

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Requests for Waiver of Decisions of the)	
Universal Service Administrator by)	
)	
Central Technology Center)	File Nos. SLD-785992, <i>et al.</i>
Drumright, Oklahoma, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: May 9, 2012

Released: May 9, 2012

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

1. Consistent with precedent,¹ we grant 14 requests and deny eight 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 a violation of section 54.503(c)(4) of our rules which requires an E-rate applicant to wait “at least four weeks from the date on which its description of services is posted on [USAC’s] website before making commitments with the selected providers of services.”⁴ Based on our review of the record, we find good cause exists to waive section 54.503(c)(4) of the Commission’s rules

¹ See *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Al-Ihsan Academy, South Ozone Park, New York, et al., Schools and Libraries Universal Service Support Mechanism*, File No. SLD-575979, 582051, 582081, *et al.*, Order, 26 FCC Rcd 16415 (Wireline Comp. Bur. 2011) (*Al-Ihsan Academy Order*) (waiving the Commission’s competitive bidding rules for certain petitioners that demonstrated good cause for such a waiver); see also *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-297249, *et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (2007) (*Aberdeen School District Order*) (denying an appeal for an applicant that requested E-rate program funds without posting an FCC Form 470 for the services); *Request for Review of the Decision of the Universal Service Administrator by Henrico County School District, Richmond, Virginia, Federal-State Joint Board on Universal Service*, File No. SLD-209204, CC Docket No. 96-45, Order, 17 FCC Rcd 706 (Com. Car. Bur. 2002) (denying a request for review where applicant relied upon a an FCC Form 470 posted in Funding Year 3 in support of its Funding Year 2 service requests).

² The requests for review and waiver are listed in the appendices.

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. § 54.503(c)(4). The Commission has interpreted this rule to require an applicant to wait 28 days after the public availability of an RFP as well. *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26424, para. 40 (2003).

for the petitioners listed in Appendix A.⁵ We also grant one petitioner listed in Appendix A, Kipp, Inc., a waiver of our 60-day filing deadline for appeals because we find the petitioner submitted its appeal to USAC within a reasonable period of time after receiving actual notice of USAC's adverse decision.⁶

2. We further find that the petitioners listed in Appendices B and C did not violate section 54.503(c) of the Commission's rules. Each of the petitioners listed in Appendix B made ministerial or clerical errors on form 471, which is the form that requests support for eligible services. The errors that the petitioners listed on Appendix B made on their form 471s created the mistaken impression that those petitioners had violated section 54.503(c)(4) of the Commission's rules. For the petitioners listed in Appendix B, we also find good cause to waive Section 54.504(a) of the Commission's rules which requires E-rate applicants to submit a completed FCC Form 471 to USAC.⁷ As for the petitioners listed in Appendix C, we find USAC erred in finding them in violation of section 54.503(c) for a variety of reasons. USAC incorrectly changed Milton School District's category of service, making it appear that Milton School District violated the 28-day rule. Next, even though the Montgomery Public Schools' RFP was available for less than 28 days, there was no competitive bidding violation because it was selecting a service provider from a multiple award state master contract with contracts that had been competitively bid by the state. We also find Pittsburg Unified School District did not violate our rules because its communications with service providers merely directed potential bidders to already-filed FCC Forms 470. Finally, we find that the eight petitioners listed in Appendix D have not demonstrated that good cause exists to justify waivers of the Commission's rules and we otherwise decline to grant these appeals.

3. At this time, we find no evidence of waste, fraud and abuse in the record with respect to the petitioners for which we grant relief. Additionally, on our own motion, we waive section 54.507(d) of the Commission's rules and any USAC procedural deadline, 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.

4. We therefore remand the underlying applications listed in Appendices A-C 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 Appendices A-C 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 those parties listed in Appendix A-C based on our findings in this order.

⁵ 47 C.F.R. § 54.503(c)(4). See *Aberdeen School District Order*, 22 FCC Rcd at 8763, para. 9 (waiving the Commission's competitive bidding rules for petitioners who, while not waiting the full 28 days before entering into a contract, missed that deadline by a minimal number of days).

⁶ See 47 C.F.R. § 54.720 (requiring appeal within 60 days of a decision by USAC. See also *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-584091, Order, 26 FCC Rcd 11019, 11019, para. 2 (Wireline Comp. Bur. 2011) (granting petitioners waivers of our filing deadline for appeals because they submitted their appeals to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decision).

⁷ 47 C.F.R. § 54.504(a). See *Aberdeen School District Order*, 22 FCC Rcd at 8761, paras. 6-7 (waiving our rules when petitioners inserted the wrong contract date, the wrong classification of service, or the wrong FCC Form 470 application number on the FCC Form 471, thus making it appear that the applicants violated the 28-day rule).

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).

5. 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 appendices A, B and C ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

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 sections 54.503(c)(4), 54.504(a) and 54.507(d) of the Commission's rules, 47 C.F.R. §§ 54.503(b)(4), 54.504(a) and 54.507(d), ARE WAIVED for the petitioners listed in Appendices A-C to the limited extent provided herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A
Waiver of Section 54.503(c)(4) Granted

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Central Technology Center Drumright, OK	785992	2011	Nov. 14, 2011
Hempfield Area School District Greensburg, SC	750235	2010	June 24, 2011
KIPP Inc. Houston, TX	433110	2004	May 16, 2011, June 15, 2011
Minneapolis Public Schools Minneapolis, MN	517640	2006	Nov. 7, 2011
Northside School Whitestone, NY	820279	2011	Jan. 6, 2012
Oregon School District Oregon, WI	664675, 602196	2009	Oct. 14, 2009
Ossining Union Free School District Ossining, NY	486474	2005	Sept. 29, 2005
Tilden Public Library Tilden, NE	875865	2012	Apr. 4, 2012
Wisconsin Cooperative Educational Service Agency #11 Turtle Lake, WI	552615	2007	Oct. 16, 2007

APPENDIX B
Waiver of Section 54.504(a) Granted

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Clinton-Glen Gardner School District Clinton, NJ	80327	2011	June 28, 2011
West Fargo Public School District West Fargo, ND	782828	2011	Feb. 1, 2012

APPENDIX C
Appeals Granted

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Milton School District Milton, WI	756126	2010	Jan. 30, 2012
Montgomery Public Schools Montgomery, AL	592679	2008	June 20, 2009
Pittsburg Unified School District Pittsburg, CA	696082	2009	Aug. 12, 2011

**APPENDIX D
Appeals Denied**

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Chicago Public Schools Chicago, IL 60603	819303	2011	March 13, 2012
Cobleigh Public Library Lyndonville, VT	391909	2004	Dec. 13, 2006
Martin County Public Library Inez, KY	791413	2011	August 11, 2011
Parkers Chapel School District El Dorado, AR	758096	2010	June 17, 2011
Sandhill Regional Library System Rockingham, NC	559697, 596639	2007, 2008	March 21, 2011
San Juan BOCES Durango, CO	689955	2009	Dec. 18, 2009
St. Lucie County School District Fort Pierce, FL	593337	2008	July 14, 2010
Williamsburg County School District Kingstree, SC	449180	2005	Nov. 6, 2006