

**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)	
)	
Achieve Career Preparatory Academy Toledo, OH <i>et al.</i>)	File Nos. SLD-756133, <i>et al.</i>
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

ORDER

Adopted: July 27, 2011

Released: July 27, 2011

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

1. In this order, we address 22 appeals of decisions by the Universal Administrative Company (USAC) denying funding to the petitioners due to certain clerical or ministerial errors on their FCC Form 471 applications for funding years 2004-2010 under the E-rate program (formally known as the schools and libraries universal service support program).¹ Consistent with precedent, and based on our review of the record, we find that 15 petitioners have demonstrated that special circumstances exist to justify limited waivers of section 54.504(c) of the Commission's rules to allow them to amend their original FCC Form 471 applications (including associated Item 21 attachments) submitted to USAC.² We grant these requests for waiver and remand the underlying applications to USAC for further action consistent with this order.³ We also dismiss one request without prejudice.⁴ We deny, however, six requests for waiver because we find that the petitioners failed to present special circumstances to justify a waiver of the Commission's rules.⁵

¹ The requests for waiver and review are listed in appendices A, B, and C. 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).

² See *Request for Review of the Decision of the Universal Service Administrator by Archer Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-140961, *et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15518 (Wireline Comp. Bur. 2008) (*Archer Public Library Order*); *Request for Review of the Decision of the Universal Service Administrator by Ann Arbor Public Schools, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-542873, *et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319 (Wireline Comp. Bur. 2010) (*Ann Arbor Order*); see also *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*); *Request for Waivers and Review of the Decisions of the Universal Service Administrator by Beth Rivka School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-631977, *et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 10653 (Wireline Comp. Bur. 2010) (*Beth Rivka Order*).

³ See appendix A; 47 C.F.R. § 54.504(c).

⁴ See appendix B.

⁵ See appendix C; 47 C.F.R. § 1.3.

2. Section 54.504(c) of the Commission's rules directs E-rate applicants to submit a completed FCC Form 471 application to USAC.⁶ In the *Archer Public Library Order*, the Commission determined that applicants may correct clerical or ministerial errors on their Form 471 without having to file new funding requests with USAC. Applying the standards of the *Archer Public Library Order*, we grant 15 requests seeking limited waivers of the FCC Form 471 application filing provision to allow petitioners to correct certain clerical and ministerial errors in their submitted applications and Item 21 attachments.⁷ Specifically, seven petitioners mischaracterized non-recurring services as recurring services on their FCC Form 471 applications;⁸ three petitioners mischaracterized recurring services as non-recurring services on their FCC Form 471 applications;⁹ two petitioners misidentified their service providers;¹⁰ one petitioner used the wrong funding request number on its FCC Form 471 block 4 worksheet;¹¹ one petitioner corrected an error in the Item 21 attachment to its application and subsequently submitted its corrected FCC Form 471 application after the applicable deadline;¹² and one petitioner's entry for eligible services accidentally used the amount for ineligible services from its Item 21 attachment.¹³ At this time, we find no evidence of waste, fraud, or abuse. Therefore, we find that good cause exists to grant 15 petitioners' requests for waiver and remand the underlying applications listed in appendix A to USAC for further action consistent with this order.¹⁴ In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We also dismiss without prejudice one request from a petitioner that submitted an outdated version of the

⁶ See 47 C.F.R. § 54.504(c).

⁷ See *Archer Public Library Order*, 23 FCC Rcd 15518; appendix A. The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived 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, 1157, (D.C. Cir. 1969). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

⁸ See El Monte Union High School District, Fort Stockton Independent School District, Harlandale Independent School, Kress Independent School District, Quincy School District 144-101, Terlingua Common School District, and Wahluke School District #73; *Ann Arbor Order*, 25 FCC Rcd at 17320, para. 2 (at n.10).

⁹ See Achieve Career Preparatory Academy, George Crockett Academy, and Lake Erie Academy. Achieve also listed an incorrect monthly service charge.

¹⁰ See A.W. Brown-Fellowship Charter School (included an incorrect service provider identification number) and Barren County Schools (listed an ineligible billing entity instead of its actual service provider, which was eligible); *Ann Arbor Order*, 25 FCC Rcd at 17320, para. 2 (at n.8).

