

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Request for Review and Waiver of the)
Commission's Rules by)
Onslow County School District) File No. SLD-801470
Jacksonville, NC)
North Carolina Office of Information) File No. SLD-801470
Technology Services)
Raleigh, NC)
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. In this order, we grant a request from the Onslow County School District (Onslow)1 and the North Carolina Office of Information Technology Services (ITS)2 seeking a waiver of section 54.504(a) of the Commission's rules and any applicable Universal Service Administrative Company (USAC) procedural deadlines in order to allow ITS, to revise its FCC Form 471 application under the E-rate program (more formally known as the schools and libraries universal service support program).3

2. Specifically, ITS submitted an application on behalf of Onslow as part of the Learning On-The-Go (LOTG) (also known as the E-rate Deployed Ubiquitously 2011) pilot program for telecommunications service.4 During USAC's program integrity assurance review, however, USAC determined that Onslow was receiving Internet access services, not telecommunications services.5 Upon consultation with Onslow, USAC changed the category of service on the FCC Form 471 application from

1 See Request for Review and Waiver, from Stacy C. Lee, Chief Technology Director, Onslow County Schools, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 19, 2012) (Onslow Request for Review) (regarding FCC Form 471 application number 801470).

2 See Supplement to Request for Review and Waiver, from Jonathan Womer, State Chief Information Officer, North Carolina Office of Information Technology Services, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 19, 2012) (regarding FCC Form 471 application number 801470). ITS is a state agency that has procurement authority for all information technology contracting on behalf of the executive branch agencies in North Carolina and also serves as a service provider for Internet access service. Onslow Request for Review at 1.

3 See 47 C.F.R. § 54.504(a) (requiring applicants to submit a completed FCC Form 471 application to USAC).

4 See Onslow Request for Review, Attachment (USAC FCC Form 471 Application). Onslow submitted an FCC Form 470 for both telecommunication services and Internet access. See FCC Form 470, Onslow County School District (posted Jan. 28, 2011).

5 See Onslow Request for Review at 1.

telecommunications service to Internet access.⁶ Onslow purchases telecommunications from Sprint Communications and Verizon Wireless, but receives Internet access from ITS and makes payments directly to ITS for the Internet access service.⁷ As such, the change in the category of service resulted in an application in which the billed entity (ITS) and the Internet access service provider (ITS) were the same entity, in violation of the Commission's rules.⁸ Onslow and ITS therefore seek a waiver of the Commission's rules to allow ITS to revise its FCC Form 471 application to reflect that Onslow is the correct billed entity for the Internet access service and that ITS is the provider of the Internet access service.⁹

3. Based on our review of the record, we find that Onslow and ITS have demonstrated that good cause exists to justify a waiver of section 54.504(a) of the Commission's rules to permit the revisions to the FCC Form 471 application.¹⁰ We believe that permitting this correction serves the public interest by allowing Onslow to receive the committed funding and services under the LOTG pilot program. We therefore direct USAC to allow ITS and Onslow to correct FCC Form 471 application number 801470 to reflect that Onslow is the billed entity and that ITS is the service provider. On our own motion, we also direct USAC to extend any procedural deadlines, such as the FCC Form 486 or invoicing deadlines, that might be necessary to effectuate our ruling.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 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 and waiver filed by Onslow County School District and the supplement to the request for review and waiver filed by North Carolina Office of Information Technology Services ARE GRANTED.

⁶ See *id.*; FCC Form 471, North Carolina Office of Information Technology (filed Mar. 22, 2011) (ITS FCC Form 471).

⁷ See ITS FCC Form 471; Onslow Request for Review, Attachment (ITS Invoice).

⁸ See Onslow Request for Review at 1; 47 C.F.R. §54.500(a) (defining a billed entity as "the entity that remits payment to service providers for services rendered to eligible schools and libraries").

⁹ *Id.*

¹⁰ 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. See, e.g., *Request for Review of the Decisions of the Universal Service Administrator by Broaddus Independent School District, Broaddus, Texas, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-214609, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15547 (Wireline Comp. Bur. 2008) (waiving the Commission's rule to allow the petitioners to amend their original FCC Form 471 applications submitted to USAC to remove ineligible portions from their funding requests).

¹¹ See USAC website, Schools and Libraries, FCC Form 486 Deadlines, available at <http://www.usac.org/sl/applicants/step10/form486-deadlines.aspx> (last visited Apr. 25, 2012); USAC website, Schools and Libraries, Invoice Deadlines and Extension Requests, available at <http://www.usac.org/sl/applicants/step11/invoice-deadlines-extension-requests.aspx> (last visited Apr. 25, 2012).

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 54.504(a) of the Commission's rules, 47 C.F.R. § 54.504(a), IS WAIVED to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau