

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 5) File Nos. SLD-525618, et al.
Aberdeen, Washington , et al.)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: February 24, 2012

Released: February 24, 2012

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

1. Consistent with Commission rules,1 we grant nine 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, USAC found that the applicants sought support for service, products or maintenance that are not eligible for E-rate funding.4 Based on our review of the record, we find that the petitioners in the appendix sought funding for services that are eligible for E-rate support and grant their requests.5 We also find that at this

1 Under the E-rate program, applicants may seek support for eligible services only. See 47 C.F.R. §§ 54.502, 54.504 and 54.518. See, e.g., Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9013, para. 444 (1997), aff'd in part, Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999) (subsequent history omitted); Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208, para. 17-18 (2003) (Second Report and Order); Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26928, para. 40 (2003) (Schools and Libraries Third Report and Order); Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 6562 (2009) (2009 ESL Order); 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 (2010) (Sixth Report and Order).

2 The requests for waiver and 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 Appendix. See also USAC website, Eligible Services List, http://www.usac.org/sl/tools/eligible-services-list.aspx (last visited Jan. 19, 2012) (providing links to the Eligible Services Lists for funding years 2010-2012 and a link to archived Eligible Services Lists for funding years 1998-2009).

time, there is no evidence of waste, fraud and abuse in the record.

2. On our own motion, we also waive section 54.507(d) of the Commission's rules and any USAC procedural deadlines, such as the invoicing deadline, that might be necessary to effectuate our ruling.⁶ We find good cause to waive section 54.507(d) because filing an appeal of a denial of funding is likely to cause petitioners to miss the program's subsequent procedural deadlines in that funding year. We also find good cause to waive section 54.504(a)⁷ of the Commission's rules to allow Marian High School to amend its FCC Form 471 regarding the telephone service it requested.⁸ Consistent with precedent,⁹ we also waive section 54.720 of the Commission's rules for Van Alstyne Independent School District.¹⁰

3. 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 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 based on the denials we reviewed in this order for those parties whose requests are addressed herein.¹¹

4. 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

⁵ Two of the petitioners, Edon Northwest Schools and Rockdale County Schools, sought funding for priority one Internet access and telecommunications category, respectively, but USAC reclassified all or a portion of their funding requests as priority two. Based on our review of the record, we find that these requests should have been funded as priority one funding requests and direct USAC to change the classifications of these requests back to priority one and fund them accordingly.

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

⁷ 47 C.F.R. § 54.504(a) (formerly at 47 C.F.R. § 54.504(c) and requiring applicants to submit a completed FCC Form 471 to USAC once they sign a contract for eligible services).

⁸ Marian believed it had listed a "primary rate interface" line (PRI line) on its Item 21 attachment to the FCC Form 471. Although the record does not clearly indicate that Marian listed a PRI line on its Item 21 attachment, consistent with precedent, we direct USAC to provide Marian with the opportunity to amend its Item 21 accordingly. *See Requests for Waiver and Review of 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) (allowing petitioners to correct certain clerical and ministerial errors in their submitted applications and associated Item 21 attachments).

⁹ *See Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Baker Hall School, et al.*, File Nos. SLD-596432, et al., Order, 25 FCC Rcd 17534, 17535, n.9 (Wireline Comp. Bur. 2010) (waiving the 60-day appeal filing requirement when petitioners filed their appeals a few days late).

¹⁰ Van Alstyne Independent School District filed its appeal with the Commission less than one week after the 60 day deadline for filing appeals.

¹¹ USAC shall cease recovery actions against the applicable applicants and the service providers listed in the appendix.

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

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 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 the appendix to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Aberdeen School District 5 Aberdeen, Washington	525618	2006	Dec. 6, 2010
Andover Regional School District Newton, New Jersey	428848	2004	Jul. 10, 2006
Clay City Schools Clay City, Illinois	664803	2009	Jan. 6, 2011
Edon Northwest Schools Edon, Ohio	561353	2007	Nov. 7, 2007
Iditarod Area School District McGrath, Alaska	662363	2009	Jun. 24, 2010
Lake County Public Library Merrillville, Indiana	726434	2010	Apr. 18, 2011
Marian High School Bloomfield Hills, Michigan	748147	2010	May 27, 2011
Rockdale County Public Schools Conyers, Georgia	365702	2003	Apr. 20, 2004
Van Alstyne Independent School District Van Alstyne, Texas	406299	2004	Jul. 20, 2005