

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Requests for Waiver and/or Review of Decisions )
of the Universal Service Administrator by )
Erie 1 BOCES ) File No. SLD-697025 et al.
West Seneca, New York et al. )
Schools and Libraries Universal Service Support ) CC Docket No. 02-6
Mechanism )

ORDER

Adopted: September 18, 2013

Released: September 18, 2013

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

1. Consistent with precedent,1 we grant requests from seven 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 Based on our review of the record, we find that, with respect to the applications and funding requests listed in the Appendix, good cause exists to justify a waiver of section 54.504(a) of the Commission’s rules to permit petitioners to correct clerical errors they made in their E-rate applications.4

1 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); Request for Waiver and Review of Decisions of the Universal Service Administrator by Alexander County School District et al., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 28 FCC Rcd 8492 (Wireline Comp. Bur. 2013) (Alexander County Order) (both orders granting appeals from petitioners seeking a waiver of the Commission’s E-rate rules in order to correct ministerial or clerical errors on petitioners’ E-rate applications or associated forms).

2 The requests for review and/or waiver that we grant are identified 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 47 C.F.R. § 54.504(a) (requiring applicants to submit a completed FCC Form 471 to USAC). 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. 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 (continued...)

2. Consistent with precedent, 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 Hartford School System, which submitted its appeal to the Commission within a reasonable period of time after receiving actual notice of the adverse earlier decision by USAC.<sup>5</sup> We also grant Sankofa Freedom Academy Charter School (Sankofa) a waiver of the FCC Form 471 application filing window deadline, because Sankofa attempted to file its application within the filing window deadline, but was prevented from doing so by a clerical error on its FCC Form 471.<sup>6</sup>

3. Consistent with precedent,<sup>7</sup> 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>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.

4. We therefore remand the underlying applications listed in the Appendix 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 the Appendix 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. 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 identified in the Appendix ARE GRANTED, and their underlying applications ARE 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, 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 Hartford School System.

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

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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>5</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>6</sup> 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).

<sup>7</sup> *Alexander County Order*, 28 FCC Rcd at 8493, para. 5.

<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).

section 54.507(c) of the Commission's rules, 47 C.F.R. § 54.507(c), IS WAIVED for Sankofa Freedom Academy Charter School.

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, 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 the Appendix to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

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

## APPENDIX

<b>Petitioner</b>	<b>Application and Funding Request Numbers (FRNs)</b>	<b>Funding Year</b>	<b>Date Request for Review/Waiver Filed</b>
Erie 1 BOCES West Seneca, NY	697025	2009	Jun. 2, 2010
Hartford School System Hartford, CT	837145	2012	May 21, 2013
Intermediate Unit 04 Grove City, PA	861762	2012	May 3, 2013
Lee-Itawamba Library Systems Tupelo, MS	368611	2003	Apr. 14, 2004
Phoenix Collegiate Academy II Phoenix, AZ	870325	2012	Apr. 4, 2013
San Diego Independent School District San Diego, CA	855624, 856947	2012	Jan. 30, 2013
Sankofa Freedom Academy Charter School Philadelphia, PA	846239 (FRNs 2391468, 2391469)	2012	Nov. 30, 2012