

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Requests for Review and Waiver of )
Decisions of the )
Universal Service Administrator by )
Colorado Springs School District ) File Nos. SLD-675773, 693741, 714290
Colorado Springs, CO )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: June 20, 2012

Released: June 20, 2012

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

1. Consistent with precedent,1 we grant three requests by Colorado Springs School District (Colorado Springs)2 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 2009 and 2010.3 In its decisions, USAC denied funding to Colorado Springs on the basis that the underlying applications violated the Commission’s competitive bidding

1 See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 481 (1997) (Universal Service First Report and Order) (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 of the Decision of the Universal Service Administrator by Allendale County School District, et al., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 26 FCC Rcd 6109 (2011) (Allendale County Order) (finding that, among other things, a waiver of the Commission’s rules, which require applicants to use price as the primary factor in the vendor selection process, is in the public interest when the applicant selected the least expensive and most cost-effective service offering).

2 See Letter from Dr. Jim Earle, Consultant, Communication Technologies, on behalf of Colorado Springs School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 14, 2010) (regarding funding year 2009 FCC Form 471 application number 675773, FRNs 1845078, 1855087, and 1903295); Letter from Dr. Jim Earle, Consultant, Communication Technologies, on behalf of Colorado Springs School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed June 14, 2010) (regarding funding year 2009 FCC Form 471 application number 693741, FRNs 1903750 and 1903789); Letter from Richard Larson, Consultant, eRate 360 Solutions, LLC, on behalf of Colorado Springs School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed April 27, 2012) (regarding funding year 2010 FCC Form 471 application number 714290, FRNs 1944533, 1944825 and 1944829 (collectively, Requests for Review)).

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).

requirements.<sup>4</sup> Specifically, USAC determined that Colorado Springs's vendor selection documentation did not clearly demonstrate that price was the primary factor in the vendor selection process.<sup>5</sup> Upon review of the record, we agree with USAC's determination that it is unclear that Colorado Springs assigned the highest weight to price when evaluating bids. Nevertheless, the record shows that, for each of the funding requests at issue, Colorado Springs selected the least expensive and most cost-effective service offering.<sup>6</sup> We therefore find that, in these instances, a waiver of sections 54.503(c)(2)(vii) and 54.511(a) of the Commission's rules, which require applicants to use price as the primary factor in the vendor selection process, is in the public interest.<sup>7</sup> Further, at this time, there is no evidence of waste, fraud and abuse in the record. On our own motion, we also 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.<sup>8</sup> 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.

2. We therefore remand the underlying applications 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 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 underlying 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 review filed by Colorado Springs School District ARE GRANTED and the underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

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<sup>4</sup> See 47 C.F.R. §§ 54.503(c)(2)(vii), 54.511(a).

<sup>5</sup> *Id.*; see also *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 48; *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).

<sup>6</sup> See *Requests for Review; Allendale County Order*, 26 FCC Rcd 6109.

<sup>7</sup> See 47 C.F.R. §§ 54.503(c)(2)(vii), 54.511(a). 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>8</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).

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), that sections 54.503(c)(2)(vii), 54.507(d), and 54.511(a) of the Commission's rules, 47 C.F.R. §§ 54.503(c)(2)(vii), 54.507(d), and 54.511(a), ARE WAIVED for Colorado Springs School District to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

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