

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Waiver of Section 54.507(d)	)	
of the Commission's Rules	)	
	)	
Harvest Preparatory School	)	File No. SLD-486149
Yuma, Arizona	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: May 20, 2010**

**Released: May 20, 2010**

By the Deputy Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we grant a request for waiver filed by Harvest Preparatory School (Harvest) seeking an extension of the services delivery implementation deadline for services it requested under the E-rate program (formally known as the schools and libraries universal service support program).<sup>1</sup> We find that Harvest made good faith efforts to extend the service delivery deadline for six of its funding requests by filing an extension request, but, due to its confusion on how to utilize the electronic submission form, inadvertently failed to include five of its funding requests. Based on the decision of the Universal Service Administrative Company (USAC) to grant Harvest's extension request for the one funding request properly submitted, it appears that Harvest's request for an extension for the additional five funding requests would have been granted on the merits had Harvest filed in the proper format and on a timely basis. Accordingly, and consistent with Commission precedent, we find that good cause exists to grant the services delivery implementation deadline and remand this matter to USAC for processing consistent with this order.<sup>2</sup> To ensure that the underlying funding requests at issue are resolved expeditiously, we direct USAC to complete its review no later than 60 calendar days from the release date of this order.

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<sup>1</sup> See Letter from Kimberly Friends, on behalf of Harvest Preparatory School, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed July 11, 2007) (Request for Waiver) (regarding FCC Form 471 application number 486149); 47 C.F.R. § 54.507(d). 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>2</sup> See *Request for Waiver of the Decision of the Universal Service Administrator by Great Rivers Education Cooperative and I-K Electric Company*, CC Docket No. 02-6, Order, 21 FCC Rcd 14115 (Wireline Comp. Bur. 2006) (*Great Rivers Order*); *Request for Review of the Decision of the Universal Administrator by Tekoa Academy of Accelerated Studies*, CC Docket No. 02-6, Order, DA 08-2372 (rel. Oct. 30, 2008) (*Tekoa Academy Order*); 47 C.F.R. § 54.507(d).

## II. BACKGROUND

2. Pursuant to the E-rate program, eligible schools, libraries, and their consortia may apply for discounts for eligible telecommunications services, Internet access, internal connections, and basic maintenance of internal connections.<sup>3</sup> In general, the applicant must use the funded services within the funding year, except that the Commission's rules give applicants three additional months (until September 30 following the close of the funding year) to install one-time services known as non-recurring services.<sup>4</sup> An applicant may request an extension of this deadline if one of certain criteria is met.<sup>5</sup> For example, USAC will grant an extension request if the applicant's service provider is unable to complete implementation for reasons beyond the service provider's control.<sup>6</sup> A request for an extension must be submitted to USAC on or before the September 30 deadline.<sup>7</sup>

3. Request for Waiver. On February 1, 2006, USAC approved Harvest's funding year 2005 FCC Form 471 application (application number 486149) which included six funding requests (funding request numbers (FRNs) 1349368, 1348538, 1349281, 1349304, 1349341, and 1349381) for non-recurring services.<sup>8</sup> The initial deadline for implementation for these services was September 30, 2006.<sup>9</sup> On July 31, 2006, Harvest's project manager sought to extend the service delivery deadline for each funding request due to Harvest's receipt of the funding commitment decision letter (FCDL) in February 2006 and its arrangements to accommodate both the service provider's schedule and the school's summer schedule.<sup>10</sup> When electronically submitting this request using USAC's website, the project manager indicated that the electronic form did not appear to allow for multiple requests for extensions to be made on the same FCC Form 471 application.<sup>11</sup> Therefore, the project manager included only FRN 1349368 on the electronic form and, subsequently, on August 2, 2006, submitted two attachments to this extension

<sup>3</sup> 47 C.F.R. §§ 54.501-54.503.

<sup>4</sup> 47 C.F.R. § 54.507(d); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 13510, 13512, para. 7 (2001) (*Permanent Extension Order*).

<sup>5</sup> The qualifying criteria are: (1) the applicant's funding commitment decision letter is issued by USAC on or after March 1 of the funding year for which discounts are authorized; (2) the applicant receives a service provider change authorization or service substitution authorization from USAC on or after March 1 of the funding year for which discounts are authorized; (3) the applicant's service provider is unable to complete implementation for reasons beyond the service provider's control; or (4) the applicant's service provider is unwilling to complete installation because funding disbursements are delayed while USAC investigates the application for program compliance. *See* 47 C.F.R. § 54.507(d); USAC website, Service Delivery Deadlines and Extension Requests, <http://www.universalservice.org/sl/applicants/step11/service-deadlines-extension-requests.aspx> (last visited May 20, 2010) (Service Delivery Deadline Guidance); *Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12. USAC will automatically extend the service delivery deadline in situations where criteria (1) or (2) are met. *See* Service Delivery Deadline Guidance.

