

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review and/or Waiver of
Decisions of the Universal Service Administrator by
Albuquerque School District, et al.
Albuquerque, New Mexico
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-548427, et al.
CC Docket No. 02-6

ORDER

Adopted: April 13, 2011

Released: April 13, 2011

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

1. In this order, we grant 13 appeals and deny 19 appeals of decisions by the Universal Service Administrative Company (USAC) concerning applications in various funding years for discounted services under the E-rate program.

2. We first grant six petitioners waivers of our filing deadline for appeals because we find they could not submit their appeals to the Commission in a timely manner due to circumstances beyond their control or because we find the petitioner submitted its appeal to USAC within a reasonable period of time after receiving actual notice of USAC's adverse decision.

1 In this order, we use the term "appeals" generally to refer to requests for review of decisions, or waivers related to such decisions, issued by USAC. 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). The E-rate program is also known as the schools and libraries universal service mechanism

2 See 47 C.F.R. § 54.720.

3 Request for Waiver by Elizabeth Board of Education; Request for Review by Hall-Dale Schools, SAD #16; Request for Waiver by Milton Town School District; Request for Review by Tarek Ibn Ziyad Academy; Request for Review by Windsor Elementary School.

4 Application for Review by Eastchester Union Free School District. Eastchester Union Free School District's (Eastchester) appeal to the Commission of USAC's denial of funding was denied by the Wireline Competition Bureau. Request for Review of the Decision of the Universal Service Administrator by Eastchester Union Free School District, Schools and Libraries Universal Service Support Mechanism, File No. SLD-326886, CC Docket No. 02-6, Order, 18 FCC Rcd 1780 (Wireline Comp. Bur 2003). We reconsider that decision and waive the deadline for filing its appeal with USAC to consider its appeal on the merits in this order. If Eastchester does not seek reconsideration of this decision within 15 days, its application for review will be dismissed as moot.

5 Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-297249, et al., (continued....)

waive section 54.504(b)(4) of the Commission's rules, which states that E-rate applicants must wait 28 days after their FCC Forms 470 are posted to USAC's website, or after public availability of an applicant's request for proposal (RFP), before entering into an agreement with a service provider for the requested services.⁷ All of these petitioners mistakenly signed their contracts or certified their FCC Forms 471 a few days before the allowable contract date.⁸ We further find that, for five petitioners that made ministerial or clerical errors on forms that were timely submitted, good cause exists to waive section 54.504(c) of the Commission's rules, which requires E-rate applicants to submit a completed FCC Form 471 to USAC.⁹ Specifically, these appeals involved petitioners entering an incorrect FCC Form 470 number on the FCC Form 471, which made it appear as though the petitioners were in violation of the 28-day rule because the allowable date when a contract for services can be signed is different from the date on the applicant's correct FCC Form 470.¹⁰

3. We further find that the appeals of two petitioners should be granted on the merits.¹¹ Because the petitioners did not disclose on their FCC Forms 470 that they were seeking a contract with terms of more than one year or a contract featuring an option for voluntary extensions, USAC treated their E-rate applications in subsequent years as if they had not been subject to competitive bidding and were in violation of the Commission's rule requiring applicants to post requests for services for 28 days. Because the FCC Form 470 in effect at the time did not require the applicant to disclose whether it was seeking a contract with terms of more than one year, we grant these appeals.¹²

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CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (2007) (*Aberdeen School District Order*) (waiving the Commission's competitive bidding rules for certain petitioners that demonstrated good cause for such a waiver); *see also Request for Review of the Decision of the Universal Service Administrator by Albert Lea Area Schools*, File Nos. SLD-517274, *et al.*, CC Docket No. 02-6, Order, 24 FCC Rcd 4533 (Wireline Comp. Bur. 2009) (*Albert Lea Order*).

⁶ Albuquerque School District; Hope Lutheran School, Inc.; Moore Public Library; Sevier County Library; Walthill Public School; Eastchester Union Free School District.

⁷ 47 C.F.R. § 54.504(b)(4).

⁸ Request for Review by Albuquerque School District; Request for Review by Hope Lutheran School, Inc.; Request for Review by Moore Public Library; Request for Review by Sevier County Library; Request for Review by Walthill Public School; Application for Review by Eastchester Union Free School District.

