

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)	
)	
Bais Chaya Mushka)	File Nos. SLD-799949, <i>et al.</i>
Los Angeles, California, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: January 12, 2012

Released: January 12, 2012

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

1. In this order, we address 31 requests from petitioners seeking waivers of the FCC Form 471 application filing window deadline for funding years 2007, 2010 and 2011 under the E-rate program,¹ including two petitions for reconsideration of an earlier Wireline Competition Bureau decision.² Consistent with the Commission's *Academy of Math and Science Order*,³ and based on our review of the record, we find that 15 petitioners have demonstrated that special circumstances exist to justify a waiver

¹ The requests for waiver and review are listed in appendices A, B, and C. 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). Section 54.407(c) of the Commission's rules maintains that E-rate funds shall be 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. The E-rate program is more formally known as the schools and libraries universal service support program.

² The petitions for reconsideration are listed in appendix D. The Bureau has the authority to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority. 47 C.F.R. § 1.106(a)(1) (2011).

³ See *Request for Review of the Decision 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 (2010) (*Academy of Math and Science Order*); *infra* para. 2; see also *Request for Waivers and Review of the Decisions of the Universal Service Administrator by Argos Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-737946, *et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 16109 (Wireline Comp. Bur. 2010); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Al-Noor School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-768866, *et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 5792 (Wireline Comp. Bur. 2011); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Beaver Area Memorial Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-750009, *et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 10317 (Wireline Comp. Bur. 2011); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by All Saints Elementary School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-816848, *et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 13107 (Wireline Comp. Bur. 2011) (*All Saints Elementary Order*).

of that filing window deadline.⁴ Therefore, we find that good cause exists to grant those requests for waiver and remand the underlying applications listed in appendices A and B to the Universal Service Administrative Company (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 We deny the remaining 14 requests for waiver because we find that those petitioners fail to present special circumstances to justify a waiver of the Commission's rules.⁶ Finally, we dismiss the two petitions for reconsideration because they fail to provide new facts or circumstances that would result in a waiver of our rules for late-filed FCC Forms 471.⁷

2. 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 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.

3. 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.

4. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority in sections 0.91, 0.291, 1.3, 1.106, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.106, and 54.722(a), that the petitions for reconsideration filed by the petitioners listed in appendix D ARE DISMISSED.

⁴ See appendices A and B. The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived 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, 1157, (D.C. Cir. 1969). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

⁵ In performing a complete review and analysis of the underlying applications, USAC shall either grant the underlying applications before it, or, if denying an application, provide the applicant with all grounds for denial.

⁶ See appendix C; 47 C.F.R. § 1.3.

⁷ See appendix D; 47 C.F.R. § 1.106(b)(2) (2011).

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 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.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade
Deputy 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
Cedar Valley Catholic Schools Waterloo, IA	821378	2011	Oct. 11, 2011
Genesee Intermediate School District Flint, MI	821308	2011	Sept. 12, 2011
Hebron Academy Hebron, ME	821928	2011	Nov. 18, 2011
Martin County West Public Schools Welcome, MN	821312	2011	July 13, 2011
Menominee Tribal School Neopit, WI	821724	2011	Sept. 19, 2011
St. Amelia School Tonawanda, NY	821942	2011	Dec. 27, 2011
Sunnyside School District Sunnyside, WA	818239	2011	Dec. 12, 2011
Willamette Education Service District Salem, OR	821943	2011	Oct. 7, 2011

APPENDIX B

Requests Granted
(Waivers Granted for Other Special Circumstances)

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Bais Chaya Mushka Los Angeles, CA	799949	2011	Nov. 18, 2011
Camden County Technical School District Sicklerville, NJ	732060	2010	June 28, 2011
Glasgow Independent Schools Glasgow, KY	811088	2011	Sept. 12, 2011
Lakeview Local Schools Cortland, OH	801596	2011	Oct. 13, 2011
Millburn Community Consolidated School District 24 Wadsworth, IL	587560	2007	Oct. 12, 2007
Newark Preschool Council Head Start Program Newark, NJ	798087	2011	Oct. 18, 2011
Yeshiva Avir Yakov Spring Valley, NY	774720	2011	Oct. 11, 2011

APPENDIX C**Requests Denied**

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Blue Earth Area Schools #2860 Blue Earth, MN	798814	2011	Sept. 14, 2011
Burgettstown Area School District Burgettstown, PA	Did not file	2011	Sept. 21, 2011
Butte County Library Oroville, CA	823066	2011	Oct. 6, 2011
College Preparatory Middle School La Mesa, CA	822645	2011	Sept. 14, 2011
Edge Charter School PCAE Tucson, AZ	822925	2011	Dec. 14, 2011
Holmen School District Holmen, WI	Did not file	2010, 2011	Oct. 31, 2011
Hugoton Learning Academy Hugoton, KS	822085, 822087, 822089	2011	Sept. 22, 2011
Hyder Public Library Hyder, AK	807488	2011	Nov. 7, 2011
Most Blessed Sacrament Catholic School Berlin, MD	822528	2011	Sept. 26, 2011
Providence High School Burbank, CA	822111	2010	Nov. 7, 2011
St. Charles Borromeo School New York, NY	822785	2011	Aug. 9, 2011
St. Ursula School Baltimore, MD	823025	2011	Dec. 13, 2011
Tallmadge City School District Tallmadge, OH	822905	2011	Oct. 26, 2011
Ursuline High School Youngstown, OH	822506	2011	Sept. 20, 2011

APPENDIX D**Petitions for Reconsideration Denied**

Petitioner	Application Number	Funding Year	Date Petition for Reconsideration Filed
Canton Public Library Canton, MI	822725	2011	Oct. 5, 2011
Crossroads Schools Jacksonville, FL	822527	2011	Oct. 19, 2011