

**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	)	
	)	
Howard School	)	File Nos. 797059 et al.
Ruston, Louisiana et al.	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: September 27, 2013**

**Released: September 27, 2013**

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

1. Consistent with precedent,<sup>1</sup> we grant two requests and deny 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 decision, USAC found a violation of section 54.503(c)(4) of the Commission's competitive bidding rules which requires an E-rate applicant to wait "at least four weeks from the date on which its description of services is posted on [USAC's] website before making commitments with the selected providers of services."<sup>4</sup>

2. As an initial matter, we find that the two petitioners identified in Appendix A did not violate section 54.503(c) of the Commission's rules but instead made clerical or ministerial errors that

<sup>1</sup> See, e.g., *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (2007); *Requests for Waiver of Decisions of the Universal Service Administrator by Central Technology Center et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 5086 (Wireline Comp. Bur. 2012) (both orders waiving section 54.504 of the Commission's rules when petitioners inserted the wrong contract date, the wrong classification of service, or the wrong FCC Form 470 application number on the FCC Form 471, thus making it appear that the applicants violated the 28-day rule, but denying requests of petitioners who entered agreements more than a few days before the allowable contract date).

<sup>2</sup> The requests for review and waiver are listed in the appendices.

<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> 47 C.F.R. § 54.503(c)(4). The Commission has interpreted this rule to require an applicant to wait 28 days after the public availability of a request for proposal as well. See *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District et al.; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26424, para. 40 (2003).

made them appear in violation of the rule.<sup>5</sup> For the petitioners listed in Appendix A, we also find good cause exists to waive section 54.504(a) of the Commission's rules, which requires E-rate applicants to submit completed FCC Forms 471 to USAC.<sup>6</sup> By contrast, we find that the three petitioners listed in Appendix B violated section 54.503(c) of the Commission's rules and have not demonstrated that good cause exists to justify waiver of the Commission's rules.<sup>7</sup>

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. Additionally, on our own motion, for the petitioners identified in Appendix A, we waive section 54.507(d) of the Commission's rules and any USAC procedural 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 Appendix A 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 Appendix A 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 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 and/or requests for waiver filed by the petitioners listed in Appendix A 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, 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.

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<sup>5</sup> Howard School referenced the wrong FCC Form 470 number on its FCC Form 471 and Midd-West School District referenced a contract with an old signature date, making it appear that the applicants violated the 28-day rule.

<sup>6</sup> 47 C.F.R. § 54.504(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>7</sup> Lorain County JVS entered into an agreement more than a few days before the allowable contract date; Southeast Service Cooperative submitted its FCC Form 470 for the wrong funding year; and Seminole County School District ended its bidding process before the 28-day deadline and turned away, unopened, a bid from a potential service provider.

<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).

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 review and/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****Waivers of Section 54.504(a) Granted**

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Date Request for Review/Waiver Filed</b>
Howard School Ruston, LA	797059	2011	Aug. 23, 2012
Midd-West School District Middleburg, PA	836008	2012	Jan. 15, 2013

**APPENDIX B****Appeals Denied**

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Date Request for Review/Waiver Filed</b>
Lorain County JVS Oberlin, OH	863638	2012	Jan. 29, 2013
Southeast Service Cooperative Rochester, MN	788554	2011	Jul. 6, 2013
Seminole County School District Sanford, FL	805456	2011	Aug. 5, 2012