

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Request for Review of a )
Decision of the )
Universal Service Administrator by )
Albert Lea Area Schools ) File No. SLD-517274, et al.
Albert Lea, Minnesota, et al. )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: April 14, 2009

Released: April 14, 2009

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

I. INTRODUCTION

1. In this order, we grant 39 appeals and deny 31 appeals of decisions by the Universal Service Administrative Company (USAC) concerning applications in funding years 1999 through 2008 for discounted services under the schools and libraries universal service mechanism (also known as the E-rate program).1 Consistent with the Commission’s Aberdeen School District Order,2 and as explained below, we find that, for 18 petitioners 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 E-rate applicants to submit a completed FCC Form 471 to USAC.3 We also find that, for 12 petitioners, good cause exists to waive section 54.504(b)(4) of the Commission’s rules, which states that E-rate applicants

1 Funding years start July 1 and run through June 30 of the following year. In this order, we use the term “appeals” generally to refer to requests for review of decisions, or waivers related to such decisions, issued by USAC. Appeals for which we grant a waiver of section 54.504(c) of the Commission’s rules are listed in Appendix A. Appeals for which we grant a waiver of section 54.504(b)(4) of the Commission’s rules are listed in Appendix B. Appeals that are granted on the merits are listed in Appendix C. Appeals that are denied are listed in Appendix D. We will refer to all of the parties seeking review or waivers as petitioners. 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). Although some petitioners did not explicitly request a waiver of the Commission’s rules, we treat their requests for review as requests for waiver because, in each case, USAC denied funding due to a violation of the Commission’s rules. All petitioners filed their appeals in CC Docket No. 02-6.

2 See Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-297249, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (2007) (Aberdeen School District Order) (waiving the Commission’s competitive bidding rules for certain petitioners that demonstrated good cause for such a waiver).

3 47 C.F.R. § 54.504(c); see also Appendix A.

must wait 28 days after their FCC Forms 470 are 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.<sup>4</sup> We further find that the appeals of nine petitioners should be granted on the merits.<sup>5</sup> Finally, we deny the appeals of 31 petitioners for failing to comply with the Commission's competitive bidding rules.<sup>6</sup> To ensure that the petitioners' underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the appendices and issue an award or denial based upon a complete review and analysis no later than 120 days from the release date of this order.

## 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.<sup>7</sup> The Commission's rules provide that an eligible school, library, or consortium must seek competitive bids for all services eligible for support.<sup>8</sup> Thus, an applicant must post an FCC Form 470 on USAC's website requesting discounts for E-rate eligible services, including tariffed telecommunications services, month-to-month Internet access, or any services for which the applicant is seeking a new contract.<sup>9</sup> In accordance with our rules, an E-rate applicant must file with USAC an FCC Form 470 requesting services.<sup>10</sup> The applicant must wait at least 28 days after the FCC Form 470 is posted to the USAC website, or after public availability of an applicant's RFP, whichever is later, before making commitments with the selected service provider for the requested services.<sup>11</sup> Once the school or library has complied with the Commission's competitive bidding requirements and signed a contract for eligible services, the applicant must submit an FCC Form 471 application before USAC will issue a funding commitment to the applicant.<sup>12</sup> 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 the original posting in Item 13 on its FCC Form 470 or in its RFP.<sup>13</sup> Applicants are also required to comply with state and local procurement procedures in addition to following the Commission's competitive bidding requirements.<sup>14</sup>

---

<sup>4</sup> 47 C.F.R. § 54.504(b)(4); *see also* Appendix B.

<sup>5</sup> *See* Appendix C.

<sup>6</sup> *See* Appendix D.

<sup>7</sup> 47 C.F.R. §§ 54.501-54.503.

<sup>8</sup> 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). None of the petitioners argue that this exemption applies to their cases.

<sup>9</sup> 47 C.F.R. § 54.504.

<sup>10</sup> 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).

<sup>11</sup> 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).

