**Before the**
**Federal Communications Commission**
**Washington, DC 20554**

MAY 15 2007
FCC Mail Room

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| In the Matter of | ) | |
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| Application for Review of the Decision of the Universal Service Administrator by | ) | |
| | ) | |
| Aberdeen School District Aberdeen, WA, *et al.* | ) | File No. SLD-297249, *et al.* |
| | ) | |
| Schools and Libraries Universal Service Support Mechanism | ) | CC Docket No. 02-6 |

# ORDER

**Adopted: April 18, 2007** **Released: May 8, 2007**

By the Commission:

## I. INTRODUCTION

1. In this Order, we grant 62 appeals and deny one appeal of decisions by the Universal Service Administrative Company (USAC) concerning applications for discounted services under the schools and libraries universal service mechanism (also known as the E-rate program).[1] As explained below, we find that, for 34 applicants that made ministerial or clerical errors on forms that were timely submitted, good cause exists to waive section 54.504(c) of the Commission's rules, which requires applicants to submit a completed FCC Form 471 to USAC.[2] We also find that, for 28 applicants, good cause exists to waive section 54.504(b)(4) of the Commission's rules, which states that applicants must wait 28 days after their FCC Form 470 is posted to USAC's website or after public availability of an applicant's request for proposal (RFP) before entering into an agreement with a service provider for the requested services.[3] Lastly, for one applicant, we deny the appeal for failing to comply with the Commission's competitive bidding rules.[4]

2. Accordingly, we remand the underlying applications associated with the granted appeals 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 each application listed in the Appendix

[1] In this Order, we use the term "appeals" to generically refer to requests for review of decisions, or waivers related to such decisions, issued by the Commission, the Wireline Competition Bureau, or USAC. A list of these petitions is attached in the Appendix and we will refer to all of these parties as Petitioners. 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 may seek review from the Commission. 47 C.F.R. § 54.719(c).

[2] 47 C.F.R. § 54.504(c); *see infra* paras. 6-7.

[3] 47 C.F.R. § 54.504(b)(4); *see infra* paras. 8-9.

[4] *See infra* para. 10.

and issue an award or denial based upon a complete review and analysis no later than 120 days from the release of this Order. In addition, starting in Funding Year 2007,[5] we direct USAC to provide applicants with a 15-day opportunity to cure any ministerial or clerical errors on their FCC Form 471 that make it appear that the applicants violated the 28-day rule.[6]

3. As the Commission recently noted, many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a number of applications for E-rate support being denied for ministerial or clerical errors.[7] We find that the actions we take here to provide relief will promote the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the "Act"), by helping to ensure that eligible schools and libraries obtain access to discounted telecommunications and information services.[8] Moreover, we believe that none of the waivers of sections 54.504(b)(4) and (c) granted here will frustrate the overarching purpose of the 28-day competitive bidding process, which is intended to ensure a fair opportunity for service providers to bid on the services sought by applicants.[9]

## II. BACKGROUND

4. 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, and internal connections.[10] The Commission's rules provide that each funding year, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.[11] In accordance with the Commission's rules, an applicant must file with USAC, for posting to USAC's website, an FCC Form 470 requesting discounted services.[12] The applicant must wait 28 days after the FCC Form 470 is posted

[5] USAC shall also apply this 15-day opportunity to applications with these types of appeals currently before USAC.

[6] *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 No. SLD-487170, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5326-27, para. 23 (2006) (*Bishop Perry Order*). We recognize that USAC cannot always identify these types of errors simply by looking at the FCC Form 471. In those cases, applicants will have 15 days from receiving the denial of their application to demonstrate that it was a ministerial or clerical error that gave the appearance that the applicant violated the 28-day rule.

[7] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*Comprehensive Review NPRM*); *Bishop Perry Order*, 21 FCC Rcd at 5316, para. 2.

[8] 47 U.S.C. § 254(h). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the Communications Act of 1934.

