

**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	)	
	)	
Milburn Public Schools	)	File Nos. SLD-463683, 505010
Milburn, OK	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: June 12, 2012**

**Released: June 12, 2012**

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

1. In this order, we address two appeals from Milburn Public Schools (Milburn)<sup>1</sup> 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) for funding years 2005 and 2006.<sup>2</sup> In its decision concerning Milburn's funding year 2005 FCC Form 471 application, USAC found that four funding requests violated the E-rate program's technology plan rules, because Milburn did not have a technology plan written prior to the time it filed its FCC Form 470 for

---

<sup>1</sup> See Letter from Jon Holmes, Superintendent, Milburn Public Schools, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 24, 2010) (regarding funding year 2005 FCC Form 471 application number 463683, FRNs 1274644, 1274660, 1274673, and 1274682) (Request for Review); Letter from Jon Holmes, Superintendent, Milburn Public Schools, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Apr. 12, 2011) (regarding funding year 2006 FCC Form 471 application number 505010, FRNs 1387637, 1387642, and 1387671) (Request for Waiver and Review) (seeking an extension of the appeal filing deadline and indicating that it would file an appeal with additional information at a later time). However, in April 2012, Milburn indicated that it did not intend to supplement its April 12, 2011 filing with additional information. See Email from Chris Webber, Consultant, CRW Consulting, LLC, on behalf of Milburn Public Schools, to Regina Brown, Federal Communications Commission (dated Apr. 19, 2012). We note that each of these appeals was submitted after the 60-day filing deadline for appeals. However, consistent with precedent, we waive the Commission's filing deadline for appeals because Milburn did not receive notice of USAC's intention to recover funds until after the 60-day deadline for filing appeals had passed. See, e.g., *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); see also 47 C.F.R. § 54.720.

<sup>2</sup> 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).

funding year 2005.<sup>3</sup> USAC also found that two of these requests violated the Commission's competitive bidding requirements because Milburn did not consider price as the primary factor in its competitive bidding process relating to those requests.<sup>4</sup> In its decision concerning Milburn's funding year 2006 FCC Form 471 application, USAC found that three funding requests violated the Commission's competitive bidding requirements because Milburn did not consider price as the primary factor in its competitive bidding process relating to those three requests.<sup>5</sup> Consistent with precedent,<sup>6</sup> we grant in part and deny in part Milburn's appeal concerning its funding year 2005 application and deny Milburn's appeal concerning its funding year 2006 application.

2. Upon review of the record, we find that Milburn had a technology plan in place that was written prior to the time it filed its FCC Form 470.<sup>7</sup> Therefore, consistent with the *Brownsville Order*,<sup>8</sup> we waive the Commission's deadline for technology plan approval for funding year 2005, and grant Milburn's request for review concerning funding request numbers (FRNs) 1274660 and 1274682 as part of its funding year 2005 FCC Form 471 application.<sup>9</sup> Additionally, on our own motion, we waive section 54.507(d) of the Commission's rules and any USAC procedural deadlines for FRNs 1274660 and

---

<sup>3</sup> Request for Review (regarding funding year 2005 FCC Form 471 application number 463683, funding request numbers (FRNs) 1274644, 1274660, 1274673, and 1274682).

<sup>4</sup> See Request for Review (regarding FRNs 1274644 and 1274673).

<sup>5</sup> See Request for Waiver and Review (regarding funding year 2006 FCC Form 471 application number 505010, FRNs 1387637, 1387642, and 1387671).

<sup>6</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 481 (1997) (subsequent history omitted); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, et al., Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5452-53, para. 233 (1997); *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 (2003) (*Ysleta Order*) (finding that applicants must select the most cost-effective service offerings, and price must be the primary factor in determining whether a particular vendor is the most cost-effective); *Requests for Review or Waiver of the Decisions of the Universal Service Administrator by Brownsville Independent School District, et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 6045 (2007) (*Brownsville Order*); 47 C.F.R. §§ 54.504, 54.508, 54.511 (2005) amended by 47 C.F.R. §§ 54.503, 54.508, 54.511 (2011).

