

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
Ashtabula Area City Schools
Ashtabula, Ohio et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-831006 et al.
CC Docket No. 02-6

ORDER

Adopted: April 16, 2013

Released: April 16, 2013

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

1. Consistent with precedent, we address requests from petitioners seeking review of 23 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), and three petitions for reconsideration of decisions of the Wireline Competition Bureau (Bureau) concerning nine applicants. The petitioners are seeking waivers of the FCC Form 471 application filing window deadline under the E-rate program. We grant 19 of the requests for review and two of the petitions for reconsideration, deny four requests for review, and dismiss one request for reconsideration.

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, File Nos. SLD-487009 et al., CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259-60, paras. 8 & 9 (2010) (Academy of Math and Science Order) (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; or filed their FCC Forms 471 on time, but failed to timely file their certifications); Requests for Waiver and Review of Decisions of the Universal Service Administrator by Anderson Elementary School et al.; Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-789495 et al., CC Docket No. 02-6, Order, 27 FCC Rcd 5319, 5319-20, para. 2 (Wireline Comp. Bur. 2012) (treating late-filed item 21 attachments like late-filed certifications); Requests for Waiver of Decisions of the Universal Service Administrator by Academy for Academic Excellence et al.; Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-539076 et al., 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 subject to technical problems interfacing with USAC's computer system).

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).

4 The requests for waiver and review are listed in Appendices A-C, and E. The applications at issue in the petitions for reconsideration are listed in Appendices D and F. 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

(continued...)

2. Based on the facts and circumstances of these specific cases, we find that good cause exists to grant the appeals of the 19 applicants listed in Appendices A-C.⁶ We grant the three appeals listed in Appendix A because we find that the applications were filed within the filing window.⁷ We grant the two waiver requests listed in Appendix B because those petitioners' applications were filed within 14 days of the close of the filing window.⁸ We grant the 14 waiver requests listed in Appendix C because each of those petitioners' applications was submitted on time but for their certifications or item 21 attachments.⁹ We also grant two petitions for reconsideration concerning the eight applicants listed in Appendix D because, on reconsideration of the record, we have determined that each of those petitioners' applications was submitted 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 of the filing window's close, despite a technical problem interfacing with USAC's computer system.¹⁰

3. Consistent with precedent,¹¹ 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 Cedar Ridge School District, Elk Hill Farm School, and St. Mary of the Assumption 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.¹²

4. We deny the four appeals listed in Appendix E because we find that those petitioners have failed to present special circumstances justifying waivers of the Commission's rules.¹³ We also dismiss

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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 their requests for review as requests for waiver because, in each case, USAC denied their funding requests because their FCC Form 471 applications were submitted after the relevant filing window deadline.

⁵ See Appendices A-F.

⁶ See Appendices A, B, and C. 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.

¹⁰ See Appendix D. 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 two petitions for reconsideration have raised facts demonstrating that a waiver of our rules is warranted. 47 C.F.R. § 1.106(c)(2).

¹¹ *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*, File Nos. SLD-427902 et al., 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 decision).

¹² 47 C.F.R. § 54.720(a).

¹³ See Appendix E; 47 C.F.R. § 1.3; *Academy of Math and Science Order*, 25 FCC Rcd at 9261, para. 13 (denying requests for waiver when the petitioners failed to present special circumstances justifying a waiver of section 54.507(c) of the Commission's rules).

the petition for reconsideration listed in Appendix F because it fails to identify any material error, omission, or reason warranting reconsideration and relies on arguments that have been fully considered and rejected by the Bureau within the same proceeding.¹⁴

5. At this time, we find no evidence of waste, fraud or 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 D 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 or as to the petitioners' compliance or non-compliance with any other E-rate program rules.

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 and/or waiver filed by the petitioners listed in Appendices A through C ARE 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, 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 petitions for reconsideration filed concerning the applications listed in Appendix D ARE GRANTED and the applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

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 Cedar Ridge School District, Elk Hill Farm School, and St. Mary of the Assumption 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 section 54.507(c) of the Commission's rules, 47 C.F.R. § 54.507(c), IS WAIVED for the applications listed in Appendices B through D to the limited extent provided herein.