[9] *See* 47 C.F.R. §§ 54.504 (b)(4) and (c); *see, e.g., Request for Review of the Decision of the Universal Service Administrator by Currituck County Schools, Federal-State Joint Board on Universal Service*, File No. SLD-111040, CC Docket No. 96-45, Order, 15 FCC Rcd 5564, 5566, para. 6 (Com. Car. Bur. 2000) (*Currituck County Schools Order*).

[10] 47 C.F.R. §§ 54.501-54.503.

[11] 47 C.F.R. §§ 54.504, 54.511(c).

[12] 47 C.F.R. § 54.504(b); *see also* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (Funding Years 2000, 2001, 2002 FCC Form 470); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-
(continued . . .)

to the USAC website or after public availability of an applicant's RFP, whichever is later, before entering into an agreement with a service provider for the requested services.[13] Once the school or library has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify USAC of the services that have been ordered, the service providers with which the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.[14] An applicant can enter into multi-year contracts or contracts with voluntary extensions without reposting an FCC Form 470 application and complying with the 28-day rule each year as long as the applicant indicated such intent in Item 13 on its FCC Form 470 or in its RFP.[15]

## III. DISCUSSION

5. In this item, we grant 62 appeals and deny one appeal of decisions by USAC denying requests for funding under the E-rate program due to an applicant's failure to comply with the Commission's 28-day competitive bidding requirement.[16] The E-rate program's competitive bidding requirements ensure more efficient pricing for telecommunications and information services purchased by schools and libraries by minimizing the amount of support needed. Specifically, "the 28-day posting rule

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0806 (April 2002) (Funding Year 2003 FCC Form 470); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (May 2003) (Funding Year 2004 FCC Form 470); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (Funding Year 2005 FCC Form 470) (collectively, FCC Form 470).

[13] 47 C.F.R. § 54.504(b)(4); *see* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1997) (Funding Year 1999 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Funding Year 2000 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (Funding Year 2001 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2001) (Funding Year 2002 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2003) (Funding Year 2004 FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (Funding Year 2005 FCC Form 471) (collectively, FCC Form 471).

[14] 47 C.F.R. § 54.504(c). *See* FCC Form 471. The Commission's rules do provide a limited exemption from the 28-day competitive bidding requirement when applicants had "existing contracts" signed before January 30, 1998. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983, 5986, para. 6 (1999); *see also* 47 C.F.R. § 54.511(c)(1). None of the Petitioners argue that this exemption applies to their case.

[15] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732, 6736, para. 10-12 (1999); *see* USAC website, Contract guidance, at http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx (retrieved March 5, 2007). A contract including voluntary extensions means that the contract expires at the end of its original term and may be voluntarily extended for one or more years pursuant to the provisions in the contract. *Id.*

[16] 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. *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.

is intended to provide a fair and uniform period applicable to all schools and libraries seeking discounts for eligible services to permit competitive bidding by all potential bidders."[17] Generally, Petitioners' argue either that they made clerical or ministerial errors on the FCC Form 471[18] or that they misunderstood our rules, which resulted in a denial of their requests for E-rate funding.[19] For the reasons discussed below, we waive sections 54.504(b) or (c) of our rules, as applicable, and grant these appeals.[20] The Commission also notes that the grant of these appeals should have minimal effect on the Universal Service Fund.[21] With regard to one appeal, we deny for failing to comply with the Commission's competitive bidding rules.[22] Therefore, we remand the underlying applications associated with these

[17] *See Currituck County Schools Order*, 15 FCC Rcd at 5566, para. 6.

