

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of
Decisions of the
Universal Service Administrator by
Beaufort County School District
Beaufort, South Carolina et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-507686 et al.
CC Docket No. 02-6

ORDER

Adopted: March 24, 2014

Released: March 24, 2014

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

1. Consistent with precedent, we grant four requests from petitioners seeking review of service substitution requests denied 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. In each case, the applicants have demonstrated that their requests met the Commission's requirements for service substitution. In all four instances, the substituted service or product had the same functionality as the original service or product; there was no violation of any contract provision or state or local procurement laws; there would have been no increase in the percentage of ineligible services or functions; and the applicants signed the required certifications.

1 Requests for Waiver of Sections 54.504(c), 54.504(f), 54.507(c), and 54.507(g) of the Commission's Rules, State of Louisiana Department of Education et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 25 FCC Rcd 1653 (2010) (granting service substitution requests meeting the regulatory requirements for service substitutions); Requests for Review of Decisions of the Universal Service Administrator by Alton Community Unit School District 11; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 25 FCC Rcd 7089 (Wireline Comp. Bur. 2010) (granting appeals when the appellant missed a USAC procedural deadline but did not violate a Commission rule).

2 The requests for review are listed 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 See 47 C.F.R. § 54.504(f) (2005 through 2010). Requests for substituted service from the service identified in the FCC Form 471 must be granted when: (1) the service or product has the same functionality as the original service or product, (2) the substitution does not violate any contract provisions or state or local procurement laws, (3) the substitution does not result in an increase in the percentage of ineligible services or functions and (4) the applicant certifies that the requested change is within the scope of the controlling FCC Form 470. The service substitution rule was moved to 47 C.F.R. § 54.504(d) in 2011.

5 See 47 C.F.R. § 54.504(f) (2005 through 2010).

3. We direct USAC to process the service substitution requests and to waive any procedural rules necessary to effectuate this ruling, including the deadline for service substitution requests for all four petitioners. In so doing, we recognize that USAC rejected service substitution requests for the Beaufort County School District, Las Cruces Public Schools, and Erie 1 BOCES because they violated USAC's deadline for filing service substitution requests. In this case, each of the applicants had a reasonable explanation for the delay in requesting a service substitution, and promptly filed a service substitution request with USAC upon its discovery of the need to do so.<sup>6</sup> We therefore find that a complete rejection of the requests is not warranted under the circumstances.

4. Likewise, we find that the record supports a decision to direct USAC to grant the appeal of Core BTS, Inc. (Berkshire Union Free School District) and allow the applicant to amend its service substitution request. The school district inadvertently misidentified the quantity of equipment to be substituted for in its original service substitution request. After USAC granted the request, Core BTS, Inc. filed an appeal informing USAC of its mistake and requesting its intended service substitution.<sup>7</sup> USAC dismissed this appeal as moot since it had already granted the school district's previous request.<sup>8</sup> We find that the applicant's error does not warrant a complete rejection of its intended request.

5. At this time, we find no evidence of waste, fraud or abuse in the record with respect to any of the petitions for which we grant relief. We therefore remand the petitioners' underlying applications to USAC for further action consistent with this Order. We direct USAC to complete its review of each application listed in the appendix and issue an award based on a complete review and analysis no later than 90 calendar days from the release date of this Order.

6. Lastly, on our own motion, we waive section 54.507(d) of the Commission's rules<sup>9</sup> We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause the petitioners to miss the program's subsequent procedural deadlines in that funding year.

7. 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 listed in the appendix ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

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<sup>6</sup> Each of the three petitioners failed to timely file a service substitution request. According to USAC procedures, a service substitution request must be received or postmarked by the last day to receive service for that funding request number. In general, the last day to receive service is June 30 of the relevant funding year for recurring services or September 30 that follows the close of the funding year for non-recurring services. See USAC Website, Service Substitutions, available at <http://www.usac.org/sl/applicants/before-youre-done/service-substitutions.aspx> (last visited Mar. 18, 2014). Beaufort County School District filed its request 24 days late when the E-rate manager on the project discovered that there was a substitution related to the project; Erie 1 BOCES filed its service substitution late because it was under the impression that it needed its funding commitment decision letter (FCDL) before filing and the FCDL arrived 10 months after the close of the funding year; Las Cruces Public Schools said it waited until it had all the information on of the non-recurring charges before submitting its service substitution, which resulted in an untimely request.

<sup>7</sup> Letter from Jaime McGowan, Corporate Comptroller, Core BTS, Inc., to USAC, Schools and Libraries Division (dated Sept. 4, 2008) (Core BTS Appeal to USAC).

<sup>8</sup> Letter from USAC, Schools and Libraries Division, to Jaime McGowan, Corporate Comptroller, Core BTS, Inc., (dated Oct. 14, 2008) (Administrator's Decision on Appeal).

<sup>9</sup> 47 C.F.R. § 54.507(d) (2005 through 2010) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

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 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.

FEDERAL COMMUNICATIONS COMMISSION

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

## APPENDIX

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Funding Year</b>	<b>Date Request for Review/Waiver Filed</b>
Beaufort County School District Beaufort, South Carolina	507686	2006	Apr. 9, 2009
Core BTS, Inc. (Berkshire Union Free School District) New Canaan, New York	586771	2006	Apr. 9, 2009
Erie 1 BOCES West Seneca, New York	769123	2010	May 14, 2012
Las Cruces Public Schools Las Cruces, New Mexico	737265	2010	May 22, 2012