¹¹ See Appalachia Intermediate Unit 8; *Ann Arbor Order*, 25 FCC Rcd at 17320, para. 2 (at n.18).

¹² See Griffin-Spalding County School; *Archer Public Library Order*, 23 FCC Rcd at 15522, para. 7 (at n.22).

¹³ See Grand Ledge Public Schools.

¹⁴ See appendix A. In performing a complete review and analysis of the underlying applications, USAC shall either grant the underlying applications before it, or, if denying an application, provide the applicant with all grounds for denial.

FCC Form 470.¹⁵ We deny the remaining six requests seeking waivers because we find that the petitioners failed to present special circumstances justifying a waiver of section 54.504(c) of the Commission's rules.¹⁶ In these cases, the petitioners sought to retroactively supplement their funding requests. In the *Beth Rivka Order*, we held that adjustments to funding requests based on revised needs are not clerical or ministerial errors of the type addressed in the *Bishop Perry Order* or the *Archer Public Library Order*, but rather are substantive changes that require applicants to file new funding requests.¹⁷

3. 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 appendix A ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

4. 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 54.504(c) of the Commission's rules, 47 C.F.R. § 54.504(c), IS WAIVED for the petitioners listed in appendix A to the limited extent provided herein.

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 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the request for review or request for waiver filed by the petitioner listed in appendix B IS DISMISSED without prejudice.

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, 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 or requests for waiver filed by the petitioners listed in appendix C ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁵ See appendix B. While in the *Bishop Perry Order*, the Commission granted appeals where the petitioners had used outdated versions of the FCC Form 470, in this instance, Brandon School has failed to specify the relief it seeks. See *Bishop Perry Order*, 21 FCC Rcd at 5321, para. 10 (at n.29). Therefore, we dismiss its appeal without prejudice.

¹⁶ See appendix C; 47 C.F.R. § 54.504(c).

¹⁷ See *Beth Rivka Order*, 25 FCC Rcd at 10662, para. 20.

APPENDIX A

Requests Granted

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Achieve Career Preparatory Academy Toledo, OH	756133	2010	June 13, 2011
Appalachia Intermediate Unit 8 Altoona, PA	687264	2009	Dec. 22, 2010
A.W. Brown-Fellowship Charter School Dallas, TX	389980	2004	Apr. 29, 2005
Barren County Schools Glasgow, KY	462939	2005	May 5, 2006
El Monte Union High School District El Monte, CA	694752	2009	May 31, 2011
Fort Stockton Independent School District Fort Stockton, TX	672204	2009	Dec. 2, 2010
George Crockett Academy Detroit, MI	755332	2010	May 2, 2011
Grand Ledge Public Schools Grand Ledge, MI	670151	2009	Aug. 25, 2010
Griffin-Spalding County School Griffin, GA	711746	2010	May 24, 2011
Harlandale Independent School District San Antonio, TX	679511	2009	Feb. 7, 2011
Kress Independent School District Kress, TX	683833	2009	Feb. 16, 2011
Lake Erie Academy Toledo, OH	757723	2010	May 5, 2011
Quincy School District 144-101 Quincy, WA	605832, 608827	2008	June 8, 2010
Terlingua Common School District Terlingua, TX	693424	2009	Mar. 10, 2011
Wahluke School District #73 Mattawa, WA	632384	2008	Dec. 22, 2009

APPENDIX B

Request Dismissed

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Brandon School Natick, MA	FCC Form 471 not filed	2006	Mar. 18, 2007

APPENDIX C

Requests Denied

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Bethel Hill Elementary School Roxboro, NC	548080	2007	Feb. 20, 2008
Greyhills Academy High School Tuba City, AZ	581142 604436	2008	Apr. 23, 2009
Highland Charter School Gastonia, NC	715336	2010	Oct. 18, 2010
Marietta City School District Marietta, OH	749368	2010	May 9, 2011
Northeastern Wayne School Corporation Fountain City, IN	667206	2009	Apr. 30, 2010
Portsmouth Public Library Portsmouth, VA	678482	2009	July 9, 2009