

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

In the Matter of)
Requests for Waiver of the Decisions of the)
Universal Service Administrator by)
Agri-Business Child Development) File Nos. SLD-201044454 et al.
Schenectady, NY et al.)
Schools and Libraries Universal Service Support) CC Docket No. 02-6
Mechanism)

ORDER

Adopted: August 6, 2020

Released: August 6, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. The coronavirus (COVID-19) pandemic has caused unprecedented disruptions across the country, including to schools and libraries that receive support for the communications needs of their students and patrons through the Commission’s E-Rate program.1 On March 13, 2020, the Wireline Competition Bureau (Bureau) extended the E-Rate FCC Form 471 application filing window for funding year 2020 by an additional 35 days to give E-Rate applicants more time to submit their applications in light of the COVID-19 pandemic.2 While many E-Rate applicants were able to timely submit their applications, some demonstrated that they were unable to meet the filing window deadline despite the extension due to timing constraints and procedural obstacles associated with extended school and library closures.

2. Recognizing the extraordinary circumstances presented by these extended school and library closures, we find that it is the public interest to grant waivers of the funding year 2020 FCC Form 471 application filing window deadline to provide additional, limited relief for those applicants that were affected by the pandemic and submitted their applications within 60 days of the close of the filing window.3 We therefore direct the Universal Service Administrative Company (USAC) to process these late-filed applications as if they were timely filed and to further determine compliance with E-Rate program rules and requirements.

II. BACKGROUND

3. Under the E-Rate program, eligible schools, libraries, and consortia (comprised of eligible schools and libraries) may request universal service discounts for eligible services, including

1 The E-Rate program is more formally known as the schools and libraries universal service support mechanism.

2 See Wireline Competition Bureau Directs USAC to Extend E-Rate Application Window for Funding Year 2020 Due to Potential Coronavirus Disruptions, CC Docket No. 02-6, Public Notice, 35 FCC Rcd 2089 (WCB 2020) (FY2020 Application Filing Window Extension PN). The funding year 2020 window was extended by the Bureau from March 25, 2020 to April 29, 2020 to account for disruptions caused by COVID-19. Id.

3 These applicants are listed in the Appendix.

connections necessary to support broadband connectivity to eligible schools and libraries.⁴ E-Rate program rules provide that these entities must seek competitive bids for services eligible for support.⁵ In accordance with the Commission's competitive bidding rules, applicants must submit for posting on USAC's website an FCC Form 470 to request discounts for E-Rate eligible services.⁶ After submitting an FCC Form 470, applicants must wait at least 28 days before entering into an agreement for services.⁷ Once competitive bidding is concluded and a contract signed, applicants must file an FCC Form 471 before the close of the applicable funding year's filing window to request E-Rate support for the contracted services.⁸

4. The Commission has granted waivers of the filing window deadline to applicants in a variety of situations, including those that have filed their FCC Form 471 applications within 14 days of deadline,⁹ applicants with serious and unexpected medical conditions that have filed their FCC Form 471 applications within 30 days of the close of the filing window,¹⁰ and applicants that filed their FCC Form 471 applications even beyond 14 days of the deadline due to delays beyond their control.¹¹ Parties requesting a waiver of the Commission's rules must seek relief directly from the Commission.¹² Waivers of the Commission's rules must be filed 60 days from the date of any adverse decision.¹³ Consistent with this precedent, the Bureau has granted waivers for applicants impacted by the pandemic that filed within 30 days of the close of this year's filing window.¹⁴

⁴ 47 CFR §§ 54.501, 54.502.

⁵ 47 CFR § 54.503.

⁶ 47 CFR § 54.503(c).

⁷ 47 CFR § 54.503(c)(4).

⁸ 47 CFR §§ 54.504(a); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (Dec. 2018) (FCC Form 471).

⁹ See, e.g., *Requests 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, 9259-60, paras. 7-9 (2010) (*Academy of Math and Science Order*).

¹⁰ See, e.g., *id.*

¹¹ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Abbotsford School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 15299, 15300, para. 2 (WCB 2012). Consistent with this precedent, the Bureau has granted waivers for applicants impacted by the pandemic that filed within 30 days of the close of the filing window. See, e.g., *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, Public Notice, DA 20-656 (WCB June 30, 2020).

¹² 47 CFR § 54.719(c).

¹³ 47 CFR § 54.720 (giving parties 60 days to file an appeal or request for waiver); 47 CFR § 54.721 (setting forth general filing requirements for requests for review of decisions issued by the Administrator, including the requirement that the request for review include supporting documentation). The Bureau has also waived the 60-day filing deadline for appeals and requests for waiver due to COVID-19 and provided an additional 60 days to file an appeal or request for waiver of any adverse USAC decision with an appeal deadline between March 11, 2020 and September 30, 2020. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 2978, 2980-81, para. 7 (WCB 2020).

¹⁴ See, e.g., *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, 35 FCC Rcd 5483 (WCB 2020); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, Public Notice, DA 20-624 (WCB June 15, 2020); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, Public Notice, DA 20-656 (WCB June 30, 2020).

