

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Request for Review and Waiver by
Houston Independent School District
Houston, Texas
Schools and Libraries Universal Service Support
Mechanism
File No. SLD-171042254
CC Docket No. 02-6

ORDER

Adopted: January 8, 2020

Released: January 8, 2020

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

I. INTRODUCTION

1. In this order, we address a Request for Review and Waiver by the Houston Independent School District (Houston) involving a decision by the Universal Service Administrative Company (USAC) that Houston did not meet the requirements for additional E-Rate program1 funding to match state funding in connection with its funding year 2017 E-Rate application. Specifically, we grant Houston a limited waiver to amend its funding year 2017 FCC Form 471 application for the sole purpose of including the additional funding to match the state funding.2 This limited waiver will encourage the deployment of high-speed connections and permit Houston to make use of state funding that was made available for special construction projects for Texas schools.

II. BACKGROUND

2. The E-Rate program provides eligible schools, libraries, and consortia that include eligible schools and libraries funding for the purchase of Internet access, internal connections, basic maintenance of internal connections, managed internal broadband services, telecommunications, and telecommunications services.3 Applicants complete an FCC Form 471 to request E-Rate supported services.4 They may apply for universal service discounts ranging from 20% to 90% of the price of eligible services (based on indicators of the applicant’s need), and must pay the balance.5 The percentage

1 The E-Rate program is formally known as the schools and libraries universal service support mechanism.

2 See Request for Review by Houston Independent School District, CC Docket No. 02-6 (filed Feb. 2, 2018) (Request for Review and Waiver).

3 47 CFR § 54.502(a).

4 See 47 CFR § 54.504(a).

5 See 47 CFR §§ 54.505(a)-(b), 54.523.

of the price paid by USAC for eligible services is generally referred to as an applicant's "discount rate,"⁶ and the amount paid by the applicant is generally referred to as the "non-discount share."⁷

3. The Commission's rules provide for additional discounts beyond an applicant's discount rate under section 54.505(c) for certain special construction projects.⁸ For example, E-Rate program applicants may receive an additional discount in E-Rate support beyond their normal discount rate to match funding provided by state governments (or, for Tribal applicants, funding provided by state governments, Tribal governments, or a federal agency) for special construction projects. As a result, an applicant's discount rate can be increased up to an additional 10% to match state funding on a one dollar-to-one dollar basis for special construction funding requests that meet the Commission's long-term capacity target for the E-Rate program.⁹ For school wide area networks, that target is to have capacity scalable to 10 Gbps per 1,000 students.¹⁰ This additional E-Rate funding is available only for special construction funding requests.¹¹ Total E-Rate discount rates with matching funds may not exceed 100%.¹²

4. On May 11, 2017, Houston filed an FCC Form 471 application requesting E-Rate support for special construction of leased dark fiber to connect one of its schools to a wide area network.¹³ At that time, because state funding was not available for special construction projects, Houston's application did not include a request for an increased discount rate to match state funding. Later, on June 12, 2017, Texas approved a budget that appropriated state funding for special construction projects for Texas schools,¹⁴ and the Texas Education Agency formally issued an award of state funding to Houston for its project on September 7, 2017.¹⁵ Houston schools were closed at the time of the award, however, due to damage from Hurricane Harvey, which made landfall in Texas on August 25, 2017.¹⁶

⁶ See 47 CFR § 54.505(c).

⁷ Applicants, i.e., schools and libraries, are required to pay their full non-discount share of the costs of eligible E-Rate services. See 47 CFR § 54.523; *Requests for Review of Decisions of the Universal Service Administrator by Achieve Telecom Network of MA*, 30 FCC Rcd 3653, 3669, paras. 23-24 (WCB 2015). Section 54.505 of the Commission's rules, which includes the discount matrix, determines the discount level that an applicant receives. 47 CFR § 54.505(c). The necessary resources rule requires applicants to certify that they will have sufficient funds "to pay for the 'non-discount' portion of E-Rate services." See 47 CFR § 54.504(a)(1)(iii).

⁸ 47 CFR § 54.505(f).

⁹ See 47 CFR § 54.505(f)(1); *Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15560-61, paras. 56-57 (2014) (*2014 Second E-Rate Order*).

¹⁰ See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8886, para. 39 (2014) (*2014 E-Rate Order*) (adopting a long-term connectivity target for wide area networks for schools).

¹¹ See *2014 Second E-Rate Order*, 29 FCC Rcd at 15561, para. 58.

¹² See *id.* at 15561, para. 56.

¹³ See FCC Form 471 No. 171042254, Funding Request No. 1799095846 (certified May 11, 2017).