⁹ 47 C.F.R. § 54.504(c).

¹⁰ Request for Review by Hall-Dale Schools, SAD #16; Request for Waiver by Milton Town School District; Request for Review by Tarek Ibn Ziyad Academy; Request for Review by Wilmington School District; Request for Review by Windsor Elementary School.

¹¹ Request for Review by Elizabeth Board of Education; Request for Review or Waiver of Matanuska-Susitna Borough Schools (Mat-Su Schools). In the case of Mat-Su Schools, we also find good cause exists to waive section 54.504(c) of the Commission's rules, which requires E-rate applicants to submit a completed FCC Form 471 to USAC. Mat-Su Schools inadvertently supplied the wrong contract date on its FCC Form 471.

¹² *Compare Schools and Libraries Universal Service, Description of Services Requested and Certification Form*, OMB 3060-0806 (October 2004) at 2 (October 2004 FCC Form 470) (requiring applicants to "[c]heck if you are seeking (1) a multi-year contract and/or (2) a contract featuring voluntary extensions") *with Schools and Libraries Universal Service, Description of Services Requested and Certification Form*, OMB 3060-0806 (May 2003) at 3 (May 2003 FCC Form 470) (noting that applicants "may provide" information on the intent to enter into a multiyear contract or a contract featuring an option for voluntary extensions).

4. We also deny the appeals of 19 petitioners for failing to comply with the Commission's competitive bidding rules.¹³ Specifically, several petitioners signed their contracts or certified their FCC Forms 471 more than a few days before the allowable contract date, thus violating the requirement that the FCC Form 470 be posted for 28 days before entering into an agreement with a service provider.¹⁴ Other petitioners requested services on their FCC Form 471 without first filing an FCC Form 470,¹⁵ filed an FCC Form 470 without including the type of service the applicant requested,¹⁶ or filed an FCC Form 470 for the wrong funding year.¹⁷

5. Therefore, we remand the underlying applications 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 appendices A, B and C, and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this order.¹⁸

6. 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 waivers of sections 54.504(b) and (c) of the Commission's rules, 47 C.F.R. §§ 54.504(b) and (c), ARE GRANTED to the petitioners listed in Appendices A and B and their applications ARE REMANDED to USAC for further consideration consistent with this order.

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 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the appeals filed by the petitioners listed in Appendix C ARE GRANTED and their applications ARE REMANDED to USAC for further consideration consistent with this order.

¹³ See *Aberdeen School District Order*, 22 FCC Rcd at 8763, para. 10 (denying funding when the applicant's contract was never subjected to the E-rate program's competitive bidding process); *Albert Lea Order*, 24 FCC Rcd at 4541-42, para. 14-15 (denying funding when petitioners entered into agreements with service providers before posting an FCC Form 470, requesting services on their FCC Form 471 without first filing an FCC Form 470, or without filing an FCC Form 470 that included the type of service the applicant requested).

¹⁴ Request for Review by Central Kitsap School District; Request for Review of Community Action of South Eastern WV; Request for Waiver by Concho Elementary School; Request for Waiver by Government of the United States Virgin Islands Department of Education; Request for Review by Integrity Communications, Ltd.; Request for Review by Mullin Independent School District; Request for Review by Netherlands Reformed Christian School; Request for Review by Newfound Area School District; Request for Review by Saint Mary's College High School; Request for Waiver by Winnebago Public Library.

¹⁵ Request for Review by Christ the King Jesuit College Preparatory School (funding request number 1845647); Request for Review by East Stroudsburg Area School District; Request for Review by Eminence Independent Schools; Request for Review by Spokane County Library District.

¹⁶ Request for Review by Big Spring School District; Request for Review by Christ the King Jesuit College Preparatory School (funding request number 1845641); Request for Review by Mohave County Library District; Request for Review by Palmyra Area School District.

¹⁷ Request for Review by Chambersburg District Public Library; Request for Review by Sundown Independent School District.

¹⁸ During post-funding review, USAC determined that Albuquerque School District and Hope Lutheran School, Inc. were in violation of the Commission's competitive bidding rules. These applicants were then subject to a funding commitment adjustment by USAC which sought recovery of funds already committed to the petitioner. In light of the decision in this order, we direct USAC to discontinue recovery actions against these petitioners and to process any outstanding invoices.

