

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Request for Waiver of Section 54.507 of the )
Commission's Rules and Review of a Decision )
of the Universal Service Administrator by )
Minford Local Schools ) File No. SLD-637390
Minford, OH )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: July 21, 2009

Released: July 21, 2009

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

I. INTRODUCTION

1. In this order we grant the request for waiver of Minford Local Schools (Minford) of the FCC Form 471 application filing window deadline for funding year 2008 under the schools and libraries universal service support mechanism, also known as the E-rate program. On October 30, 2008, Minford was granted waiver of the filing deadline for its funding year 2008 FCC Form 471 application number 637392. The instant petition for waiver applies to Minford's 2008 FCC Form 471 application number 637390. The same factual scenario exists for Minford's application number 637390 as for its application number 637392, i.e., Minford inadvertently filed its applications two days past the application filing deadline. For the reasons that Minford was granted waiver of the filing deadline for application number 637392, we also grant Minford waiver of the filing deadline for application number 637390 and remand its underlying application to USAC for further action consistent with this order. To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of Minford's application and issue an award or a denial based on a complete review and analysis no later than 60 calendar days from the release date of this order.

1 Letter from Ryan Stockham, Technology Supervisor, Minford Local Schools, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed June 11, 2008) (Request for Waiver) (regarding application number 637390). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (USAC) may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 See Request for Waiver and Review of Decisions of the Universal Service Administrator by Acorn Public Library District, Oak Forest, IL et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-637819, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15474, App. (Wireline Comp. Bur. 2008) (Acorn Public Library District Order).

3 Request for Waiver at 1.

4 Id.; Letter from Ryan Stockham, Minford Local Schools, to Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed June 11, 2008) (regarding application number 637392).

## II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, basic maintenance and internal connections.<sup>5</sup> The applicant must file an FCC Form 470 to request discounted services.<sup>6</sup> After the FCC Form 470 is posted on USAC's website for all potential competing service providers to review, the applicant must wait at least 28 days before entering an agreement for services.<sup>7</sup> After entering into a contract for eligible services, the applicant files the FCC Form 471 to request discounts on the eligible services to be provided.<sup>8</sup> The FCC Form 471 must be filed within each funding year's "filing window" because, under Commission rules, USAC treats all filings made within the filing window as if the applications were simultaneously received.<sup>9</sup> Since 1999, the requests for funding filed within the filing window have always exceeded the annual cap on funding.<sup>10</sup> Accordingly, if an FCC Form 471 is filed outside of the window, the applicant will not receive funding.

3. In 2008, consistent with the *Bishop Perry Order* and the *Academy for Academic Excellence Order*, we adopted the *Acorn Public Library District Order*, granting waivers of the FCC Form 471 application filing window deadline for applicants that filed their FCC Form 471 application within 14 days after the FCC Form 471 application filing window deadline.<sup>11</sup> In this instance, USAC denied Minford's request for E-rate funding on the grounds that Minford submitted its FCC Form 471 application two days after the February 7, 2009 filing window deadline for funding year 2008.<sup>12</sup>

## III. DISCUSSION

4. Consistent with our treatment of Minford's application number 637392 in the *Acorn Public Library District Order*, we grant Minford's request for waiver of the filing deadline for its application

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<sup>5</sup> 47 C.F.R. §§ 54.501-54.503.

<sup>6</sup> 47 C.F.R. § 54.504(b).

<sup>7</sup> 47 C.F.R. § 54.504(b)(4).

<sup>8</sup> 47 C.F.R. § 54.504(c); *see, e.g.*, Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

<sup>9</sup> 47 C.F.R. § 54.507(c).

<sup>10</sup> The annual cap on E-rate funds is \$2.25 billion per funding year. 47 C.F.R. § 54.507. Since 1999, E-rate funds have been exhausted before satisfying all of the funding requests of those applicants who filed within the filing window. *See* USAC website, Automated Search of Commitments, <http://www.usac.org/sl/tools/commitments-search/Default.aspx> (last visited July 21, 2009).

<sup>11</sup> *See Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5321-22, para. 12 (2006) (*Bishop Perry Order*); *Request for Review of the Decision of the Universal Service Administrator by Academy for Academic Excellence, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-539076, 539722, *et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 4747, 4748-49, para. 5 (Wireline Comp. Bur. 2007); *Acorn Public Library District Order*, 23 FCC Rcd at 15476-77, para. 5. Although we found that good cause existed generally to grant the waiver requests in the *Acorn Public Library District Order*, we did not extend the E-rate filing window generally. Applicants are still required to file within the window to receive funding commitments and E-rate funds in the normal course. Applicants will have to file waiver requests if they miss the deadline. Applicants thus have an incentive to timely file their FCC Forms 471 to avoid this delay. *Acorn Public Library District Order*, 23 FCC Rcd at 15477, para. 5 n.15.

<sup>12</sup> *See* Letter from USAC, Schools and Libraries Division, to Ryan Stockham, Minford Local Schools (dated June 9, 2008); 47 C.F.R. § 54.507(c); Request for Waiver at 1.

number 637390.<sup>13</sup> As in the *Acorn Public Library District Order*, we find that Minford's late-filing of its application by only two days is not likely to impede USAC's ability to administer the E-rate program.<sup>14</sup> Moreover, because the violation, in this instance, is procedural, not substantive, a complete rejection of Minford's application is not warranted.<sup>15</sup> Further, at this time, there is no evidence of waste, fraud, or abuse of E-rate funds or a failure to adhere to core program requirements. We thus find it in the public interest to waive the FCC Form 471 application filing window deadline in this case. Accordingly, we remand the underlying application to USAC for further action consistent with this order.<sup>16</sup>

5. In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or Minford's application.<sup>17</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. To ensure that Minford's application is resolved expeditiously, we direct USAC to complete its review of the underlying application and issue an award or a denial based on a complete review and analysis no later than 60 calendar days from the release date of this order.<sup>18</sup>

6. 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 the requests 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,

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<sup>13</sup> The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived 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, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). 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. *Northeast Cellular*, 897 F.2d at 1166.

<sup>14</sup> *Acorn Public Library District Order*, 23 FCC Rcd at 15477

<sup>15</sup> *Id.*, citing *Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14.

<sup>16</sup> We estimate that the waiver request granted in this order involves an application for approximately \$17,000 in funding for funding year 2008. 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 2009 (May 1, 2009). We thus determine that the action we take today should have a minimal impact on the universal service fund as a whole.

<sup>17</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>18</sup> In performing a complete review and analysis of each underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

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

7. 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 of 47 C.F.R. §54.507(c) filed by Minford Local Schools IS GRANTED and its application IS REMANDED to USAC for further consideration consistent with this order.

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

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, and 54.722(a), that the Universal Service Administrative Company SHALL COMPLETE its review of Minford's application and ISSUE an award or a denial based on a complete review and analysis no later than 60 calendar days from the release date of this order.

10. 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

Jennifer K. McKee  
Acting Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau