

PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
TTY: 1-888-835-5322

DA 17-198

Released: February 27, 2017

STREAMLINED RESOLUTION OF REQUESTS RELATED TO ACTIONS BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

CC Docket No. 02-6

Pursuant to our procedure for resolving requests for review, requests for waiver, and petitions for reconsideration of decisions related to actions taken by the Universal Service Administrative Company (USAC) that are consistent with precedent (collectively, Requests), the Wireline Competition Bureau (Bureau) grants, dismisses, or denies the following Requests.¹ The deadline for filing petitions for reconsideration or applications for review concerning the disposition of any of these Requests is 30 days from release of this Public Notice.²

Schools and Libraries (E-rate)

CC Docket No. 02-6

Dismissed³

Cox Georgia Telecom, LLC (Bibb County School District), GA, Application No. 941778,
Request for Review, CC Docket No. 02-6 (filed Jan. 6, 2017)

Newaygo County RESA, MI, Application No. 996695, Request for Review, CC Docket No. 02-6
(filed Jan. 27, 2017)

Putnam County School District, TN, Application Nos. 1051032, 1051183, Request for Review,

¹ See *Streamlined Process for Resolving Requests for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60, 06-122, 08-71, 10-90, 11-42, and 14-58, Public Notice, 29 FCC Rcd 11094 (WCB 2014). Section 54.719(b) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC, after first seeking review at USAC, may seek review from the Commission. Section 54.719(c) of the Commission's rules provides that parties seeking waivers of the Commission's rules shall seek review directly from the Commission. 47 CFR § 54.719(b)-(c). In this Public Notice, we have reclassified as Requests for Waiver those appeals seeking review of a USAC decision that appropriately should have requested a waiver of the Commission's rules. Similarly, we have reclassified as Requests for Review those appeals seeking a waiver of the Commission's rules but are actually seeking review of a USAC decision.

² See 47 CFR §§ 1.106(f), 1.115(d); see also 47 CFR § 1.4(b)(2) (setting forth the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission).

³ See, e.g., *Request for Review of a Decision of the Universal Service Administrator by La Canada Unified School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 30 FCC Rcd 4729, 4729, para. 2 (WCB 2015) (*La Canada Unified School District Order*) (dismissing an appeal that properly belongs before USAC pursuant to Commission rules).

CC Docket No. 02-6 (filed Jan. 6, 2017)

Rio Bravo-Greeley Union School District, CA, Application No. 1012910, Request for Review, CC Docket No. 02-6 (Jan. 6, 2017)

Dismissed as Moot⁴

A-H-S-T Community Schools, IA, Application No. 1034359, Request for Waiver, CC Docket No. 02-6 (filed Nov. 16, 2015)

West Iron County Public Schools, MI, Application No. 1033023, Request for Review, CC Docket No. 02-6 (filed Nov. 2, 2016)

Dismissed on Reconsideration⁵

Chabad of Southern Nevada, NV, Application No. 915203, Petition for Reconsideration, CC Docket No. 02-6 (filed Dec. 29, 2016)

Malverne Public Library, NY, Application No. 966927, Petition for Reconsideration, CC Docket No. 02-6 (filed Jan. 12, 2017)

NextEra FiberNet, LLC (Harlandale Independent School District), TX, Application No. 957585, Petition for Reconsideration, CC Docket No. 02-6 (filed Dec. 30, 2016)

Oskaloosa Christian School, IA, Application No. 161034412, Petition for Reconsideration, CC Docket No. 02-6 (filed Jan. 25, 2017)

San Diego Independent School District, TX, Application No. 815356, Petition for Reconsideration, CC Docket No. 02-6 (filed Nov. 21, 2016)

School Administrative Unit 58, NH, Application No. 937372, Petition for Reconsideration, CC Docket No. 02-6 (filed Aug. 1, 2016)

Southwest Chicago Christian School Association, IL, Application No. 997698, Petition for Reconsideration, CC Docket No. 02-6 (filed Feb. 2, 2017)

St. Rose School, OH, Application No. 1036310, Petition for Reconsideration, CC Docket No. 02-6 (filed Jan. 24, 2017)

⁴ See, e.g., *Requests for Review of Decision of the Universal Service Administrator by Diversified Computer Solutions, Inc.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 5250, 5251, para. 3 (WCB 2012) (dismissing appeals as moot where invoicing records demonstrate that the entity was fully compensated for the funding it requested and all submitted invoices funded).

⁵ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Allan Shivers Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 29 FCC Rcd 10356, 10357, para. 2 (WCB 2014) (dismissing petitions for reconsideration that fail to identify any material error, omission, or reason warranting reconsideration, and rely on arguments that have been fully considered and rejected by the Bureau within the same proceeding).