5. The funding year 2020 E-Rate application filing window closed on April 29, 2020, resulting in 38,207 applications requesting \$2.91 billion in discounts for E-Rate-supported goods and services.¹⁵ While many schools and libraries timely submitted their applications, many others were unable to meet the deadline because of disruptions caused by school and library closures as a result of COVID-19.¹⁶

III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.¹⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁸ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁹

7. Based on the unprecedented, special circumstances caused by COVID-19, including extended school and library closures and the need for limited staff resources to be quickly redirected to transition to remote learning and other remote services, we find that good cause exists to waive the funding year 2020 FCC Form 471 application filing window deadline for those applicants impacted by the pandemic (listed in the Appendix) that requested a waiver of the filing deadline and submitted their applications within 60 days of the close of the filing window,. Schools struggled to transition to an online learning curriculum and develop remote learning policies, all while being unable to access their schools' resources to complete their applications during the spring filing window. Libraries faced similar issues in completing their applications because of closed facilities and staffing issues as a result of COVID-19. For example, in certain communities, schools and libraries reported that they were unable to file their applications due to their building closures,²⁰ difficulties in obtaining the necessary board approvals for their procurements,²¹ and disruptions when necessary staff members contracted COVID-19.²²

8. Each of the applicants listed in the Appendix was affected by the pandemic and requested relief of the filing deadline because they were unable to submit the FCC Form 471 application on time, but filed it within 60 days of the close of the filing window. We therefore waive the deadline for these applicants and direct USAC to process these late-filed applications as if they were timely filed. Additionally, we direct USAC to determine compliance with E-Rate program rules and requirements and make no finding as to the ultimate eligibility of the services requested or the petitioners' applications. We note that we provide this relief to applicants that struggled to meet the April 29 deadline, but we expect that others that filed after 60 days – more than 90 days after the originally-announced closing of the filing

¹⁵ See Letter from Craig Davis, Vice President, Schools and Libraries Division, USAC, to Kris Monteith, Chief, Wireline Competition Bureau, FCC, CC Docket No. 02-6, at Attach. (filed May 1, 2020). As discussed above, the Bureau extended the funding year 2020 window from March 25, 2020 to April 29, 2020 to account for disruptions caused by COVID-19. See *supra* n.1 and accompanying text.

¹⁶ See, e.g., Letter from Debra Kriete, State E-Rate Coordinators Alliance (SECA), to Chairman Ajit Pai, Federal Communication Commission, WC Docket No. 13-184, at 1 (filed Apr. 23, 2020) (requesting leniency for those applicants that are unable to meet the April 29, 2020 filing deadline due to time constraints and procedural obstacles resulting from COVID-19 building closures).

¹⁷ 47 CFR § 1.3.

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁰ See, e.g., Rockwell City Public Library Waiver Request at 1.

²¹ See, e.g., Great Clarks Hill Regional Library Waiver Request at 2.

²² See, e.g., Sumner Fredericksburg Community School District Waiver Request at 2.

window of March 25, 2020 – have had a sufficient amount of time to file their applications.²³ We therefore do not expect to grant additional waivers absent a showing of extraordinary circumstances.

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR 54.504(a) of the Commission's rules is waived to the limited extent provided herein.

10. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Wireline Competition Bureau

²³ See *FY2020 Application Filing Window Extension PN*, 35 FCC Rcd 2089.

APPENDIX

Petitioner	Application Number(s)	Date Request for Review/Waiver Filed
Agri-Business Child Development, NY	201044454	June 24, 2020
Belleville School District, WI	201037066	June 12, 2020
Bright Hope Center, NY	201044592, 201044593	June 29, 2020
Chattooga County Library System, GA	201013260	June 15, 2020
Christ the Teacher Catholic School, DE	201011579, 201044129	July 13, 2020
City of Knowledge School, CA	201040570	June 12, 2020
Clifton Christian Academy, OH	201044542	June 25, 2020
Colton School District 53, OR	201044386	June 12, 2020
Community Parents, NJ	201044541	June 24, 2020
Convent of the Sacred Heart, NY	201044478	June 24, 2020
Deer Park Independent School District, TX	201044584	July 16, 2020
Dundy County Stratton Public Schools, NE	201036050, 201038225	June 9, 2020
Eminence R1 School District, MO	201044485	June 9, 2020
Family Christian Association of America, NJ	201044530, 201044531	June 24, 2020
Ferris Independent School District, TX	201044434	June 25, 2020
Fontbonne Academy, MA	201044461	June 15, 2020
Glenwood Community School District, IA	201044588, 201044589	June 29, 2020
Grafton School, VA	201044543	June 24, 2020
Greater Clarks Hill Regional Library System	201044448	June 4, 2020
Halstead USD440	201044442	June 17, 2020
Hillside Children Center, NY	201007740	June 23, 2020
Jacksonville Adventist Academy AKA LifePoint, FL	201044499	June 11, 2020
Kinmundy Public Library, IL	201044554	June 22, 2020
Kuemper Catholic School System, IA	201044451	June 5, 2020
Neshoba County School District, MS	201044580	June 26, 2020
New Haven Public School District, MO	201044453	June 5, 2020
New Holstein School District, WI	201044552	June 22, 2020

North Jackson Unified School District 335, KS	201044545	June 19, 2020
Ocean Charter School, CA	201044463	June 8, 2020
Onamia Public Schools, MN	201044462	June 5, 2020
Paramount Academy, AZ	201044582	June 29, 2020
Park County Public Library, CO	201043028	June 15, 2020
Resurrection Catholic School, KS	201044455	June 4, 2020
Rockwell City Public Library, IA	201044511	June 12, 2020
Roxana School District 1, IL	201030513	June 24, 2020
Sampson-Clinton Public Library, NC	201044513	June 15, 2020
Saydel Community School District, IA	201044591	June 29, 2020
Sheldon Independent School District, TX	201044497	June 25, 2020
Sibley-Ocheyedan Community School District, IA	201044443	June 3, 2020
St. Ansgar Community School District, IA	201044575	June 29, 2020
St. John Vianney Regional High School, NJ	201044437	June 2, 2020
St. Nicholas Catholic School, ID	201044532	June 18, 2020
Sumner-Fredericksburg Community School District, IA	201044450	June 8, 2020
Surry County School District, VA	201044533	July 17, 2020
West Clermont Local School District, OH	201044566	June 25, 2020
Williamsburg Y Head Start, NY	201040438	May 26, 2020