<sup>12</sup> 47 C.F.R. § 54.504(c). *See also* FCC Form 471.

<sup>13</sup> *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-> (continued . . .)

3. The E-rate program's competitive bidding requirements minimize the amount of support needed by ensuring more efficient pricing for telecommunications and information services purchased by schools and libraries.<sup>15</sup> In the *Aberdeen School District Order*, the Commission granted limited waivers of the competitive bidding rules in appeals involving clerical errors on the part of the E-rate applicants that made it appear as if the 28-day rule had been violated.<sup>16</sup> The Commission also granted waivers when applicants mistakenly signed their contracts or certified their FCC Forms 471 a few days before the allowable contract date.<sup>17</sup> Although the Commission waived certain limited aspects of the competitive bidding rules for several applicants, the Commission in the *Aberdeen School District Order* also denied a request for waiver after determining that the applicant had not posted an FCC Form 470 for the services it was requesting.<sup>18</sup> Instead, the applicant was relying on an FCC Form 470 that was filed three years earlier for unrelated services.<sup>19</sup> The Commission found that waiver of the rules was not justified when the applicant's contract with its service provider was never subject to the competitive bidding process.<sup>20</sup>

### III. DISCUSSION

4. In this item, we grant 39 appeals and deny 31 appeals 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.<sup>21</sup> Generally, petitioners argue that they made

---

(Continued from previous page)

guidance.aspx (retrieved April 14, 2009). 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.*

<sup>14</sup> 47 C.F.R. § 54.504(a).

<sup>15</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9080, para. 579 (1997) (*Universal Service First Report and Order*), *aff'd in part, rev'd in part, remanded in part sub nom, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999), *cert. denied*, 530 U.S. 1210 (2000), *cert. dismissed*, 531 U.S. 975 (2000).

<sup>16</sup> *Aberdeen School District Order*, 22 FCC Rcd at 8761, para. 6.

<sup>17</sup> *Id.* at 8763, para. 9 (granting waivers to applicants that posted their FCC Forms 470 for a meaningful period of time and missed the 28-day deadline by only one to three days).

<sup>18</sup> *Id.* at 8763, para. 10.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 8762-63, paras. 9-10; *see also 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 (Accounting Pol. Div. 2002) (denying a request for review where applicant relied upon an FCC Form 470 posted in funding year 3 in support of its funding year 2 service requests).

<sup>21</sup> 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. *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, 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.

clerical or ministerial errors on their FCC Forms 470 or 471<sup>22</sup> or that they misunderstood our rules, which resulted in a denial of their requests for E-rate funding.<sup>23</sup> Other petitioners argue that they were in compliance with the E-rate program's competitive bidding rules and their funding was wrongly denied or rescinded by USAC.<sup>24</sup> For the reasons discussed below, we find that good cause exists to grant a waiver of sections 54.504(b)(4) or 54.504(c) of our rules for 30 petitioners, as applicable, and grant these appeals.<sup>25</sup> We also grant nine appeals on the merits. Further, we deny 31 appeals of decisions by USAC denying requests for funding under the E-rate program due to the applicant's: (1) failure to comply with

---

<sup>22</sup> See Request for Review of Alden-Hebron School District 19; Request for Review of Albert Lea Area Schools; Request for Waiver of All Saints Catholic School; Request for Review of Autauga County Board of Education; Request for Review and/or Waiver of Bedford County Department of Education; Request for Review of Benicia Unified School District; Request for Review of Birmingham City Schools; Request for Review of Coalinga-Huron Joint Union School District; Request for Review of Crestline Exempted Village Schools; Request for Review of Ducor Union Elementary School District; Request for Review of Edgewood City School District (application no. 564544); Request for Review of Garvey School District; Request for Review of Grant County Schools; Request for Review of Hanover County Public Schools; Request for Review and Waiver of Humboldt Unified School District 22; Request for Review of Mark Twain Union Elementary School District; Request for Review of Maud Independent School District; Request for Review of Mineral Elementary School District; Request for Review of New Education for the Workplace, Inc. (NEWCorp.); Request for Review of Pasadena Independent School District; Request for Review of Piggott School District; Request for Review of Polk County Department of Education; Request for Review of Presidio School; Request for Review of Queen Anne's County Board of Education; Request for Review of San Diego Unified School District; Request for Review of San Luis Coastal Unified School District; Request for Review of San Miguel Joint Unified Elementary District; Request for Review of The School for Integrated Academics and Technologies, Inc. (SIATech); Request for Review of Visitation BVM School; Request for Review of Wagner Public Library; Request for Review of Walthill Public School; Request for Review of Western Wayne School District.

