



Federal Communications Commission
Washington, D.C. 20554

Memo

To: Joy Green, for
Ulen-Hitterdal Public School

From: Ryan B. Palmer, Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission

Date: February 1, 2019

Re: DA 19-30, released January 31, 2019

The attached Public Notice contains the Bureau's decision on your appeal. It may be referenced in the future by its document number and release date: DA 19-30, released January 31, 2019.

If the Bureau has granted your appeal, please contact the Universal Service Administrative Company (USAC) at 1-888-203-8100 for more information regarding your application. Please submit any information to USAC that the order may require. Once USAC has reviewed your application related to the issues resolved in the attached Public Notice, you will receive a revised funding commitment decision letter.

If the Bureau has dismissed or denied your appeal and you would like to seek reconsideration of that decision, the deadline to file a petition for reconsideration or application for review by the full Commission is 30 days from the release date. *See* 47 CFR §§ 1.106, 1.115. We encourage you to file your petition for reconsideration or application for review electronically using the Commission's electronic comment filing system (ECFS) at <https://www.fcc.gov/ecfs/filings>. On your filing, please include a reference to the proceeding, CC Docket No. 02-6.



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
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DA 19-30

Released: January 31, 2019

STREAMLINED RESOLUTION OF REQUESTS RELATED TO ACTIONS BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

CC Docket No. 02-6
WC Docket No. 06-122

Pursuant to our procedure for resolving requests for review, requests for waiver, and petitions for reconsideration of decisions related to actions taken by the Universal Service Administrative Company (USAC) that are consistent with precedent (collectively, Requests), the Wireline Competition Bureau (Bureau) grants, dismisses, or denies the following Requests.¹ The deadline for filing petitions for reconsideration or applications for review concerning the disposition of any of these Requests is 30 days from release of this Public Notice.²

Schools and Libraries (E-Rate)

CC Docket No. 02-6

Granted³

Appeal or Waiver Filed Few Days Late⁴

Centro Mater Child Care Services, Inc., FL, Application No. 181028236, Request for Waiver, CC Docket No. 02-6 (filed Dec. 14, 2018, supplemented Dec. 19, 2018)

¹ See *Streamlined Process for Resolving Requests for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60, 06-122, 08-71, 10-90, 11-42, and 14-58, Public Notice, 29 FCC Rcd 11094 (WCB 2014). Section 54.719(b) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC, after first seeking review at USAC, may seek review from the Commission. Section 54.719(c) of the Commission's rules provides that parties seeking waivers of the Commission's rules shall seek review directly from the Commission. 47 CFR § 54.719(b)-(c). In this Public Notice, we have reclassified as Requests for Waiver those appeals seeking review of a USAC decision that appropriately should have requested a waiver of the Commission's rules.

² See 47 CFR §§ 1.106(f), 1.115(d); see also 47 CFR § 1.4(b)(2) (setting forth the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission).

³ We remand these applications to USAC and direct USAC to complete its review of the applications and issue a funding commitment or a denial based on a complete review and analysis, no later than 90 calendar days from the release date of this Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We also waive sections 54.507(d) and 54.514(a) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. See 47 CFR § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year); 47 CFR § 54.514(a) (codifying the invoice filing deadline).

⁴ See, e.g., *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*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (WCB 2011) (*ABC Unified School District Order*) (waiving the filing deadline for petitioners that submitted their appeals or waiver requests to the Commission or USAC only a few days late). We make no finding on the underlying issues in this appeal and remand these applications back to USAC for a determination on the merits. See *supra* note 3.

Community Action Marin, CA, Application No. 181005216, Request for Waiver, CC Docket No. 02-6 (filed Dec. 14, 2018, supplemented Dec. 18, 2018)

Rural Resources Community Action, WA, Application No. 181008328, Request for Waiver, CC Docket No. 02-6 (filed Dec. 14, 2018, supplemented Dec. 19, 2018)

YMCA of Palm Beach County, FL, Application No. 181027669, Request for Waiver, CC Docket No. 02-6 (filed Dec. 14, 2018)

