

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Requests for Review or Waiver of)
Decisions of the)
Universal Service Administrator by)
Cathedral Home for Children) File Nos. SLD-803159 et al.
Laramie, Wyoming et al.)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: April 23, 2013

Released: April 23, 2013

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

1. Consistent with precedent,1 we grant nine requests from 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 In each case, USAC reduced funding because it found that the applicant failed to timely submit its FCC Form 486. Based on the facts and circumstances of these specific cases, we find that rigid adherence to USAC's procedural deadline is not in the public interest in these cases and we therefore grant these appeals and associated waivers.

2. On our own motion, we also waive section 54.507(d) of the Commission's rules,4 and direct USAC to waive any procedural deadlines, such as the invoicing deadline, that might be necessary

1 See, e.g., Requests for Review and Waiver of the Decision of the Universal Service Administrator by Alaska Gateway School District et al.; Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-412028 et al., CC Docket No. 02-6, Order, 21 FCC Rcd 10182, 10185, para. 6 (Wireline Comp. Bur. 2006) (granting appeals after finding that applicants did not file their FCC Forms 486 late, filed late as the result of immaterial clerical, ministerial or procedural errors, or that the late filings were due to circumstances beyond their control); Requests for Review or Waiver of Decisions of the Universal Service Administrator by Bank Street School for Children et al.; Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-796250 et al., CC Docket No. 02-6, Order, 28 FCC Rcd 1295 (Wireline Comp. Bur. Feb. 25, 2013) (granting 16 appeals of USAC decisions to reduce applicants' funding on the basis of late-filed FCC Forms 486).

2 The requests for review or waiver are listed in the Appendix. Tucumcari Public School District filed a request for waiver for two funding request numbers (FRNs) associated with application number 812502. We grant its appeal with respect to FRN 2206952 in this Order. FRN 2207034 will be handled in a separate Order.

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. § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

to effectuate our ruling.⁵ We find good cause to waive section 54.507(d) because filing an appeal of a denial of funding is likely to cause petitioners to miss the program's subsequent procedural deadlines in that funding year. Consistent with precedent,⁶ we also find that good cause exists to waive section 54.720(a) of the Commission's rules,⁷ which requires applicants to seek review of a USAC decision within 60 days, for New York City Montessori Charter School, because it submitted its appeal to the Commission only two days late.

3. We therefore remand the applications listed in the Appendix to USAC for further action consistent with this order. To ensure that those applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the Appendix, and issue a funding commitment or 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 as to 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 review or waiver listed in the Appendix ARE GRANTED and those 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, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that section 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d), IS WAIVED for the petitioners listed in the Appendix to the limited extent provided herein.

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,

⁵ 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.

⁶ See *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-584091 et al., CC Docket No. 02-6, Order, 26 FCC Rcd 11019, 11019, para. 2 (Wireline Comp. Bur. 2011) (granting a waiver of filing deadline for an appeal because it was submitted to the Commission only a few days late).

⁷ 47 C.F.R. § 54.720(a).

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 New York City Montessori Charter School.

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX

Requests for Review or Waiver

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Cathedral Home for Children Laramie, Wyoming	803159	2011	Feb. 11, 2013
Coudersport Area School District Coudersport, Pennsylvania	778693	2011	Mar. 12, 2013
Forest City Regional School District Forest City, Pennsylvania	861295	2012	Apr. 2, 2013
Goose Creek Consolidated Independent School District Baytown, Texas	411530	2004	Dec. 28, 2012
Lamar County School District Purvis, Mississippi	799431, 811476	2011	Feb. 15, 2013
New York City Montessori Charter School Bronx, New York	816793	2011	Feb. 11, 2013
Tucumcari Public School District Tucumcari, New Mexico	812502	2011	Mar. 15, 2013
Vance County School District Henderson, North Carolina	752571	2010	Feb. 15, 2013
Washington Public Library Washington, Iowa	823501	2012	Mar. 29, 2013