

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Review and/or Requests for)	
Waiver of the Decisions of the)	
Universal Service Administrator by)	
)	
Al Noor High School)	File Nos. SLD-529343, <i>et al.</i>
Brooklyn, New York, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: July 23, 2012

Released: July 23, 2012

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

1. Consistent with precedent,¹ we grant 16 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(more formally known as the schools and libraries universal service support program).³ In each case, USAC denied or rescinded funding because it found that the petitioners violated the Commission's rule that a contract or legally binding agreement be in place when the FCC Form 471 application is submitted.⁴ We also dismiss as moot two requests for review.⁵

¹ See *Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-400938, *et al.*, CC Docket No. 02-6, 23 FCC Rcd 15526 (Wireline Comp. Bur. 2008) (*Barberton Order*) (finding, among other things, that petitioners all had some form of an agreement in place during the relevant funding year prior to the filing of their applications, notwithstanding minor irregularities with respect to the contracts at issue) and *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Animas School District 6, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-427902, *et al.*, CC Docket No. 02-6, 26 FCC Rcd 16903 (Wireline Comp. Bur. 2011) (granting petitioners' appeals consistent with the *Barberton Order*).

² The requests for review and for review and waiver granted by this Order are listed in Appendices A and B.

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(a).

⁵ The requests for review that are dismissed by this Order are listed in Appendix C.

2. As an initial matter, consistent with precedent, we waive⁶ section 54.720 of the Commission's rules, which requires applicants to seek review of a USAC decision within 60 days, for Cook County School District 130, Edgewood Independent School District, Mayer Unified School District 43, and Richland Springs Independent School District because we find that they submitted their appeals to the Commission or USAC only a few days late.⁷ Based on our review of the record, we find that the 13 petitioners identified in Appendix A have demonstrated that good cause exists to justify waiver of the rule that a signed contract be in place when the FCC Form 471 application is submitted.⁸ Although the record demonstrates that the petitioners' contracts had minor errors or were not signed and dated by both parties before the petitioners filed their FCC Form 471 applications, all petitioners had some form of an agreement in place during the relevant funding year prior to the filing of their FCC Form 471 applications. We therefore waive the Commission's rules requiring that a signed contract be in place prior to the filing of an FCC Form 471 for these 13 petitioners.⁹ We also grant the appeals of the three petitioners identified in Appendix B because these petitioners demonstrated that they had contracts in place that complied with the Commission's rules and procedures when submitting their FCC Form 471 applications. Additionally, we dismiss as moot the request for review identified in Appendix C and filed by Atlantic City BVE-Admin (Atlantic City) and Lyme-Old Lyme Public Schools (Lyme-Old Lyme) because, on appeal, USAC reversed its initial determinations and issued new decisions approving funding for Atlantic City and Lyme-Old Lyme.¹⁰

3. On our own motion, we waive section 54.507(d) of the Commission's rules and direct USAC to waive any procedural deadline, such as the invoicing deadline, that might be necessary to effectuate our ruling.¹¹ We find good cause to waive section 54.507(d) because filing an appeal of a

⁶ 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. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

⁷ See 47 C.F.R. § 54.720; *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 (Wireline Comp. Bur. 2011) (waiving our filing deadline for appeals because petitioners submitted their appeals to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decision). Cook County School District 130, Edgewood Independent School District, and Mayer Unified School District 43 filed their appeals one day late. Richland Springs Independent School District filed its appeal two days late.

⁸ See 47 C.F.R. § 54.504(a) (previously codified at 47.C.F.R. § 54.504(c)).

⁹ *Id.*

¹⁰ See Letter from Martin Friedman, Atlantic City BVE-Admin, to USAC, Schools and Libraries Division (dated Oct. 10, 2011) (Atlantic City Appeal to USAC); Letter from USAC, Schools and Libraries Division, to Martin Friedman, Atlantic City BVE-Admin (dated Jan. 26, 2012 (Administrator's Decision on Appeal Letter)); Letter from John Rhodes, Lyme-Old Lyme Public Schools, to USAC, Schools and Libraries Division (dated June 5, 2006). (Lyme-Old Lyme Appeal to USAC); Letter from USAC, Schools and Libraries Division, to John Rhodes, Lyme-Old Lyme Public Schools (dated Oct. 10, 2006) (Administrator's Decision on Appeal Letter).

