

BECKER, PAULSON, HOERNER & THOMPSON, P.C.

SEP 29 2009

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* ILLINOIS AND MISSOURI

SENT VIA: Certified U.S. Mail # 7008 1140 0003 9248 4261

September 21, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 02-6
REQUEST FOR REVIEW OR, ALTERNATIVELY, REQUEST FOR WAIVER
Concerning February 26, 2009 Universal Service Administrative Company
Schools & Library Division (SLD) Administrator's Decision on Appeal denying
Appeal of January 19, 2005 Notification of Commitment Adjustment Letter
Funding Request Number: 440968
Billed Entity Name: East St. Louis School District No. 189
Billed Entity Number: 136412
Applicant's Form Identifier: ESTL-F471-YR3
FCC Registration Number: 0012736567
Form 471 Application Number: 200698
Funding Year: 2000 (7/1/2000 – 6/30/2001)
Service Provider Name: Ameritech Advanced Data Services, Inc.
Service Provider Identification Number (SPIN): 143005375
Services Ordered: Internal Connections
Contract Number: ESTL-ERATE-AADS-1
Site Identifier: 136412
Original Funding Commitment: \$4,329,838.41
Adjusted Funding Commitment Claimed: \$4,329,838.41
Funds Disbursed to Date: \$4,315,258.08
Funds Sought to be Recovered from Applicant: \$4,315,258.08

Secretary Dortch:

Our law firm represents East St. Louis School District No. 189 (District). I write to supplement the District's Appeal pursuant to 47 CFR §54.719 and §54.720 in the above-referenced matter, mailed on March 27, 2009 and received by the FCC on April 3, 2009. (See Exhibit A attached). Specifically, the District cites as authority for its alternative position the October 30, 2008 FCC Order, *In the Matter of Request for Waiver of the Decision of the Universal Service Administrator by Berberston City School District Berberston, Ohio, et al.*, CC

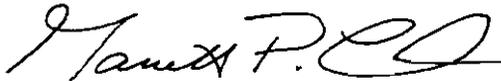
Docket No 02-6, DA 08-2382, wherein the FCC granted waivers under strikingly similar circumstances - to a school district that "certified its FCC Form 471 three days before the contract was awarded to its service provider," and to another school district that "submitted its FCC Form 471 the evening before signing its contract." (See Exhibit B attached).

Likewise, in this case, SLD's conclusion, albeit erroneous, only involves a one-day discrepancy and there is no allegation of misappropriation of funds/equipment. Indeed, all of the funds expended and equipment purchased are accounted for by the District. Therefore, as it did in the case cited above, the FCC should grant a limited waiver of 54.504(c) of the FCC Rules.

Accordingly, for the foregoing reasons and those stated in its March 27, 2009 Appeal, East St. Louis School District No. 189 respectfully requests that the FCC grant its appeal, reverse the SLD Administrator's Decision on Appeal denying the District's appeal to SLD of Notification of Commitment Adjustment Letter from SLD for Funding Request Number 440968 (as more fully described above), and order such other relief as FCC deems just and proper.

Thank you for your attention to this matter. If you have any questions or comments, please contact me at your convenience at the contact information below.

BECKER, PAULSON, HOERNER & THOMPSON, P.C.

By: 
Garrett P. Hoerner

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enclosures: Exhibits A and B

cc: Universal Service Administrative Company
Schools & Library Division Administrator (w/ enclosures via U.S. Mail only)
Dr. Theresa E. Saunders (w/o enclosures via U.S. Mail only)
Mr. Lee Triefenbach (w/ enclosures via U.S. Mail only)
Mr. Lonzo Greenwood (w/o enclosures via U.S. Mail only)
Mr. Pearson C.J. Bush (w/o enclosures via U.S. Mail only)

EXHIBIT A

BECKER, PAULSON, HOERNER & THOMPSON, P.C.

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* ILLINOIS AND MISSOURI

SENT VIA: Certified U.S. Mail #7007 3020 0000 7061 8928

March 27, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
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**Re: CC Docket No. 02-6
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Funds Disbursed to Date: \$4,315,258.08
Funds Sought to be Recovered from Applicant: \$4,315,258.08**

Secretary Dortch:

Our law firm represents East St. Louis School District No. 189 (District). I write at the direction of the District Board of Education pursuant to its Resolution No. 031809C authorizing and instructing me to seek appeal in the above-referenced matter. (See Attachment 1). Accordingly, the District hereby appeals the February 26, 2009 Universal Service Administrative Company Schools & Library Division (SLD) Administrator's Decision on Appeal denying the

District's appeal to SLD of Notification of Commitment Adjustment Letter from SLD for Funding Request Number 440968 (as more fully described above).

