

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	)	
	)	
Falcon School District 49	)	File Nos. SLD-627866, <i>et al.</i>
Falcon, Colorado, <i>et al.</i>	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: March 12, 2012**

**Released: March 12, 2012**

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

1. Consistent with precedent,<sup>1</sup> we 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 decision, USAC determined that the applicants were not located in a rural area. Based on our review of the record, we find that USAC correctly determined that the urban-rural designation for each application is urban pursuant to E-rate program rules.<sup>4</sup> We also find that petitioners have not demonstrated good cause

<sup>1</sup> See *Universal Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9115-9116, para. 649 (1997) (*1997 Universal Service Order*) (*subsequent history omitted*). In 2003, the Commission sought comment on possible changes to the definition of “rural” in the context of both the E-rate and rural health care programs. See *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, 26939-41, paras. 67-69 (2003) (noting that a new definition was necessary because the Office of Rural Health Policy (ORHP) was no longer using the definition adopted by the Commission and had not updated the Goldsmith Modification to the 2000 Census data); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24578, paras. 63-64 (2003) (*Rural Health Care Report and Order*). In 2004, the Commission modified its definition of “rural area” for the rural health care program, but the Commission has not yet adopted a new definition of “rural” for the E-rate program. See *Rural Health Care Support Mechanisms*, WC Docket No. 02-60, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, 24617-24, paras. 9-23 (2004) (*Rural Health Care Second Report and Order*); See *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Notice of Proposed Rulemaking, 25 FCC Rcd 6872, 6888-6889, paras. 37-40 (2010) (*E-Rate Broadband NPRM*).

<sup>2</sup> The requests for review are listed in the appendix. See appendix.

<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. § 54.505(b)(3). The applicants are located in the following counties: Falcon School District 49 – Falcon County, Colorado; Floresville Independent School District -Wilson County, Texas; Julian Union Elementary School District and Spencer Valley Elementary School District - San Diego County, California; McKittrick School District – Kern County, California. The California schools are located in counties that contain areas classified as

justifying a waiver<sup>5</sup> of section 505(b)(3) the Commission's E-rate rules.<sup>6</sup>

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 the appendix ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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Deputy Chief  
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rural pursuant to E-rate program rules; however the schools are not located in these rural census tract areas. See U.S. Census Bureau census tract tool at: <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>. (last visited Jan. 27, 2012).

<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. § 505(b)(3).

## APPENDIX A

## Appeals Denied on the Merits

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Funding Year</b>	<b>Date Request for Review</b>
Falcon School District 49 Falcon, CO	627866	2008	Jun. 24, 2009
Floresville Independent School District Floresville, TX	571898	2007	Mar. 20, 2008
Julian Union Elementary School District Julian, CA	455089	2005	Jan. 11, 2006
McKittrick School District McKittrick, CA	600828	2008	Mar. 20, 2008
Spencer Valley Elementary School District San Ysabel, CA	452594	2005	May 3, 2006