[18] *See* Application for Review of Aberdeen School District; Request for Review of Abilene Free Public Library; Petition for Reconsideration of Albany Public Library; Request for Review of Augusta County School District; Request for Review of Bank Street School for Children; Request for Review of Bath School Department; Request for Review of Bethlehem Area Public Library; Request for Review of B.F. Jones Memorial Library Aliquippa District Library Center; Request for Review of Calumet City Public Library; Request for Review of Chippewa Hills School District; Request for Review of Chowchilla Union High School District; Request for Review and/or Waiver of Cumberland County School District; Request for Review of David Douglas School District 40; Request for Review of Hydaburg City School; Request for Review of Jackson-Hinds Library System; Request for Review of Johnson Elementary School; Request for Review of Kennewick School District; Request for Review of Madawaska School District; Request for Review of Maine School Administration District No. 9; Request for Waiver of Marvin L. Winans Academy of Performing Arts; Request for Review of Milton School District; Request for Review of Modesto City Schools; Request for Review of Nelson Public School District; Request for Review of Norborne R-VIII School District; Request for Review of Onondaga-Cortland Madison BOCES; Request for Review of Princeton R-5 School; Request for Review of Prosser School District No. 116; Request for Review of Rapides Parish Library; Request for Review of Richland School District; Request for Review of Sycamore Community Schools; Request for Review and/or Waiver of Waverly City Schools; Request for Review of Western Ohio Computer Organization; Request for Review of White Settlement Independent School District; Request for Review of Willits Charter School.

[19] *See* Request for Review of Anchorage School District; Request for Review of Atlantic County Library System; Request for Review of Butternut School District; Request for Review of Clark Township School District; Request for Review of Columbia Union School District; Request for Waiver of Cooperative Educational Service Agency No. 7; Request for Review of Ewing Public Schools; Request for Review of Graham Independent School District; Request for Review of Islesboro School District; Request for Review of Los Angeles Unified School District; Request for Waiver of Mason Public School District; Request for Review of Miles City Unified School District; Request for Waiver of Nottingham School; Request for Review of Swampscott Public Schools; Request for Waiver of Bedford Public Schools; Application for Review of Custer County School District; Request for Review of Manton JT Union Elementary School District; Request for Waiver of Philadelphia-Montgomery Christian Academy; Request for Review of Brunswick County Schools; Request for Review of Dallas County School District 1; Request for Review of Danville City School District; Request for Review of Helena Public School District No. 1; Request for Review of Howell Township Public Schools; Request for Review of Latch School Inc.; Request for Review of North Scott Community School District; Request for Review of The School District of Palm Beach County; Request for Review of United School District. One request for waiver, filed on behalf of Reform Public Library (Reform), was submitted by USAC. USAC acknowledged that it significantly delayed posting Reform's FCC Form 470 to its website. Due to this delay, Reform violated the 28-day rule in order to file its FCC Form 471 before the filing window closed. *See* Request for Waiver of Reform Public Library.

[20] *See* 47 C.F.R. §§ 54.504(b)(4) and (c).

[21] We estimate that the appeals granted in this Order involve applications for approximately $15.2 million in funding for Funding Years 1999-2005. 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 Second Quarter 2007 (Jan. 31, 2007). Thus, we determine that the action we take today should have minimal impact on the Universal Service Fund as a whole.

[22] *See infra* para. 10.

appeals 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 each application listed in the Appendix and issue an award or denial based upon a complete review and analysis no later than 120 days from the release of this Order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the requested services.[23]

6. *Section 54.504(c) Waivers*. According to their denial letters from USAC, these Petitioners' requests for E-rate funding were denied because their contracts for discounted services were signed prior to the 28-day waiting period computed from the date of the posting of the FCC Form 470 on the USAC website. These Petitioners' denials, however, can be more accurately described as failing to comply with the requirement of section 54.504(c) of our rules, which requires applicants to submit a completed FCC Form 471 to USAC.[24] That is, while the applicants filed their FCC Forms 471 on time, they need a waiver to make a correction after the deadline. Specifically, these appeals involved clerical errors on the part of the Petitioners; they inserted the wrong contract date, the wrong classification of service, or the wrong FCC Form 470 application number on the FCC Form 471, thus making it appear that the applicants violated the 28-day rule.[25]

7. Based on the facts and the circumstances of these specific cases, we find that good cause exits to waive section 54.504(c) of our rules.[26] In these circumstances, applicants committed minor errors in filling out their application forms. As the Commission recently noted, we do not believe that such minor mistakes warrant the complete rejection of each of these applicants' E-rate applications.[27] Our finding is consistent with our ruling in the *Bishop Perry Order* in which the Commission waived section 54.504(c) of our rules in situations where applicants' ministerial or clerical errors caused USAC to find that the applications were not complete and thus not filed within the filing window.[28] Importantly, like those appeals granted in the *Bishop Perry Order*, applicants' errors here could not have resulted in an

[23] Nothing in this order is intended to authorize or require payment of any claim that has previously been released by a service provider or applicant, including in a civil settlement or criminal plea agreement with the United States.