<sup>7</sup> See Request for Review, Affidavit of Shanelle Baxter.

<sup>8</sup> *Brownsville Order* (waiving the technology plan rules for petitioners that, among other things, had approved technology plans in place for the relevant funding year, or had plans that were in the process of being approved, but failed to provide sufficient information to USAC about the status of their technology plans).

<sup>9</sup> See Request for Review, Attachment (Milburn Public Schools Technology Plan 2005-2007); see also *Brownsville Order*. 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.

1274682, such as the invoicing deadline, that might be necessary to effectuate our ruling.<sup>10</sup> We find good cause to waive section 54.507(d) because filing an appeal of a denial of funding is likely to cause Milburn to miss the program's subsequent procedural deadlines in that funding year. Moreover, at this time, there is no evidence of waste, fraud and abuse in the record concerning these FRNs. We therefore remand FRNs 1274660 and 1274682 as part of Milburn's funding year 2005 FCC Form 471 application to USAC for further action consistent with this order.

3. To ensure that the underlying funding requests are resolved expeditiously, we direct USAC to complete its review of each FRN 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 FRNs to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application. We direct USAC to discontinue recovery actions against Milburn and its service provider, Lewis Technologies, Inc. (Lewis), for these FRNs based on the denials that are addressed herein.

4. As for the remaining FRNs at issue for funding years 2005 and 2006,<sup>11</sup> upon review of the record, we find that Milburn violated sections 54.503 and 54.511 of the Commission's competitive bidding rules by failing to make price the primary factor considered in its competitive bidding process relating to those FRNs.<sup>12</sup> We further find that Milburn has not demonstrated that good cause exists to waive the Commission's competitive bidding requirements for those FRNs.<sup>13</sup> We therefore deny Milburn's request for review concerning FRNs 1274644 and 1274673 as part of its funding year 2005 FCC Form 471 application<sup>14</sup> and its subsequent request for waiver and review concerning its funding year 2006 FCC Form 471 application. We direct USAC to continue its recovery actions against Milburn and its service provider, Lewis, for FRNs 1274644, 1274673, 1387671, 1387637, and 1387642 to the extent provided herein.

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 request for review filed by Milburn Public Schools on June 24, 2010 is GRANTED IN PART AND DENIED IN PART to the extent provided herein, and the underlying funding request numbers 1274660 and 1274682 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

---

<sup>10</sup> 47 C.F.R. § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

<sup>11</sup> See Request for Review (regarding funding year 2005 FCC Form 471 application number 463683, FRNs 1274644 and 1274673); Request for Waiver and Review (regarding funding year 2006 FCC Form 471 application number 505010, FRNs 1387637, 1387642, and 1387671).

<sup>12</sup> See 47 C.F.R. §§ 54.504, 54.511 (2005) amended by 47 C.F.R. §§ 54.503, 54.511 (2011); *Ysleta Order*, 18 FCC Rcd 26407.

<sup>13</sup> See 47 C.F.R. § 1.3.

<sup>14</sup> Because we find that Milburn failed to demonstrate that price was the primary factor considered in its competitive bidding process for FRNs 1274644 and 1274673, there is no need to address whether Milburn had a technology plan in place for these FRNs.

sections 54.503(c)(2)(iii)-(iv), 54.504(a)(1)(iv)-(v), 54.507(d) 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) and 54.720 ARE WAIVED for Milburn Public Schools' funding request numbers 1274660 and 1274682 to the 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 request for waiver and review filed by Milburn Public Schools on April 12, 2011 is DENIED.

8. 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 pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that USAC SHALL COMPLETE its review of the remanded funding requests and SHALL 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.

FEDERAL COMMUNICATIONS COMMISSION

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