitioners as listed in the Appendix ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this order.

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<sup>5</sup> See Appendix.

<sup>6</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. *Northeast Cellular*, 897 F.2d at 1166.

<sup>7</sup> 47 C.F.R. § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

<sup>8</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) (Waiving our filing deadline for petitioners who submitted their appeals to the Commission only a few days late).

<sup>9</sup> See 47 C.F.R. § 54.720 (requiring appeals to be filed within 60 days of a decision by USAC).

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, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that section 54.720(a) of the Commission's rules, 47 C.F.R. § 54.720(a), IS WAIVED for Bayfield School District.

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 pursuant to authority delegated in 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 sections 54.504(a) and 54.507(d) of the Commission's rules, 47 C.F.R. §§ 54.504(a) and 54.507(d) ARE WAIVED for the petitioners listed in the Appendix to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

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

## APPENDIX

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Funding Year</b>	<b>Date Appeal Filed</b>
Bayfield School District Bayfield, Colorado	859096	2012	Oct. 23, 2012
Celina City School District Celina, Ohio	834021	2012	Nov. 6, 2012
Ogden Preparatory Academy Ogden, Utah	751193	2010	Nov. 20, 2012
Van Wert City School District Van Wert, Ohio	849954	2012	Nov. 14, 2012