[24] *See* 47 C.F.R. § 54.504(c).

[25] *See* Application for Review of Aberdeen School District; Request for Review of Abilene Free Public Library; Petition for Reconsideration of Albany Public Library; Request for Review of Augusta County School District; Request for Review of Bank Street School for Children; Request for Review of Bath School Department; Request for Review of Bethlehem Area Public Library; Request for Review of B.F. Jones Memorial Library Aliquippa District Library Center; Request for Review of Calumet City Public Library; Request for Review of Chippewa Hills School District; Request for Review of Chowchilla Union High School District; Request for Review and/or Waiver of Cumberland County School District; Request for Review of David Douglas School District 40; Request for Review of Hydaburg City School; Request for Review of Jackson-Hinds Library System; Request for Review of Johnson Elementary School; Request for Review of Kennewick School District; Request for Review of Madawaska School District; Request for Review of Maine School Administration District No. 9; Request for Waiver of Marvin L. Winans Academy of Performing Arts; Request for Review of Milton School District; Request for Review of Modesto City Schools; Request for Review of Nelson Public School District; Request for Review of Norborne R-VIII School District; Request for Review of Onondaga-Cortland Madison BOCES; Request for Review of Princeton R-5 School; Request for Review of Prosser School District No. 116; Request for Review of Rapides Parish Library; Request for Review of Richland School District; Request for Review of Sycamore Community Schools; Request for Review and/or Waiver of Waverly City Schools; Request for Review of Western Ohio Computer Organization; Request for Review of White Settlement Independent School District; Request for Review of Willits Charter School.

[26] 47 C.F.R. § 54.504(c).

[27] *Bishop Perry Order*, 21 FCC Rcd at 5321, para. 11.

[28] *Id.* at paras. 10-11.

advantage for them in the processing of their application.[29] As such, the applicants' mistakes, if not caught by USAC, could not have resulted in the applicants receiving more funding than they were entitled to. Moreover, the Commission found in the *Bishop Perry Order* that, under certain circumstances, rigid adherence to certain E-rate rules and requirements that are "procedural" in nature does not promote the goals of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.[30] Thus, we find that good cause exists to waive section 54.504(c) of our rules for these applicants.[31] Accordingly, we grant and remand these appeals to USAC for further processing consistent with this Order.

8. *Section 54.504(b) Waivers*. A number of Petitioners mistakenly signed their contracts or certified their FCC Forms 471 before the allowable contract date.[32] Other Petitioners filed an FCC Form 471 before the allowable contract date because there was only one service provider in the area that could provide the needed services and, therefore, Petitioners mistakenly believed they did not have to wait 28 days before submitting an FCC Form 471.[33] Other Petitioners did not indicate they were posting for a multi-year contract or a contract with a voluntary renewal provision when they originally posted the FCC Form 470.[34] Finally, we find that two Petitioners complied with the Commission's rules and grant their requests for review.[35]

9. Based on the facts and the circumstances of these specific cases, we find that good cause exists to waive section 54.504(b)(4) of the Commission's rules, which requires applicants to wait 28 days after posting an FCC Form 470 to USAC's website before entering into an agreement with a service provider for the requested services.[36] We find that Petitioners' errors related to the competitive bidding process do not warrant a complete rejection of their applications. We have examined the facts of each of

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[29] *Id.* at para. 11.

[30] *See id.* at paras. 2, 9.

[31] 47 C.F.R. § 54.504(c).

[32] *See* Request for Review of Atlantic County Library System; Request for Review of Butternut School District; Request for Review of Clark Township School District; Request for Waiver of Cooperative Educational Service Agency No. 7; Request for Review of Dallas County School District 1; Request for Review of Ewing Public Schools; Request for Review of Graham Independent School District; Request for Review of Islesboro School District; Request for Review of Los Angeles Unified School District; Request for Waiver of Mason Public School District; Request for Review of Miles City Unified School District; Request for Waiver of Nottingham School; Request for Review of Swampscott Public Schools.

[33] *See* Request for Waiver of Bedford Public Schools; Application for Review of Custer County School District; Request for Review of Manton JT Union Elementary School District; Request for Waiver of Philadelphia-Montgomery Christian Academy.

[34] *See* Request for Review of Anchorage School District; Request for Review of Brunswick County Schools; Request for Review of Columbia Union School District; Request for Review of Danville City School District; Request for Review of Helena Public School District No. 1; Request for Review of Howell Township Public Schools; Request for Review of Latch School Inc.; Request for Review of North Scott Community School District; Request for Review of The School District of Palm Beach County; Request for Review of United School District.

[35] In the Request for Review of Butternut School District (Butternut), we find that USAC erred in denying the school district funding for telecommunications services. The certification date of Butternut's FCC Form 471 was February 4, 2004, after the January 16, 2004 allowable contract date. In the Request for Review of United School District (United), we find that USAC also erred in denying United's funding. The FCC Form 470 filed by United School District for the services at issue indicated that the applicant was seeking a multi-year contract.

[36] *See* 47 C.F.R. § 54.504(b)(4).

these appeals and found that a waiver is warranted based on the circumstances presented and based on the facts that there is no evidence of waste, fraud or abuse. The goal of the competitive bidding process is to ensure that funding is not wasted because an applicant agrees to pay a higher price than is otherwise commercially available. We find no indication in the record that, as a result of these errors, applicants benefited from their mistakes or that any service provider was harmed. Specifically, there is no evidence in the record that other bids were not considered because these applicants did not fully comply with our competitive bidding rules. We find that the policy underlying these rules, therefore, was not compromised due to Petitioners' errors. In fact, those Petitioners with multi-year contracts complied with our competitive bidding rules when their requests for service were initially posted. Furthermore, we find that several of these Petitioners, while not waiting the full 28 days before entering into an agreement, only missed the 28-day deadline by a minimal number of days (*i.e.*, one to three days) and therefore their requests for discounted services were subject to competitive bidding for a meaningful period of time. While we emphasize that our competitive bidding rules are important to ensure a fair bidding process, we find that denying these Petitioners requests for funding would create undue hardship and prevent these potentially otherwise eligible schools and libraries from receiving E-rate funding. We therefore find that good cause exists to grant Petitioners a waiver of section 54.504(b)(4) of our rules.[37] Accordingly, we grant and remand these appeals to USAC for further processing consistent with this Order.[38]

10. Although we find that good cause exists to grant waivers of the Commission's rules for the Petitioners described above, we deny the appeal of Adel-Desoto-Minburn Community School District (Adel) for failing to adhere to the Commission's competitive bidding rules.[39] Adel said it did not file a new FCC Form 470 in Funding Year 2002 because the window for FCC Form 470s was closed.[40] Instead, Adel cited to an FCC Form 470 it had filed three years earlier. Commission rules require applicants to file a new FCC Form 470 for posting each year, with minor exceptions.[41] As a result, Adel did not file an FCC Form 470 in Funding Year 2002 to be posted on USAC's website for 28 days to solicit competitive bids for its services.[42] We find that the particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule.[43] Unlike the other Petitioners, Adel's violation of the 28-day rule was not a result of a clerical error or misunderstanding of our competitive bidding rules. Adel circumvented the competitive bidding process by not soliciting bids in the year for which it sought services. As a result, Adel's contract with its service provider was never subject to the competitive bidding process. We therefore deny Adel's petition for review.

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[37] 47 C.F.R. § 54.504(b)(4).

