

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications for Review of a)	
Decision of the)	
Wireline Competition Bureau by)	
)	
Brooklyn Public Library)	File No. SLD-954303
Brooklyn, New York)	
)	CC Docket No. 02-6
Schools and Libraries Universal Service Support)	
Mechanism)	

ORDER

Adopted: December 18, 2025**Released: December 19, 2025**

By the Commission:

I. INTRODUCTION

1. In this Order, we deny two applications for review (collectively, AFRs) filed by Brooklyn Public Library, both seeking review of a decision issued by the Wireline Competition Bureau (Bureau).¹ Specifically, the 2017 Application for Review seeks review of the Bureau's decision denying the library's petition for waiver of sections 54.504(a)(1)(ix) and 54.511(a) of the Commission's rules or, in the alternative, a reduction in the amount of recovery related to its funding year (FY) 2014 E-Rate disbursement.² The 2025 Application for Review seeks a review of the Bureau's decision denying the library's request for the reversal of the Universal Service Administrative Company's (USAC) decision to rescind its FY 2014 E-Rate commitment and recover disbursed funding based on its violation of section 54.511(a) of the Commission's competitive bidding rules.³ In both decisions, the Bureau found that the library violated the Commission's rules by not adhering to its own bid evaluation criteria when selecting its incumbent service provider Windstream Communications, LLC (Windstream) as its service provider.⁴

¹ Application for Review by Brooklyn Public Library of Streamlined Resolution of Requests Related to Actions by the Universal Service Administration Company, CC Docket No. 02-6 (filed Aug. 18, 2017), <https://www.fcc.gov/ecfs/search/search-filings/filing/10818034276545> (2017 Application for Review); Application for Review by Brooklyn Public Library of Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, CC Docket No. 02-6 (filed July 2, 2025), <https://www.fcc.gov/ecfs/search/search-filings/filing/10702187433628> (2025 Application for Review).

² 2017 Application for Review; *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, Public Notice, 32 FCC Rcd 5755, 5762-63, n.16 (WCB 2017) (*July 2017 Public Notice*) (denying petition for waiver); Petition for Waiver by Brooklyn Public Library of Sections 54.504(a)(1)(ix) and 54.511(a) of the Commission's Rules, CC Docket No. 02-6 (filed May 22, 2017) (Petition for Waiver).

³ 2025 Application for Review; *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6 et al., Public Notice, DA 25-433, 2025 WL 1906122, at *18 & n.34 (WCB June 2, 2025) (*June 2025 Public Notice*) (denying Brooklyn Public Library's Request for Review of USAC's decision); Request for Review by Brooklyn Public Library of a Decision of Universal Service Administrator, CC Docket No. 02-6 (filed Aug. 18, 2017) (Request for Review).

We affirm the Bureau's decisions and deny the two AFRs, finding that Brooklyn Public Library has not demonstrated good cause to grant a waiver of the Commission's rules. We further find that the Bureau did not commit an error in denying the library's request for waiver or its request for review.⁵ Finally, we direct USAC to continue its recovery action consistent with this Order.

II. BACKGROUND

2. The E-Rate program allows eligible schools, libraries, and consortia that include eligible schools and libraries, to apply for universal service support for eligible equipment and services (collectively services).⁶ The Commission determined that fiscal responsibility required that schools and libraries award contracts for eligible services pursuant to fair and open competitive bidding.⁷ Accordingly, the Commission adopted competitive bidding requirements, noting that "[c]ompetitive bidding is the most efficient means for ensuring that eligible schools and libraries are informed about all of the choices available to them."⁸ These requirements aim to ensure that all prospective bidders can identify the services that schools and libraries seek to receive and that all such bidders have sufficient time to prepare and submit bids.⁹

3. To initiate the competitive bidding process, the Commission's rules require that the applicant seek bids for eligible services by posting a completed FCC Form 470 on USAC's website along with any request for proposal (RFP).¹⁰ The applicant must also describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.¹¹ After submitting an FCC Form 470, the applicant must wait at least 28 days before making commitments with the selected service providers.¹² The applicant must carefully consider all bids received, using price as the primary factor, and select the most cost-effective service offering.¹³ Once an applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible

(Continued from previous page) _____

⁴ See *July 2017 Public Notice*, 32 FCC Rcd at 5762-63, n.16; *June 2025 Public Notice*, 2025 WL 1906122, at *18 & n.34.

⁵ See *id.*

⁶ See 47 CFR §§ 54.501, 54.502 (2014).

⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (1997) (*First Universal Service Report and Order*).

⁸ *First Universal Service Report and Order*, 12 FCC Rcd at 9029, para. 480.

⁹ 47 CFR §§ 54.504, 54.511 (2014); *First Universal Service Report and Order*, 12 FCC Rcd at 9078-80, paras. 575-79. These requirements are in addition to any applicable state and local procurement rules.