<sup>23</sup> See Request for Waiver of Annunciation School; Request for Review of Brevard County School District; Request for Review of Cardinal McCarrick High School; Request for Review and/or Waiver of Charleston County School District; Request for Review of Cochise County Library District; Request for Review and/or Waiver of Edgewood Independent School District (application no. 507520); Request for Waiver of Finger Lakes Library System; Request for Review and/or Waiver of Gateway Regional School District; Request for Waiver of Georgetown County School District; Request for Review of Hoquiam School District #28; Request for Waiver of Grenora Public School District No. 99; Request for Review of Hemphill Independent School District; Request for Review of Klamath Falls City Schools; Request for Review of Los Angeles Leadership Academy; Request for Waiver by Lourdesmont School; Request for Review of Moore Public Library; Request for Review of Morris County School of Technology; Request for Review of Morris Hills Regional School District; Request for Review of Pharr-San Juan-Alamo Independent School District; Request for Review of Port Angeles School Dist 121; Request for Review and/or Waiver of Richland County School District 1; Request for Review of Rumney Memorial School; Request for Review of Salem City School District; Request for Review of Saltsburg Free Library; Request for Review of Star Independent School District (application no. 406737); Request for Waiver of Valley Union High School District #22; Request for Review of Virden Community Unit School District 4; Request Review and/or Waiver of Wells Central School District; Request for Review of West Iron County School District; Request for Review of Wolfe County Board of Education.

<sup>24</sup> See Request for Review and/or Waiver for Athens City Schools; Request for Review of Cherokee Independent School District; Request for Review of Goldthwaite Independent School District; Request for Review of Lohn Independent School District; Request for Review of Lometa Independent School District; Request for Review of Richland Springs Independent School District; Request for Review of Rochelle Independent School District; Request for Review of Star Independent School District (application no. 351691).

<sup>25</sup> See 47 C.F.R. §§ 54.504(b)(4), (c).

the Commission's 28-day competitive bidding requirements; or (2) failure to post an FCC Form 470 that included the service requested on its FCC Form 471.<sup>26</sup>

5. Section 54.504(c) Waivers. According to their denial letters from USAC, the applications of the petitioners listed in Appendix A 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 Forms 470 on the USAC website.<sup>27</sup> 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.<sup>28</sup> That is, while the petitioners filed their FCC Forms 471 on time, corrections to the forms were made after the deadline, requiring a waiver of the rule that applications be complete when filed. Specifically, these appeals involved clerical errors on the part of the petitioners: they provided an incorrect contract date,<sup>29</sup> classification of service,<sup>30</sup> or FCC Form 470 application number on the FCC Form 471,<sup>31</sup> thus making it appear that the applicants violated the 28-day rule.

6. Based on the facts and the circumstances of these specific cases and consistent with the Commission's *Aberdeen School District Order*, we find that good cause exists to waive the requirement that applications be complete when filed in section 54.504(c) of the Commission's rules for the petitioners listed in Appendix A.<sup>32</sup> In these circumstances, petitioners committed minor errors in filling out their application forms. As the Commission has found, such minor mistakes do not warrant the complete rejection of these E-rate applications.<sup>33</sup> This finding is consistent with the Commission's ruling in the

---

<sup>26</sup> See Appendix D.

