

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	)	
	)	
Aberdeen School District 5	)	File Nos. SLD-519763, <i>et al.</i>
Aberdeen, Washington, <i>et al.</i>	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: March 5, 2012**

**Released: March 5, 2012**

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

1. Consistent with precedent,<sup>1</sup> we grant 44 requests from petitioners<sup>2</sup> 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).<sup>3</sup> Based on our review of the record, we grant nine requests for review because we find that the petitioners demonstrated that they are eligible for the discount level they requested.<sup>4</sup> These petitioners are listed in appendix A. For the other 35 requests for review, we find that good cause exists to grant the requests for review and remand them back to USAC for further processing.<sup>5</sup> Upon remand, USAC shall provide these petitioners, listed in appendix B, with a limited 15-day opportunity to file additional documentation to support their calculations of the correct discount rates. In addition, we direct USAC to accept information already provided by the applicants that USAC had deemed late.<sup>6</sup>

2. Consistent with precedent,<sup>7</sup> we also grant two waivers of section 54.720 of the

<sup>1</sup> See *Request for Review of the Decision of the Universal Service Administrator by Academia Claret, Puerto Rico, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-401699, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 10703 (Wireline Comp. Bur. 2006) (*Academia Claret Order*).

<sup>2</sup> The requests for waiver and review are listed in appendices A and B.

<sup>3</sup> 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).

<sup>4</sup> See 47 C.F.R. § 54.505.

<sup>5</sup> Appendix B.

<sup>6</sup> See *Academia Claret Order*, 21 FCC Rcd at 10709, para. 14.

<sup>7</sup> See *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Baker Hall School, et al.*, File Nos. SLD-596432, *et al.*, Order, 25 FCC Rcd 17534, 17535, n.9 (Wireline Comp. Bur. 2010) (waiving the 60-day appeal filing requirement when petitioners either filed their appeals a few days late or soon after they received actual notice of the denial).

Commission's rules<sup>8</sup> establishing deadlines for the filing of appeals.<sup>9</sup> On our own motion, we also waive section 54.507(d) of the Commission's rules and any USAC procedural deadlines, such as the invoicing deadline, that might be necessary to effectuate our ruling.<sup>10</sup> We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause petitioners to miss the program's subsequent procedural deadlines in that funding year.

3. Accordingly, we remand the underlying applications listed in 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 B and issue an award or a denial based on a complete review and analysis no later than 120 calendar days from the receipt of the requested information. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We also direct USAC to discontinue actions against those parties listed in appendix A from which it is seeking recovery. Upon completion of its review of the applications listed in appendix B, USAC shall discontinue recovery actions against those applicants that provide sufficient documentation to support their discount calculation.

4. 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), the requests for review or requests for waiver filed by the petitioners listed in appendices A and B ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

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<sup>8</sup> See 47 C.F.R. § 54.720. 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.

<sup>9</sup> Public School #30 (original funding commitment decision letter was not delivered because the U.S. Post Office deemed the letter "undeliverable"); Bethlehem Center Head Start (filed a few days late).

<sup>10</sup> 47 C.F.R. § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

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, 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 sections 54.507(d) and 54.720 of the Commission's rules, 47 C.F.R. §§ 54.507(d) , 54.720 ARE WAIVED for the petitioners listed in appendices A and B to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade  
Deputy Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

## APPENDIX A

## Appeals Granted on the Merits

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Funding Year</b>	<b>Date Request for Review/Waiver Filed</b>
Aberdeen School District 5 Aberdeen, WA	519763	2006	Dec. 6, 2010
Dallas County School Dallas, TX	502116	2006	Oct. 20, 2006
Education Service Center – Region 1 Edinburg, TX	448041	2005	Nov. 30, 2006
Genesee County Independent School District Flint, MI	526408, 531275	2006	June 20, 2007
North American Family Institute, Inc.	515620	2006	Oct. 23, 2009
Region One Education Service Center Edinburg, TX	448041	2005	Nov. 30, 2006
St. Barnabas High School Bronx, NY	468702	2005	Nov. 25, 2011
Townshend Elementary School Townshend, VT	541440	2007	Sept. 4, 2007
Yonkers Public Schools Yonkers, NY	415068, 415045, 419033, 415095, etc.	2004, 2005, 2006	Dec. 23, 2010

## APPENDIX B

## Appeals Granted and Remanded for Limited Opportunity to Provide Supporting Documentation

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Baldwin Park Unified School District Baldwin Park, CA	518552, 527053, 527173, 527431	2006	Dec. 8, 2006
Baltimore City Public School System Baltimore, MD	534030	2006	May 9, 2007
Bethlehem Center Head Start Bethlehem, NC	732287	2010	May 25, 2011
Better Learning Communities Academy St. Louis, MO	793679	2011	Oct. 20, 2011
Bradley Union Elementary School District Bradley, CA	570237	2007	May 23, 2008
California School Management Group Cameron Park, CA	564159, 571465, 585448, 585796	2007	Aug. 13, 2008
Cherokee New Campus Cherokee, NC	578910	2007	Sept. 11, 2008
Colegio Corazon de Maria Juncos, PR	452409	2005	June 6, 2006
Colegio San Felipe Arecibo, PR	456652	2005	June 5, 2006
Cotulla Independent School District Cotulla, TX	524060	2006	June 29, 2011
Edison School Consortium College Park, GA	765837	2010	Jul. 18, 2011
El Monte Union El Monte, CA	478151, 427900	2004, 2005	Mar. 21, 2011
Frederick County Public Library Frederick, MD	494024	2006	May 31, 2011
Lower Kuskokwim School District Bethel, AK	504372	2006	Nov. 2, 2007
Neptune Township School District Neptune, NJ	527742, 459500	2006	Apr. 11, 2007
New Media Technology Philadelphia, PA	538032	2006	Mar. 8, 2007
New York Public Library New York, NY	203402	2000	Sept. 12, 2005
Notre Dame High School Lawrence, MA	658630	2009	Aug. 12 2010
Paramus Catholic High School Paramus, NJ	657028	2009	Sept. 17, 2009
Preclarus Mastery Academy St. Louis, MO	819505	2011	Nov. 9, 2011
Pribilof School District St. Paul Island, AK	526076	2006	Apr. 30, 2007

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Funding Year</b>	<b>Date Request for Review/Waiver Filed</b>
Public School #30 Elizabeth, NJ	419823	2004	Oct. 25, 2005
San Jose Conservation Corps and Charter School San Jose, CA	482177	2005	Oct. 12, 2006
Saint Mary's School Middlebury, VT	734483	2010	Nov. 22, 2010
Southern Local School District Salineville, OH	779396	2011	Nov. 3, 2011
Southside Independent School District San Antonio, TX	596496	2008	Sept. 21, 2009
South Texas Educational Technologies, Inc. Weslaco, TX	537148	2006	June 14, 2007
St. Mary School Tulsa, OK	790359	2011	Oct. 20, 2011
St. Rafael the Archangel Milwaukee, WI	778996	2011	Aug. 15, 2011
St. Raymond School Bronx, NY	559667	2007	Oct. 29, 2007
St. Rose Phillipine Duchesne Florissant, MO	727306	2010	Oct. 21, 2010
TLC Charter Tucson, AZ	373999, 381399, 339389	2003	Oct. 18, 2005
Worth County Schools Sylvester, GA	449655	2005	Feb. 21, 2006
Yeshiva RLKTI Primary Jamaica, NY	726247	2010	Dec. 6, 2011
Yeshiva Tiferes Elimelech Brooklyn, NY	675498	2009	May 19, 2010