¹⁰ 47 CFR §§ 54.503(c), 54.511(c)-(d)(1) (2014); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Report and Order and Fourth Order on Reconsideration, 13 FCC Rcd 5318, 135, para. 233 (1997) (*Fourth Order on Reconsideration*).

¹¹ 47 CFR § 54.503(c)(1)(ii) (2014).

¹² 47 CFR § 54.503(c)(4) (2014).

¹³ 47 CFR § 54.511(a) (2014) (Applicants "shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered."); see also 47 CFR § 54.504(a)(1)(ix) (requiring the applicant to certify on its FCC Form 471 that it carefully considered all bids received and selected the most most-effective means of meeting educational and technology needs).

services, it must file an FCC Form 471 application seeking E-Rate support for the eligible services that have been ordered from the selected service provider(s).¹⁴

4. The Brooklyn Public Library filed an FCC Form 470 seeking eligible services in FY 2014.¹⁵ Brooklyn Public Library received proposals from Verizon Business (Verizon), Cogent Communications, Inc. (Cogent), and its incumbent provider, Windstream for the requested services.¹⁶ The library evaluated each of the three proposals using a bid assessment worksheet, which specifically included an evaluation criterion for “Prices/Charges.”¹⁷ In 2016, USAC commissioned KPMG LLP (KPMG) to conduct a performance audit of Brooklyn Public Library’s compliance with the applicable E-Rate rules and requirements relative to disbursements made for FY 2014 and KPMG discovered Brooklyn Public Library “did not correctly calculate the raw pricing scores for two of the three bids evaluated” in its bid assessment worksheet.¹⁸ In the bid assessment worksheet under the “Price/Charges” evaluation criterion, Brooklyn Public Library assigned scores based on a five-point rating scale for each evaluation factor, with “5” being the assigned to the lowest bid.¹⁹ Brooklyn Public Library awarded a score of “5” to the lowest bid (Cogent, \$5,298 to \$8,956), “4” to the highest bid (Windstream, \$55,298), and “3” to the mid-price bid (Verizon, \$21,865).²⁰ Under Brooklyn Public Library’s scoring system, the second-highest price score (“4”) should have been awarded to Verizon based on its bid price, and the third-highest price score (“3”) should have been awarded to Windstream based on its bid price, but Brooklyn Public Library “inverted the raw scores” of Verizon and Windstream, as noted by KPMG.²¹ KPMG concluded that Brooklyn Public Library did not correctly calculate the “Price/Charges” scores for two of the bids, Verizon and Windstream, and as a result, it failed to select the most cost-effective bid as required by the Commission’s rules.²² KPMG also determined that had Brooklyn Public Library properly scored the bids according to its bid assessment criteria, Cogent would have received the most points and would have been correctly identified as the most cost-effective service offering.²³ USAC agreed with KPMG’s finding and conclusion that Brooklyn Public Library “Fail[ed] to Comply with Competitive Bidding Requirements”

¹⁴ 47 CFR § 54.504(a) (2014).

¹⁵ 2017 Application for Review at 4; 2025 Application for Review at 4.

¹⁶ *Id.*; see also USAC, Funding Request Data Retrieval Tool, <https://slweb.usac.org/DRT/Default.aspx> (last visited Aug. 27, 2025) (showing Windstream Communications, Inc., SPIN 143030766, as the Internet access service provider for the library since funding year 1998).

¹⁷ 2017 Application for Review, Exhibit 3 (E-Rate Bid Assessment Worksheet); 2025 Application for Review, Exhibit 4 (same).

¹⁸ 2017 Application for Review, Exhibit 4 (KPMG Audit Report) at 10-11 (listing bid prices in Table 2 (original bid evaluation) and Table 3 (KPMG recalculated bid evaluation); 2025 Application for Review, Exhibit 5 (same).

¹⁹ 2017 Application for Review, Exhibit 3 (E-Rate Bid Assessment Worksheet); 2025 Application for Review, Exhibit 4 (same).

²⁰ *Id.*; see also 2025 Application for Review at 7, n.34 (“Cogent and Windstream did not propose identical services. Cogent provided a price schedule for a 500 Mbps Dedicated Internet Access (“DIA”) line, a 700 Mbps DIA line and a 1000 Mbps DIA line. Windstream, meanwhile, proposed a 500 Mbps transport line and a 750 Mbps line. Both Cogent and Windstream provided pricing for a 12 month service term. BPL therefore has calculated the estimated price of Cogent’s services by adding together the monthly recurring charges for a 500 Mbps line and a 700 Mbps line for a one year service term.”).

²¹ See 2017 Application for Review, Exhibit 4 (KPMG Audit Report) at 11 (providing KPMG corrected bid evaluation scores in Table 3); 2025 Application for Review, Exhibit 5 (same).

²² 2017 Application for Review, Exhibit 4 (KPMG Audit Report) at 11; 2025 Application for Review, Exhibit 5 (same).

