

Request for Waiver: Chama Valley Independent School District
BEN 143285 CC Docket No. 02-6 CC Docket 96-45

Request for Waiver

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

Re: Name: **Chama Valley Independent School District**
BEN: **143285**
Funding Year: **2012**
Applications: **869373**
FRNs: **2370714, 2370725, 2370743, 2370771,**
2370791, 2370808, 2370818, 2370830,
2370844, 2370855, 2370907
USAC FCDL: **12/26/2012**

February 20, 2013

Dear Sirs.

This is a letter for a request of a Waiver regarding the above captioned USAC Notification regarding the following FRNs:

Application #: 869373. FRNs 2370714, 2370725, 2370743, 2370771, 2370791, 2370808, 2370818, 2370830, 2370844, 2370855, 2370907

Applicant has not provided sufficient documentation needed to determine the eligibility of the following item(s): no proof of Item 21 submission before window close of May 9, 2012.

The school administrator misplaced the reminder for the submission of the attachment 21. The FCC can rely on precedent that due to a technical error where all aspects of program rules are adhered to, it would be in the best public interest not to extoll and undo hardship on the very recipients upon which the program is intended.

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The FCC has already ruled in:

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

| | | |
|---|---|-------------------------------------|
| In the Matter of |) | |
| |) | |
| Request for Review of the |) | |
| Decision of the |) | |
| Universal Service Administrator by |) | |
| |) | |
| Bishop Perry Middle School |) | File Nos. SLD-487170, <i>et al.</i> |
| New Orleans, LA, <i>et al.</i> |) | |
| |) | |
| Schools and Libraries Universal Service |) | CC Docket No. 02-6 |
| Support Mechanism |) | |

The rest of the petitioners assert a waiver is appropriate for one of two reasons: either someone on the applicants' staff made a mistake or had a family emergency that prevented them from filing on time or the delay in the filing or receipt of the application was due to circumstances out of the applicants' control. Specifically, in the first group, some of these appeals involve **applicants whose staff members inadvertently failed to file the application forms in a timely manner.**¹

Another group

¹ Request for Waiver of Assabet Valley Regional Vocational School District; Request for Review of Barnwell County School District 45; Request for Review of Bath County School District; Request Waiver of Beavertown Community Library; Request for Review of Brown County School Corporation; Request for Review of Caruthers Unified School District; Request for Review of Central Catholic High School; Application for Review of Chawanakee Joint Elementary School District; Request for Review of Clearwater Memorial Library; Request for Waiver of Clinton County Board of Education; Request for Review of Coahoma County Public Schools; Requests for Review of Consorcio de Escuelas y Bibliotecas; Request for Review and Waiver of CPC Behavioral Healthcare; Request for Review of Delta County School District; Request for Review of Fairfax School District R3; Request for Review of Germantown School District; Request for Waiver of Hawaii State Public Library; Petitioner for Reconsideration of High Bridge Board of Education; Request for Waiver of Holmes District School Board; Request for Review of Hubbard Independent School District; Request for Waiver of Indian Oasis Baboquivari District 40; Request for Waiver of Island Trees Public Library; Request for Waiver of Jefferson School District; Request for Review of Los Alamitos Unified School District; Request for Review of Madera Unified School District; Request for Review of Malone Independent School District; Request for Waiver of McClure Community Library; Request for Waiver of Middleburg Community Library; Request for Waiver of Minnesota Transition School; Request for Waiver of Minnewaska Area Schools; Request for Review of Montfort & Allie B. Jones Memorial Library; Request for Waiver of Mount Ayr Community School District; Request for Waiver of Mount Saint John School; Request for Waiver of Mt. Carroll Township Public Library; Request for Review of Our Lady of Refuge; Request for Waiver of Pinon Dormitory; Request for Waiver of Queen of Apostles Catholic School; Request for Waiver of Richmond Public Library; Request for Review of Rylander Memorial School; Request for Waiver of Selinsgrove Community Library; Petitioner for Reconsideration of Siskiyou County Library; Request for Review of Southeast Delco School District; Request for Review of Southeastern Libraries Cooperating; Request for Review of St. Clement's Regional Catholic School; Request for Review of St. Elizabeth Interparochial School;

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of petitioners state that they were unable to comply with the filing deadline due to staff illness or relatives of staff members who were ill.² Other petitioners claim that the rules and instructions for filing an FCC

1. Form 471 are vague and unclear and that the resulting misunderstandings led to forms being filed after the filing window.³

And in:

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

In the Matter of)
)
Requests for Waiver and Review of)
Decisions of the)
Universal Service Administrator by)
)
Anderson Elementary School) File Nos. SLD-789495, *et al.*
Sand Springs, Oklahoma, *et al.*)
)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)
)

order

Adopted: May 22, 2012

Released: May 22, 2012

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

Request for Waiver of St. Francis of Assisi School; Request for Waiver of SuperNet Consortium; Request for Waiver of Tiverton School Department; Request for Waiver Wabash Valley Educational Center; Request for Review of Wallington Public Schools; Request for Waiver of Walnut Community School District; Request for Waiver of Washington Local School District; Request for Waiver of Westside Holistic Family Services; Request for Review of Whitfield County School District; Request for Waiver of Wilkinson County School District; Request for Review of Wilson Memorial Library.