Late-Filed FCC Form 471 Applications Filed Timely⁵

Two Dimensions Preparatory Academy Charter School, TX, Application Nos. 181043207, 181043208, Request for Waiver, CC Docket No. 02-6 (filed Sept. 18, 2018)

Ministerial and/or Clerical Errors⁶

Columbus Unified School District 493, KS, Application No. 171027938, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Nov. 29, 2018)

Dothan City Schools, AL, Application No. 181043402, Request for Waiver, CC Docket No. 02-6 (filed Oct. 29, 2018)

Empower Charter School, CA, Application No. 161033429, Request for Review, CC Docket No. 02-6 (filed Jan. 4, 2018)

Golden Plains Unified School District, CA, Application No. 181024820, Request for Review, CC Docket No. 02-6 (filed Nov. 20, 2018)

Ulen-Hitterdal Public School, MN, Application No. 181003287, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Nov. 1, 2018)

⁵ See, e.g., *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, para. 7 (2010) (finding that petitioners filed their FCC Forms 471 within the FCC Form 471 filing window). Even though the two applications numbers at issue in this Public Notice were submitted after the close of the filing window, the substance of these requests was the same as that of Application No. 181014182, which was timely filed on February 27, 2018. Moreover, the creation of the two applications addressed here was at USAC's request to allow for the effective processing of the funding requests.

⁶ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Achieve Career Preparatory Academy et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 10254, 10255, & n.9 (WCB 2011) (permitting applicant to correct a mischaracterization of a recurring charge as a non-recurring charge); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319, 17319-20, para. 2 & nn.5, 6, 7 & 20 (WCB 2010) (waiving the appeal filing deadline and permitting applicant to correct the name of a school on its FCC Form 471; permitting applicant to file an appeal when applicant did not timely notify USAC of USAC's clerical error; permitting applicant to correct a mislabeling of a service category on its FCC Form 471; permitting applicant to correct a wrong application number; and permitting applicant to include item omitted from FCC Form 471 but included on its source list); *Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15518, 15520 n.19 (WCB 2008) (permitting applicant to correct a pre-discount price on its FCC Form 471 to conform to the price on the source document); *Requests for Review of Decisions of the Universal Service Administrator by Joseph Jingoli & Son, Inc. et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 19227, 19228-29, paras. 3-4 (WCB 2007) (granting petitioners' requests to correct their mistaken cancellations of funding requests). Consistent with precedent, we also find good cause exists to waive sections 54.720(a) and (b) of the Commission's rules, which requires that petitioners file their appeals or waiver requests within 60 days of an adverse USAC decision. See, e.g., *ABC Unified School District Order*, 26 FCC Rcd at 11019, para. 2.

*Services Provided Within Funding Year*⁷

Charter Fiberlink CCO, LLC (Colby School District), WI, Application No. 792422, Request for Review, CC Docket No. 02-6 (filed Apr. 24, 2012)

*Unnecessary Reduction in Funding*⁸

Mississippi Bend AEA, IA, Application Nos. 181007906, 181008621, 181010071, Request for Review, CC Docket No. 02-6 (filed Aug. 15, 2018, supplemented Dec. 11, 2018)

Granted in Part/Denied in Part*Waiver of Competitive Bidding Requirement to Comply with State and Local Procurement Rules*⁹

William Floyd School District, NY, Application No. 538560, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Mar. 25, 2011)

Denied*Ministerial and/or Clerical Errors*¹⁰

Good Shepherd School, NY, Application No. 181034458, Request for Waiver, CC Docket No. 02-6 (filed Sept. 18, 2018)

*Untimely-Filed Appeals or Waiver Requests*¹¹

Roncalli High School, NE, Application No. 181041797, Request for Waiver, CC Docket No. 02-6 (filed July 30, 2018)

⁷ USAC rescinded funding after determining that an invoice was calculated from a billing statement dated before the funding year began. Consistent with our obligation to conduct a *de novo* review of appeals of decisions made by USAC, we grant this request for review. See 47 C.F.R. § 54.723. Based on the facts and circumstances of this case, we find that Fiberlink CCO, LLC provided services to Colby School District during the funding year, and not before. See, e.g., *Request for Review of a Decision of the Universal Service Administrator by Grand Rapids; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15413, 15416, para. 6 (WCB 2008) (conducting de novo review of the facts and circumstances to determine that USAC's decision was in error). In this instance, we waive any procedural deadlines, including the invoice deadline, that might be necessary to effectuate our ruling. See *supra* note 3.