[38] During post-funding review, USAC determined that Atlantic County Library System (Atlantic), Los Angeles Unified School District (Los Angeles); and Swampscott School District (Swampscott) had agreements with their service providers prior to the allowable contract date, and that Kennewick School District (Kennewick) provided the wrong classification of service on its FCC Form 470, both violations of the Commission's competitive bidding rules. Los Angles, Swampscott and Kennewick were then subject to funding commitment adjustments by USAC which rescinded their funding commitments. In light of our decision, we direct USAC to discontinue recovery actions against Atlantic, Los Angeles, Swampscott and Kennewick.

[39] *See* Request for Review of Adel-DeSoto-Minburn Community School District.

[40] *Id.* at 1.

[41] There is a limited exception for existing, binding contracts. *See* 47 C.F.R. § 54.511(c).

[42] *Id.*

[43] *See Request for Review of the Decision of the Universal Service Administrator by Henrico County School District, Richmond, Virginia, Federal-State Joint Board on Universal Service*, File No. SLD-209204, CC Docket No. 96-45, Order, 17 FCC Rcd 706 (APD 2002) (denying a request for review where applicant relied upon a an FCC Form 470 posted in Funding Year 3 in support of its Funding Year 2 service requests).

11. We emphasize the limited nature of this decision. As discussed above, the competitive bidding rules ensure more efficient pricing for telecommunications and information services purchased by schools and libraries.[44] Many other E-rate applicants fully complied with these rules, and our action here does not eliminate the 28-day competitive bidding requirement. Applicants are not free to disregard the 28-day rule based on their own determination that only one service provider can provide the desired services—they must use the bidding process to determine whether this is the case. In addition, we note that, in the *Comprehensive Review NPRM*, we started a proceeding to address, among other things, potential streamlining of the application and competitive bidding process for the schools and libraries support mechanism.[45] In the interim, all applicants must comply with our current rules and procedures and continue to submit complete and accurate information to USAC as part of the application review process. Applicants who have questions about the competitive bidding process or who need technical support should contact USAC for clarification and assistance.

12. Further, beginning in Funding Year 2007, we require USAC to provide all E-rate applicants with an opportunity to cure ministerial and clerical errors on their FCC Forms 471 that make it appear that the applicants violated the 28-day rule.[46] Specifically, USAC shall inform applicants promptly in writing of any and all ministerial or clerical errors that are detected in their applications, along with a clear and specific explanation of how the applicant can remedy those errors. Applicants shall have 15 calendar days from the date of receipt of notice in writing by USAC to amend or refile their FCC Form 471.[47] The 15-day period is limited enough to ensure that funding decisions are not unreasonably delayed for E-rate applicants and should provide sufficient time for applicants to correct unintentional ministerial and clerical errors.[48] The opportunity for applicants to amend their filings to cure these types of errors will also improve the efficiency and effectiveness of the Fund and reduce the occurrence of circumstances justifying waivers such as those granted above. Because applicants who are eligible for funding will now receive funding where previously it was denied for ministerial or clerical errors, we will ensure that funding is distributed first to the applicants who are determined by our rules to be most in need of funding. As a result, universal service support will be received by schools in which it will have the greatest impact for the most students. Furthermore, the opportunity to amend the application will improve the efficiency of the schools and libraries program. If USAC helps applicants file correct and complete applications initially, USAC should be able to reduce the money it spends on administering the fund because fewer appeals will be filed protesting the denial of funding for these types of issues. Therefore, we believe this additional opportunity to cure inadvertent administrative, ministerial, and clerical errors on applications will improve the administration of fund.

13. Finally, we are 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 appeals addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits and investigations to determine compliance with the E-rate program rules and

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[44] *See supra* para. 6.

[45] *Comprehensive Review NPRM*, 20 FCC Rcd at 11325, para. 40.

[46] USAC shall also apply this 15-day opportunity to applications with these types of appeals currently before USAC. *See Bishop Perry Order*, 21 FCC Rcd at 5326, para. 23.

[47] Applicants will be presumed to have received notice five days after such notice is postmarked by USAC. USAC, however, shall continue to work beyond the 15 days with applicants attempting in good faith to amend their applications.

[48] We note that applicants will retain the ability to appeal decisions denying funding requests on the grounds discussed herein.

requirements. Because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or our rules, such proceedings can reveal instances in which universal service funds were improperly disbursed or in a manner inconsistent with the statute or our rules. To the extent we find that funds were not used properly, we will require USAC to recover such funds through its normal processes. We emphasize that we retain 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, or abuse of program funds occurred and that recovery is warranted. We remain 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

14. 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 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that 47. C.F.R. §§ 54.504(b)(4) and (c) ARE WAIVED, to the extent detailed herein.

15. 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 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that, with the exception of the Request for Review filed by Adel-Desoto-Minburn, Adel, Iowa, the Requests for Review and/or Requests for Waiver filed by the Petitioners as listed in the Appendix ARE GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this Order.

16. 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 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that the Request for Review filed by Adel-Desoto-Minburn, Adel, Iowa, IS DENIED.

17. 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 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that USAC SHALL COMPLETE its review of each remanded application listed in the Appendix and SHALL ISSUE an award or a denial based on a complete review and analysis no later than 120 calendar days from release of this Order.

18. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release, in accordance with section 1.103 of the Commission's rules, 47 C.F.R. § 1.103.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

## Appendix

### 28-Day Competitive Bidding Requirement Violations

| Applicant | Application Number | Funding Year | Type of Appeal |
|---|---|---|---|
| Aberdeen School District<br>Aberdeen, WA | 297249 | 2002 | Application for Review |
| Abilene Free Public Library<br>Abilene, KS | 475678 | 2005 | Request for Review |
| Adel-DeSoto-Minburn Community School District<br>Adel, IA | 312456 | 2002 | Request for Review |
| Anchorage School District<br>Anchorage, AK | 359931 | 2003 | Request for Review |
| Albany Public Library<br>Albany, NY | 264946, 264948, 264968, 264975 | 2001 | Petition for Reconsideration |
| Atlantic County Library System<br>Mays Landing, NJ | 210563 | 1999 | Request for Review |
| Augusta County School District<br>Fisherville, VA | 468711 | 2005 | Request for Review |
| Bank Street School for Children<br>New York, NY | 266720 | 2001 | Request for Review |
| Bath School Department<br>Bath, ME | 394135 | 2004 | Request for Review |
| Bedford Public Schools<br>Temperance, MI | 383870 | 2003 | Request for Waiver |
| Bethlehem Area Public Library<br>Bethlehem, PA | 476706 | 2005 | Request for Review |
| B.F. Jones Memorial Library<br>Aliquippa District Library Center<br>Aliquippa, PA | 462310 | 2005 | Request for Review |
| Brunswick County Schools<br>Brunswick, NC | 402426 | 2004 | Request for Review |

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|---|---|---|---|
| Butternut School District<br>Butternut, WI | 427879 | 2004 | Request for Review |
| Calumet City Public Library<br>Calumet City, IL | 397978 | 2004 | Request for Review |
| Chippewa Hills School District<br>Remus, MI | 458210 | 2005 | Request for Review |
| Chowchilla Union High School District<br>Chowchilla, CA | 286755 | 2002 | Request for Review |
| Clark Township School District<br>Clark, NJ | 329953 | 2002 | Request for Review |
| Columbia Union School District<br>Columbia, CA | 476940 | 2005 | Request for Review |
| Cooperative Educational Service Agency No. 7<br>Green Bay, WI | 434930, 431367 | 2004 | Request for Waiver |
| Cumberland County School District<br>Burkesville, KY | 422037 | 2004 | Request for Review and/or Waiver |
| Custer County School District<br>Westcliffe, CO | 408862 | 2004 | Application for Review |
| Dallas County School District 1<br>Buffalo, MO | 450565 | 2005 | Request for Review |
| Danville City School District<br>Danville, VA | 377368[49] | 2003 | Request for Review |
| David Douglas School District 40<br>Portland, OR | 488132 | 2005 | Request for Review |
| Ewing Public Schools<br>Ewing, NE | 389540 | 2004 | Request for Review |
| Graham Independent School District<br>Graham, TX | 231786 | 2001 | Request for Review |

[49] The relief granted to Danville City School District applies only to the 28-day competitive bidding violation in Funding Request Number 1044175.

