

**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	)	
	)	
Assabet Valley Regional Vocational District	)	File Nos. SLD-628454, <i>et al.</i>
Marlborough, MA, <i>et al.</i>	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: February 23, 2012**

**Released: February 23, 2012**

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

1. Consistent with precedent,<sup>1</sup> we grant 12 and deny five requests from petitioners<sup>2</sup> 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).<sup>3</sup> In each case, USAC refused to permit petitioners to make changes to their applications after they had submitted them. We first grant four petitioners waivers of section 54.720 of the Commission's rules because we find they submitted their appeals to the Commission, or filed a service change request with USAC, within a reasonable period of time of actual notice of a clerical error or a decision by USAC not to correct the error.<sup>4</sup> Based on our review of the record, we find that 12 petitioners have demonstrated that good cause exists to justify a waiver of section 54.504(a) of the Commission's rules to permit them to correct clerical

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<sup>1</sup> See *Request for Review of the Decision of the Universal Service Administrator by Archer Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-140961, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15518 (Wireline Comp. Bur. 2008); see also *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, 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); *Request for Waivers and Review of the Decisions of the Universal Service Administrator by Achieve Career Preparatory Academy, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-756133, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 10254 (Wireline Comp. Bur. 2011).

<sup>2</sup> The requests for waiver and review are listed in appendices A & B.

<sup>3</sup> 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).

<sup>4</sup> See 47 C.F.R. § 54.720. Two petitioners filed appeals with the Commission within 60 days of discovering errors in their applications (Leake & Watts Services, Inc., Northwest Ohio Educational Service Center), one filed a service change request with USAC within 60 days of discovering an error in its application (Providence Public School District), and one filed with the Commission within 60 days of being informed that a response it received was an appealable denial (Colon Community School District). *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 Fcd 11019, 11019, para. 2 (Wireline Comp. Bur. 2011).

or ministerial errors.<sup>5</sup> On our own motion, for these petitioners, we also waive section 507(d) of the Commission's rules and any USAC procedural deadline, such as the invoicing deadline, that might be necessary to effectuate our ruling.<sup>6</sup> We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause petitioners to miss the program's subsequent procedural deadlines in that funding year. We find the other five petitioners have not demonstrated that good cause exists to justify waivers to permit changes that were not the result of a clerical or ministerial error.

2. We therefore remand the underlying applications listed in appendix A to USAC for further action consistent with this order. To ensure that those underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in appendix A and issue a funding commitment 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 petitioners' applications.

3. 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 filed by the petitioners listed in appendix A ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

4. 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 sections 54.504(a), 54.507(d), and 54.720 of the Commission's rules, 47 C.F.R. §§ 54.504(a), 54.507(d), and 54.720 ARE WAIVED for the petitioners listed in appendix A to the limited extent provided herein.

5. 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

Gina M. Spade  
Deputy Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>5</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. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

<sup>6</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).

## APPENDIX A

## Requests Granted

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Funding Year</b>	<b>Date Request for Review/Waiver Filed</b>
Assabet Valley Regional Vocational District Marlborough, MA	628454	2008	Aug. 19, 2011
Balsz School District No. 31 Phoenix, AZ	547589	2007	Oct. 1, 2009
Colon Community School District Westfield, IN	550929 / 587785	2007	Mar. 4, 2008
Forsyth County School District Cumming, GA	733385	2010	Nov. 3, 2010
Hickman County Schools Clinton, KY	727530	2010	Feb. 6, 2012
Leake & Watts Services, Inc. Yonkers, NY	653637	2009	June 14, 2010
Northwest Ohio Educational Service Center Archbold, OH	789351	2011	Nov. 1, 2011
Providence School District Providence, RI	723112	2010	Aug. 9, 2011
San Diego Independent School District San Diego, TX	480500	2005	Oct. 1, 2007
Scott County School District 1 Austin, IN	793562	2011	Dec. 1, 2011
Tunica County School District Tunica, MS	734172	2010	Apr. 19, 2011
Yeshivath Vznitz D'khal Torath Chaim Monsey, NY	401878	2004	Nov. 18, 2005

## APPENDIX B

## Requests Denied

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Funding Year</b>	<b>Date Request for Review/Waiver Filed</b>
Chandler Unified School District 80 Chandler, AZ	678541	2009	July 1, 2011
Lynden Christian School Lynden, WA	727597	2010	Dec. 28, 2011
Servite High School Anaheim, CA	777890	2011	Nov. 8, 2011
White Oak Independent School District 1 Vinita, OK	716964	2010	Dec. 29, 2011
Willmar Public Schools Willmar, MN	726265	2010	Aug. 26, 2011