

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
A.C.E. Charter High School
Tucson, Arizona, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-877807, et al.
CC Docket No. 02-6

ORDER

Adopted: December 28, 2012

Released: December 28, 2012

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

1. Consistent with precedent,1 we address 17 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).2 The petitioners are seeking waivers of the FCC Form 471 application filing window deadline under the E-rate program.3 We grant 11 requests and deny six requests.4

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, 9259-60, paras. 8 & 9 (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); Requests for Review of the Decisions of the Universal Service Administrator by Anderson Elementary School, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-789495, et al., CC Docket No. 02-6, Order, 27 FCC Rcd 5319, 5319-20, para. 2 (Wireline Comp. Bur. 2012) (treating late-filed item 21 attachments like late-filed certifications); Requests for Waiver and Review of the Decisions of the Universal Service Administrator by Academy for Academic Excellence, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-539076, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 4747, 4749, para. 4 (Wireline Comp. Bur. 2011) (finding special circumstances exist to justify granting waiver requests where petitioners was subject to a school reorganization or technical problems interfacing with USAC's computer system).

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).

3 The requests for waiver and review are listed in Appendices A-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.

4 See Appendices A-C.

2. Based on the facts and circumstances of these specific cases, we find that good cause exists to grant the 11 appeals listed in Appendices A and B with respect to the applications listed therein.⁵ We grant the two waiver requests listed in Appendix A, because those petitioners' applications were filed within 14 days of the close of the filing window.⁶ We grant the nine waiver requests listed in Appendix B, because each of those petitioners' applications was submitted either 1) on time but for their certifications or item 21 attachments; or 2) within a reasonable period of the filing window's close despite a school reorganization or a technical problem interfacing with USAC's computer system.⁷

3. We deny the six appeals listed in Appendix C because we find that, with respect to those applications, the six petitioners have failed to present special circumstances justifying waivers of the Commission's rules.⁸

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.

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. *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).

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.

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
Cardinal Hayes High School Bronx, NY	875870	2012	Nov. 30, 2012
Rome Community Consolidated School Dix, IL	875370	2012	Dec. 6, 2012

APPENDIX B

Requests Granted
(Waivers Granted for Other Special Circumstances)

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Cardinal Foley Regional Catholic School Havertown, PA	875905	2012	Dec. 10, 2012
Fair Haven Elementary School Fair Haven, VT	868187	2012	Dec. 14, 2012
Grant Parish Library Colfax, LA	869224	2012	Dec. 10, 2012
Newton County School District Decatur, MS	871530	2012	Dec. 4, 2012
Orwell Village Elementary School Orwell, VT	867908	2012	Dec. 14, 2012
Washington County School District Sandersville, GA	872592, 872875, 873222	2012	Oct. 31, 2012
West Side School District 202 Dayton, ID	874218	2012	Dec. 14, 2012
Westmoreland County Federated Library System Greensburg, PA	875948	2012	Nov. 29, 2012
Whitney Intermediate School Whitney, TX	841839	2012	Dec. 4, 2012

APPENDIX C

Requests Denied

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
A.C.E. Charter High School Tucson, AZ	877807	2012	Dec. 11, 2012
Buffalo Academy of Science Charter School Buffalo, NY	852593	2012	Dec. 4, 2012
Cave Creek Unified School District 93 Cave Creek, AZ	877488	2012	Dec. 10, 2012
Long Island Hebrew Academy Great Neck, NY	875942, 875956	2012	Dec. 5, 2012
St. Peter's Elementary School Mansfield, OH	875703	2012	Dec. 10, 2012
South Carolina State Library Columbia, SC	876327	2012	Dec. 11, 2012