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

denial is likely to cause the applicant to miss the program's subsequent procedural deadlines in that funding year. We also find that at this time there is no evidence of waste, fraud and abuse in the record.

4. We therefore remand the underlying applications listed in the Appendices A and B to USAC for further action consistent with this order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in Appendix A and B and issue an award or denial based upon a complete review and analysis no later than 90 calendar days from the release of this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the underlying applications. We direct USAC to discontinue recovery actions against those parties based on the denials that are addressed herein.¹²

5. ACCORDINGLY, IT IS ORDERED that, 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 pursuant to authority delegated in 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), the Requests for Review and/or Requests for Waiver filed by the petitioners as listed in Appendices A and B ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this order.

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 and/or Requests for Waiver filed by the petitioners as listed in Appendix C ARE DISMISSED.

7. 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 of the Commission's rules, that section 54.720(a) of the Commission's rules, 47 C.F.R. § 54.720(a), IS WAIVED for Cook County School District 130, Edgewood Independent School District, Mayer Unified School District 43, and Richland Springs Independent School District.

8. IT IS FURTHER ORDERED that, 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 pursuant to authority delegated in 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), section 54.504(a) of the Commission's rules, 47 C.F.R. § 54.504(a) IS WAIVED for the petitioners as listed in Appendix A.

¹² See Cook County School District 130, East St. Louis School District No. 189, Eastern Upper Peninsula Intermediate School District, Edgewood Independent School District, Holy Rosary Elementary Academy, Kingsville Independent School District, Mayer Unified School District 43, Richland Springs Independent School District, and Royal Independent School District. USAC shall cease recovery actions against both the applicant and the service provider, unless otherwise provided in this order.

9. 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 parties to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A

Petitioners Granted Waivers

Petitioner	Application Number(s)	Funding Year	Date Appeal Filed
Al Noor High School Brooklyn, New York	529343	2006	June 8, 2007
Cook County School District Blue Island, Illinois	301034	2002	Mar. 21, 2011
Eastern Upper Peninsula Intermediate School District Sault Ste. Marie, Michigan	365335 365661	2003	Feb. 12, 2010
Edgewood Independent School District San Antonio, Texas	733321	2010	May 3, 2012
Edgewood Independent School District San Antonio, Texas	687739	2009	May 14, 2012
Holtville Unified School District Holtville, California	807589	2011	Dec. 13, 2011
Holy Rosary Elementary Academy Union City, New Jersey	458734 459674	2005	Sept. 29, 2009
Kingsville Independent School District Kingsville, Texas	369934	2003	Jan. 5, 2010
Los Fresnos Consolidated Independent School District Los Fresnos, Texas	366160	2003	Nov. 29, 2007
Mayer Unified School District 43 Mayer, Arizona	486830	2005	Sept. 28, 2009
Richland Springs Independent School District Richland Springs, Texas	288683 406735	2002 2004	Dec. 17, 2007
Royal Independent School District Pattison, Texas	351477	2003	Jan. 11, 2011
Wayne County Public Schools Goldsboro, North Carolina	772229	2011	Apr. 12, 2012

APPENDIX B

Petitioners Appeals Granted on the Merits

Petitioner	Application Number(s)	Funding Year	Date Appeal Filed
Ascension Parish School District Donaldsonville, Louisiana	530997	2006	Mar. 12, 2007
East St. Louis School District No. 189 East St. Louis, Illinois	200698	200	Mar. 31, 2009
Manchester City Library Manchester, New Hampshire	777471	2011	Jan. 6, 2012

APPENDIX C

Petitioners Appeals Dismissed

Petitioner	Application Number(s)	Funding Year	Date Appeal Filed
Atlantic City BVE-Admin Atlantic City, New Jersey	520460	2006	Oct. 18, 2011
Lyme-Old Lyme Public Schools Old Lyme, Connecticut	526727	2006	June 30, 2006