

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Requests for Review and/or Requests for Waiver of Decisions of the Universal Service Administrator by)	
)	
Imagine College Preparatory High School St. Louis, Missouri, <i>et al.</i>)	File Nos. SLD-752453, <i>et al.</i>
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

ORDER

Adopted: May 31, 2012

Released: May 31, 2012

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

1. Consistent with precedent,¹ we grant five 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 case, USAC denied or reduced funding because it found that the applicants failed to respond to its requests for additional information within the USAC-specified time frame. Based on our review of the record, we find that the five petitioners have demonstrated that good cause exists to justify waiver of USAC's filing deadline and allow the applicants another opportunity to respond to USAC's requests for further information.⁴ We also dismiss an appeal filed by Yeshiva Mesivta Wiznitz USA (Yeshiva) because its

¹ *Requests for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School District et al.*, File Nos. SLD-523576, *et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 6035 (2007) (*Alpaugh Unified School District Order*) (granting 78 appeals of applicants denied funding because they failed to respond to USAC's request for information within the USAC-specified time frame); *Requests for Review and/or Waiver of the Decision of the Universal Service Administrator by Burlington Township School District, et al.*, File Nos. SLD-739222, *et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 10951 (Wireline Comp. Bur. 2011) (granting five appeals of applicants denied funding because they failed to respond to USAC's request for information within the USAC-specified time frame).

² The requests for review and those for waiver and review that are granted by this order are listed in Appendix A. The applications covered by those requests for review are listed in Appendices A and B.

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 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.

(continued...)

funding request was fulfilled by USAC after it filed its appeal.⁵ Consistent with precedent,⁶ we also waive, for Warren Consolidated School District (Warren) and Northwest Institute (Northwest), section 54.720 of the Commission's rules, which requires applicants to seek review of a USAC decision within 60 days, because we find they submitted their appeals to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decision or filed their appeal only a few days late.⁷

2. We therefore remand the underlying applications listed in the appendices 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 the submitted documentation related to each application and issue a funding commitment or denial based on a complete review and analysis no later than 90 calendar days from its receipt of the submitted documentation. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

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), the requests for review and for waiver and review filed by the petitioners listed in Appendix A ARE GRANTED and their underlying applications listed in Appendices A and B 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), the request for review filed by Yeshiva Mesivta Wiznitz USA, Brooklyn, New York IS DISMISSED.

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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.

⁵ Letter from Amrom Merring, Administrator, Yeshiva Mesivta Wiznitz USA, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 6, 2010) (Request for Review). USAC issued a Revised Funding Commitment Decision Letter granting Yeshiva's E-rate funding after Yeshiva submitted its appeal to the Commission. See Letter from USAC to Mr. Stein, Yeshiva Mesivta Wiznitz USA dated June 8, 2010 (Yeshiva Revised Funding Commitment Decision Letter).

⁶ *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 or file their appeals only a few days late).

⁷ See 47 C.F.R. § 54.720 (requiring appeals to be filed within 60 days of a decision by USAC). Warren states that the funding commitment decision letter sent by USAC was misdirected to a former employee and was not received in time to file a timely appeal. It filed its appeal 33 days after becoming aware of USAC's adverse decision. Northwest files its appeal 4 days after the 60-day time limit.

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 54.720 of the Commission's rules, 47 C.F.R. § 54.720, IS WAIVED for Northwest Institute and Warren Consolidated School District.

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX A

List of Petitioners

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Imagine College Preparatory High School St. Louis, Missouri	752453	2010	Dec. 21, 2011
Northwest Institute Chicago, Illinois	570926	2007	Mar. 21, 2012 or Feb. 22, 2012
State E-Rate Coordinator's Alliance (SECA)	<i>See Appendix B</i>	2011	Jan. 18, 2012
St. Francis Xavier Head Start Baltimore, Maryland	785325	2011	Feb. 16, 2012
Warren Consolidated School District South Lyon, Michigan	725505	2010	Apr. 9, 2012

APPENDIX B

**List of Applicants and Application Numbers Included in the Request for Waiver filed January 18,
2012 by State E-Rate Coordinator's Alliance (SECA)**

Applicants	Application Number	State
Bias Chaya Mushka	799949	California
Cardiff Elementary School District	775798	California
Chula Vista Public Library	775464	California
Hawthorne Elementary School District	782238	California
Shasta County Office of Education	777767, 790118	California
Sierra-Plumas Joint Unified School District	782025	California
Woodville Elementary School	805130	California
Milford TWP High School District 233	800825	Illinois
St. Ann School	779136	Illinois
All Saints School	804352	Missouri
Elba Public School District	790227	New England
Yeshiva Bais Aharon	784795	New Jersey
Dobbs Ferry Union Free School District	773686	New York
Yeshiva Avir Yakov	774720	New York
Colonel Crawford Local Schools	786060	Ohio
Columbus Performance Academy	802338	Ohio
Lakeview Local Schools	801596	Ohio
Triway Local School District	771927	Ohio
Morris School District	778935	Oklahoma
Waukomis Independent School District 1	790892	Oklahoma
Marcola School District 79 J	799299	Oregon
McIver's Grant Public Library	795387	Tennessee
Pearland Independent School District	788176	Texas