

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

In the Matter of)
Petitions for Reconsideration by)
Little Falls Township School District) File Nos. SLD—985116, 991002
Little Falls, New Jersey)
Putnam County School District) File Nos. SLD—1051032, 1051183
Cookeville, Tennessee)
Rio Bravo-Greeley Union ESD) File No. SLD—1012910
Bakersfield, California)
Schools and Libraries Universal Service) CC Docket No. 02-6
Mechanism)

ORDER ON RECONSIDERATION

Adopted: February 8, 2023

Released: February 8, 2023

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

I. INTRODUCTION

1. In this Order, we reconsider on our own motion the denial of three petitions seeking reconsideration of Wireline Competition Bureau (Bureau) decisions.1 We grant these petitioners’ requests for additional time to properly file their appeals with the Universal Service Administrative Company (USAC) for consideration on the merits of their arguments.2 Initially, each petitioner mistakenly filed an

1 47 CFR § 1.113(a). Because the Wireline Competition Bureau’s (Bureau’s) decisions dismissing the petitions were released more than 30 days ago, we also waive the section 1.113 requirement that any sua sponte reconsideration of an action taken under delegated authority occur within 30 days of that action. See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Archdiocese of San Antonio et al.; Schools and Libraries Universal Service Support Mechanism; Establishing Emergency Connectivity Fund to Close the Homework Gap, CC Docket No. 02-6, WC Docket No. 21-93, Order, DA 22-399, para. 11 (WCB Apr. 11, 2022); Requests for Review of the Decision of the Universal Service Administrator by Pioneerland Library System; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Assoc., CC Docket Nos. 96-45, 97-21, Order on Reconsideration, 16 FCC Rcd 3428 (2001) (waiving section 1.113 of the Commission’s rules to permit the reconsideration of a more-than-30-day Bureau denial because it was warranted in that case).

2 Petition for Reconsideration of Little Falls Township School District, CC Docket No. 02-6 (filed Mar. 30, 2016), https://www.fcc.gov/ecfs/search/search-filings/filing/60001532236; Petition for Reconsideration of Putnam County School District, CC Docket No. 02-6 (filed Mar. 10, 2017), https://www.fcc.gov/ecfs/search/search-filings/filing/10310880326426; Petition for Reconsideration of Rio Bravo-Greeley Union ESD, CC Docket No. 02-6

(continued...)

appeal with the Commission, instead of with USAC, in violation of section 54.719 of the Commission's rules.³ By the time petitioners recognized the mistake, they were time-barred from refile their appeals at USAC because of section 54.720(a)-(b) of the Commission's rules that require appeals and requests for waiver be filed within 60 days of the date of the initial adverse decision.⁴ We now waive section 54.720(a) of the Commission's rules to allow these petitioners to refile their appeals with USAC to be decided on the merits.

II. BACKGROUND

2. In 2014, the Commission amended section 54.719 of its rules to require parties seeking review of USAC decisions to first file an appeal with USAC.⁵ After USAC issues a decision on an initial request for review, parties may then seek review from the Commission.⁶ Previously, any party aggrieved by an action of USAC could seek review of that action from USAC or from the Commission.⁷ The Commission explained this change would improve efficiency in the appeals process by reducing the number of appeals coming to the Commission.⁸ Further, this change allowed USAC an initial opportunity to correct any of its own errors, and to receive and review additional information provided by aggrieved parties prior to involving the Commission, if necessary.⁹

3. The new rule became effective September 18, 2014,¹⁰ and, on November 17, 2014, the Bureau issued a public notice explaining the new policy.¹¹ The Bureau also announced a safe harbor period where appeals that were mistakenly filed with the Commission would be treated as being timely filed with USAC before transmitting to USAC for processing through December 31, 2014.¹² The public notice stated after that date, appeals first filed with the Commission would then be dismissed without prejudice.¹³ The Commission's policy did not reset or pause the 60-day deadline that petitioners had to

(Continued from previous page) _____
(filed Mar. 13, 2017), <https://www.fcc.gov/ecfs/search/search-filings/filing/10313012129441> (collectively, Petitions for Reconsideration).

³ 47 CFR § 54.719 (noting that any person seeking review of an action taken by USAC must first seek review from USAC).

⁴ *Id.* § 54.720(a)-(b).

