

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Request for Waiver and Review of Decisions of the Universal Service Administrator by	)	WC Docket No. 06-122
	)	
Alexander County School District Taylorsville, North Carolina et al.	)	File No. SLD-827833 et al.
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	

**ORDER**

**Adopted: June 14, 2013**

**Released: June 14, 2013**

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

1. Consistent with precedent,<sup>1</sup> we grant 27 requests, deny nine requests, and grant in part and deny in part three requests from petitioners<sup>2</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).<sup>3</sup> In each case, USAC did not allow petitioners to make changes to their applications after the close of the E-rate funding window.<sup>4</sup>

2. Based on our review of the record, we find that, with respect to the applications and funding requests listed in Appendix A, thirty petitioners sought to correct clerical or ministerial errors on their E-rate applications, and therefore good cause exists to justify a waiver of section 54.504(a) of the

---

<sup>1</sup> See *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319 (Wireline Comp. Bur. 2010) (granting 38 appeals concerning many different types of clerical errors by applicants in their E-rate applications or associated forms); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Beth Rivka School et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 10653 (Wireline Comp. Bur. 2010) (*Beth Rivka Order*) (denying applicant requests to remove entities with lower discount rates from their applications so as to raise their average discount rate above the funding threshold).

<sup>2</sup> The requests for review and waiver that we grant are listed in Appendix A, and the requests for review and waiver that we deny are listed in Appendix B. Where we grant in part and deny in part a request, the funding request we are granting is listed in Appendix A, and that which we are denying is listed in Appendix B.

<sup>3</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).

<sup>4</sup> Applications filed before the close of the annual funding window are all treated as if they were filed at the same time. 47 C.F.R. § 54.507(c). Funding requests filed after the close of the window, whether as new applications or modifications to previously filed applications, are treated as filed on the date of filing. Applications filed after the funding window are almost certain to go unfunded, because requests filed by the close of the window usually exhaust the available funds.

Commission's rules to permit them to correct those errors.<sup>5</sup> We find that, with respect to the applications and funding requests identified in Appendix B, twelve petitioners sought to make changes to their E-rate applications that were more than ministerial or clerical, and therefore have not demonstrated that good cause exists to justify a waiver of our rules.<sup>6</sup> In denying these requests, we emphasize that an applicant's request to remove entities from its application, when such removal would raise the average discount percentage for the relevant funding request above the funding threshold for that year, is not justifiable as a ministerial or clerical error.<sup>7</sup>

3. Consistent with precedent,<sup>8</sup> we also waive section 54.720(a) of the Commission's rules, which requires applicants to seek review of a USAC decision within 60 days, for Chabad of Southern Nevada, Dominion Academy Charter School, John F. Kennedy Day School, Northern Central Local School District, and Second Mesa Day School, which submitted their appeals to the Commission or USAC within a reasonable period of time after receiving actual notice of adverse earlier decisions by USAC.

4. We therefore remand the underlying applications listed in Appendix A to USAC for further action consistent with this order. To ensure that those underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in Appendix A and issue a funding commitment 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 petitioners' applications.

5. We also 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.<sup>9</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.

6. 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 or requests for waiver filed by the petitioners listed in Appendix A ARE

---

<sup>5</sup> 47 C.F.R. § 54.504(a) (requiring applicants to submit a completed FCC Form 471 to USAC); *see infra* Appendix 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. *Northeast Cellular*, 897 F.2d at 1166.

<sup>6</sup> *See* Appendix B.

<sup>7</sup> *See Beth Rivka Order*, 25 FCC Rcd at 10659, para. 12.

<sup>8</sup> 47 C.F.R. § 54.720(a). *See Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Animas School District 6 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 16903, 16905, para. 4 (Wireline Comp. Bur. 2011) (granting petitioners waivers of the Commission's 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 decisions).

<sup>9</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).

GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

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 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 Appendix A to the limited extent provided herein.

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 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 Chabad of Southern Nevada, Dominion Academy Charter School, John F. Kennedy Day School, Northern Central Local School District, and Second Mesa Day School.

