

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)
Public Works Commission of Fayetteville, et al.) File No. SLD-342528, et al.
Fayetteville, North Carolina)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: May 3, 2012

Released: May 3, 2012

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

1. Consistent with precedent,1 we grant seven (one in part) and deny three 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 USAC denied petitioners funding or seeks recovery of funding previously granted on the grounds that the petitioners listed in Appendices A-C sought telecommunications services from providers that were not telecommunications carriers, in violation of section 54.502(a)(1) of the Commission's rules.4 Based on our review of the record, we find that the six petitioners listed in Appendix A did not violate that provision of the Commission's rules and grant their appeals.5 With respect to five of the petitions listed in Appendix A, filing errors by their service providers incorrectly indicated that the service providers were not telecommunications carriers,6 while Noblesville Schools accidentally mislabeled its

1 See Request for Review of the Decision of the Universal Service Administrator by Bay Shore Union Free School District, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-294923, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15537 (Wireline Comp. Bur. 2008); Request for Review of the Decision of the Universal Service Administrator by Hancock County School District, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-459271, et al., CC Docket No. 02-6, Order, 24 FCC Rcd 12730 (Wireline Comp. Bur. 2009); Request for Waiver and Review of the Decision of the Universal Service Administrator by Alpine Union School District, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-499657, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 5796 (Wireline Comp. Bur. 2011).

2 The requests for waiver and review are listed in Appendices A, B and C.

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 47 C.F.R. § 54.502(a)(1).

5 Appendix A.

6 John Wood, Jr., Public Charter District; Grace Lutheran School; Kiryas Joel Union Free School District; Niagara Falls City School District, and Spartanburg County School District 3.

purchase of Internet access as telecommunications service. We also grant, in part, Public Works Commission of Fayetteville's (Fayetteville) request for review. Fayetteville received E-rate support for both Internet access and telecommunications services provided to the Cumberland County Public Library but, because Fayetteville is not a telecommunications carrier, it was only entitled to the support for Internet access. We find that Fayetteville must return the E-rate support it requested and received for providing telecommunications. Finally, we find that the three petitioners listed in Appendix C violated that provision of the Commission's rules, and we therefore deny their requests for review.⁷

2. Next, 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.⁸ 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 therefore remand the underlying applications listed in Appendices A and B 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 those 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 any of the parties listed in Appendix A from which it is seeking recovery, and from Fayetteville or Cumberland County Library, except with respect to the support for the latter's purchase of telecommunications, which USAC should recover.

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), that 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 the request for review filed by Public Works Commission of Fayetteville IS GRANTED IN PART and its underlying application IS 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 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d), IS WAIVED for the petitioners listed in Appendices A and B to the limited extent provided herein.

6. 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

⁷ Appendix C.

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

requests for review or requests for waiver filed by the petitioners listed in Appendix C ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A**Requests Granted**

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Grace Lutheran School Winter Haven, FL	790089	2011	Oct. 21, 2011
John H. Wood Jr. Public Charter District San Antonio, TX	582917	2007	Feb. 19, 2009
Kiryas Joel Union Free School District Monroe, NY	500811	2006	Apr. 12, 2007
Niagara Falls City School District West Seneca, NY	489138	2005	Feb. 28, 2011
Noblesville Schools Noblesville, IN	651588	2009	Dec. 10, 2010
Spartanburg County School District 3 Glendale, SC	503828	2006	May 29, 2007

APPENDIX B**Request Granted in Part**

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Public Works Commission of Fayetteville (Cumberland County Public Library Fayetteville, NC)	342528	2003	Sept. 11, 2009

APPENDIX C**Requests Denied**

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Memphis City School District Memphis, TN	598012	2008	May 28, 2009
Point Pleasant Board of Education Point Pleasant, NJ	404069	2004	Aug. 3, 2011
Warrior Run School District Turbotville, PA	731818	2010	Nov. 29, 2010