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|---|---|---|---|
| Helena Public School District No. 1 Helena, MT | 329699 | 2002 | Request for Review |
| Howell Township Public Schools Howell, NJ | 355805 | 2003 | Request for Review |
| Hydaburg City School Hydaburg, AK | 445230 | 2005 | Request for Review |
| Islesboro School District Islesboro, ME | 267529 | 2001 | Request for Waiver |
| Jackson-Hinds Library System Jackson, MS | 364529 | 2003 | Request for Review |
| Johnson Elementary School Johnson, VT | 419684 | 2004 | Request for Review |
| Kennewick School District Kennewick, WA | 289973 | 2002 | Request for Review |
| Latch School Inc. Phoenix, AZ | 407909 | 2004 | Request for Review |
| Los Angeles Unified School District Los Angeles, CA | 154262, 153035, 153020 | 1999 | Request for Review |
| Madawaska School District Madawaska, ME | 471143 | 2005 | Request for Review |
| Maine School Administration District No. 9 New Sharon, ME | 292956 | 2002 | Request for Review |
| Manton JT Union Elementary School District Manton, CA | 472608 | 2005 | Request for Review |
| Marvin L. Winans Academy of Performing Arts Detroit, MI | 340426 | 2003 | Request for Waiver |
| Mason Public School District Mason, MI | 502936 | 2006 | Request for Waiver |
| Miles City Unified School District Miles City, MT | 409073 | 2004 | Request for Review |

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|---|---|---|---|
| Milton School District<br>Tilton, NH | 382043 | 2003 | Request for Review |
| Modesto City Schools<br>Modesto, CA | 447375 | 2005 | Request for Review |
| Nelson Public School District<br>Nelson, NV | 355307 | 2003 | Request for Review |
| Norborne R-VIII School District<br>Norborne, MO | 342549 | 2003 | Request for Review |
| North Scott Community School District<br>Eldridge, IA | 405789 | 2004 | Request for Review |
| Nottingham School<br>Nottingham, NH | 434790 | 2004 | Request for Waiver |
| Onondaga-Cortland Madison BOCES<br>Syracuse, NY | 296555 | 2002 | Request for Review |
| Philadelphia-Montgomery Christian Academy<br>Erdenheim, PA | 330476 | 2002 | Request for Waiver |
| Princeton R-5 School<br>Princeton, MO | 386867 | 2004 | Request for Review |
| Prosser School District No. 116<br>Prosser, WA | 469478 | 2005 | Request for Review |
| Rapides Parish Library<br>Alexandria, LA | 488334 | 2005 | Request for Review |
| Reform Public Library<br>Reform, AL | 361356 | 2003 | Request for Waiver |
| Richland School District<br>Richland, WA | 373134 | 2002 | Request for Review |
| Swampscott Public Schools<br>Swampscott, MA | 325959 | 2002 | Request for Review |
| Sycamore Community Schools<br>Cincinnati, OH | 461129 | 2005 | Request for Review |

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|---|---|---|---|
| The School District of Palm Beach County<br>West Palm Beach, FL | 328065 | 2002 | Request for Review and/or Request for Waiver |
| United School District<br>Armagh, PA | 472451 | 2005 | Request for Review |
| Waverly City Schools<br>Waverly, OH | 444786 | 2005 | Request for Review and/or Waiver |
| Western Ohio Computer Organization<br>Sidney, OH | 350140 | 2003 | Request for Review |
| White Settlement Independent School District<br>White Settlement, TX | 423543 | 2004 | Request for Review |
| Willits Charter School<br>Willits, CA | 440944 | 2005 | Request for Review |