Specifically, through the Funding Commitment Adjustment Report attached to the January 19, 2005 Notification of Commitment Adjustment, the SLD originally concluded that "[s]ince the applicant was unable to demonstrate that they had a legally binding agreement or contract in place at the time of submission of the Form 471, the commitment has been rescinded in full and the SLD will seek recovery of any disbursed funds." (See Attachment 2, Exhibit A). On appeal, the SLD Administrator acknowledged that "a legally binding agreement or contract between the district and service providers was effective January 18, 2000", but nevertheless concluded that the "district did not follow the Program's competitive bidding rules" because the agreement or contract was effective "after the submission of the Form 471" that was "signed and postmarked on January 17, 2000." (See Attachment 1, Exhibit A). However, that conclusion remains erroneous and/or based upon an incorrect legal assumption by the SLD Internal Audit Division and the SLD Administrator in that it belies the documentation produced by the District as well as applicable law.

Initially, SLD's determination "that the Form 471 certification was signed and postmarked on January 17, 2000" is incorrect in that it is impossible. Indeed, January 17, 2000 was Martin Luther King, Jr. Day, a national holiday during which both the District administrative offices and the U.S. Post Offices were closed. Actually, District Director of Technology James Daniels sent the Form 471 to SLD via Federal Express on January 18, 2000 (after all necessary approvals) for delivery to and filing with SLD on the January 19, 2000 deadline. (See Attachment 2, Exhibit C).

In its April 30, 2004 *Executive Summary – Schools and Libraries Beneficiary Audit Report – East St. Louis School District (Audit No. SL2003BE098)* directed to SLD Vice-President George McDonald, the SLD Internal Audit Division contends that "[t]he results of the audit disclosed apparent non-compliance with Schools and Libraries Support Mechanism regulations and/or procedures in" that "[t]he applicant did not have a signed contract in place prior to the submission of the FCC Form 471" for Funding Year 2000. (See Attachment 2, Exhibit B). However, as noted in the Funding Commitment Adjustment Report attached to the January 19, 2005 Notification of Commitment Adjustment, "[p]rior to Funding Year 2004, the Commission interpreted this rule to require a legally binding agreement at the time the Form 471 was submitted, but not necessarily a signed contract." (See Attachment 2, Exhibit A). In this instance, the District had such a legally binding agreement or contract prior to the January 19, 2000 filing of the Form 471 for Funding Year 2000. Indeed, in response to the District's Convergence Network Request for Proposal (see Attachment 2, Exhibit D), the aforementioned service provider submitted a fully executed bid to the District on or about December 27, 1999 (see Attachment 2, Exhibit E), which was approved by the District Board of Education Finance Committee on January 13, 2000 (see Attachment 2, Exhibit F), pre-approved by the District Financial Oversight Panel contingent on District Board of Education approval on January 14, 2000 (see Attachment 2, Exhibit G), and approved by the full District Board of Education on January 18, 2000 (see Attachment 2, Exhibit H). Under Illinois law, such acceptance by public authorities of a bid submitted pursuant to a proposal or advertisement for bids for a contract for public work created a legally binding and enforceable contract or agreement, specifically a legally binding agreement or contract between the District and the above-referenced service provider effective January 18, 2000. *Universal Printing Company v. State of Illinois*, 43 Ill.Ct.Cl.

165 (1990), citing *Harvey v. United States*, 105 U.S. 671 (1882); see also *Joseph J. Duffy Co. v. State of Illinois*, 34 Ill.Ct.Cl. 69 (1981), *People ex rel. Department of Public Works and Buildings v. South East National Bank of Chicago*, 131 Ill. App. 2d, 278, 266 N.E.2d 778 (1st Dist. 1971), *Mandel Brothers, Inc. v. State of Illinois*, 10 Ill.Ct.Cl. 448 (1939), *West Chicago Park Commissioners v. Carmody*, 139 Ill. App. 635 (1908). Because the January 18, 2000 acceptance of that bid preceded the January 19, 2000 filing of Form 471 for Funding Year 2000, the District clearly had a legally binding agreement or contract in place at the time of submission of the Form 471. Accordingly, the SLD should not rescind the commitment and should not seek recovery of any disbursed funds.