¹⁴ See H.B. No. 3765, 85th Leg., Reg. Sess. 2017 (Tex. signed June 12, 2017), http://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2018-2019.pdf.

¹⁵ See Letter from Melody Parrish, Deputy Commissioner, Office of Information Technology Services, Texas Education Agency, to Richard A. Carranza, Superintendent, Houston Independent School District (dated Sept. 7, 2017) (TEA Letter).

¹⁶ See Request for Review and Waiver. See also Alejandra Matos, Texas Schools Suffer Financial Blow from Harvey, Houston Chronicle (Oct. 9, 2017), <http://www.houstonchronicle.com/news/article/Texas-schools-suffer-financial-blow-from-Harvey-12265207.php>.

5. On December 8, 2017, USAC issued a funding commitment of \$118,641 for Houston's funding request that did not include an increased discount rate accounting for state match funding.¹⁷ Because it was dealing with the effects of Hurricane Harvey, Houston was not able submit documentation to increase its funding request for additional E-Rate discounts to match the state funds until December 14, 2017, less than a week after USAC had already issued the funding commitment.¹⁸ Houston filed this Request for Review and Waiver to the Commission and an appeal to USAC simultaneously on February 2, 2018, asking to increase its funding commitment on account of the state funds.¹⁹ USAC denied the appeal filed to it on May 15, 2018.²⁰

III. DISCUSSION

6. We find, based on the circumstances presented, that Houston satisfied the Commission's requirements for receiving additional E-Rate discounts to match funding provided by Texas for special construction projects. Further, we find that Houston was unable to submit the necessary documentation to USAC to update its FCC Form 471 to seek support for the additional funds before issuance of USAC's commitment, despite its diligent efforts, because it was dealing with the aftereffects of Hurricane Harvey.²¹ Thus, we find that it is in the public interest to grant Houston a limited waiver to update its FCC Form 471 application to request funding to match the funding provided by Texas.²²

7. Houston's funding request is for a special construction project that is consistent with the Commission's long-term connectivity target for wide area networks for schools.²³ Further, Houston has provided evidence that Texas will provide 5% of special construction costs for the project.²⁴ Although Texas had no mechanism to provide applicants with additional funding for special construction projects at the time Houston initially filed its FCC Form 471 application, Texas later adopted legislation that allowed for additional funding for special construction projects and set aside funds for Houston's project.

8. Consistent with this waiver, we find that Houston is eligible for an increased funding commitment given the additional funds that Texas has set aside for it. Under the E-Rate program rules,

¹⁷ Notification of Funding Commitment Decision Letter, FCC Form 471 No. 171042254 (dated Dec. 8, 2017).

¹⁸ See Request for Review and Waiver at 2.

¹⁹ See Request for Review and Waiver and Letter from Stephanie Johnson, Houston Independent School District, and Kimberly Friends, Consultant for Houston Independent School District, to USAC, Schools and Libraries Division (dated Feb. 2, 2018).

²⁰ See Notification of Revised Funding Commitment Decision Letter to Sherrie Robinson, Houston Independent School District (May 15, 2018). After USAC denied that appeal, Houston filed a supplement to its Request for Review and Waiver on June 1, 2018. See Letter from Stephanie Johnson, Houston Independent School District, and Kimberly Friends, Consultant for Houston Independent School District, to USAC, Schools and Libraries Division (June 1, 2018).

²¹ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 7456, 7457, para. 3 & n.10 (WCB 2017) (extending Commission deadlines related to requests for review or waiver of USAC decisions, the FCC 486, and invoicing for E-Rate applicants impacted by Hurricane Harvey and noting that USAC had already suspended many of its administrative deadlines for applicants impacted by Hurricane Harvey).

²² Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 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). 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.

²³ See *2014 E-Rate Order*, 29 FCC Rcd at 8886, para. 39.

²⁴ See TEA Letter at 1.

an applicant's discount rate can be increased, up to an additional 10%, to match state funding on a one dollar-to-one dollar basis. The Texas Education Agency agreed to pay for \$6,591, which is 5% of special construction costs. Accordingly, we direct USAC to match the \$6,591 in funding provided by the Texas Education Agency and increase Houston's funding commitment from \$118,641 to \$125,232.

IV. ORDERING CLAUSES

9. 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, 54.504(a), 54.505(f) and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, 54.504(a), 54.505(f) and 54.722(a), that 54.504(a) of the Commission's rules, 47 C.F.R. § 54.504(a) IS WAIVED for the petitioner to the limited extent provided herein, the above-referenced Request for Review and Waiver IS GRANTED, and the application at issue IS REMANDED to USAC.

10. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Ryan B. Palmer
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau