

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
Boulevard Nursery School
Brooklyn, New York et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-917556 et al.
CC Docket No. 02-6

ORDER

Adopted: March 12, 2014

Released: March 12, 2014

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

1. Consistent with precedent,1 we address requests from petitioners seeking review of 12 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 seek waivers of the FCC Form 471 application filing window deadline under the E-rate program.3 Based on the facts and special circumstances of these specific cases, we find that good cause exists to grant the three requests for review for the applications of the petitioners listed in Appendix A because each those petitioners filed their application before the close of the filing window, except for the related certifications or item 21 attachments.4 At this time, we find no evidence of waste, fraud and abuse in the record with

1 See Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259-60, paras. 8 & 9 (2010) (finding special circumstances exist to justify granting waiver requests where, for example, petitioners filed their FCC Forms 471 on time, but failed to timely file their certifications); Requests for Waiver and Review of Decisions of the Universal Service Administrator by Anderson Elementary School et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 27 FCC Rcd 5319, 5319-20, para. 2 (Wireline Comp. Bur. 2012) (treating late-filed item 21 attachments like late-filed certifications).

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 review are listed in Appendices A and B. 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 as requests for waiver all of the requests for review involving FCC Form 471 applications that were submitted after the relevant filing window deadline.

4 See Appendix A. 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...)

respect to the petitioners for which we grant relief. We therefore remand the underlying applications listed in Appendix A 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. We deny the requests of the nine petitioners listed in Appendix B because we find that the petitioners have failed to present special circumstances justifying waivers of the Commission's rules.<sup>5</sup>

2. 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 waiver and review filed by the petitioners listed in Appendix A ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this Order.

3. 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 Appendix A, to the limited extent provided herein.

4. 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 requests for waiver and review filed by the petitioners listed in Appendix B ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly A. Scardino  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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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. *Northeast Cellular*, 897 F.2d at 1166.

<sup>5</sup> See Appendix B.

## APPENDIX A

## Waivers Granted for Special Circumstances

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Boulevard Nursery School Brooklyn, NY	917556	2013	Jan. 27, 2014
Southwest Detroit Lighthouse Charter School Detroit, MI	917031	2013	Feb. 10, 2014
Trinity Lutheran Day School Toledo, OH	923111	2013	Jan. 28, 2014

## APPENDIX B

## Requests for Waiver and Review Denied

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Chesapeake Bay Academy Virginia Beach, VA	935669	2013	Nov. 27, 2013
Frederick Independent School District Frederick, OK	891679	2013	Jan. 9, 2014
Gloucester County Institute of Technology Sewell, NJ	936088	2013	Feb.4, 2014
Gloucester County Special Services School District Sewell, NJ	935988	2013	Feb.4, 2014
Hartford Public Library Hartford, MI	883944	2013	Jan. 8, 2014
Oswego County Opportunities, Inc. Fulton, NY	Did not file	2013	Dec. 17, 2013
St. Mary and All Angels School Aliso Viejo, CA	935773	2013	Nov. 26, 2013
St. Matthew Parish School Glendale Heights, IL	879904, 877913	2013	Apr. 30, 2013
School Administrative Unit 15 Auburn, NH	Did not file	2013	Dec. 11, 2013