² Request for Waiver of Augusta County Library; Request for Review of Bonnie Brae Educational Center School; Request for Review of Garvey School District; Request for Waiver of Gaston County School District; Request for Waiver Millennium Community School; Request for Waiver of Northwest Institute for Contemporary Learning, Inc.; Request for Waiver of St. Mary's School; Petition for Reconsideration of Neches Independent School District; Request for Waiver of Unadilla Community School.

³ Request for Waiver of Blackwell Public Schools; Request for Waiver of Brooklyn Jesuit Prep; Request for Review of Cecil County Public Schools; Request for Review of Colleton County School District; Request for Review of Jefferson City School District; Request for Review of Laporte School District 306; Request for Waiver of Nativity Mission School; Request for Review of Pierce City School District R6; Request for Waiver of St. Ignatius Academy.

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I. Consistent with precedent,⁴ we grant 56 requests and deny 18 requests from petitioners seeking review of decisions made by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program).⁵ **The petitioners are seeking waivers of the FCC Form 471 application filing window deadline for funding years 2005, 2011 and 2012 under the E-rate program.**⁶

II. Based on our review of the record, we find that the 56 petitioners listed in Appendices A and B have shown that special circumstances exist to justify a waiver of the FCC Form 471 filing window deadline.⁷ We grant the 40 waiver requests listed in Appendix A, because those petitioners' applications or waiver petitions were filed shortly after the filing window closed.⁸ We also grant the 16 waiver requests listed in Appendix B, because each of those petitioners' applications was either delayed by medical issues (and yet still filed within 30 days of the filing

⁴ See *Request for Review of the Decision of the Universal Service Administrator by Academy of Math and Science, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487009, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 9256 (2010) (*Academy of Math and Science Order*) (finding special circumstances exist to justify granting waiver requests where the petitioners filed their FCC Forms 471 after the FCC Form 471 filing window deadline).

⁵ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

⁶ The requests for waiver and review are listed in Appendices A, B, and C. Section 54.507(c) of the Commission's rules provides for E-rate funds to be made available on a first-come-first-served basis, but requires USAC to implement an initial funding window that treats all applicants filing within that window as if their applications were simultaneously received. 47 C.F.R. § 54.507(c). Although some petitioners did not explicitly request a waiver of the FCC Form 471 application filing window deadline, we treat their requests for review as requests for waiver because, in each case, USAC denied their funding requests because their FCC Form 471 applications were submitted after the relevant filing window deadline.

⁷ See Appendices A and B. Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

⁸ See Appendix A; *Academy of Math and Science Order*, 25 FCC Rcd at 9259, para. 8; *Request for Waivers and Review of the Decisions of the Universal Service Administrator by Argos Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-737946, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 16109, 16110, para. 2 (at n.8) (*Wireline Comp. Bur.* 2010) (granting waiver requests where the petitioners filed their waiver requests within 14 days after the FCC Form 471 filing window deadline).

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window deadline), **submitted on time but for their certifications or item 21 attachments**, or late due to a USAC error.⁹ We deny the waiver requests of those petitioners listed in Appendix C, because we find that those 18 other petitioners have failed to present special circumstances to justify a waiver of the Commission's rules.¹⁰ At this time, we find no evidence of waste, fraud and abuse in the record with respect to the petitioners for which we grant relief.

III. We therefore remand the underlying applications listed in Appendices A and B to USAC for further action consistent with this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

IV. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the requests for review or requests for waiver filed by the petitioners listed in Appendices A and B ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

V. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that section 54.507(c) of the Commission's rules, 47 C.F.R. § 54.507(c), IS WAIVED for the petitioners listed in Appendices A and B to the limited extent provided herein.

Therefore we submit that the school's form 471's FRN be designated as Certified within Window so as not to create undue hardship for an eligible institution that would prevent them from potentially receiving funding that they truly need to bring advanced telecommunications and information services their disadvantaged students and patrons .

Sincerely,



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LOA Attached

⁹ See Appendix B; *Academy of Math and Science Order*, 25 FCC Rcd at 9259-60, para. 8 (at nn.27 and 28); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 354, para. 2 (at n.8) (Wireline Comp. Bur. 2010).

¹⁰ See Appendix C; 47 C.F.R. § 1.3; *Academy of Math and Science Order*, 25 FCC Rcd at 9261, para. 13 (denying requests for waiver when the petitioners failed to present special circumstances justifying a waiver of section 54.507(c) of the Commission's rules).