

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)
Anderson Elementary School) File Nos. SLD-789495, et al.
Sand Springs, Oklahoma, et al.)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: May 22, 2012

Released: May 22, 2012

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

1. Consistent with precedent,1 we grant 56 requests and deny 18 requests from petitioners 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).2 The petitioners are seeking waivers of the FCC Form 471 application filing window deadline for funding years 2005, 2011 and 2012 under the E-rate program.3

2. Based on our review of the record, we find that the 56 petitioners listed in Appendices A and B have shown that special circumstances exist to justify a waiver of the FCC Form 471 filing window deadline.4 We grant the 40 waiver requests listed in Appendix A, because those petitioners' applications

1 See Request for Review of the Decision of the Universal Service Administrator by Academy of Math and Science, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-487009, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 9256 (2010) (Academy of Math and Science Order) (finding special circumstances exist to justify granting waiver requests where the petitioners filed their FCC Forms 471 after the FCC Form 471 filing window deadline).

2 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).

3 The requests for waiver and review are listed in Appendices A, B, and C. Section 54.507(c) of the Commission's rules provides for E-rate funds to be made available on a first-come-first-served basis, but requires USAC to implement an initial funding window that treats all applicants filing within that window as if their applications were simultaneously received. 47 C.F.R. § 54.507(c). Although some petitioners did not explicitly request a waiver of the FCC Form 471 application filing window deadline, we treat their requests for review as requests for waiver because, in each case, USAC denied their funding requests because their FCC Form 471 applications were submitted after the relevant filing window deadline.

4 See Appendices A and B. 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,

(continued....)

or waiver petitions were filed shortly after the filing window closed.⁵ We also grant the 16 waiver requests listed in Appendix B, because each of those petitioners' applications was either delayed by medical issues (and yet still filed within 30 days of the filing window deadline), submitted on time but for their certifications or item 21 attachments, or late due to a USAC error.⁶ We deny the waiver requests of those petitioners listed in Appendix C, because we find that those 18 other petitioners have failed to present special circumstances to justify a waiver of the Commission's rules.⁷ At this time, we find no evidence of waste, fraud and abuse in the record with respect to the petitioners for which we grant relief.

3. We therefore remand the underlying applications listed in Appendices A and B to USAC for further action consistent with this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

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), that 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.

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 section 54.507(c) of the Commission's rules, 47 C.F.R. § 54.507(c), IS WAIVED for the petitioners listed in Appendices A and B to the limited extent provided herein.

(Continued from previous page) _____

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.

⁵ See Appendix A; *Academy of Math and Science Order*, 25 FCC Rcd at 9259, para. 8; *Request for Waivers and Review of the Decisions of the Universal Service Administrator by Argos Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-737946, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 16109, 16110, para. 2 (at n.8) (Wireline Comp. Bur. 2010) (granting waiver requests where the petitioners filed their waiver requests within 14 days after the FCC Form 471 filing window deadline).

⁶ See Appendix B; *Academy of Math and Science Order*, 25 FCC Rcd at 9259-60, para. 8 (at nn.27 and 28); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 354, para. 2 (at n.8) (Wireline Comp. Bur. 2010).

⁷ See Appendix C; 47 C.F.R. § 1.3; *Academy of Math and Science Order*, 25 FCC Rcd at 9261, para. 13 (denying requests for waiver when the petitioners failed to present special circumstances justifying a waiver of section 54.507(c) of the Commission's rules).

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

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

APPENDIX A

Requests Granted
(FCC Form 471 Applications Filed Within 14 Days of the Close of the Filing Window)

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Bancroft Neuro Health Cherry Hill, NJ	870236	2012	Apr. 5, 2012
Beaver Area School District Beaver, PA	875775	2012	Apr. 30, 2012
Bishop Garcia Diego School Santa Barbara, CA	875294	2012	Mar. 22, 2012
Cape Porpoise Library Cape Porpoise, ME	875756	2012	Apr. 5, 2012
Celeryville Christian School Willard, OH	875658	2012	Mar. 29, 2012
Centralia R-6 Public Schools Centralia, MO	875538	2012	Mar. 27, 2012
Chattooga County Library System Summerville, GA	875177	2012	Mar. 27, 2012
Eastern Pulaski Community School Corp. Winamac, IN	875315	2012	Mar. 28, 2012
Freshwater Education District Staples, MN	875761	2012	Apr. 6, 2012
Hartford Public Library Hartford, MI	875623	2012	Ar. 23, 2012
Herron Charter High School Indianapolis, IN	875670	2012	Apr. 25, 2012
Holy Family School Bronx, NY	875118	2012	Apr. 30, 2012
Howell Valley Elementary School West Plains, MO	859721	2012	Apr. 5, 2012
La Causa Charter School Milwaukee, WI	875778	2012	Apr. 3, 2012
La Causa Child Care Center Milwaukee, WI	875790	2012	Apr. 3, 2012
Lafayette Elementary School District Lafayette, CA	875351	2012	Apr. 10, 2012
Lane Public Library Hamilton, OH	868008	2012	Mar. 22, 2012
L'Anse Creuse Public Schools Harrison Township, MI	875767	2012	Apr. 18, 2012
Libby School District 4 Libby, MT	875720	2012	Apr. 6, 2012
Ludlow Independent School District Ludlow, KY	875175	2012	Apr. 5, 2012
Naperville Public Library Naperville, IL	875524	2012	Mar. 27, 2012