⁸ USAC reduced funding after the withdrawal of two school districts from the consortium. Consistent with our obligation to conduct a *de novo* review of appeals of decisions made by USAC, we grant the request for review. See 47 C.F.R. § 54.723. Based on the facts and circumstances of this case, we find that the reduction of entities from the consortium did not materially reduce the overall demand for bandwidth and, therefore, no cost reduction is warranted. See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by The Bronx Charter School for Better Learning; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259, para. 7 (2010) (finding that USAC unnecessarily reduced funding based on errors in its calculations). In this instance, we waive any procedural deadlines, including the invoice deadline, that might be necessary to effectuate our ruling. See *supra* note 3.

⁹ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aberdeen School District et al.; Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1941, 1942, para. 1 (WCB 2012) (granting a waiver where applicants failed to comply with state competitive bidding requirements, but the Bureau determined these were technical violations of the competitive bidding rules and there was no evidence of waste, fraud, or abuse). Consistent with precedent, we also deny the applicant's request for review and/or waiver of the service substitution deadline. See, e.g., *Request for Review or Waiver of a Decision of the Universal Service Administrator by RECtec Technology and Communications (Colcord Public Schools); Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 8180, 8183, paras. 7-8 (WCB 2014) (denying waiver request when applicant sought reimbursement from USAC for
(continued....)

Contribution Methodology**WC Docket No. 06-122****Denied***Late 499-A Filing Fee Waiver Request*¹²

Network Connections, Inc., Request for Waiver, WC Docket No. 06-122 (filed Oct. 31, 2018)

For additional information concerning this Public Notice, please contact James Bachtell in the Telecommunications Access Policy Division, Wireline Competition Bureau, at james.bachtell@fcc.gov or (202) 418-2694.

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unapproved services, stating that providing E-Rate support for services that were not initially sought by the applicant and not approved by USAC would promote waste, fraud, and abuse).

¹⁰ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Assabet Valley Regional Vocational District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1924, 1925, para. 1 (WCB 2012) (finding petitioners had not demonstrated good cause to justify waivers permitting changes to the applicants' E-Rate applications). Here, the applicant failed to provide documentation showing the service provider and monthly rate were selected prior to filing of its FCC Form 471 application.

¹¹ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-134 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684 (WCB 2010) (*Agra Public Schools Order*); *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Bound Brook School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 5823 (WCB 2014) (denying requests for review and/or waiver on the grounds that the petitioners failed to 1) submit their appeals either to the Commission or to USAC within 60 days; or failed to submit their waiver requests to the Commission within 60 days as required by the Commission's rules; and 2) did not show special circumstances necessary for the Commission to waive the deadline).

¹² See, e.g., *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; Requests for Review of Decisions of Universal Service Administrator by Airband Communications, Inc. et al.*, WC Docket No. 06-122, CC Docket No. 96-45, Order, 25 FCC Rcd 10861 (WCB 2010) (denying deadline waivers where claims of good cause amount to no more than simple negligence, errors by the petitioner, or circumstances squarely within the petitioner's control); *Universal Service Contribution Methodology; Requests for Waiver of Decisions of the Universal Service Administrator by ComScape Telecommunications of Raleigh- Durham, Inc. and Millennium Telecom, LLC*, WC Docket No. 06-122, Order, 25 FCC Rcd 7399 (WCB 2010) (denying waiver requests when negligence caused late filing fee); *Universal Service Contribution Methodology; Requests for Review of Decisions of the Universal Service Administrator by Achilles Networks, Inc., et al.*, WC Docket No. 06-122, Order, 25 FCC Rcd 4646, 4648-49, paras. 5, 8 (WCB 2010); *Federal-State Joint Board on Universal Service; Request for Review by National Network Communications, Inc.*, CC Docket No. 96-45, Order, 22 FCC Rcd 6783 (WCB 2007) (good cause not shown when filer claimed it did not have skilled personnel to interpret and correctly apply FCC Form 499 instructions).