

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
Academy of Excellence
Phoenix, Arizona, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-523299, et al.
CC Docket No. 02-6

ORDER

Adopted: May 16, 2012

Released: May 16, 2012

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

1. Consistent with precedent, we grant 15 requests from petitioners 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). In each decision, USAC found that the applicants violated the E-rate program technology plan rules. Based on our review

1 See Requests for Review or Waiver of the Decisions of the Universal Service Administrator by Brownsville Independent School District, et al., File Nos. SLD-482620, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 6045 (2007) (waiving the technology plan rules for petitioners that, among other things, (1) did not develop a technology plan because they sought discounts only for telecommunications or because they believed that a technology plan was not required for what they believed to be basic voice service; (2) failed to show, in response to inquiries by USAC, that they had an approved technology plan in place for the relevant funding year, or that the plan was in the process of being approved; or (3) based their funding applications on approved technology plans from prior years while they updated those plans) (Brownsville Order); see also Requests for Review and Waiver of Decisions of the Universal Service Administrator by Al-Ishan Academy, et al., File Nos. SLD-535827, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 17744 (Wireline Comp. Bur. 2010) (waiving the technology plan rules for petitioners applying the standards of the Brownsville Order, for petitioners that did not create technology plans in accordance with E-rate program rules yet in good faith planned for the implementation of new technology in their schools in accordance with state, local, or other internal requirements, and remanding applications for petitioners that were denied funding because their technology plans did not include a budget demonstrating funding sufficient to acquire other services necessary to use the E-rate services they were requesting).

2 The requests for review are listed in the Appendix. This order pertains only to USAC's decisions to not grant or to rescind funding because of technology plan rule violations, unless stated otherwise herein, and does not bar USAC from enforcing any other decisions or taking any other actions regarding these applicants. Petitioner CDCR-DJJ, for example, did not appeal USAC's determination that CDCR-DJJ received \$1,386.00 in improper disbursements for ineligible miscellaneous fees that were included during invoicing. Nor has Southern Westchester BOCES disputed USAC's determination that Southern Westchester BOCES received \$9,100.36 in improper disbursements. We note that Southern Westchester BOCES has repaid those funds.

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 See 47 C.F.R. §§ 54.503(c)(2)(iii)-(iv); 54.504(a)(1)(iv)-(v); and 54.508.

of the record, we find that these petitioners have demonstrated that special circumstances exist to justify a waiver of the E-rate program's technology plan rules at sections 54.503, 54.504 and 54.508 of the Commission's rules.⁵ We also find that at this time, there is no evidence of waste, fraud or abuse in the record.

2. 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.⁶ We find good cause to waive section 54.507(d) because filing an appeal of a denial of funding is likely to cause petitioners to miss the program's subsequent procedural deadlines in that funding year.⁷ Consistent with precedent,⁸ we also grant three petitioners⁹ waivers of the Commission's filing deadline for appeals.¹⁰

⁵ 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.

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

⁷ Where USAC moved the service start dates for applicants listed in the appendix based on a decision that a technology plan was approved after the start of a funding year, we direct USAC to amend these applicants' FCC Forms 486 to move the service start dates back to the beginning of the funding year. For example, in the case of the UNO (UNO) Network of Charter Schools, USAC moved UNO's service start date to April 19, 2010, the approval date of its technology plan. Because UNO is being granted a waiver of the technology plan rules, we direct USAC to amend UNO's FCC Form 486 to move the service start date back to the beginning of funding year 2009.

⁸ See, e.g., *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Baker Hall School, et al.*, File Nos. SLD-596432, et al., Order, 25 FCC Rcd 17534, 17535, n.9 (Wireline Comp. Bur. 2010) (waiving the 60-day appeal filing requirement when petitioners filed their appeals a few days late or soon after they received actual notice of the denial); *Request for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Animas School District 6, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-427902, et al., CC Docket No. 02-6, Order, DA 11-2040, at para. 4 (released Dec. 22, 2011) (granting waivers for late filed appeals because the applicant filed within a reasonable time of receiving actual notice or because the appeal would not have been necessary, but for an error by USAC); *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Albuquerque School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-548427, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 5878 (Wireline Comp. Bur. 2011) (waiving the Commission's filing deadline for appeals for six applicants because the Bureau found that these applicants could not submit their appeals to the Commission in a timely manner due to circumstances beyond their control or because the petitioners submitted its appeal to USAC within a reasonable period of time after receiving actual notice of USAC's adverse decision).

⁹ Altoona Public Library System (did not learn that it had not received funding and that USAC made an incorrect determination about its technology plan until after the appeals deadline had expired); Southern Westchester BOCES (never received correspondence and therefore was not aware of USAC's intention to recover funds until after it received the demand payment letter that arrived after the 60-day deadline for appeals); and Muhammad University (filed its appeal one day late to USAC and two days late to the Commission).

¹⁰ See 47 C.F.R. § 54.720.

3. We therefore remand the underlying applications listed in the appendix 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 the appendix and issue an award or a denial based on a complete review and analysis no later than 120 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 based on the denials we reviewed in this order for those parties whose requests are addressed herein.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), the requests for review or requests for waiver filed by the petitioners listed in the appendix ARE GRANTED and their underlying applications ARE 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 sections 54.503(c)(2)(iii)-(iv), 54.504(a)(1)(iv)-(v), 54.507(d), 54.508 and 54.720 of the Commission's rules, 47 C.F.R. §§ 54.503(c)(2)(iii)-(iv), 54.504(a)(1)(iv)-(v), 54.507(d), 54.508 and 54.720 ARE WAIVED for the petitioners listed in the appendix to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader, Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

¹¹ USAC shall cease recovery actions against both the applicant and the service provider, unless otherwise provided in this order.

APPENDIX

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Academy of Excellence Phoenix, Arizona	523299	2006	Nov. 8, 2010
Alamogordo Public School District Alamogordo, New Mexico	529682; 534697	2006	Nov. 15, 2010
Altoona Area Public Library Altoona, Pennsylvania	460862	2005	June 14, 2006
Bishop Fenwick High School Peabody, Massachusetts	494624	2006	May 16, 2011
Boston Public Library Boston, Massachusetts	558489; 558675; 558737; 559648	2007	Mar. 25, 2011
CDCR-DJJ/California Education Authority Sacramento, California	503157	2006	Jan. 24, 2011
Christ the King School Bronx, New York	532076	2006	Dec. 6, 2010
Holy Name of Jesus School Los Angeles, California	473686	2005	Mar. 4, 2011
Latham School Brewster, Massachusetts	431113	2004	Nov. 9, 2010
Muhammad University Oakland, California	440016	2005	Sept. 22, 2009
Navajo Nation Technology Consortium Ganado, Arizona	428029, 432378	2004	Apr. 1, 2011
New Haven Public School District New Haven, Connecticut	504720	2006	Dec. 8, 2010
Pickett-Center School District – 20 Ada, Oklahoma	527126	2006	Mar. 23, 2011
Southern Westchester BOCES Rye Brook, New York	471962; 506595; 510983; 512817	2005; 2006	Feb. 16, 2011
UNO Network of Charter Schools Chicago, Illinois	697006, 697203, 697223, 697204	2009	Sept. 29, 2011