⁵ *See Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8970-71, paras. 250-52 (2014) (*First 2014 E-Rate Modernization Order*) (revising sections 54.719 and 54.720 of the Commission's rules to, among other things, require parties seeking appeal of a USAC decision to first seek review with USAC). The new procedural requirement applies to all USAC decisions. *Id.* at 8970, para. 250, n.611.

⁶ 47 CFR § 54.719(b). Conversely, parties seeking waivers of the Commission's rules must seek relief directly from the Commission. 47 CFR § 1.3 (providing that the Commission may waive its rules on its own motion or on petition if good cause is demonstrated). USAC does not have authority to act on waiver requests under the Commission's rules.

⁷ *See, e.g.*, 47 CFR § 54.719 (2013).

⁸ *First 2014 E-Rate Modernization Order*, 29 FCC Rcd at 8971, para. 252.

⁹ *Id.*

¹⁰ 79 Fed. Reg. 49160 (Aug. 19, 2014) (announcing effective date of modified rules as September 18, 2014).

¹¹ *Wireline Competition Bureau Reminds Parties of Requirements for Request for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 11-42, 13-184, 14-58, Public Notice, 29 FCC Rcd 13874 (WCB 2014) (*Notice of Appeal Requirements*).

¹² *Id.*

¹³ *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

(continued....)

file an appeal with USAC, meaning that a Commission dismissal close to or after the appeals deadline could prevent an appeal from being considered by the time it was refiled with USAC. To effectuate the safe harbor, the Bureau waived section 54.719(a) of the Commission's rules that requires applicants to first seek review of adverse decisions from USAC.¹⁴

4. In addition to the Commission's policy of dismissing misfiled appeals, USAC in the past has transmitted appeals to the Commission, both in instances where the party was seeking a waiver from USAC and when parties filed a second appeal with USAC instead of the Commission.¹⁵ The Bureau has accepted these filings, using the date the waiver or second appeal was filed at USAC for determining whether the party filed within 60 days of the date of the adverse decision.¹⁶

5. In this instance, the three petitioners mistakenly filed requests with the Commission instead of first filing with USAC. Little Falls Township School District, Putnam County School District, and Rio Bravo-Greeley Union ESD all faced reduced E-Rate program reimbursements because they filed their FCC Forms 486 late.¹⁷ Because the deadline for the FCC Form 486 is administrative in nature, there was not any rule for the Commission to waive and these decisions must first be filed at USAC.¹⁸ In each situation, the Bureau's decision to dismiss the appeal filings was issued more than 60 days after the date of the initial adverse decision;¹⁹ thus, the petitioners were unable able to refile a timely appeal with

(Continued from previous page) _____
4729, 4729, para. 2 (WCB 2015) (dismissing an appeal that properly belongs before USAC pursuant to Commission rules).

¹⁴ 47 CFR § 54.719(a); *Notice of Appeal Requirements*.

¹⁵ See, e.g., Administrator's Referral of Appeal to the FCC, CC Docket No. 02-6 (filed May 28, 2021) (transmitting the second appeal to the Commission "[b]ecause the issue raised on appeal relates to denial of funding for which USAC has already issued its decision").

¹⁶ See, e.g., Administrator's Referral of Appeal to the FCC, CC Docket No. 02-6 (filed Feb. 23, 2021); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, Public Notice, 36 FCC Rcd 6507 (WCB 2021) (resolving the appeal transmitted from USAC, as though it had been filed timely with the Commission).

¹⁷ See Request for Review of Little Falls Township School District, CC Docket No. 02-6 (filed May 25, 2015) at 2, <https://www.fcc.gov/ecfs/search/search-filings/filing/60001059145>; Request for Review of Putnam County School District, CC Docket No. 02-6 (filed Jan. 6, 2017) at 2, <https://www.fcc.gov/ecfs/search/search-filings/filing/10106118590658>; Request for Review of Rio Bravo-Greeley Union ESD, CC Docket No. 02-6 (filed Jan. 6, 2017) at 2, <https://www.fcc.gov/ecfs/search/search-filings/filing/1010691677081>.

¹⁸ See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Alaska Gateway School District, et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 10182 (WCB 2006) (noting that the FCC Form 486 deadline is procedural in nature and not a Commission rule); USAC Website, FCC Form 486 Filing, <https://www.usac.org/e-rate/applicant-process/starting-services/fcc-form-486-filing/> (last visited Feb. 1, 2023) (noting that "[i]f you want to appeal a decision related to a late-filed FCC Form 486, you must file your appeal first with USAC. If USAC denies the appeal, then you may then appeal to the FCC.").

