

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 )
Annunciation Elementary School ) File No. SLD-576164
Denver, Colorado )
Hamilton County School District ) File No. SLD-666050
Jasper, Florida )
Optimized VDV, Inc. ) File Nos. SLD-423409, 459452
Brooklyn, New York )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: June 18, 2012

Released: June 18, 2012

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

1. Consistent with precedent,<sup>1</sup> we grant two requests<sup>2</sup> 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) and dismiss another request for review as moot.<sup>3</sup> USAC denied funding because it found that the applicants failed to submit

1 Requests for Waiver and Review of Decisions of the Universal Service Administrator by Clintonville Public School District, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-744909, et al., CC Docket No. 02-6, Order, 27 FCC Rcd 416 (Wireline Comp. Bur. Jan. 25, 2012)(granting six appeals after finding good cause to waive USAC's deadline for filing FCC Forms 472 or 474); 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, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 11019 (Wireline Comp. Bur. 2011) (ABC Order) (granting 24 appeals after finding good cause to waive USAC's deadline for filing FCC Forms 472 or 474).

2 Letter from Debra Roberts, Annunciation Elementary School (Annunciation School), to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 26, 2012) (Annunciation School Request for Waiver); Letter from Richard Larson, Hamilton County School District (Hamilton County), to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Feb. 13, 2012)(Hamilton County Request for Review). 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).

3 Letter from Nicole Fendrich, Optimized VDV, Inc., to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 28, 2012)(Optimized Request for Review). Optimized was the service provider for Viznitzer Chaider Tiferes Yisroel, Brooklyn, NY.

their invoicing forms (FCC Forms 472 or 474) timely or not at all.<sup>4</sup> Based on our review of the record, we find that Annunciation School and Hamilton County have demonstrated that good cause exists to justify a waiver of USAC's filing deadline for the FCC Forms 472 or 474 and allow the petitioners to file or resubmit their invoicing forms.<sup>5</sup> Consistent with precedent,<sup>6</sup> we also waive, for Hamilton County, section 54.720 of the Commission's rules which requires applicants to seek review of a USAC decision within 60 days because we find Hamilton County submitted its appeal to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decision.<sup>7</sup> We dismiss as moot the request for review filed by Optimized VDV, Inc. (Optimized) because, on appeal, USAC reversed its initial determination and issued a new decision allowing Optimized to resubmit the invoices in question.<sup>8</sup>

2. We therefore remand the underlying applications for Annunciation School and Hamilton County 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 invoices related to those applications 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 invoices. 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), that the requests for waiver and review filed by Annunciation Elementary School and Hamilton County School District ARE GRANTED and their underlying applications 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, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the request for review filed by Optimized VDV, Inc., Brooklyn, New York IS DISMISSED.

---

<sup>4</sup> Annunciation School's appeal was originally granted in the *ABC Order* but the school failed to timely complete the invoicing process on remand. See *ABC Order*, 26 FCC Rcd at 11021, Appendix A. It now seeks an extension to file its invoicing documents.

<sup>5</sup> 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.

<sup>6</sup> *ABC Order*, 26 FCC Rcd at 11019, para. 2 (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).

<sup>7</sup> See 47 C.F.R. § 54.720. According to Hamilton County, USAC's decision denying its invoice deadline extension request was sent to the wrong address. See Hamilton County Request for Review at 2. Based on the record, Hamilton County filed its appeal 60 days after receiving actual notice of USAC's adverse decision.

<sup>8</sup> See Letters from Nicole Fendrich, Optimized VDV, Inc., to USAC, Schools and Libraries Division, dated March 21, 2010 (Optimized Appeals to USAC); Letters from USAC, Schools and Libraries Division, to Nicole Fendrich, Optimized VDV, Inc., dated May 10, 2012 and May 14, 2012 (Administrator's Decisions on Appeal).

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 Hamilton County School District.

FEDERAL COMMUNICATIONS COMMISSION

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