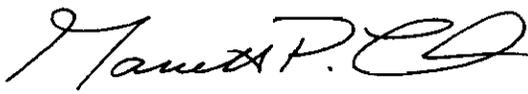
Alternatively, even if such a violation of program rules was committed for argument's sake, the Notification of Commitment Adjustment Letter erroneously seeks recovery of funds disbursed from the District rather than the aforementioned service provider. Indeed, SLD Commitment Adjustment rules provide that "if funds need to be recovered, the SLD will seek recovery from the service provider." The fact remains that the District's Form 471 filed on January 19, 2000 identifies the aforementioned service provider and its properly-filed invoices were paid directly to the aforementioned service provider by SLD. (See Attachment 2, Exhibit I). Accordingly, SLD should seek recovery of any disbursed funds from the aforementioned service provider, not the District.

Further alternatively, even if such a violation of program rules was committed for argument's sake, the District hereby requests that the FCC waive the applicable rule because SLD's conclusion, albeit erroneous, only involves a one-day discrepancy and there is no allegation of misappropriation of funds/equipment. Indeed, all of the funds expended and equipment purchased are accounted for by the District.

For one or more of the foregoing reasons, East St. Louis School District No. 189 respectfully requests that the FCC grant its appeal, reverse the SLD Administrator's Decision on Appeal denying the District's appeal to SLD of Notification of Commitment Adjustment Letter from SLD for Funding Request Number 440968 (as more fully described above), and order such other relief as FCC deems just and proper.

If you have any questions or comments, please contact me at your convenience at the contact information below.

BECKER, PAULSON, HOERNER & THOMPSON, P.C.

By: 
Garrett P. Hoerner

Attorney for East St. Louis School District No. 189
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fax: (618) 235-8558
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enclosures: Attachment 1
Attachment 2, Exhibits A through I

cc: Dr. Theresa E. Saunders (w/o enclosures via U.S. Mail only)
Mr. Lee Triefenbach (w/ enclosures via U.S. Mail only)
Mr. Lonzo Greenwood (w/o enclosures via U.S. Mail only)
Mr. Pearson C.J. Bush (w/o enclosures via U.S. Mail only)

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1. Article Addressed to:

Marlene H. Dortch, Secretary
 Federal Communications Comm.
 Office of the Secretary
 445 12th Street, SW
 Washington, DC 20554

2. Article Number

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EXHIBIT B

2008 WL 4758811 (F.C.C.)

Federal Communications Commission (F.C.C.)

Order

*1 IN THE MATTER OF REQUEST FOR WAIVER OF THE DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR BY BARBERTON CITY SCHOOL DISTRICT BARBERTON, OHIO, ET AL.

File Nos.

SLD-400938, et al.

SCHOOLS AND LIBRARIES UNIVERSAL SERVICE SUPPORT MECHANISM

CC Docket No. 02-6

DA 08-2382

Adopted: October 30, 2008

Released: October 30, 2008

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

I. INTRODUCTION

1. In this order, we grant requests by 18 schools and libraries (collectively, Petitioners) for review of decisions by the Universal Service Administrative Company (USAC) denying applications or rescinding funding for discounted services under the schools and libraries universal service mechanism (also known as the E-rate program).^[FN1] USAC denied the Petitioners' applications for Funding Years 2004, 2005, 2006, and 2007 on the grounds that they violated the Commission's requirement that a legally binding agreement be in place when the FCC Form 471 application is submitted.^[FN2] We also grant one appeal from an applicant that had its funding commitment reduced on the grounds that an existing contract expired without the applicant posting a new FCC Form 470 for services to be provided for the remainder of the funding year.^[FN3] Upon review of these records, we find that the issues raised in seven appeals were recently addressed by the Commission in the Adams County Order.^[FN4] We further find that the appeals of 11 Petitioners should be granted on the merits. We therefore remand the underlying applications 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 90 days from the release of this order.^[FN5]