²³ *Id.*

when it selected its incumbent provider Windstream, and that rescission of the funding commitment and recovery of disbursed E-rate funds was appropriate.²⁴

5. On March 24, 2017, USAC issued a Notification of Commitment Adjustment (COMAD) Letter to Brooklyn Public Library rescinding in full the funding commitment of \$570,675.36 because those funds were committed in violation of the Commission's competitive bidding rules and seeking recovery of the disbursed funding.²⁵ On May 22, 2017, Brooklyn Public Library filed a petition seeking a waiver of sections 54.504(a)(1)(ix) and 54.511(a) of the Commission's rules.²⁶ Simultaneously, the library filed an appeal with USAC of the COMAD letter on May 22, 2017, which USAC denied on June 22, 2017.²⁷ On July 31, 2017, the Bureau denied the library's petition for waiver because of its failure to adhere to its own bid evaluation criteria.²⁸ On August 18, 2017, Brooklyn Public Library filed its first AFR seeking Commission review of the Bureau's decision,²⁹ as well as a request for review of USAC's appeal decision regarding the FY 2014 commitment rescission and recovery action.³⁰ The Bureau denied the library's request for review of USAC's commitment rescission and recovery action on June 2, 2025,³¹ and the library filed its second AFR regarding the Bureau's decision on July 2, 2025.³²

6. In both AFRs, Brooklyn Public Library claims that the selection of the bid with the higher cost was a clerical error made during the bid evaluation process.³³ Brooklyn Public Library explains that it assigned Cogent's bid the highest raw score under the "Prices/Charges" selection criterion, but mistakenly transposed the raw scores for "Prices/Charges" for the other two bidders, Verizon and

²⁴ 2017 Application for Review, Exhibit 4 (KPMG Audit Report) at 12; 2025 Application for Review, Exhibit 5 (same).

²⁵ 2017 Application for Review, Exhibit 5 (Notice of Commitment Adjustment (COMAD) Letter) at 1, 4; 2025 Application for Review, Exhibit 1 (same).

²⁶ See Petition for Waiver by Brooklyn Public Library of Sections 54.504(a)(1)(ix) and 54.511(a) of the Commission's Rules, CC Docket No. 02-6 (filed May 22, 2017) (Petition for Waiver).

²⁷ 2025 Application for Review, Exhibit 6 (USAC Appeal) and Exhibit 2 (USAC Appeal Decision).

²⁸ See *July 2017 Public Notice*, 32 FCC Rcd at 5762-63, n.16.; *Requests for Review of Decisions of the Universal Service Administrator by Central Islip Free Union School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 8630 (WCB 2011) (*Central Islip Order*) (denying funding requests where the evidence demonstrated that applicant "failed to adhere to its own evaluation criteria in the vendor selection process.").

²⁹ 2017 Application for Review at 2 (seeking review of Bureau's *July 2017 Public Notice*, 32 FCC Rcd at 5762-63, n.16).

³⁰ See Request for Review.

³¹ See *June 2025 Public Notice*, DA 25-433, 2025 WL 1906122, at *18 & n.34; *Central Islip Order*, 26 FCC Rcd at 8634-35, 8638, paras. 9, 17 (denying requests where the evidence demonstrated that applicant "failed to adhere to its own evaluation criteria in the vendor selection process"); see also *Petition for Reconsideration by Chicago Public Schools; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, 29 FCC Rcd 9289, 9291-92, paras. 7-8 (WCB 2014) (*Chicago Public Schools Order*) (finding that petitioner did not demonstrate the existence of special circumstances to justify waiving the Commission's rules when petitioners did not comply with the competitive bid requirements or ensure that the requested services were the most cost effective).

³² See 2025 Application for Review.

³³ 2017 Application for Review at 1, 5, 9-10, 12; 2017 Application for Review, Exhibit 2 (Declaration of Brett D. Robinson) at 1 ("Unfortunately, BPL committed a slight ministerial or clerical error that resulted in it selecting a different service provider than Cogent, the lowest-cost bidder."); 2025 Application for Review, at 1, 5, 9-10; 2025 Application for Review, Exhibit 3 (Declaration of Karen Sheehan) at 1 (explaining that it "committed a slight ministerial or clerical error that resulted in it selecting a different service provider than Cogent, the lowest-cost bidder").