9. 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 requests for review or requests for waiver filed by the petitioners listed in Appendix B ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

## APPENDIX A

## Requests Granted

Petitioner	Application and Funding Request Number(s)	Funding Year	Date(s) Request for Review/Waiver Filed
Belleville Township High School District 201 Belleville, IL	869282	2012	Jan. 29, 2013
Chabad of Southern Nevada Las Vegas, NV	481708	2005	Sept. 10, 2007
Chillicothe-Ross County Public Library Chillicothe, OH	861999	2012	Nov. 29, 2012
Christ the King Prep Newark, NJ	858585	2012	Dec. 12, 2012
Concordia Charter School Mesa, AZ	809062 (FRN 2196120)	2011	Sept. 20, 2012
Dayspring Head Start Baltimore, MD	807942	2011	Sept. 12, 2012
Dominion Academy Charter School Houston, TX	667521	2009	Apr. 29, 2010
Advent Communication Systems (Erie City School District Erie, PA)	757530	2010	Aug. 29, 2012
Granville County School District Oxford, NC	827957	2012	Dec. 21, 2012 supplemented Jan. 22, 2013
Greater Johnstown CTC Johnstown, PA	849833	2012	Jan. 4, 2013
Hickory City School District Hickory, NC	828034 (FRN 2374034)	2012	Dec. 21, 2012 supplemented Jan. 21 & 29, 2013
John F. Kennedy Day School White River, AZ	756218	2010	Oct. 25, 2012
Necedah Area School District Necedah, WI	869271	2012	Dec. 12, 2012
Neshoba County School District Philadelphia, MS	729408	2010	Apr. 13, 2012
Northern Central Local School District Pioneer, OH	836210	2012	Nov. 8, 2012
Osage Hills School District 3 Bartlesville, OK	848761	2012	Dec. 20, 2012
Paramount Unified School District Paramount, CA	869994	2012	Dec. 14, 2012
Pender County School District Burgaw, NC	836862	2012	Dec. 21, 2012 supplemented Jan. 22, 2013
Petersburg City School District Petersburg, VA	762164	2010	Apr. 15, 2013

<b>Petitioner</b>	<b>Application and Funding Request Number(s)</b>	<b>Funding Year</b>	<b>Date(s) Request for Review/Waiver Filed</b>
Prescott Valley Charter School Prescott Valley, AZ	870830, 873813	2012	Jan. 22, 2013
St. Anthony of Padua School Columbus Grove, OH	824443	2012	Apr. 22, 2013
St. Joseph Catholic School Muskogee, OK	830574	2012	Nov. 13, 2012
San Diego Independent School District San Diego, TX	855624, 856947	2012	Jan. 30, 2013
Savannah R3 School District Savannah, MO	825393	2012	Dec. 17, 2012
Second Mesa Day School Second Mesa, AZ	846271	2012	Nov. 8, 2012
Selma Unified School District Selma, CA	826498	2012	Oct. 23, 2012 supplemented Oct. 25, 2012
Warren County School District Warrenton, NC	856694	2012	Dec. 21, 2012 supplemented Jan. 22, 2013
Washington County School District Plymouth, NC	794941	2011	Dec. 21, 2012 supplemented Jan. 22, 2013
Washington State Department of Information Services Olympia, WA	676418, 689914	2009	Apr. 29, 2010 supplemented Aug. 8, 2012
Wilson County School District Wilson, NC	829164 (FRN: 2372044)	2012	Dec. 21, 2012 supplemented Jan. 17 & 29, 2013

## APPENDIX B

## Requests Denied

Petitioner	Application and Funding Request Number(s)	Funding Year	Date(s) Request for Review/Waiver Filed
Alexander County School District Taylorsville, NC	827833	2012	Dec. 21, 2012
Cherokee-Crawford School District 247 Cherokee, KS	800166	2011	Jun. 19, 2012
Concordia Charter School Mesa, AZ	809062 (FRN 2196158)	2011	Sept. 20, 2012
Dalton Public School District Dalton, GA	791733	2011	Nov. 13, 2012
Halifax County School District Halifax, VA	849905	2012	Dec. 21, 2012 supplemented Jan. 22, 2013
Hickory City School District Hickory, NC	828034 (FRN 2374045)	2012	Dec. 21, 2012 supplemented Jan. 21 & 29, 2013
Ionia Public Schools Ionia, MI	830257	2012	Nov. 19, 2012 supplemented Dec. 19, 2012
Laurens County School District Dublin, GA	865767	2012	Nov. 13, 2012 supplemented Feb. 4, 2013
Manchester School District Manchester, CT	825626	2012	Dec. 5, 2012
Mid-Florida Community Services Brooksville, FL	799603	2011	Sept. 28, 2012
Tustin Unified School District Tustin, CA	824322	2012	Apr. 1, 2013
Wilson County School District Wilson, NC	829164 (FRNs: 2372018, 2372034, 2372056)	2012	Dec. 21, 2012