

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Requests for Review or Waiver of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Amphitheater Unified School District 10)	File Nos. SLD-859888 et al.
Tucson, Arizona et al.)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: May 24, 2013

Released: May 24, 2013

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

1. Consistent with precedent,¹ we grant 11 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 funding on the basis that the petitioner violated the Commission’s rule that a signed contract be in place when the FCC Form 471 application is submitted.⁴

2. Based on the facts and circumstances of these specific cases, we find that each appellant listed in the appendix has demonstrated that good cause exists to justify waiver of the rule that a signed

¹ See *Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District et al.; Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-400938 et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15526 (Wireline Comp. Bur. 2008); *Requests for Review and/or Waiver of the Decisions of the Universal Service Administrator by Bayfield School District et al.; Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-859096 et al., CC Docket No. 02-6, Order, 27 FCC Rcd 15890 (Wireline Comp. Bur. 2012) (both orders granting appeals on the basis that petitioners had agreements in place with their service providers before filing their Forms 471, even though the contracts in question were not signed and dated by both parties before the petitioners filed their FCC Form 471).

² The requests for review or waiver are listed in the Appendix.

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. § 54.504(a).

contract be in place when the applicant submits its FCC Form 471.⁵ Although the record demonstrates that the petitioners had contracts that were not signed and dated by both parties before the petitioners filed their FCC Form 471 applications, all 11 petitioners had legally binding agreements in place prior to the filing of their FCC Forms 471. We therefore waive section 54.504(a), of the Commission's rules, that requires applicants to have a signed contract before filing an FCC Form 471 for each of these petitioners.⁶

3. With respect to the appeals we grant in this order, on our own motion, we waive section 54.507(d) of the Commission's rules and direct USAC to waive any procedural deadline, such as the invoicing deadline, that might be necessary to effectuate our ruling.⁷ We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause the applicant to miss the program's subsequent procedural deadlines in that funding year. Consistent with precedent,⁸ we also find good cause exists to waive, for Amphitheater Unified School District 10 and Southern Ohio Educational Service Center, section 54.720(a) of the Commission's rules,⁹ which requires applicants to seek review of a USAC decision within 60 days, because we find they filed their appeals only a few days late. We also find that at this time there is no evidence of waste, fraud and abuse in the record.

4. 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 denial based upon a complete review and analysis no later than 90 calendar days from the release 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. We direct USAC to discontinue recovery actions against the petitioners with respect to the applications identified in the appendix.

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 pursuant to the authority delegated in 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 or Waiver filed by the petitioners as listed in the Appendix ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this Order.

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. *Northeast Cellular*, 897 F.2d at 1166.

⁶ See 47 C.F.R. § 54.504(a).

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

⁸ *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., Order, 26 FCC Rcd 11019, 11019, para. 2 (Wireline Comp. Bur. 2011) (waiving the filing deadline for petitioners who submitted their appeals to the Commission or USAC only a few days late).

⁹ See 47 C.F.R. § 54.720 (requiring appeals to be filed within 60 days of a decision by USAC).

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 pursuant to the authority delegated in sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that section 54.720(a) of the Commission's rules, 47 C.F.R. § 54.720(a), IS WAIVED for Amphitheater Unified School District 10 and Southern Ohio Educational Service Center.

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 pursuant to the authority delegated in sections 0.91, 0.291, and 1.3, of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that sections 54.504(a) and 54.507(d) of the Commission's rules, 47 C.F.R. §§ 54.504(a) and 54.507(d), ARE WAIVED for the petitioners listed in the Appendix to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly A. Scardino
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX

Petitioner	Application Number	Funding Year	Date Appeal Filed
Amphitheater Unified School District 10 Tucson, Arizona	859888	2012	Jan. 16, 2013
Columbus Grove School District Columbus Grove, Ohio	861705	2012	Jan. 4, 2013
Madison County Public Library Marshall, North Carolina	824336	2012	Dec. 31, 2012
Northwood Local School District Northwood, Ohio	835468	2012	Dec. 19, 2012
Ocean State Libraries Warwick, Rhode Island	645002	2009	Mar. 21, 2013
Osborne Unified School District 392 Osborne, Kansas	844290	2012	Dec. 20, 2012
Paxton-Buckley-Loda School District 10 Paxton, Illinois	829655	2012	Nov. 13, 2012
Perkiomen Valley School District Collegeville, Pennsylvania	836810	2012	Nov. 21, 2012
Salida School District R-32-J Salida, Colorado	849160	2012	Dec. 27, 2012
Southern Ohio Educational Service Center Wilmington, Ohio	824681	2012	Apr. 30, 2013
St. Bernard's Central Catholic High School Fitchburg, Massachusetts	827390	2012	Sep. 17, 2012