

**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)	
)	
Aberdeen School District)	File Nos. SLD-580215, <i>et al.</i>
Aberdeen, Washington, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: February 22, 2012

Released: February 22, 2012

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

1. Consistent with precedent,¹ we grant 36 requests from petitioners² 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).³ In each decision,

¹ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 481 (1997) (subsequent history omitted); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5452-53, para. 233 (1997); *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734 (1997); *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407 (2003); *Request for Review of the Decision of the Universal Service Administrator by Academia Discipulos de Cristo Bayamon, Puerto Rico, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 9210 (2006); *Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technologies, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 9220 (2006); *Request for Review of the Decision of the Universal Service Administrator by Approach Learning and Assessment Center, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15510 (2008); *Request for Review of the Decision of the Universal Service Administrator by Coahoma County School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11201 (2011); *Request for Review of the Decision of the Universal Service Administrator by Allendale County School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6190 (2011); *Request for Review of the Decision of the Universal Service Administrator by Baltimore City School District, Cobb County School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11193 (2011).

² The requests for review and waiver are listed in appendices A and B.

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).

USAC found violations of the Commission's competitive bidding requirements. Based on our review of the record, we find that the petitioners listed in appendix A conducted a fair and open competitive bidding process under Commission rules in effect at the time.⁴ We find that the petitioners listed in appendix B have demonstrated good cause to waive sections 54.504 and 54.511 of the Commission's rules⁵ because either (1) the errors they made on their applications were ministerial or clerical and do not warrant a complete rejection of their applications; or (2) their competitive bidding processes were not compromised by their technical violation of the Commission's competitive bidding requirements.⁶ At this time, there is no evidence of waste, fraud and abuse in the record. Additionally, on our own motion, we waive section 54.507(d) of the Commission's rules and any USAC procedural deadline, such as the invoicing deadline, that might be necessary to effectuate our ruling.⁷ 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.

2. We therefore remand the underlying applications listed in the appendices 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 appendices 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 petitioners' applications. We direct USAC to discontinue recovery actions against those parties based on the denials that are addressed herein.

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 the appendices ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

⁴ Prior to the 2010 *Schools and Libraries Sixth Report and Order*, the E-rate competitive bidding requirements were codified in sections 54.505 and 54.511 of the Commission's rules. See 47 C.F.R. §§ 54.504, 54.511 (2002). In the *Schools and Libraries Sixth Report and Order*, the Commission amended section 54.503 and 54.511 of the Commission's rules to establish new competitive bidding requirements for the E-rate program, which became effective January 3, 2011. *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, Sixth Report and Order, CC Docket 02-6, 25 FCC Rcd 18762, 18798-800, paras. 85-86 (2010) (*Schools and Libraries Sixth Report and Order*); 47 C.F.R. §§ 54.503, 54.511 (2011); appendix A.

⁵ 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.

⁶ See 47 C.F.R. §§ 54.504, 54.511 (2002) amended by 54.503, 54.511 (2011); appendix B. See also *Request for Review of the Decision of the Universal Service Administrator by Ann Arbor Public Schools, et al., Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319 (2010).

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

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 54.504, 54.507(d), and 54.511 of the Commission's rules, 47 C.F.R. §§ 54.504, 54.507(d), and 54.511, ARE WAIVED for the petitioners listed in the appendices to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX A

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Aurora Public Schools Aurora, CO	695502	2009	July 21, 2010
Braggs Public Schools Braggs, OK	664175 664233	2009 2009	January 31, 2011 January 31, 2011
Burke County Board of Education Waynesboro, GA	530681 529893 522743	2006 2006 2006	October 29, 2010 October 29, 2010 October 29, 2010
Computer Consulting Network Design Greenville, KY	452144 452329 464272	2005 2005 2005	September 25, 2009 September 25, 2009 September 25, 2009
Covert Public Schools Covert, MI	736198	2010	August 22, 2011
Culpepper County School District Culpepper, VA	523427	2006	April 8, 2011
Donna Independent School District Donna, TX	425806 437252 437253 437255 437256 437259 425434	2004 2002 2002 2002 2002 2002 2004	April 15, 2011 August 12, 2011 April 15, 2011 April 15, 2011 April 15, 2011 April 15, 2011 April 15, 2011 Consolidated appeal also filed on August 12, 2011
Doughtery County Public Schools Albany, GA	484606 515535	2005 2006	December 15, 2009 December 15, 2009
Duplin County School District Kenansville, NC	524056	2006	December 1, 2010
El Monte Union High School El Monte, CA	478151	2005	May 31, 2011
Florence County School District Lake City, SC	504103	2006	August 1, 2011
Gary Community School Corporation Gary, IN	483884	2005	April 11, 2011
Greenfield Union School District Bakersfield, CA	547389 570791	2007 2007	March 13, 2011 April 14, 2011
Kent School District Kent, WA	468994	2005	April 1, 2011
Lake Elsinore Unified School District Lake Elsinore, CA	513324 566516	2006 2007	July 14, 2011
Lower Kuskokwin School Bethel, AK	486751	2005	June 5, 2009
Mesa Unified School District Mesa, AZ	448714 502165	2005 2006	September 3, 2009 September 3, 2009

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Oklahoma City Public Schools Oklahoma City, OK	315578	2002	March 19, 2004
Puyallup School District Puyallup, WA	688179 766949	2009 2010	July 6, 2010 April 25, 2011
Ravenswood City Elementary School District Palo Alto, CA	482419	2005	July 19, 2011
Sharon City School District Sharon, PA	538717	2006	December 28, 2010
Terrebone Parish School District Houma, LA	571054	2007	December 2, 2010
Tolleson Elementary School Tolleson, AZ	681373 681378 681384 681390	2009 2009 2009 2009	October 12, 2010 October 12, 2010 October 12, 2010 October 12, 2010
Tyler Independent School District Tyler, TX	667379	2009	June 23, 2010

APPENDIX B

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Aberdeen School District Aberdeen, WA	580215	2007	December 6, 2010
Bellflower Unified School District Bellflower, CA	469901 527931 571902	2005 2006 2007	August 3, 2011 January 14, 2011 January 14, 2011
City Springs Elementary School Baltimore, MD	752526	2010	June 13, 2011
Franklin Pierce School District Tacoma, WA	416127	2004	July 29, 2011
Hemet Unified School District Hemet, CA	512341	2006	July 5, 2011
Lancaster School District Lancaster, CA	352384	2003	November 2, 2009
Minot School District Minot, ND	516904 519543 572735 573575	2006 2006 2007 2007	February 10, 2011 February 10, 2011 February 10, 2011 February 10, 2011
Norman County West Independent School District Hendrum, MN	405013 461921	2004 2005	May 23, 2006
Rangeview Library District Thornton, CO	440845	2005	May 17, 2010
San Juan Unified School District Carmichael, CA	510946	2006	March 17, 2010

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Truth or Consequences Municipal School District Truth or Consequences, NM	498459	2006	July 11, 2011
Zapata County School District Zapata, TX	484065 531511 552614 549988	2005 2006 2007 2007	January 18, 2011 January 18, 2011 January 18, 2011 January 18, 2011