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, and internal connections.^[FN6] The Commission's rules provide that an eligible school, library, or consortium must seek competitive bids for all services eligible for support.^[FN7] In accordance with our rules, an applicant must file with USAC an FCC Form 470 requesting services.^[FN8] After the FCC Form 470 is posted to USAC's web site, the applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471.^[FN9] Section 54.504(c) of the Commission's rules also states that the FCC Form 471 requesting support for the services ordered by the applicant shall be submitted "upon signing a contract for eligible services."^[FN10] Specifically, the instructions for FCC Form 471 state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered on the FCC Form 471.^[FN11]

*2 3. To ensure that applicants are in compliance with our competitive bidding rules, applicants must file a new FCC Form 470 when the existing contract ends.^[FN12] When contracts expire at the end of the original term, the applicant must post a new FCC Form 470 for services provided beyond the contract expiration date.^[FN13] An applicant does not need to post a new FCC Form 470 each year when it has a multi-year contract or when exercising a contract's voluntary renewal provision if the applicant indicated that it was seeking a contract with those terms when it originally filed the FCC Form 470.^[FN14]

4. Eighteen Petitioners have requested a waiver of our rules or a review of USAC's decision to deny or rescind funding because they did not have a legally binding agreement in place when their FCC Form 471 application was submitted or because their contract expired before the end of the funding year.^[FN15]

III. DISCUSSION

5. We grant relief to 18 Petitioners seeking a reversal of USAC's decisions to deny or rescind their requests for universal service funding under the E-rate program. For seven Petitioners, we grant a limited waiver of section 54.504(c) of our rules and remand the underlying applications associated with these appeals to USAC for further action consistent with this order.^[FN16] We grant 11 Petitioners' appeals on the merits because these Petitioners demonstrated that they had in place contracts that met the Commission's rules and procedures when submitting their FCC Forms 471. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.^[FN17] 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 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 90 days from the release of this order.

6. Appeals Granted by Waiver. Based on the facts and circumstances of these specific cases, we find that good cause exists to grant a limited waiver of section 54.504(c) of the Commission's rules for six Petitioners: Barberton; Coffee County School District; Kings River Elementary School District; Manatee County School District; Midwest City-Del City Independent School District; and Urban Day School. ^[FN18] These Petitioners claim that their employees erred or they misunderstood the rules. ^[FN19] Specifically, Barberton certified its FCC Form 471 three days before the contract was awarded to its service provider. ^[FN20] Coffee County School District submitted its FCC Form 471 the evening before signing its contract, mistakenly believing that USAC would consider the form submitted the next business day. ^[FN21] Kings River Elementary School District signed its contract 10 days after submitting its FCC Form 471, but had written a signed and dated acceptance letter before the FCC Form 471 was certified. ^[FN22] Manatee County School District had a valid Funding Year 2005 multi-year contract in place for the relevant funding period, but mistakenly reposted for the same services in subsequent years and executed new contracts each year, including one contract that was not signed by the applicant when it filed its Funding Year 2006 FCC Form 471. ^[FN23] Midwest City-Del City Independent School District entered into a five-year agreement, renewable on an annual basis, in Funding Year 2005 with its service provider and inadvertently signed a contract renewal three days after certifying its FCC Form 471 in Funding Year 2007. ^[FN24] Urban Day School's service provider signature date and the effective date of the agreement were both February 7, 2007, before the FCC Form 471 was certified on February 8, 2007. ^[FN25] Urban Day School, however, did not sign the contract until five days after the FCC Form 471 was certified. ^[FN26]

*3 7. As the Commission found in the *Adams County Order*, these mistakes do not warrant the complete rejection of these Petitioners' applications for E-rate funding. ^[FN27] Although the record demonstrates that Petitioners' contracts had minor errors or were not signed and dated by both parties before the Petitioners filed their FCC Forms 471, they all had some form of an agreement in place during the relevant funding year prior to the filing of their applications. ^[FN28] Importantly, these appeals do not involve a misuse of funds. The Commission recently 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. ^[FN29]

8. We also find that good cause exists to grant a waiver for Middle Georgia Wilderness Institute, which was denied funding on a month-to-month basis after the contract with its service provider expired several months before the end of the E-rate funding year. ^[FN30] Middle Georgia Wilderness Institute entered into a multi-

year contract in 2005 that expired on February 3, 2008.^[FN31] The school continued to receive services on a month-to-month basis from the same service provider after the contract ended, but was denied funding by USAC.^[FN32] Consistent with the Adams County Order, we waive USAC's requirement that the contract expiration date coincide with the end of the funding year.^[FN33]

