

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
Allenstown Public Library
Suncook, New Hampshire et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-935288 et al.
CC Docket No. 02-6

ORDER

Adopted: August 2, 2013

Released: August 2, 2013

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

1. Consistent with precedent,1 we address requests from petitioners seeking review of 43 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)2 and one petition for reconsideration of a decision of the Wireline Competition Bureau (Bureau).3 The petitioners seek waivers of the FCC Form 471 application filing window deadline under the E-rate program.4 We grant

1 See Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259-60, paras. 8 & 9 (2010) (finding special circumstances exist to justify granting waiver requests where, for example, petitioners filed their FCC Forms 471 within 14 days after the FCC Form 471 filing window deadline; filed their Forms 471 on time, but failed to timely file their certifications; or filed within 30 days despite medical issues); Requests for Waiver of Decisions of the Universal Service Administrator by Academy for Academic Excellence et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 22 FCC Rcd 4747, 4749, para. 4 (Wireline Comp. Bur. 2007) (finding special circumstances exist to justify granting waiver requests where petitioners were unable to file on time due to reorganizations or severe weather, but still filed within a reasonable time).

2 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 The Bureau has the authority to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority. 47 C.F.R. § 1.106(a)(1); see also Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ashtabula Area City Schools et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 28 FCC Rcd 4051 (Wireline Comp. Bur. 2013) (finding special circumstances to justify granting two petitions for reconsideration).

4 The requests for review are listed in Appendices A, B, and D. The petition for reconsideration is listed in Appendix C. Section 54.507(c) of the Commission's rules provides for E-rate funds to be made available on a first-come, first-served basis, but requires USAC to implement an initial funding window that treats all applicants filing within that window as if their applications were simultaneously received. 47 C.F.R. § 54.507(c). Although some petitioners did not explicitly request a waiver of the FCC Form 471 application filing window deadline, we treat as requests for waiver all of the requests for review involving FCC Form 471 applications that were submitted after the relevant filing window deadline.

the requests of 15 applicants, including the petition for reconsideration, and deny the requests of 29 applicants.⁵

2. Based on the facts and circumstances of these specific cases, we find that good cause exists to grant the requests for review for the 14 applications listed in Appendices A and B.⁶ We grant the nine requests listed in Appendix A, because each of those petitioners filed its applications within 14 days of the close of the filing window.⁷ We grant the five waiver requests listed in Appendix B because each of those petitioners filed its application 1) within 14 days of the close of the filing window, but for their certifications or item 21 attachments or 2) within a reasonable period from the close of the window despite the person responsible for submitting the form or a close family member of that person suffering an unexpected serious illness or death.⁸ We also grant the petition for reconsideration because, on reconsideration of the record, we have determined that the petitioner's application was submitted within 30 days despite an unexpected illness and death in the family of the person responsible for submitting the E-rate forms.⁹ We deny the requests of the 29 applicants listed in Appendix D because we find that the petitioners have failed to present special circumstances justifying waivers of the Commission's rules.¹⁰

3. At this time, we find no evidence of waste, fraud and abuse in the record with respect to the petitioners for which we grant relief. We therefore remand the underlying applications listed in Appendices A through C to USAC for further action consistent with this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

4. 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 the petitioners listed in Appendices A and B ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

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, 1.106, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.106, and 54.722(a), that the petition for reconsideration filed concerning the application listed in Appendix C IS

⁵ See Appendices A-D.

⁶ See Appendices A and B. 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.

⁷ See Appendix A.

⁸ See Appendix B.

⁹ See Appendix C. Section 1.106(c)(2) of the Commission's rules provides that a petition for reconsideration of an order may rely on facts not previously presented to the Commission if consideration of the facts relied on is required by the public interest. We find that the petition for reconsideration has raised facts demonstrating good cause for waiver of the Commission's rules, and that consideration of the facts newly presented in the petition is warranted. 47 C.F.R. § 1.106(c)(2).

¹⁰ See Appendix D.