Windstream.³⁴ Brooklyn Public Library further explains that this mistake was merely a “minor, unintentional clerical error”³⁵ or “small procedural violation of the competitive bidding rules.”³⁶ Brooklyn Public Library argues that this clerical error presents a unique legal and policy issue that the Commission has not directly addressed.³⁷ In support of this argument, Brooklyn Public Library asserts that the Commission has yet to state that “creating an E-rate bid evaluation framework that complies with the competitive bidding rules, but committing a clerical error in applying that framework, results in a violation of the competitive bidding rules.”³⁸ Brooklyn Public Library points to then-Commissioner Pai’s concurring statement recognizing the consequence of competitive bidding errors in the *Henrico County Order*, as support, in part, for a reversal of the Bureau’s decision to deny its petition for a waiver and to continue to seek full recovery.³⁹

7. Brooklyn Public Library next argues that the Bureau relied on precedent that was inapplicable to deny its waiver request.⁴⁰ The library notes that the Bureau’s application of the *Central Islip Order* to the instant facts, specifically with regard to the differences in usage of the bid matrix, was misguided and should be overturned.⁴¹ Brooklyn Public Library asserts that the petitioner in the *Central Islip Order* did not use any bid scoring matrix, whereas in the present case, the library used a bid assessment worksheet that complied with the Commission’s rules and properly awarded the most points for price to Cogent, the lowest-priced bid.⁴² In its second AFR, the library also argues that the *Chicago Public Schools Order* is distinguishable from the circumstances in this matter, stating that it did not omit information that would stifle E-Rate competition and instead is “more akin to other ministerial errors that the Commission has been willing to waive.”⁴³ In addition, the library argues that even if both the *Central Islip Order* and *Chicago Public Schools Order* are applicable, the Commission is not bound by Bureau precedent and should reverse its decisions.⁴⁴

³⁴ 2017 Application for Review at 5; 2025 Application for Review at 5.

³⁵ 2017 Application for Review at 10; 2025 Application for Review at 10.

³⁶ 2017 Application for Review at 9 (citing to then Commissioner Pai’s concurring statement in *Application for Review of a Decision of the Wireline Competition Bureau by Henrico County School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 10837, 10843 (2014) (*Henrico County Order*)); 2025 Application for Review at 9 (same).

³⁷ 2017 Application for Review at 9-10; 2025 Application for Review at 9-10.

³⁸ 2017 Application for Review at 9; 2025 Application for Review at 10.

³⁹ 2017 Application for Review at 9 (citing to *Henrico County Order* and quoting the concurring statement of then Commissioner Pai that “[t]he penalty for such paperwork mistakes is harsh.”); 2025 Application for Review at 9 (same). We find that Brooklyn Public Library takes this statement out of context. Then-Commissioner Pai concurred with the outcome in the *Henrico County Order* and agreed that the petitioner failed to use price as the primary factor. However, Commissioner Pai also noted that because the Commission’s rule does not require the lowest-priced offering that meets the needs of the applicant to be selected, and does not require price to be the majority factor (i.e., weighted at least 51%), that price as the primary factor rule is “nothing more than a paperwork exercise” and “elevates form over substance.” He further explained that because applicants may use many non-price factors, the significance of price in the evaluation decision can be minimized by applicants “savvy enough to game the system,” and that when an applicant makes a mistake and does not use price as the primary factor, the penalty is harsh as full recovery is required.

⁴⁰ 2017 Application for Review at 10-12; 2025 Application for Review at 11-14.

⁴¹ 2017 Application for Review at 10-12; 2025 Application for Review at 11-12 (discussing the *Central Islip Order*, 26 FCC Rcd at 8638, para. 17).

⁴² 2017 Application for Review at 11-12; 2025 Application for Review at 11-12.

⁴³ 2025 Application for Review at 12-13.

⁴⁴ 2017 Application for Review at 12; 2025 Application for Review at 14.

8. Finally, Brooklyn Public Library seeks a waiver of sections 54.504(a)(1)(ix) and 54.511(a) of the Commission's rules by arguing that the full return of funding would cause significant detriment to the residents of Brooklyn.⁴⁵ In the alternative, Brooklyn Public Library asks that the Commission grant a partial waiver of the rules and require recovery of only the difference in the funding amounts between the Windstream and Cogent bids.⁴⁶

III. DISCUSSION

9. For the reasons explained below, we affirm the Bureau's decisions denying Brooklyn Public Library's petitions for review and waiver of the Commission's rules.⁴⁷ We rely on the Commission's rules and precedent requiring applicants to carefully consider all bids received and select the most-cost effective service offering using the price of eligible services as the primary factor in selecting the most cost-effective service offering.⁴⁸ Brooklyn Public Library violated sections 54.504(a)(1)(ix) and 54.511(a) of the Commission's rules when it failed to select the most cost-effective service offering among the three bids received.⁴⁹ Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.⁵⁰ The good cause waiver standard requires the Commission to assess whether special circumstances warrant a deviation from the general rule and a waiver will serve the public interest.⁵¹ We find that Brooklyn Public Library has not demonstrated good cause to grant a waiver of sections 54.504(a)(1)(ix) and 54.511(a) of the Commission's rules, and we also deny the library's request for a reduced recovery amount.

10. *Brooklyn Public Library's Arguments.* First, Brooklyn Public Library's characterization of the competitive bid rule violation as a clerical error fails to recognize the significance of the error to the outcome of the competitive bidding process. In prior Commission and Bureau orders, waivers have been granted to E-Rate program participants for a variety of ministerial and clerical errors on the FCC Form 471 and related forms.⁵² When an applicant argues that an error is ministerial or clerical, the Commission

⁴⁵ 2017 Application for Review at 12-14. *See also* 2025 Application for Review at 14-16 (discussing the harm to the Brooklyn Public Library if the Bureau's decision is not reversed).

⁴⁶ 2017 Application for Review at 14; 2025 Application for Review at 14-16.

⁴⁷ *See* 47 U.S.C. § 155(c)(5) ("In passing upon applications for review, the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefor."); 47 CFR § 1.115(g) (similar). *See also* July 2017 Public Notice, 32 FCC Rcd at 5762-63, n.16.; June 2025 Public Notice, 2025 WL 1906122, at *18 & n.34.

⁴⁸ 47 CFR §§ 54.504(a)(1)(ix); 54.511(a) (2014); *Central Islip Order*, 26 FCC Rcd at 8632-33, 8640, paras. 4-5, 22.

⁴⁹ 47 CFR §§ 54.504(a)(1)(ix); 54.511(a) (2014).

⁵⁰ 47 CFR § 1.3 (2014).

⁵¹ *See NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (noting that an applicant for waiver "faces a high hurdle" and "must plead with particularity the facts and circumstances which warrant such action").

⁵² *See, e.g., Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*) (providing applicants additional time to meet the minimum processing standards, correct ministerial and clerical errors, and submit missing forms and certifications); *Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, 23 FCC Rcd 15518 (WCB 2008) (*Archer Public Library Order*) (allowing the correction of errors made on the FCC Form 471 or the Item 21 attachment, including entering the wrong dollar amount, term of service, or discount rate); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319 (WCB 2010) (*Ann Arbor Order*) (allowing the correction of various "ministerial or clerical errors" relating to FCC Form 470 or 471 or worksheet number, calculation errors, errors in

(continued....)

considers whether the effect of the error was substantive or procedural in making its determination whether to grant or deny the waiver request.⁵³ Applicants in the 2006 *Bishop Perry Order* were granted waivers of various Commission rules after making clerical or ministerial errors in their applications for E-Rate funding, including failure to timely file an FCC Form 471, failure to timely file a certification related to an FCC Form 470, and failure to comply with minimum processing standards.⁵⁴ The Commission explained that it based its decision to grant the waivers, in part, on the fact that many of the rules at issue were procedural, not substantive in nature.⁵⁵ Moreover, in granting waivers to applicants that had failed to comply with minimum processing standards, such as by making minor clerical errors in filling out their application forms, the Commission noted that “[i]mportantly, applicants’ errors could not have resulted in an advantage for them in the processing of their application. That is, the applicants’ mistakes, if not caught by USAC, could not have resulted in the applicant receiving more funding than it was entitled to.”⁵⁶ The Commission took a similar approach in the 2007 *Aberdeen School District Order*, granting waivers of section 54.504(c) of its rules for applicants only if they had made “minor errors in filling out their application forms,” noting that applicants’ errors “could not have resulted in the applicants receiving more funding than they were entitled to,” while denying a waiver to an applicant whose error circumvented the competitive bidding process.⁵⁷ For similar reasons, the Commission also granted waivers of section 54.504(b) of its rules, after finding “no indication in the record that, as a result of these errors, applicants benefited from their mistakes or that any service provider was harmed.”⁵⁸ For example, the Bureau has waived section 54.511(a) of the Commission’s rules when the applicant committed clerical errors during the evaluation process but ultimately selected the lowest-priced bid and there was no evidence of waste, fraud, or abuse, or misuse of funds.⁵⁹

11. Brooklyn Public Library explained that it switched the scoring of two price figures, which led to the selection of a significantly higher-cost bid. This is not merely a “minor, unintentional clerical error” or “small procedural violation of the competitive bidding rules”⁶⁰ as in past cases, but a substantive error that directly resulted in the library not selecting the most cost-effective service offering and receiving more E-Rate funding than it was entitled to, thereby violating sections 54.504(a)(1)(ix) and

(Continued from previous page) _____

pricing data, incorrect SPIN number, discount rate errors, omitting a building on the FCC Form 471, wrong service category and other errors made while completing the FCC Form 471).

⁵³ *Bishop Perry Order*, 21 FCC Rcd at 5321, para. 11 (illustrating two types of “errors” that can occur, “those that could not result[] in an advantage for [the applicant] in the processing of their application”—i.e., a procedural error—or those which result in an “applicant receiving more funding than it was entitled to”—i.e., a substantive error). The types of errors that the Commission has waived as “ministerial or clerical” errors include mistyping a number or using the wrong name or phone number on an application. These errors could not have resulted in the applicant receiving more funding than it was entitled to and are, procedural in nature.

⁵⁴ *Bishop Perry Order*, 21 FCC Rcd at 5316, para. 1.

⁵⁵ *Id.* at 5319-20, para. 9.

⁵⁶ *See id.* at 5321, para. 11.

⁵⁷ *Application for Review of the Decision of the Universal Service Administrator by Aberdeen Sch. Dist. et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757, 8761-62, para. 7 (2007) (*Aberdeen School District Order*).

⁵⁸ *Id.* at 8763, para. 9.

⁵⁹ *See 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) (*Allendale Order*) (waiving the requirement to use price as the primary factor in vendor selection where the applicants selected the lowest priced bid and there was no evidence of waste, fraud or abuse, or misuse of funds).

⁶⁰ 2017 Application for Review at 9, 10; 2025 Application for Review at 9, 10.

54.511(a) of the Commission's rules.⁶¹ Unlike the applicants' errors relating to minimum processing standards in *Bishop Perry*, Brooklyn Public Library's error is a substantive violation of the program's rules to carefully consider all bids received and select the most cost-effective offering.⁶² As a result of this error, Brooklyn Public Library did not select the most cost-effective offering. Specifically, had Brooklyn Public Library properly scored the three bids, Cogent, the least expensive bid would have received the most points in the bid evaluation process.⁶³ The Commission has emphasized that waivers granted for an applicant's ministerial and clerical errors, as referenced above, occurred in situations where the errors were procedural and not substantive (where the applicant received more funding than it was entitled to).⁶⁴ Brooklyn Public Library's attempt to frame its error as a "clerical data-entry error" deserving of waiver relief is unpersuasive as the error was substantive, resulting in the selection of a bid that was more than six times higher in price than Cogent's bid and in the library receiving significantly higher E-Rate disbursements than it would have received absent the error.⁶⁵

12. Second, Brooklyn Public Library's argument that the Bureau misapplied *Central Islip* to the present facts is similarly misguided.⁶⁶ While the facts in *Central Islip* differ somewhat, the competitive bidding violations are sufficiently similar to demonstrate and uphold Brooklyn Public Library's rule violations. In *Central Islip*, the Bureau denied the appeal on the grounds that the applicant could not demonstrate compliance with its own bid evaluation procedures and the competitive bidding rules, despite the *Central Islip* petitioner claiming the error was a procedural, rather than a substantive violation of the Commission's rules.⁶⁷ In *Central Islip*, the petitioner was unable to show how it evaluated the bids received and provided partially completed score sheets even though its Contract Proposal Evaluation provided nine factors and weights that would be used to score each received bid.⁶⁸ Although the facts are not identical, both here and in *Central Islip*, the parties did not abide by the applicant's evaluation criteria when considering all bids received and selecting the most-cost effective bid pursuant to sections 54.504(a)(1)(ix) and 54.511(a) of the Commission's rules. As such, we believe that the Bureau's application of the precedential *Central Islip Order* was appropriate.⁶⁹ In the alternative, even if *Central Islip* did not involve a waiver request, we find, for the reasons articulated above, that the circumstances alleged by Brooklyn Public Library do not demonstrate good cause that would justify a waiver of a substantive violation of our competitive bidding rules.

13. In its second Application for Review, Brooklyn Public Library attempts to distinguish its facts from the *Chicago Public Schools Order*, cited by the Bureau when denying the library's request for review and waiver. Brooklyn Public Library attempts to misemploy the holding by narrowly focusing on

⁶¹ See *Application for Review of a Decision of the Wireline Competition Bureau by Henrico County School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 10837, 10842, para. 10 & n.46 (2014) (*Henrico County School District Order*) (summarizing that competitive bidding is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates).

⁶² 47 CFR §§ 54.504(a)(1)(ix); 54.511(a).

⁶³ 2017 Application for Review, Exhibit 4 (KPMG Audit Report) at 10-11 (providing KPMG's recalculated bid evaluation at Table 3); 2025 Application for Review, Exhibit 5 (same).

⁶⁴ See *supra* note 52.

⁶⁵ 2017 Application for Review, Exhibit 4 (KPMG Audit report) at 10 (showing Bid 3 (Cogent) costing \$5,298-\$8,956 per month compared with Bid 2 (Windstream) costing \$55,298 per month); 2025 Application for Review, Exhibit 5 (KPMG Audit Report) at 10 (same).

⁶⁶ 2017 Application for Review at 10-12.

⁶⁷ See *Central Islip Order*, 26 FCC Rcd at 8638-39, para. 18.

⁶⁸ See *id.* at 8639, para. 19.

⁶⁹ See *July 2017 Public Notice*, 32 FCC Rcd at 5762-63, n.16.

the type of competitive bid violation, rather than addressing its failure to present special circumstances that warrant deviation from the general rule, as articulated in the *Chicago Public Schools Order*.⁷⁰ There, USAC determined that the petitioner, Chicago Public Schools, violated the Commission competitive bidding rules by omitting internal connections from its FCC Form 470 as required by section 54.503(c)(4) of the Commission's rules.⁷¹ Chicago Public Schools sought Commission review of USAC's decision, arguing its error was ministerial or clerical, and in the alternative, requesting a waiver of the rules on the same basis. The Bureau denied the waiver request,⁷² reaffirming that errors resulting in "receiving more funding than [the petitioners] were entitled to" or that "undermine the framework of the competitive bidding process" do not merit a waiver of the Commission's rules.⁷³ Likewise, Brooklyn Public Library's error also resulted in it not selecting the most cost-effective service offering as required by sections 54.504(a)(1)(ix) and 54.511(a) of the Commission's rules and in it receiving more funding than it was entitled to, thus lacking special circumstance that would warrant a waiver of these critical competitive bidding rules and requirements.⁷⁴

14. Finally, Brooklyn Public Library states that requiring the library to return the full amount of disbursed funding will cause significant detriment to the residents of Brooklyn and this decision should be overturned.⁷⁵ Brooklyn Public Library asserts that adopting a strict liability standard with regard to the special circumstances of this case would harm the public interest rather than further it, and that the principles of equity counsel in favor of a grant of waiver and a refrain from seeking full recovery.⁷⁶ Identical arguments were raised in Brooklyn Public Library's petition for waiver, which we also find unpersuasive.⁷⁷ We find that Brooklyn Public Library has not demonstrated the existence of special circumstances to warrant a waiver of sections 54.504(a)(1)(ix) and 54.511(a) of our rules. Granting a waiver is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve in the public interest.⁷⁸

15. We disagree with Brooklyn Public Library's premise and contention that "inadvertently transpos[ing] the raw bid scores for two of the three bids" is a mere ministerial or clerical error and that its error was similar to prior grants of waiver. We instead find this was a substantive error, causing the library to not select the most cost-effective service offering and resulting in the library receiving more E-Rate funding that it was entitled to, thereby violating sections 54.504(a)(ix) and 54.511(a) of the Commission's rules, and thus fails to constitute a special circumstance to warrant a waiver.⁷⁹ Because of

⁷⁰ 2025 Application for Review at 12-13.

⁷¹ 47 CFR § 54.503(c)(4) ("After posting [FCC Form 470] on the Administrator's Web site an eligible school, library, or consortium [...] shall then wait at least four weeks from the date on which its description of services is posted on the Administrator's Web site before making commitments with the selected providers of services.").

⁷² See *Chicago Public Schools Order*, 29 FCC Rcd at 9290, para. 3.

⁷³ *Id.* at 9291-92, paras. 7-8.

⁷⁴ *Id.*

⁷⁵ 2017 Application for Review at 12; see also 2025 Application for Review at 14-16

⁷⁶ 2017 Application for Review at 12; see also 2025 Application for Review at 15-16.

⁷⁷ 2017 Application for Review at 13-14; Petition for Waiver at 7-9 (arguing that the library intended to comply with the competitive bidding rules, evidenced by the fact that it assigned the highest weighting to the Prices/Charges factor and awarded the most points under that factor to Cogent's lowest-priced bid).

⁷⁸ See *Chicago Public Schools Order*, 29 FCC Rcd at 9291-92, para. 7 (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)); See also *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (noting that an applicant for waiver "faces a high hurdle" and "must plead with particularity the facts and circumstances which warrant such action").

⁷⁹ The types of errors that the Commission has waived as "ministerial or clerical" errors include mistyping a number or using the wrong name or phone number, errors that could not have resulted in the applicants receiving more

(continued....)

the importance of the competitive bidding process and in selecting the most cost-effective service offering to the program, the Commission has consistently required that all potential bidders be treated equally and that no bidders receive an unfair advantage and that price of the eligible services/equipment be used as the primary factor when selecting the most cost-effective service offering.⁸⁰ Failure to correctly score a bid or inadvertently transpose the raw scores, which led to the selection of a significantly higher-cost bid, frustrates the purpose and the framework of these rules and opens the door for grants of waiver for similar substantive errors that result in applicants receiving more E-Rate funding than they are entitled to.

16. Brooklyn Public Library also argues that special circumstances exist here because adopting a strict liability standard would harm the public interest. To support this claim, Brooklyn Public Library states that its “ability to satisfy its digital transmission and internet access services [is] contingent upon its receipt of E-Rate Funds” and “[s]trict application of the competitive bidding rules in this case would jeopardize [Brooklyn Public Library]’s ongoing ability to connect its community to the rest of the digital universe.”⁸¹ In its second AFR, Brooklyn Public Library also states returning funds would “hinder [its] ability to refresh outdated technology with new equipment across the library system” and “ensure [...] patrons have access to high-quality technology tool that can enhance access to and discovery of the library’s collection, databases, and programs.”⁸² While we are supportive of the library’s efforts to connect its patrons to Internet access services and programs, the Commission has consistently held that the assertion of financial need of the applicant and the detrimental impact a denial of support will have on its students and patrons does not meet the requirement of special circumstances necessary to justify a waiver of the Commission’s rules.⁸³ Here, we are unpersuaded that these hardships rise to the level of special circumstances that would warrant a deviation, nor that the public interest would be served by deviating from our rules. Instead, providing a waiver would undermine our efforts to ensure applicants across the nation work to carefully consider all bids received, using price of the eligible services and equipment as the primary factor, when selecting the most cost-effective service offering.

17. *Request for Partial Recovery.* Finally, in the event of a denial of its request for a reversal of the Bureau’s prior decisions, Brooklyn Public Library argues that partial recovery is appropriate, where the library would return of the difference of costs between the Windstream and Cogent bids.⁸⁴ In the *Fifth Report and Order*, the Commission directed USAC to seek full recovery for competitive bidding

(Continued from previous page) —————

funding than they were entitled to. By contrast, failing to select the most cost-effective service offering using price as the primary factor is fundamental to the competitive bidding requirements of the E-Rate program and results in the applicant receiving more funding than it is entitled to.

⁸⁰ See, e.g., *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26939, para. 66 (2003) (finding that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources).

⁸¹ 2017 Application for Review at 12-14.

⁸² 2025 Application for Review at 15-16 (“Such technology upgrades include replacing aging computers with more secure, energy efficient models; upgrading public access terminals to ensure compliance with the Americans with Disabilities Act and improve the user experience; replacing routers and switches to use Wi-Fi and improve broadband access throughout its branches; and expanding endpoint detection and response coverage to better secure staff and patron data.”).

⁸³ See, e.g., *Application for Review of a Decision of the Wireline Competition Bureau by Mescalero Apache School, Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 20 FCC Rcd 5848, 5850, para. 5 (2005) (stating that “financial need does not meet the requirement of special circumstances that warrant a waiver of the Commission’s rules”); *Request for Review by Northern Waters Library Service, 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 and 97-21, Order, 17 FCC Rcd 1756, 1759, para. 7 (CCB 2002) (holding that financial need does not meet the requirement of special circumstances that warrant a waiver of the Commission’s rules).

⁸⁴ 2017 Application for Review at 14; 2025 Application for Review at 14-16.

violations “based on our position that the competitive bidding process is a key component of the schools and libraries program, ensuring . . . that services are provided at the lowest possible rates.”⁸⁵ It has been the Commission’s longstanding practice that funds disbursed in violation of the statute or a rule that implements the statute or a substantive program goal must be recovered.⁸⁶ The competitive bidding rules are foundational to the integrity and fairness of the E-Rate program, and they help prevent waste, fraud and abuse of the scarce E-Rate funds. When a violation of these rules arises in a way that materially affects the outcome, as occurred here, full enforcement, including full recovery of the disbursed funds, is not only appropriate but necessary to preserve the integrity and effectiveness of the E-Rate program. As explained above, Brooklyn Public Library’s error presents a substantive violation of sections 54.504(a)(1)(ix) and 54.511(a) of the Commission’s rules that resulted in a significant overcommitment and receipt of E-Rate funds, and was not a technical or harmless error. Partial recovery here would frustrate the requirements that applicants conduct a fair and open competitive bidding process, carefully consider all bids received, and select the most cost-effective service offering using price as the primary factor, all of which protect the E-Rate program from waste, fraud, or abuse and misuse of program funds. We also find that partial recovery would also lead to more petitioners seeking waivers and asking for reduced recovery when they failed to adhere to their bid evaluation criteria when selecting the most cost-effective service offering and received more E-Rate funding than they were entitled to.

18. In conclusion, we find Brooklyn Public Library’s arguments unpersuasive to warrant a reversal of prior precedent or a waiver of sections 54.504(a)(1)(ix) or 54.511(a) of our rules, and we therefore affirm the Bureau’s decisions.⁸⁷ We also direct USAC to continue its recovery action in accordance with this Order.

IV. ORDERING CLAUSES

19. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.115 of the Commission’s rules, 47 CFR § 1.115, that the Application for Review filed by Brooklyn Public Library, Brooklyn, New York, on August 18, 2017, as to the arguments previously presented to the Bureau, IS DENIED.

20. IT IS FURTHER ORDERED, pursuant to section 1.115 of the Commission’s rules, 47 CFR § 1.115, that the Application for Review filed by Brooklyn Public Library, Brooklyn, New York, on July 2, 2025, as to the arguments previously presented to the Bureau, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸⁵ See *Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, CC Docket No. 02-6, Order, 19 FCC Rcd 15808, 15815-16, para. 21 (2004) (*Fifth Report and Order*).

⁸⁶ *Fifth Report and Order*, 19 FCC Rcd at 15814-15, para 18.

⁸⁷ See *July 2017 Public Notice*, 32 FCC Rcd at 5762-63, n.16.; *June 2025 Public Notice*, 2025 WL 1906122, at *18 & n.34.