

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)	
)	
Hondo Valley School District)	File Nos. SLD-459333, <i>et al.</i>
Hondo, NM, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: March 19, 2012

Released: March 19, 2012

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

1. Consistent with precedent,¹ we grant eight requests from petitioners² seeking review of 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).³ Based on our review of the record, we find that good cause exists to justify a grant of these requests pursuant to sections 54.503 and 54.511 of the Commission’s rules.⁴ We find that the applicants listed in the appendix met the requirements for demonstrating that the costs of the products and services in the funding requests were

¹ See *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407 (2003). See also *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd. 8776, 9029-9030, 9078, paras. 481, 574 (1997); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 12294 at paras. 22-24 (2003); *Requests for Review by Wyoming Department of Education*, CC Docket No. 02-6, Order, 21 FCC Rcd. 8518 (2006); *Requests for Review by Allendale County School District, et. al. of the Decision of the Universal Service Administrator*, CC Docket No. 02-6, Order, 26 FCC Rcd 6109 (2011); *Requests for Review by Baltimore City School District, et. al. of a Decision of the Universal Service Administrator*, CC Docket No. 02-6, Order, 26 FCC Rcd. 11193 (2011). But see *Request for Review by Macomb Intermediate School District Technology Consortium of the Decision of the Universal Service Administrator*, CC Docket No. 02-6, Order, 22 FCC Rcd 8771 (May 8, 2007) (upholding USAC’s finding where the most cost-effective solution was not selected by the applicant).

² The requests for waiver and review are listed in the appendix.

³ 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).

⁴ 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, 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. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

reasonable based on their circumstances and therefore were cost-effective under Commission rules.⁵ In addition, there is no evidence of waste, fraud or abuse in the record at this time.

2. On our own motion, we waive section 54.507(d) of the Commission's rules and any USAC procedural deadlines, such as the invoicing deadline, that might be necessary to effectuate our ruling.⁶ We find good cause to waive section 54.507(d) because filing an appeal of a denial of funding is likely to cause petitioners to miss the program's subsequent procedural deadlines in that funding year. Consistent with precedent,⁷ we also waive section 54.720 of the Commission's rules for two petitioners.⁸

3. We therefore remand the underlying applications listed in the appendix 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 the applications listed in the appendix 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. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We direct USAC to discontinue recovery actions based on the denials we reviewed in this order for those parties whose requests are addressed herein.⁹

4. 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), the requests for review or requests for waiver filed by the petitioners listed in the appendix ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

⁵ See 47 C.F.R. §§ 54.503(c)(2)(vii), 54.511. See also *supra* note 1.

⁶ 47 C.F.R. § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

⁷ *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District, et al.*, Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-584091, Order, 26 FCC Rcd 11019, 11019, para. 2 (Wireline Comp. Bur. 2011) (granting petitioners waivers of our filing deadline for appeals because they submitted their appeals to the Commission within a reasonable period of time after receiving actual notice of USAC's adverse decision). *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Baker Hall School, et al.*, File Nos. SLD-596432, et al., Order, 25 FCC Rcd 17534, 17535, n.9 (Wireline Comp. Bur. 2010) (waiving the 60-day appeal filing requirement when petitioners either filed their appeals a few days late or soon after they received actual notice of the denial).

⁸ The two waivers are for Shiprock Associated Schools, Inc. (special circumstances) and Leak & Watts Service, Inc. (actual notice).

⁹ USAC shall cease recovery actions against both the applicant and the service provider, unless otherwise provided in this order.

5. 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 sections 54.407(d) and 54.720 of the Commission's rules, 47 C.F.R. §§ 54.407(d), 54.720, ARE WAIVED to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A

Petitioner	Application Number(s)	Funding Year	Date Request for Review Filed
Hondo Valley School District Hondo, NM	459333	2005	Feb. 11, 2009
Leak & Watts Services, Inc. Yonkers, NY	416712	2004	Feb. 27, 2009
Mel Blount Youth Home Vidalia, GA	738159	2010	Apr. 20, 2011
Navajo Prep School Farmington, NM	475813	2005	Oct. 12, 2010
American Internet Group, LLC (Northpoint Academy) Highland Park, MI	762367	2010	Nov. 7, 2011
Shiprock Associated Schools, Inc. Shiprock, NM	299171	2002	July 20, 2009
Step Special Torah Education Program Brooklyn, NY	393183	2004	June 6, 2011
Universal/Star International Academics Dearborn Heights, MI	464961	2005	Sept. 10, 2010