¹⁹ Little Falls Township School District received its FCC Form 486 Notification Letter March 25, 2015 and the Bureau dismissed its appeal September 30, 2015; Putnam County School District received its FCC Form 486 Notification Letter November 9, 2016 and the Bureau dismissed its appeal February 27, 2017; Rio Bravo-Greeley Union ESD received its FCC Form 486 Notification Letter November 9, 2016 and the Bureau dismissed its appeal February 27, 2017. See *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, Public Notice, 30 FCC Rcd 10685 (WCB 2015) (dismissing Little Falls Township School District's appeal); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, Public Notice, 32 FCC Rcd 1452 (WCB 2017) (dismissing Putnam County School District and Rio Bravo-Greeley Union ESD's appeals).

USAC. Each of the petitioners now request that the Bureau allow their appeals to be properly filed at USAC for a determination on the merits.²⁰

III. DISCUSSION

6. We now find that it is the public interest to grant these three petitions for reconsideration and remand these applications to USAC. Section 1.106(c)(2) of the Commission's rules provides that a petition for reconsideration of a Bureau decision may rely on facts not previously presented to the Commission if consideration of the facts relied on is required by the public interest.²¹ We therefore grant the petitions for reconsideration and, to effectuate our decision, waive the 60-day appeal filing deadline to allow the appeals to be considered by USAC on the merits.²² Pursuant to section 1.3 of the Commission's rules, the Commission may waive any provision of its rules on its own motion and for good cause shown.²³ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.²⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁵ We find that the three petitions for reconsideration have raised additional facts demonstrating that a waiver of our rules is warranted.²⁶

7. In their filings, the petitioners request that the Commission reconsider the denials so they can properly file their appeals with USAC.²⁷ The petitioners argue that they diligently tried to comply with applicable appeal requirements but were not aware of the change that required requests for relief for late-filed FCC Forms 486 to be filed at USAC, not the Commission.²⁸ They also argue that the grace period provided for the misfiled appeals was not long enough to sufficiently give notice to petitioners filing appeals that there was a change in the rules.²⁹

8. Waivers of the appeal filing deadline may be granted where applicants demonstrate good cause and where shown to be in the public interest.³⁰ We find that the petitioners in the instant case have

²⁰ Putnam County School District and Rio Bravo-Greeley Union ESD both specifically request a waiver of the 60-day appeal filing deadline with USAC. Petition for Reconsideration of Putnam County School District at 2; Petition for Reconsideration of Rio Bravo-Greeley Union ESD at 2. While Little Falls Township School District's filing did not request a waiver of the 60-day appeal filing deadline, it asks that its appeal be remanded to USAC for a determination on the merits. Such request would only be possible with a waiver of the 60-day appeal filing deadline. Petition for Reconsideration of Little Falls Township School District at 3.

²¹ 47 CFR § 1.106(c)(2).

²² See *id.* § 54.720(b) (stating that an affected party seeking review of a USAC decision must file the request within 60 days of the date on which USAC issued the decision).

²³ *Id.* § 1.3.

²⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972).

²⁶ 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; *Network IP v. FCC*, 548 F.3d 116, 127-28 (D.C. Cir. 2008); *Accord Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

²⁷ Petitions for Reconsideration at 1-2. See 47 CFR § 54.720(b) (stating that an affected party seeking review of a USAC decision must file the request within 60 days of the date on which USAC issued the decision).

²⁸ *Id.*

²⁹ *Id.*

³⁰ See *Request for Review of Decisions of the Universal Service Administrator by the Iowa Department of Education Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 9848, 9851, para. 7 (WCB 2012) (*Iowa DOE Order*) (finding that the situation that led to the late appeal filing was both limited

(continued....)

demonstrated that reconsideration of the denials, and the grant of a waiver of section 54.720(b) of the Commission's rules is warranted. All three school districts reasonably believed that the Commission had the authority to grant their appeals, which were filed within 60 days of date of USAC's adverse decisions. Further, there was no possibility for the petitioners to correct their mistake and refile to USAC within the 60 day period set forth in section 54.720(a).³¹ The Bureau issued its decisions dismissing the petitioners' requests after the 60-day appeal filing deadline had passed. Although the Bureau instituted a grace period for misfiled appeals, it lasted only a few months and was not in effect when the petitioners filed their initial appeals.³² Consistent with precedent, we find that the circumstances are both limited and compelling, and the totality of these circumstances provides a basis for granting a waiver for good cause.³³

9. We also find that the justification for creating the rule is not impacted by waiving the 60-day appeal filing deadline to give petitioners additional time to properly file their appeals with USAC. Granting these waivers constitutes no greater burden on the Commission because it is still required to dismiss these filings through the normal appeals process. Further, by waiving the appeal deadline and allowing the petitioners to refile their appeals, USAC will now have the opportunity to correct any of its own errors, and to receive and review additional information provided by the aggrieved parties, without having to involve the Commission staff.

10. Going forward, the Bureau will continue to dismiss without prejudice appeals that are filed with the Commission before being reviewed at USAC. However, in certain circumstances, the Bureau may also waive the 60-day appeal filing deadline to allow a party to refile its appeal at USAC after their appeal is dismissed by the Bureau. The Bureau will presume that an appeal filed at the Commission in the first instance, instead of USAC, is the result of an error on the part of the filer. In these instances, because of the time it takes for the petitioner to draft and submit an appeal, combined with the time the Bureau needs to review and resolve the appeal, there is little possibility that the filer will be able to refile their appeal with USAC within this 60 day time period. Consistent with our decision today, we find good cause to waive section 54.720(b) of the Commission's rules to allow the appeal to be considered on the merits by USAC, if the petitioner refiles the appeal with USAC within 60 days of the date of the Bureau's decision to dismiss without prejudice the appeals filed with the Commission before USAC.³⁴ This waiver analysis will be done on a case-by-case basis, and waiver of section 54.720 may not be justified in all circumstances. We remind applicants, consultants, and service providers that they are expected to know and comply with the Commission's E-Rate program rules.³⁵

11. We provide the petitioners, Little Falls Township School District, Putnam County School District, and Rio Bravo-Greeley Union ESD, 60 days from the date of this order to refile their appeals with USAC, and we further direct USAC to treat the appeals as timely filed and to complete its review of the appeals based on the merits. In remanding these appeals 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

(Continued from previous page) _____
and compelling, and the totality of these circumstances provides a basis for granting a waiver of the appeal filing deadline for good cause).

³¹ See *supra* para. 5.

³² See *supra* para. 3.

³³ See *Iowa DOE Order*, 27 FCC Rcd at 9851, para. 7.

³⁴ 47 CFR § 54.720(b).

³⁵ See, e.g., *Requests for Review of the Decisions of the Universal Service Administrator by Harmony Science Academy, Schools and Libraries Universal Support Mechanism*, CC Docket 02-6, Order, 20 FCC Rcd 1298, 1299 (WCB 2005) (denying waiver finding that "misunderstanding of the rules [does] not relieve[] applicants of their responsibility to comply with the Commission's rules and procedures").

54.514(a) of the Commission's rules and direct USAC to waive any procedural deadlines that might be necessary to effectuate our ruling.³⁶

IV. ORDERING CLAUSES

12. 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 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291 and 54.722(a), the Petitions for Reconsideration filed by Little Falls Township School District, Putnam County School District, and Rio Bravo-Greeley Union ESD are GRANTED and petitioners are given 60 days from the release date of this order to resubmit their appeals to USAC for further consideration.

13. 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, 47 CFR §§ 0.91, 0.291, 1.3, that section 54.720(b) of the Commission's rules, 47 CFR § 54.720(b), IS WAIVED for Little Falls Township School District, Putnam County School District, and Rio Bravo-Greeley Union ESD as provided herein.

14. 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, 47 CFR §§ 0.91, 0.291, 1.3, that sections 54.507(d) and 54.514(a) of the Commission's rules, 47 CFR §§ 54.507(d) and 54.514(a), ARE WAIVED for Little Falls Township School District, Putnam County School District, and Rio Bravo-Greeley Union ESD as provided herein.

15. IT IS FURTHER ORDERED, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 1.113 of the Commission's rules, 47 CFR § 1.113, IS WAIVED to the extent described herein.

16. 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, that USAC SHALL COMPLETE its review of each remanded application listed in the appendix and ISSUE a decision based on a complete review and analysis.

FEDERAL COMMUNICATIONS COMMISSION

Jodie Griffin
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

³⁶ See 47 CFR § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year); *id.* § 54.514(a) (codifying the invoice filing deadline).