Dismissed on Reconsideration – Untimely⁶

School District U-46, IL, Application No. 955619, Petition for Reconsideration, CC Docket No. 02-6 (filed July 26, 2016)

Granted⁷

*Granted on Reconsideration – Waiver of Price as Primary Factor Requirement: Applicant Selected Lowest-Price Solution*⁸

Wheeling School District 21, IL, Application No. 908809, Petition for Reconsideration, CC Docket No. 02-6 (filed Jan. 27, 2017)

*No Service Provider Involvement in Competitive Bidding Process*⁹

Education Service Center Region 12, TX, Application No. 558544, Request for Review, CC Docket No. 02-6 (filed Jan. 11, 2011)

*Waiver of Appeal Filing Deadline*¹⁰

Barton County Library, IA, Application No. 1011192, Request for Waiver, CC Docket No. 02-6 (filed Jan. 23, 2017)

⁶ See, e.g., *Petitions for Reconsideration by Rockwood School District and Yakutat School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Order, 26 FCC Rcd 13004, 13004, para. 2 (WCB 2011) (dismissing two petitions for reconsideration because they were filed more than 30 days after the Bureau's decisions).

⁷ We remand these applications to USAC and direct USAC to complete its review of the applications, 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 Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We also waive sections 54.507(d) and 54.514(a) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. See 47 CFR § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year); 47 CFR § 54.514(a) (codifying the invoice filing deadline).

⁸ See *Requests for Review of Decisions of the Universal Service Administrator by Net56, Inc., Wheeling School District 21; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13122, 13126-27, paras. 8-10 (WCB 2013) (granting a waiver of the requirement that the applicant demonstrate that it used price as the primary factor where Wheeling demonstrated that they selected the lowest price vendor for Internet access, Wide Area Network, and web hosting services and denying a waiver with respect to email hosting service). On reconsideration, we reaffirm our decisions with respect to funding year 2012, and we also grant a waiver with respect to FRNs 2474743, 2474744, and 2474746, the corresponding funding requests for funding year 2013.

⁹ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Greeley Public School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 6898, 6900-01, para. 5 (WCB 2013) (finding that when an applicant seeks bids on multiple funding requests as part of an application, improper service provider involvement during the competitive bidding process does not indicate a violation on the part of every vendor selected to provide services arising from the same FCC Form 470).

¹⁰ See, e.g., *Requests for Review &/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, 11019, para. 2 (WCB 2011) (waiving the filing deadline for petitioners that submitted their appeals to the Commission or USAC only a few days late). We make no finding on the underlying issues in this appeal and remand this application back to USAC to make a determination on the merits. See *supra* note 7.

*Waiver of Price as Primary Factor Requirement: Applicant Selected Lowest-price Solution*¹¹

Xenia City School District, OH, Application No. 837863, FRN 2363844, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Sept. 8, 2013)

Xenia City School District, OH, Application No. 897551, FRN 2452253, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Dec. 9, 2013)

Denied

*Failure to Conduct a Fair and Open Competitive Bidding Process*¹²

Xenia City School District, OH, Application No. 837863, FRN 2363822, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Sept. 8, 2013)

Xenia City School District, OH, Application No. 897551, FRN 2452251, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Dec. 9, 2013)

*Violation of the Competitive Bidding 28-Day Rule*¹³

Horatio Public Schools, AR, Application No. 161047360, Request for Waiver, CC Docket No. 02-6 (filed Dec. 13, 2016)¹⁴

¹¹ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Allendale County School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6109, 6115-17, paras. 10-12 (WCB 2011) (waiving the requirement that an applicant be able to demonstrate that it used price as the primary factor in vendor selection when the applicant selected the lowest priced option and there was no evidence of waste, fraud or abuse).

¹² See, e.g., *Petitions for Reconsideration by Bloomfield Public School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 28 FCC Rcd 9973, 9975-77, paras. 5-7 (WCB 2013) (finding that the competitive bidding process was not fair and open where applicant provided detailed information to a service provider about its needs and worked with that service provider on a proposal prior to beginning the competitive bidding process); see also 47 CFR § 54.503 (2011) (requiring a fair and open competitive bidding process); *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18798-800, paras. 85-86 (2010) (codifying the existing requirement that the E-rate competitive bidding process be fair and open and stating that “all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process”); *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033 (2000) (stating that a service provider participating in the competitive bidding process cannot be involved in the preparation of the entity’s technology plan, FCC Form 470 or RFP).

¹³ See, e.g., *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Al-Ihsan Academy et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 16415, 16418, para. 9 (WCB 2011) (denying appeals where the applicant violated the 28-day rule by missing the deadline by more than three days, thereby preventing their requests for services to be competitively bid for a meaningful period of time).

¹⁴ The petitioner states that an ill E-rate consultant and mistakes by its IT specialist led to the failure to comply with the 28-day posting requirement. Consistent with precedent, we find these reasons to be unavailing. See, e.g., *Requests for Waiver by E-rate Central Seaford, New York et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Order, 20 FCC Rcd 3638, 3639-40, para. 3 (WCB 2005) (“[E]mployee illness, staff failure to perform a job properly, inclement weather, or misunderstanding of the rules does not relieve applicants of (continued....)

