

**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)	
)	
Administrative Headquarters)	File Nos. SLD-478729, <i>et al.</i>
New York, New York, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: November 6, 2012

Released: November 6, 2012

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

1. Consistent with precedent,¹ we grant seven requests and deny one request² 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(more formally known as the schools and libraries universal service support program).³ In each case, USAC denied or rescinded funding on the basis that the petitioners violated the Commission's rule that a signed contract be in place when the FCC Form 471 application is submitted.⁴

2. Based on our review of the record, we find that the five appeals listed 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.⁵ Although the record demonstrates that the petitioners

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*); *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); *Request for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Al Noor High School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-529343, *et al.*, CC Docket No. 02-6, 27 FCC Rcd 8223 (Wireline Comp. Bur. 2012) (all granting appeals either on the basis that petitioners did have signed contracts before filing their FCC Forms 471 or on the basis that petitioners had agreements in place with their service providers before filing their Forms 471, even though the contracts in question had minor errors or were not signed and dated by both parties before the petitioners filed their FCC Form 471).

² The requests for review and/or waiver are listed in Appendices A-C.

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) (2011) (before 2011, the citation for this rule was 47 C.F.R. § 54.504(c)).

⁵ See Appendix A.

identified in Appendix A had contracts that contained minor errors or were not signed and dated by both parties before the petitioners filed their FCC Form 471 applications, all five petitioners had a legally binding agreement in place during the relevant funding year prior to the filing of their FCC Form 471 applications. We therefore waive the Commission's rule that requires applicants to have a signed contract before filing an FCC Form 471 for those five petitioners.⁶ We also grant the two appeals identified in Appendix B because the petitioners that filed those appeals demonstrated that they had signed contracts in place that complied with the Commission's rules and procedures when submitting their FCC Form 471 applications.⁷ We deny the appeal identified in Appendix C because the petitioner that filed that appeal has not demonstrated that it had either a signed contract or a legally binding agreement in place when it submitted its FCC Form 471 application.

3. With respect to the appeals we grant in this Order, 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.⁸ We find good cause to waive section 54.507(d) because filing an appeal of a 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. We also waive section 54.720 of the Commission's rules, which requires applicants to seek review of a USAC decision within 60 days, for four applicants because we find that they submitted their appeals to the Commission or USAC within a reasonable amount of time.⁹

4. We therefore 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 A 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 the petitioners with respect to the applications identified in Appendix B.

5. 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 pursuant to

⁶ See 47 C.F.R. § 54.504(a); Appendix A.

⁷ See Appendix B.

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

⁹ 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) (granting petitioners waivers of filing deadline for appeals because they submitted their appeals to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decision). Administrative Headquarters, Douglas-Omaha Technology Commission, San Rafael City School District, and Westwood Community School District each filed its appeal no more than nine days late.

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), that 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 Request for Review filed by the petitioner listed in Appendix C IS DENIED.

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, that section 54.720(a) of the Commission's rules, 47 C.F.R. § 54.720(a), IS WAIVED for Administrative Headquarters, Douglas-Omaha Technology Commission, San Rafael City School District, and Westwood Community School District.

8. 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 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), that sections 54.504(a) and 54.507(d) of the Commission's rules, 47 C.F.R. §§ 54.504(a) and 54.507(d) ARE WAIVED for the petitioners listed in Appendix A 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
Administrative Headquarters New York, NY	478729	2005	Oct. 10, 2006
Douglas-Omaha Technology Commission Omaha, Nebraska	474677	2005	Jul. 18, 2006
Euclid City School District Euclid, Ohio	784661, 801252	2011	Aug. 1, 2012
San Rafael City School District San Rafael, California	406438, 406457, 406459, 406585, 406594, 406605, 406611	2004	Jun. 13, 2005
Westwood Community School District Dearborn Heights, Michigan	425528	2004	Oct. 5, 2005

APPENDIX B

Petitioners' Appeals Granted on the Merits

Petitioner	Application Number	Funding Year	Date Appeal Filed
Alamogordo Public School District Alamogordo, New Mexico	581531, 613214, 659321, 735508	2007, 2008, 2009, 2010	Sept. 27, 2012
Trillion Partners, Inc. (Alamogordo Public School District) Alamogordo, New Mexico	581531, 613214, 659321, 735508	2007, 2008, 2009, 2010	October 2, 2012

APPENDIX C

Petitioner's Appeal Denied

Petitioner	Application Number	Funding Year	Date Appeal Filed
West Branch Area School District Morrisdale, Pennsylvania	533153	2006	Jun. 12, 2007