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Oswayo Valley School District Shinglehouse, PA	875764	2012	Apr. 27, 2012
Peniel Baptist Academy Palatka, FL	876467, 876468, 876469	2012	Mar. 19, 2012
Pequot Lakes School District 186 Pequot Lakes, MN	875719	2012	May 11, 2012
Phoenix Charter Academy Chelsea, MA	875216	2012	Mar. 21, 2012
Sacred Heart School West Lynn, MA	845370	2012	Apr. 11, 2012
St. Mary Cathedral School Cape Girardeau, MO	875531	2012	Apr. 6, 2012
St. Peter School of Kirkwood St. Louis, MO	875782	2012	Apr. 10, 2012
Schuyler R-1 School District Queen City, MO	875241	2012	Mar. 28, 2012
Scotland County Memorial Library Laurinburg, NC	875378	2012	May 14, 2012
Scribner-Snyder Community School Scribner, NE	875254	2012	Apr. 4, 2012
Sebeka School District 820 Sebeka, MN	875593	2012	Apr. 2, 2012
Seminole County Public Libraries Sanford, FL	875768	2012	Apr. 24, 2012
Shenango Area School District New Castle, PA	875715	2012	Apr. 10, 2012
Sinclairville Free Library Sinclairville, NY	875750	2012	Apr. 9, 2012
South Barber Unified School District 255 Kiowa, KS	875532	2012	Mar. 27, 2012
South Western School District Hanover, PA	875199, 875258	2012	Apr. 26, 2012
Tilden Public Library Tilden, NE	875865	2012	Apr. 4, 2012
Tolland School District Tolland, CT	875864	2012	Apr. 27, 2012
Tri-Valley Learning Corporation Livermore, CA	856365	2012	Mar. 19, 2012

APPENDIX B

Requests Granted
(Waivers Granted for Other Special Circumstances)

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Anderson Elementary School Sand Springs, OK	789495	2011	Mar. 12, 2012
Betsie Valley District Library Thompsonville, MI	875814	2012	Apr. 25, 2012
Bosworth R-V School District Bosworth, MO	875884	2012	Apr. 16, 2012
Burke County Libraries Waynesboro, GA	875829	2012	Apr. 6, 2012
Celerity Educational Group Los Angeles, CA	815835, 816116, 816224, 816289, 816406, 816465	2011	Feb. 28, 2012
Celerity Educational Group Los Angeles, CA	816438, 816440, 818071	2011	May 14, 2012
Crown Pointe Academy Westminster, CO	875933	2012	May 3, 2012
East Central Georgia Regional Library Augusta, GA	875800	2012	Apr. 6, 2012
House of Good Shepherd School Utica, NY	875875, 875878	2012	Apr. 18, 2012
IDEA Public Schools Weslaco, TX	804822	2011	May 2, 2012
Klingber Family Center New Britain, CT	794167	2011	Mar. 8, 2012
Lick Creek Community Consolidated School Buncombe, IL	777877	2011	Mar. 16, 2012
Lincoln County Library Lincolnton, GA	875830	2012	Apr. 6, 2012
Ossining Union Free School District Ossining, NY	486474	2005	Sept. 29, 2005
School Admin District 37 Harrington, ME	875849, 875851	2012	Apr. 9, 2012
Warren County Library Warrenton, GA	875831	2012	Apr. 6, 2012

APPENDIX C

Requests Denied

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Cape Inc. Livermore, CA	875815, 875816, 875818	2012	Apr. 9, 2012
Carrabassett Valley Library Carrabassett Valley, ME	875766	2012	Apr. 3, 2012
Cashton School District Cashton, WI	875882, 875885	2012	Apr. 17, 2012
Central Regional School District Bayville, NJ	821422	2011	Jan. 17, 2012
Dillon County Library Dillon, SC	875789	2012	Apr. 19, 2012
Fairland Local Schools Proctorville, OH	Did not file with USAC	2012	Apr. 24, 2012
Floyd County Library Floydada, TX	Did not file	2012	Apr. 10, 2012
Goose Creek Consolidated Independent School District Baytown, TX	823126	2011	Jan. 19, 2012
Lafayette Elementary School District Lafayette, CA	875859	2012	Apr. 10, 2012
Madison County School District Richmond, KY	822447	2011	Mar. 24, 2011
Mineral Point School District Mineral Point, WI	875899	2012	Apr. 11, 2012
NYCSARC, INC NYC Chapter AHRC New York, NY	875817	2012	May 4, 2012
Prosser School District #116 Prosser, WA	823165	2011	Jan. 11, 2012
Provincetown Public Schools Provincetown, MA	875901	2012	Apr. 23, 2012
Romeo Community School District Romeo, MI	785460	2011	Jan. 17, 2012
St. Johnsbury Academy St. Johnsbury, VT	Did not file	2012	May 3, 2012
Spaulding Memorial Library Athens, PA	875805	2012	Apr. 10, 2012
Ulen-Hitterdal School District 914 Ulen, MN	875551	2012	Apr. 18, 2012