9. As the Commission found in the Adams County Order, these mistakes do not warrant the complete rejection of these Petitioners' applications for E-rate funding.^[FN34] Although the record demonstrates that Petitioners' contracts had minor errors or were not signed and dated by both parties before the Petitioners filed their FCC Forms 471, they all had some form of an agreement in place during the relevant funding year prior to the filing of their applications.^[FN35] Importantly, these appeals do not involve a misuse of funds. The Commission recently 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.^[FN36] We find that, for these applicants, denying or rescinding their requests for funding would create undue hardship and prevent these otherwise eligible schools and libraries from receiving E-rate funding. Finally, granting these appeals should have minimal effect on the Universal Service Fund (USF or the Fund).^[FN37] Accordingly, we find that good cause exists to grant Petitioners a limited waiver of our rules, and remand these matters to USAC for further processing consistent with our decision.^[FN38]

*4 10. Appeals Granted on the Merits. We also grant 11 appeals because we find that the applicants were either in compliance with the Commission's rules or USAC's guidance on contracts.^[FN39] Consistent with precedent, we grant one request for review of a decision in which USAC denied funding solely because the execution date of the contract did not accompany the signature lines of both the applicant and the service provider.^[FN40] Consistent with USAC's current guidance to applicants, we grant four appeals where the Petitioners had contracts signed by the applicant but not the service provider prior to the submission of their FCC Forms 471, or the Petitioner listed the effective date as the date the contract was signed.^[FN41] Finally, consistent with our obligation to conduct a *de novo* review of appeals of decisions made by USAC,^[FN42] we grant seven appeals on the merits because the Petitioners submitted evidence to the Commission demonstrating that each Petitioner had a valid, signed contract in place at the time it submitted its FCC Forms 471 to USAC.^[FN43]

11. We emphasize the limited nature of this decision. The Commission's competitive bidding rules serve as a central tenet of the E-rate program. They ensure more efficient pricing for telecommunications and information services purchased by schools and libraries and help deter waste, fraud and abuse.^[FN44] Although we grant the subject appeals before us, our action here does not eliminate the rule that applicants have a signed contract in place when submitting an FCC Form 471.

In addition, we continue to require E-rate applicants to submit complete and accurate contract information to USAC in a timely fashion as part of the application review process.

12. 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 Requests for Review or Waiver 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 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 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

*5 13. ACCORDINGLY, IT IS ORDERED that, 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 pursuant to authority delegated in 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 and 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.

14. IT IS FURTHER ORDERED that, 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 pursuant to authority delegated in 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), section 54.504(c) of the Commission's rules, 47 C.F.R. § 54.504(c), IS WAIVED to the limited extent described herein.

15. IT IS FURTHER ORDERED that, 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 pursuant to authority delegated in 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), section 54.504(a) of the Commission's rules, 47 C.F.R. § 54.504(a), IS WAIVED to the limited extent described herein.

*6 16. IT IS FURTHER ORDERED that, 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 pursuant to authority delegated in 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), section 54.720 of the Commission's rules, 47 C.F.R. § 54.720, IS WAIVED to the limited extent described herein.

17. IT IS FURTHER ORDERED that, 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 pursuant to the authority delegated in 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), USAC SHALL COMPLETE its review of the underlying applications as listed in the Appendix and ISSUE an award or a denial based on a complete review and analysis no later than 90 days from release of this order.

18. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee

*7 Acting Chief

Telecommunications Access Policy Division

Wireline Competition Bureau

FN1. See Appendix for a complete list of 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).

FN2. One applicant, Barberton City School District (Barberton), was denied funding because USAC found that the contract expiration date on its FCC Form 471 changed from the previous year's FCC Form 471. While the changed expiration date was the stated reason for the denial, USAC also found, during its Program Integrity Assurance (PIA) review, that Barberton entered into a contract after the FCC Form 471 certification postmark date. See *infra* para. 5. Funding Years run from July through June, e.g. Funding Year 2004 ran from July 1, 2004 to June 30, 2005.

FN3. Request for Review of Middle Georgia Wilderness Institute.

FN4. See *Request for Waiver of the Decision of the Universal Service Administrator by Adams County School District 14, Commerce City, CO, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-425151, 425211, 425303, 425352, 426285, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 6019 (2007) (*Adams County Order*) (finding good cause to grant a limited waiver of the Commission's contract rules and procedures for several applicants).

FN5. 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.

FN6. 47 C.F.R. §§ 54.502, 54.503.

FN7. 47 C.F.R. § 54.504. There is one limited exception for existing, binding contracts signed on or before July 10, 1997. See 47 C.F.R. § 54.511(c).

FN8. 47 C.F.R. § 54.504(b); see also *Schools and Libraries Universal Service, Description of Services Requested and Certification Form*, OMB 3060-0806 (October 2004) (FCC Form 470).

FN9. 47 C.F.R. § 54.504(b)(4); see also *Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (November 2004) (FCC Form 471).

FN10. 47 C.F.R. § 54.504(c); see also *Request for Review of Waldwick School District, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket No. 02-6, Order, 18 FCC Rcd 22994, 22995, para. 3 (Wireline Comp. Bur. 2003) (*Waldwick Order*); *Request for Review of St. Joseph High School, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket Nos. 96-45, 97-21, Order, 17 FCC Rcd 22499, 22500-01, para. 4 (Wireline Comp. Bur. 2002) (*St. Joseph Order*).

FN11. *Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 at 19 (November 2001) (FCC Form 471 Instructions). There are two exceptions to this rule: non-contracted tariffed services and certain month-to-month services. If the services are month-to-month, applicants can instead submit copies of standard monthly bills as proof that they have binding, legal arrangements with service providers. *Id.*

FN12. See *Request for Review of New Albany-Floyd County Consolidated School Corporation, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-287615, CC Docket No. 02-6, Order, 20 FCC Rcd 8159, 8160-61, para. 5 (Wireline Comp. Bur. 2005) (*New Albany-Floyd County Order*).

FN13. *Id.*

FN14. USAC website, Contract Guidance, <http://www.sl.universalservice.org/reference/contract%5Fguidance.asp> (retrieved Aug. 11, 2008).

FN15. See 47 C.F.R. § 54.504(c). Although there is no specific provision in the Commission's rules that requires applicants to file a new Form 470 for services that extend beyond the contract expiration date, this principle is implicit in the program requirement that all services funded by the schools and libraries program

be competitively bid. See 47 C.F.R. 54.504(a).

FN16. 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. *North-east Cellular*, 897 F.2d at 1166.

FN17. 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.

FN18. 47 C.F.R. § 54.504(c).

FN19. See Request for Review by Barberton City School District; Request for Review of Coffee County School District; Request for Review of Kings River Elementary School District; Request for Review of Manatee County School District; Request for Review of Midwest City-Del City Independent School District; Request for Review of Urban Day School.

FN20. See FCC Form 471, Barberton City School District (certified Jan. 30, 2004) (Barberton FCC Form 471).

FN21. See Request for Review of Coffee County School District at 2.

FN22. See FCC Form 471, Kings River Elementary School District (certified Feb. 6, 2007) (Kings River FCC Form 471); Request for Review by Kings River Elementary School District at 1-3.

FN23. See Request for Review of Manatee County School District at 2-3.

FN24. Request for Review of Midwest City-Del City Independent School District at 2.

FN25. See FCC Form 471, Urban Day School (certified Feb. 8, 2007) (Urban Day School FCC Form 471); Request for Review of Urban Day School at Attachment 1 (IT People Unlimited, Inc. Contract).

FN26. See Request for Review of Urban Day School at Attachment 1 (IT People Unlimited, Inc. Contract).

FN27. *Adams County*, 22 FCC Rcd at 6023-24, para. 10.

FN28. We also grant Barberton's appeal with respect to being denied funding because its contract expiration date changed from the previous year's FCC Form 471. See *supra* n.2. Barberton notes that USAC was under the mistaken impression that Barberton had a multi-year contract when, in fact, Barberton entered into two separate one-year contracts that each had differing expiration dates. Request for Review by Barberton City School District at 3. Upon review of the record, we find that Barberton had two separate contracts that complied with E-rate program rules for two separate funding years. Therefore, since Barberton did not have a multi-year contract, we find it is acceptable that Barberton's FCC Forms 471 had different expiration dates for Funding Years 2003 and 2004.

FN29. 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, 5316-17, 5319-20, paras. 2, 9 (2006) (*Bishop Perry Order*). Moreover, as noted in the *Bishop Perry Order*, many applicants contend that the application process is complicated and time-consuming, and the Commission has started a proceeding to address, among other things, modifying the application and competitive bidding process for the schools and libraries support mechanism. 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, 11325, para. 40 (2005) (*Comprehensive Review NPRM*); *Bishop Perry Order*, 21 FCC Rcd at 5319-20, para. 9.

FN30. Request for Review of Middle Georgia Wilderness Institute at 1-2.

FN31. *Id.* at 1.

FN32. *Id.*

FN33. *Adams County Order*, 22 FCC Rcd at 6022, para. 8.

FN34. *Id.* at 6023-24, para. 10.

FN35. We also grant Barberton's appeal with respect to being denied funding because its contract expiration date changed from the previous year's FCC Form 471. See *supra* n.2. Barberton notes that USAC was under the mistaken impression that Barberton had a multi-year contract when, in fact, Barberton entered into two separate one-year contracts that each had differing expiration dates. Request for Review by Barberton City School District at 3. Upon review of the record, we find that Barberton had two separate contracts that complied with E-rate program rules

for two separate funding years. Therefore, since Barberton did not have a multi-year contract, we find it is acceptable that Barberton's FCC Forms 471 had different expiration dates for Funding Years 2003 and 2004.

FN36. 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, 5316-17, 5319-20, paras. 2, 9 (2006) (*Bishop Perry Order*). Moreover, as noted in the *Bishop Perry Order*, many applicants contend that the application process is complicated and time-consuming, and the Commission has started a proceeding to address, among other things, modifying the application and competitive bidding process for the schools and libraries support mechanism. 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, 11325, para. 40 (2005) (*Comprehensive Review NPRM*); *Bishop Perry Order*, 21 FCC Rcd at 5319-20, para. 9.

FN37. We estimate that the appeals granted in this order involve applications for approximately \$3.35 million in funding for Funding Years 2004-2007. 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 Fourth Quarter 2008* (Aug. 1, 2008). Thus, we determine that the action we take today should have minimal impact on the Universal Service Fund as a whole.

FN38. In the case of one Petitioner, Clarksburg-Harrison Public Library (Clarksburg-Harrison), we also find good cause to waive section 54.720 of the Commission's rules that establishes deadlines for affected parties to seek review of decisions issued by USAC. 47 C.F.R. § 54.720. Clarksburg-Harrison indicates that it was given different advice by the Commission and USAC regarding the proper procedure for filing its appeal and, by the time it determined the proper course of action, its appeal was late. Request for Review by Clarksburg-Harrison Public Library at 1. Specifically, Clarksburg-Harrison said it contacted USAC by phone and was told to file its appeal with the Commission. *Id.* The Commission subsequently told Clarksburg-Harrison to file with USAC "to obtain a case number." *Id.* When the library eventually filed its appeal with USAC, it was 16 days late. *Id.* We find that the conflicting advice given to Clarksburg-Harrison hampered its ability to file in a timely manner. Had USAC or the Commission originally accepted Clarksburg-Harrison's appeal, it would have been timely filed. Furthermore, Clarksburg-Harrison was only a few days late in filing its appeal and has demonstrated that it was making a good-faith effort to comply with the E-rate program's procedures. Therefore, consistent with precedent, we find good cause to waive the filing dead-

line from section 54.720 of the Commission's rules in this instance. See, e.g., *Request for Review by Benavides Independent School District*, File No. SLD-348268, CC Docket No. 02-6, Order, 21 FCC Rcd 12910 (Wireline Comp. Bur. 2006) (granting a waiver request when applicant did not receive notice of the requirements for filing an appeal in accordance with Commission rules).

FN39. See *supra* para. 2; 47 C.F.R. § 54.504(c); USAC website, Contract Guidance, <http://www.usac.org/sl/applicants/step04/contract-guidance.aspx> (retrieved Aug. 11, 2008).

FN40. See *Request for Review of Merkaz Bnos High School* (USAC denied funding because the effective date of the contract was separate from the signature lines); see *Adams County Order*, 22 FCC Rcd at 6024, para. 11; *Request for Review of a Decision of the Universal Service Administrator by Gayville-Volin School District 63-1, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-471545, CC Docket No. 02-6, Order, 21 FCC Rcd 9274 (Wireline Comp. Bur. 2006) (granting the request for review where USAC denied funding solely because the agreement between Gayville-Volin and its service provider was not dated by both parties); *Request for Review of Richmond County School District, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-451211, 452514, 464649, CC Docket No. 02-6, Order, 21 FCC Rcd 6570 (Wireline Comp. Bur. 2006) (granting Richmond's appeal where USAC denied funding solely because the execution date of the contract did not accompany the signature lines of both the applicant and the service provider).

FN41. See *Request for Review of Jerome Joint School District* (demonstrating that it had valid contracts even though one contract did not contain the signature of the service provider and the second contract had the effective date of the contract instead of the date the parties signed); *Request for Review of Ottawa Elementary School* (noting that the school timely signed the three contracts in question but its service providers did not sign the contracts until a few days after the FCC Form 471 was submitted); *Request for Review of Sophia Academy* (noting that it provided USAC with a contract that was unsigned by its service provider but providing the correct, signed contract on appeal with the Commission); *Request for Review of Townshend Elementary School* (noting that the service provider had not signed and dated the contract when the FCC Form 471 was submitted but later provided USAC with a contract that was signed and dated by both parties).

FN42. See 47 C.F.R. § 54.723.

FN43. See *Request for Review of Cascade Union Elementary School District* (noting that, although the wrong documentation was provided for Program Integrity Assurance (PIA) review, a valid contract was in place when the FCC Form 471 was submitted); *Request for Review of Clarksburg-Harrison Public Library* (providing the valid contract on appeal that was dated before submission of FCC Form 471); *Request for Review and/or Waiver of Cleburne Independent School District* (noting that it

had a "ratified" contract, which is considered a valid contract under its state's procurement laws, before signing the actual contract); Request for Review of Durham Public School District (following North Carolina procurement law that requires only an agreement in writing, not a formal contract); Request for Review of Mosdos Chasidei Square (demonstrating that it had a valid contract when its FCC Form 471 was filed by noting the date at the top of the contract despite a conflicting date next to the signature that was written in several months later); Request for Review of St. Fidelis School (noting that it provided USAC with an unsigned, electronic copy of the contract but providing the correct, signed contract on appeal with the Commission).

FN44. See Adams County Order, 22 FCC Rcd at 6022, para. 8.

APPENDIX

Applicant	Application Number	Funding Year	Date Appeal Filed With FCC
Barberton City School District Barberton, OH	400938	2004	March 7, 2005
Cascade Union Elementary School District Redding, CA	535567	2006	Feb. 12, 2007
Clarksburg-Harrison Public Library Clarksburg, WV	456281	2005	Feb. 9, 2006
Cleburne Independent School District Cleburne, TX	449621	2005	May 5, 2006
Coffee County School District Douglas, GA 31533	526781, 531378	2006	May 7, 2007
Durham Public School District Durham, NC	533758	2006	Jan. 29, 2007

Jerome Joint School District #261	493107	2006	Feb. 2, 2007
Jerome, ID			
Kings River Elementary School District	578414	2007	Feb. 6, 2008
Kingsburg, CA			
Manatee County School District	508569	2006	May 3, 2007
Bradenton, FL			
Merkaz Bnos High School	520594	2006	March 15, 2007
Brooklyn, NY			
Middle Georgia Wilderness Institute	573749	2007	Apr. 7, 2008
Cochran, GA			
Midwest City-Del City Independent School District	559836	2007	Apr. 9, 2008
Midwest City, OK			
Mosdos Chasidei Square	535040	2006	Jan. 10, 2007
Brooklyn, NY			
Ottawa Elementary School	506423	2006	Dec. 20, 2006
Ottawa, IL			
Sophia Academy	502804	2006	Jan. 23, 2007
Providence, RI			
St. Fidelis School	518553	2006	Dec. 26, 2006
College Point, NY			
Townshend Elementary School	494678	2006	March 9, 2007

Townshend, VT

Urban Day School	585262, 585437, 585769	2007	Jan. 29, 2008
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Milwaukee, WI

2008 WL 4758811 (F.C.C.)

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