10. 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 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the requests for review and/or waiver filed by the petitioners listed in Appendix E ARE DENIED.

¹⁴ See Appendix F; 47 C.F.R. § 1.106(p)(1), (3).

11. 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 by the petitioner listed in Appendix F IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX A

**Requests Granted
FCC Form 471 Applications Filed Within the Filing Window**

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Charles Churn Christian Academy Brooklyn, NY	857884	2012	Dec. 26, 2012
Laramie County School District 2 Pine Bluffs, WY	834646	2012	Dec. 26, 2012
Team Success School of Excellence Bradenton, FL	871450	2012	Dec. 26, 2012

APPENDIX B

**Requests 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
Central A & M School District 21 Assumption, IL	875648	2012	Dec. 27, 2012
George Washington Carver Academy Highland Park, MI	875224	2012	Jan. 15, 2013

APPENDIX C

**Requests Granted
Waivers Granted for Other Special Circumstances**

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Ashtabula Area City Schools Ashtabula, OH	831006	2012	Jan. 8, 2013
Camas School District 117 Camas, WA	873941	2012	Jan. 22, 2013
Cedar Ridge School District Newark, AR	859386	2012	Jan. 18, 2013
Douglas County School District 15 Days Creek, OR	855912	2012	Feb. 5, 2013
Elk Hill Farm School Goochland, VA	835717	2012	Jan. 29, 2013
Hereford Independent School District Hereford, TX	870486	2012	Jan. 14, 2013
Hodgen Elementary School Hodgen, OK	870499	2012	Dec. 20, 2012

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Lewis & Clark Public Library Helena, MT	825092	2012	Dec. 26, 2012
Our Lady – Mt. Carmel West School Cleveland, OH	875013	2012	Jan. 28, 2013
Penelope Independent School District Penelope, TX	799090	2011	Jan. 15, 2013
St. Mary of the Assumption School Upper Marlboro, MD	875680	2012	Feb. 8, 2013
Seven Hills Charter Public School Worcester, MA	871635	2012	Jan. 4, 2013
Trenton Special School District Trenton, TN	873251	2012	Dec. 21, 2012
Wellston Independent School District 4 Wellston, OK	868268	2012	Dec. 31, 2012

APPENDIX D**Petitions for Reconsideration Granted**

Applicant	Application Number(s)	Funding Year	Date Request for Reconsideration Filed
Beach Cities Chabad Redondo Beach, CA	875306, 875308	2012	Jan. 10, 2013
Chaya Mushka Children's House Sandy Springs, GA	875303, 875304	2012	Jan. 10, 2013
Cheder at the Ohel – New Campus Valley Stream, NY	875292, 875300, 875301	2012	Jan. 10, 2013
East Haven Public Schools East Haven, CT	876867, 832870	2012	Dec. 20, 2012
Emek Hebrew Academy Sherman Oaks, CA	875140, 875361	2012	Jan. 10, 2013
Torah Academy – Lawrence Cedarhurst High School Cedarhurst, NY	875362, 875363	2012	Jan. 10, 2013
USA Outreach Valley Village, CA	875357, 875358	2012	Jan. 10, 2013
Yeshiva Rabbi Samson Raphael Hirsch School New York, NY	875350, 875359, 875360	2012	Jan. 10, 2013

APPENDIX E**Requests Denied**

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Evanston Township High School Evanston, IL	818705 877987	2011 2012	Dec. 17, 2012
Mary Queen of Heaven School Brooklyn, NY	876167	2012	Jan. 3, 2013
St. Edward School Chillicothe, IL	843801	2012	Dec. 21, 2012
Watson Chapel School District Pine Bluff, AR	877867	2012	Feb. 7, 2013

APPENDIX F**Petition for Reconsideration Dismissed**

Petitioner	Application Number	Funding Year	Date Request for Reconsideration Filed
Oregon Howell School District R-3 Koshkonong, MO	876827	2012	Dec. 21, 2012