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 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 waivers of section 47 C.F.R. § 54.720 of the Commission’s rules, 47 C.F.R. § 47 C.F.R. § 54.720, ARE GRANTED to Eastchester Union Free School District, Eastchester, NY; Elizabeth Board of Education, Elizabeth, NJ; Hall-Dale Schools, SAD #16, Farmingdale, ME; Milton Town School District, Milton, VT; Tarek Ibn Ziyad Academy, Inver Grove Heights, MN; Windsor Elementary School, Windsor, IL; and their applications ARE REMANDED to USAC for further consideration consistent with this order.

9. 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, 54.722(a), that USAC SHALL DISCONTINUE its recovery actions against Albuquerque School District, Albuquerque, NM, and Hope Lutheran School, Inc., Waukesha, WI.

10. 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 the appeals filed by the petitioners listed in Appendix D ARE DENIED.

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 the authority delegated pursuant to sections 0.91, 0.291, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that USAC SHALL COMPLETE its review of each remanded application as listed in Appendices A through C and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A

Waiver of Section 54.504(b)(4) Granted

Applicant	Application Number	Funding Year	Date Appeal Filed
Albuquerque School District Albuquerque, NM	459813, 509774, 548427	2005, 2006, 2007	4/23/2010
Eastchester Union Free School District Eastchester, NY	326886	2002	3/10/2003
Hope Lutheran School, Inc. Waukesha, WI	575549	2007	9/21/2009
Moore Public Library Lexington, MI	499661	2006	4/4/2007
Sevier County Library De Queen, AR	693456	2009	12/17/2009
Walthill Public School Walthill, NE	594532	2008	10/7/2008

APPENDIX B

Waiver of Section 54.504(c) Granted

Applicant	Application Number	Funding Year	Date Appeal Filed
Hall-Dale Schools, SAD #16 Farmingdale, ME	465396	2005	11/21/2005
Milton Town School District Milton, VT	728406	2010	12/14/2010
Tarek Ibn Ziyad Academy Inver Grove Heights, MN	536319	2006	2/21/2007
Wilmington School District Wilmington, MA	586778	2007	1/30/2008
Windsor Elementary School Windsor, IL	433432	2004	6/22/2005

APPENDIX C

Appeals Granted on the Merits

Applicant	Application Number	Funding Year	Date Appeal Filed
Elizabeth Board of Education Elizabeth, NJ	457014	2005	11/21/2005
Matanuska-Susitna Borough Schools Palmer, AK	710275	2010	11/18/2010

APPENDIX D

Appeals Denied

Applicant	Application Number	Funding Year	Date Appeal Filed
Big Spring School District Newville, PA	693667	2009	7/7/2009
Central Kitsap School District No. 401 Silverdale, WA	441552	2005	12/20/2006
Chambersburg District Public Library Chambersburg, PA	475487	2005	9/27/2007
Christ the King Jesuit College Preparatory School Chicago, IL	675998	2009	10/28/2009
Community Action of South Eastern WV Bluefield, WV	739047	2010	12/20/2010
Concho Elementary School Concho, AZ	628390	2008	6/3/2009
East Stroudsburg Area School District East Stroudsburg, PA	677445	2009	11/12/2010
Eminence Independent Schools Eminence, KY	661529	2009	4/6/2009
Government of the United States Virgin Islands Department of Education St. Thomas, VI	331593	2002	6/17/2003
Integrity Communications, Ltd. (Raymondville Independent School District) Raymondville, TX	636603	2008	3/12/2010
Mohave County Library District Kingman, AZ	729784	2010	8/11/2010
Mullin Independent School District Mullin, TX	495901	2006	5/22/2007
Netherlands Reformed Christian School Pompton Plains, NJ	697064	2009	9/8/2009
Newfound Area School District Bristol, NH	596461	2008	12/10/2008
Palmyra Area School District Palmyra, PA	456222	2005	3/14/2006
Saint Mary's College High School Berkeley, CA	530313	2006	3/6/2007
Spokane County Library District Spokane Valley, WA	454685	2005	6/6/2006

Sundown Independent School District Sundown, TX	481163	2005	5/31/2006
Winnebago Public Library Winnebago, IL	514710	2006	1/3/2007