<sup>6</sup> 47 C.F.R. § 54.507(d); *Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12.

<sup>7</sup> *See* Service Delivery Deadline Guidance; *see also Permanent Extension Order*, 16 FCC Rcd at 13514, para. 15.

<sup>8</sup> Letter from USAC, Schools and Libraries Division, to Cheryl Boswell, Harvest Preparatory School (dated Feb. 1, 2006) (Funding Commitment Decision Letter (FCDL)).

<sup>9</sup> *See supra* para. 2; 47 C.F.R. § 54.507(d).

<sup>10</sup> *See* Request for Waiver at 3; Letter from Louisa Martinez, Harvest Preparatory Schools, to USAC, Schools and Libraries Division (dated July 31, 2006) (Request for Implementation Extension).

<sup>11</sup> *See* Request for Waiver at 3.

request with what she thought included the list of the additional five funding requests, FRNs 1348538, 1349281, 1349304, 1349341, and 1349381, for which extensions were sought as well.<sup>12</sup> On February 15, 2007, USAC approved Harvest's request for a service delivery extension request until September 30, 2007, due to circumstances beyond the service provider's control that prevented Harvest from meeting the established deadline for the delivery and installation of non-recurring services for FRN 1349368.<sup>13</sup> Because there was no mention of the other five funding requests in USAC's approval letter, Harvest followed up with USAC regarding its electronic submission and learned that the project manager had submitted two copies of the same letter as part of its August 2, 2006 submission which only addressed FRN 1349368.<sup>14</sup> Harvest thus sought to correct its error but USAC indicated that the deadline to request an extension of the service delivery deadline had passed.<sup>15</sup> Harvest then filed the instant request for waiver with the Commission.<sup>16</sup>

4. In its request for waiver, Harvest indicates that it made an inadvertent mistake when submitting its request for an extension of the service delivery deadline for its funding requests due to the confusing nature of the electronic form on USAC's website.<sup>17</sup> Harvest argues that USAC should have, upon review of its extension request, contacted Harvest to verify that the information submitted was correct since there were two copies of the same document rather than two attachments with different information.<sup>18</sup> Harvest thus seeks a waiver of the service delivery implementation deadline for the FRNs at issue.<sup>19</sup>

### III. DISCUSSION

5. Based on the facts and circumstances of this case, and consistent with precedent, we grant Harvest's request for waiver and remand the underlying funding requests at issue as part of FCC Form 471 application number 486149 to USAC for processing consistent with this order.<sup>20</sup> In the *Great Rivers Order* and the *Tekoa Academy Order*, the Wireline Competition Bureau granted waivers to Great Rivers Education Cooperative (Great Rivers) and Tekoa Academy of Accelerated Studies (Tekoa) where the applicants attempted in good faith to comply in a timely manner in seeking an extension of the deadline for non-recurring services by filing an FCC Form 500 rather than in the proper format of an extension

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<sup>12</sup> *Id.*; Request for Implementation Extension; Email from Louis Martinez, Harvest Preparatory Schools, to USAC, Schools and Libraries Division (dated Aug. 2, 2006) (Attachments to Request for Implementation Extension).

<sup>13</sup> Letter from USAC, Schools and Libraries Division, to Louisa Martinez, Harvest Preparatory School (dated Feb. 15, 2007) (Administrator's Decision on Implementation Extension Request).

<sup>14</sup> See Request for Waiver at 3-4.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> See Request for Waiver.

<sup>17</sup> *Id.* at 3-4, 5.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 6.

<sup>20</sup> See *supra* note 2.

request.<sup>21</sup> Similarly, in this instance, we find that the facts in this case rise to the level of “special circumstances” necessary for a waiver of USAC’s procedural deadline.<sup>22</sup>

6. The Commission may waive any provision of its rules on its own motion and for good cause shown.<sup>23</sup> A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>24</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>25</sup> In sum, 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.<sup>26</sup>

7. First, similar to Great Rivers and Tekoa, it appears that Harvest’s request for an extension for the additional five funding requests would have been granted on the merits had Harvest filed in the proper format and on a timely basis. In fact, USAC granted Harvest’s extension request for one of its funding requests, FRN 1349368, because the service provider was unable to complete implementation for reasons beyond the service provider’s control.<sup>27</sup> Based on the record, it appears that this same reason was the basis for Harvest’s request to extend the service delivery implementation deadline for the additional funding requests as well.<sup>28</sup> Second, Harvest made good faith efforts to extend the service delivery deadline for its six funding requests by filing an extension request, but due to its confusion on how to utilize the electronic form, inadvertently failed to include five of its funding requests.<sup>29</sup> Finally, the violation at issue is procedural, not substantive, and there is no evidence of waste, fraud or, abuse, misuse of funds, or a failure to adhere to core program requirements.<sup>30</sup> Thus, based on the record before us, we conclude that the rejection of the service delivery extension request for the remaining five funding requests due to an inadvertent error is not warranted, and that strict adherence with USAC’s procedures in this instance would be inconsistent with the public interest.<sup>31</sup> We therefore find that good cause exists to waive the service

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 47 C.F.R. § 1.3.

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

<sup>25</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

<sup>26</sup> *Northeast Cellular*, 897 F.2d at 1166. *Accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (stating that in addition to the public interest being well-served, there must also be a sufficiently “unique situation” to grant waiver).

<sup>27</sup> See Administrator’s Decision on Implementation Extension Request; 47 C.F.R. § 54.507(d); *Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12.

<sup>28</sup> See Request for Waiver at 3-4.

<sup>29</sup> See *supra* para. 3.

<sup>30</sup> We estimate that the request for waiver granted in this order involves funding requests in the amount of approximately \$71,657 in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. *See, e.g.*, Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2010 (Jan. 29, 2010). We thus determine that the action we take today should have minimal impact on the universal service fund as a whole.

<sup>31</sup> *Northeast Cellular*, 897 F.2d at 1166.

delivery implementation deadline and remand this matter to USAC for further action consistent with this order. In remanding this matter to USAC, we also direct USAC to waive any other procedural deadlines that would have been missed while this issue was on appeal with the Commission.<sup>32</sup> To ensure that the funding requests at issue are resolved expeditiously, we direct USAC to complete its review no later than 60 calendar days from the release date of this order.<sup>33</sup>

8. We emphasize, however, the limited nature of this decision. In remanding this matter to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.<sup>34</sup> We remind USAC of its obligation to independently determine whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, or applicable statutes and to decline to disburse funds where this standard is not met. Although we grant this request for waiver, this order does not alter the obligation of participants in the E-rate program to comply with the Commission's rules.<sup>35</sup> We continue to require E-rate applicants to submit complete, timely, and accurate information to USAC as part of the application review process. Applicants continue to be responsible for requesting service delivery deadline extensions on time and in the proper format.

9. Finally, we emphasize that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant this request for waiver, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with the E-rate program rules and requirements. Because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or the Commission's rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission's rules. To the extent the Commission finds that funds were not used properly, the Commission will require USAC to recover such funds through its normal processes. We emphasize that the Commission retains the discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. The Commission remains committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

#### IV. ORDERING CLAUSES

10. 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 request for waiver filed by Harvest Preparatory School on July 11, 2007, IS GRANTED and the

<sup>32</sup> See, e.g., USAC website, Schools and Libraries, Invoice Deadlines and Extension Requests, <http://www.usac.org/sl/applicants/step11/invoice-deadlines-extension-requests.aspx> (last visited May 20, 2010).

<sup>33</sup> Accordingly, where applicable, we also waive the relevant invoice deadlines established by USAC for these FRNs so that USAC can make payments for approved support on eligible services. See USAC website, Schools and Libraries, Invoice Deadlines and Extension Requests, <http://www.usac.org/sl/applicants/step11/invoice-deadlines-extension-requests.aspx> (last visited May 20, 2010).

<sup>34</sup> Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

<sup>35</sup> 47 C.F.R. §§ 54.501-503.

funding requests (FRNs 1348538, 1349281, 1349304, 1349341, and 1349381) ARE REMANDED to USAC for further consideration consistent with this order.

11. 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 Universal Service Administrative Company SHALL COMPLETE its review of the underlying funding requests, FRNs 1348538, 1349281, 1349304, 1349341, and 1349381, as part of FCC Form 471 application number 486149, no later than 60 calendar days from the release date of this order.

12. 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(d) of the Commission's rules, 47 C.F.R. § 54.507(d) IS WAIVED to the extent provided herein.

13. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey  
Deputy Chief  
Wireline Competition Bureau