GRANTED and the application IS 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 section 54.507(c) of the Commission’s rules, 47 C.F.R. § 54.507(c), IS WAIVED for the petitioners listed in Appendices A, B and C, to the limited 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 requests for waiver and review filed by the petitioners listed in Appendix D ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX A

**Requests for Waiver and Review Granted
FCC Form 471 Applications Filed Within 14 Days of the Close of the Filing Window**

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Aybar Academy Corp. Manati, PR	925792	2013	Jun. 17, 2013
Crescent View West Charter Fresno, CA	896938	2013	Apr. 4, 2013
Eagle College Prep II, Inc. Phoenix, AZ	895170	2013	Apr. 4, 2013
Eagle College Prep Endeavor St. Louis, MO	895184	2013	May 13, 2013
Eagle South Mountain Charter, Inc. Phoenix, AZ	895182	2013	Apr. 4, 2013
Pillager School District 116 Pillager, MN	932407	2013	May 28, 2013
St. Vincent De Paul School San Diego, CA	899247	2013	May 13, 2013
Swanville School District 486 Swanville, MN	932587	2013	Jun. 11, 2013
Trails Regional Library Warrensburg, MO	931738	2013	Apr. 30, 2013

APPENDIX B

**Requests for Waiver and Review Granted
Waivers Granted for Other Special Circumstances**

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Deerfield Valley Elementary School Wilmington, VT	920080	2013	May 6, 2013
East Valley High School Mesa, AZ	874534	2012	May 6, 2013
Hamlin-Lincoln County Public Library Hamlin, WV	933247	2013	May 7, 2013
Library of Virginia Richmond, VA	931360, 933008	2013	Apr. 29, 2013
Silverton Public Library Silverton, CO	924754	2013	Jun. 27, 2013

APPENDIX C

Petition for Reconsideration Granted

Applicant	Application Number	Funding Year	Date Request for Reconsideration Filed
Bucklin R-2 School Bucklin, MO	933571	2013	Jun. 4, 2013

APPENDIX D

Requests for Waiver and Review Denied

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Allenstown Public Library Suncook, NH	935288	2013	Jun. 28, 2013
Bertha Hewitt Public Schools Bertha, MN	933807	2013	Jul. 1, 2013
Canyon Creek School District 4 Billings, MT	933714	2013	Apr. 30, 2013
Central Linn School District Brownsville, OR	916813	2013	Apr. 29, 2013
Cheder Menachem Kingston, PA	930986	2013	Jul. 1, 2013
Contoocook Valley Regional School District Peterborough, NH	935348	2013	Jun. 26, 2013
Durham Public Library Durham, CT	935127	2013	Jun. 10, 2013
El Tejon Unified School District Lebec, CA	did not file	2013	May 29, 2013
Emmaus Lutheran Grade School Milwaukee, WI	did not file	2013	May 29, 2013
Greater Lowell Technical High School Tyngsboro, MA	933987, 934047	2013	Apr. 25, 2013
Hamilton County Juvenile Court Cincinnati, OH	935269	2013	Jun. 26, 2013
King Center Charter School Buffalo, NY	934107	2013	Apr. 29, 2013
Kootenai Technical Education Campus Rathdrum, ID	934347	2013	May 3, 2013
Lexington School for the Deaf Jackson Hts., NY	891674	2012	Jun. 3, 2013
Liberty Center Public Library Liberty Center, OH	933289	2013	Jun. 21, 2013
Long Branch Free Public Library Long Branch, NJ	934867	2013	Jun. 4, 2013

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Marian Catholic High School Chicago Hts., IL	897169	2012	May 13, 2013
Nativity Jesuit Middle School Milwaukee, WI	933909	2013	May 1, 2013
Norwood Elementary School District 63 Peoria, IL	935208	2013	May 30, 2013
Oakdale Christian High School Jackson, KY	did not file	2013	May 17, 2013
Our Redeemer Lutheran School Wauwatosa, WI	did not file	2013	May 29, 2013
Rosholt School District Rosholt, WI	935188	2013	Jun. 4, 2013
St. Anthony Catholic School Lakeland, FL	934067	2013	Apr. 29, 2013
St. Jerome School West Long Branch, NJ	933048	2012	May 9, 2013
St. Joseph School for the Deaf Bronx, NY	did not file	2013	Jun. 6, 2013
St. Mary of the Assumption Catholic School Van Wert, OH	did not file	2013	May 13, 2013
Stafford County Public Schools Stafford, VA	903029	2013	May 15, 2013
Torah Academy School Minneapolis, MN	933715	2013	May 1, 2013
Trinity Lutheran Grade School Mequon, WI	did not file	2013	May 29, 2013