*Invoice Deadline Extension Requests*¹⁵

Cashmere School District, WA, Application No. 1029359, Request for Waiver, CC Docket No. 02-6 (filed Jan. 30, 2017)

Charter Communications (Gwinnett County Public Schools), GA, Application No. 987797, Request for Waiver, CC Docket No. 02-6 (filed Dec. 9, 2016)

Crenshaw Arts and Technology Charter High School, CA, Application No. 986556, Request for Waiver, CC Docket No. 02-6 (filed Feb. 1, 2017)

Dillon County School District Four, SC, Application No. 964925, Request for Waiver, CC Docket No. 02-6 (filed June 6, 2016)

Pojoaque Valley Public Schools, NM, Application Nos. 758272, 758277, Request for Waiver, CC Docket No. 02-6 (filed Jan. 23, 2017)

Questa Independent School District, NM, Application No. 1020724, Request for Waiver, CC Docket No. 02-6 (filed Jan. 3, 2017)

Ralls County R-II School District, MO, Application No. 1028426, Request for Waiver, CC Docket No. 02-6 (filed Dec. 30, 2016)

RISE Academy School of Science and Technology, FL, Application Nos. 1031182, 1043281, Request for Waiver, CC Docket No. 02-6 (filed Jan. 31, 2017)

The Office of Education of the Department of Children and Families, NJ, Application No. 1038377, Request for Waiver, CC Docket No. 02-6 (filed Jan. 9, 2017)

*Late-Filed FCC Form 471 Applications*¹⁶

City Charter High School, PA, Application Number 161062179, Request for Waiver, CC Docket No. 02-6 (filed Nov. 29, 2016)

(Continued from previous page) _____

their responsibility to comply with the Commission's rules and procedures"). To the extent the petitioner disputes that USAC correctly denied its funding request based on the other reasons listed in USAC's Funding Commitment Decision Letter, the petition is dismissed for failing to appeal to USAC in the first instance. *See, e.g., La Canada Unified School District Order*, 30 FCC Rcd at 4729, para. 2 (dismissing an appeal that properly belongs before USAC pursuant to Commission rules).

¹⁵ *See, e.g., Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834, 3836, para. 8 (WCB 2016) (denying requests for waiver of the Commission's invoice extension rule for petitioners that failed to demonstrate extraordinary circumstances justifying a waiver); *see also Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8966, para. 240 (2014) (establishing that it is generally not in the public interest to waive the Commission's invoicing rules absent extraordinary circumstances); 47 CFR § 54.514.

¹⁶ *See, e.g., Request 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*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259, para. 8 (2010) (denying requests for waiver of the FCC Form 471 filing window deadline where petitioners failed to present special circumstances justifying waiver of our rules).

Congregation Beth Mikroh, NY, Application Number 161062148, Request for Waiver, CC Docket No. 02-6 (filed Dec. 6, 2016)

El Puente High School, WI, Application Numbers 161062235, 161062236, Request for Waiver, CC Docket 02-6 (filed Dec. 12, 2016)

New Braunfels Public Library, TX, Application Number 161062243, Request for Waiver, CC Docket No. 02-6 (filed Oct. 20, 2016)

*Untimely Filed Requests for Review*¹⁷

Acton School District, ME, Application Number 161019439, Request for Waiver, CC Docket No. 02-6 (filed Dec. 1, 2016)

Cathedral High School, NY, Application Nos. 161057785, 161057790, 161061271, 161061313, Request for Waiver, CC Docket No. 02-6 (filed Oct. 12, 2016, supplemented Dec. 19, 2016)

Clifton Public Library, NJ, Application No. 161061588, Request for Waiver, CC Docket No. 02-6 (filed Oct. 20, 2016)

Community Renewal Team Inc., CT, Application No. 972121, Request for Waiver, CC Docket No. 02-6 (filed Dec. 30, 2016)

Green Pastures Academy, Inc., GA, Application No. 852264, Request for Review, CC Docket No. 02-6 (filed Nov. 28, 2016)

Heritage Collegiate Leadership Academy, NC, Application No. 1028418, Request for Waiver, CC Docket No. 02-6 (filed Jan. 18, 2017)

South Education Center, TX, Application No. 161054099, Request for Waiver, CC Docket No. 02-6 (filed Nov. 30, 2016)

West Milford Township Library, NJ, Application No. 161061590, Request for Waiver, CC Docket No. 02-6 (filed Oct. 20, 2016)

For additional information concerning this Public Notice, please contact James Bachtell in the Telecommunications Access Policy Division, Wireline Competition Bureau, at james.bachtell@fcc.gov or at (202) 418-7400.

- FCC -

¹⁷ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-134 et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684 (WCB 2010); *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Bound Brook School District et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 5823 (WCB 2014) (denying appeals on the grounds that the petitioners failed to submit their appeals either to the Commission or to USAC within 60 days, as required by the Commission's rules, and did not show special circumstances necessary for the Commission to waive the deadline).