<sup>27</sup> Autauga County Board of Education (Autauga) inadvertently gave USAC the wrong contract date, making it appear as though there was a three-year gap between the posting of the FCC Form 470 on November 8, 2002 and the erroneous contract award date of November 15, 2005 that Autauga listed on the FCC Form 471. Although Autauga complied with the 28-day rule by waiting more than 28 days from the posting of the FCC Form 470 to award the contract, USAC found that the more than three-year time lapse between the FCC Form 470 posting date and the contract award date constituted a competitive bidding violation. Autauga's actual contract award date was February 4, 2003, which was 88 days after the posting of the FCC Form 470 and 34 days after the allowable contract date.

<sup>28</sup> See 47 C.F.R. § 54.504(c).

<sup>29</sup> See Request for Review of Autauga County Board of Education; Request for Review and/or Waiver of Bedford County Department of Education; Request for Review of Crestline Exempted Village Schools; Request for Review of Hanover County Public Schools; Request for Review of New Education for the Workplace, Inc. (NEWCorp.); Request for Review of The School for Integrated Academic and Technologies, Inc. (SIATech).

<sup>30</sup> See Request for Review of Grant County Schools.

<sup>31</sup> See Request for Review of Albert Lea Area Schools; Request for Review of Benicia Unified School District; Request for Review of Hanover County Public Schools; Request for Review of Los Angeles Leadership Academy; Request for Review of Mark Twain Union Elementary School District; Request for Review of Piggott School District; Request for Review of Polk County Department of Education; Request for Review of Presidio School; Request for Review of Queen Anne's County Board of Education; Request for Review of San Diego City Unified School District; Request for Review of San Luis Coastal Unified School District; Request for Review of San Miguel Joint Unified Elementary District.

<sup>32</sup> 47 C.F.R. § 54.504(c); *Aberdeen School District Order*, 22 FCC Rcd at 8761, para. 7.

<sup>33</sup> *Id.* (citing *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, 5321, para. 11 (2006) (*Bishop Perry Order*)).

*Bishop Perry Order*, in which the Commission waived section 54.504(c) of its 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.<sup>34</sup> Importantly, like those appeals granted in the *Bishop Perry Order*, petitioners' errors here could not have resulted in an advantage for them in the processing of their E-rate applications.<sup>35</sup> That is, the petitioners' mistakes, if not caught by USAC, could not have resulted in the petitioners receiving more E-rate funding than they were entitled to receive. Moreover, the Commission found in the *Bishop Perry Order* that, under certain circumstances, rigid adherence to certain E-rate requirements that are "procedural" in nature does not promote the goals of section 254 of the Communications Act of 1934, as amended (the Act) – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.<sup>36</sup> Thus, we find that good cause exists to waive section 54.504(c) of the Commission's rules for the petitioners listed in Appendix A.<sup>37</sup> Accordingly, we grant and remand these appeals to USAC for further processing consistent with this order.

7. Section 54.504(b)(4) Waivers. A number of petitioners mistakenly signed their contracts or certified their FCC Forms 471 before the allowable contract date.<sup>38</sup> Two applicants waited 28 days after posting their FCC Forms 470 to sign their contracts, but established shorter deadlines in their requests for proposals (RFP).<sup>39</sup>

8. Based on the facts and the circumstances of the specific cases of the petitioners listed in Appendix B, we find that good cause exists to waive section 54.504(b)(4) of the Commission's rules, which requires E-rate 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.<sup>40</sup> Consistent with the

---

<sup>34</sup> See *Bishop Perry Order*, 21 FCC Rcd at 5320-21, paras. 10-11.

<sup>35</sup> *Id.* at 5321, para. 11.

<sup>36</sup> See *id.* at 5316-17, 5319-20, paras. 2, 9; 47 U.S.C. § 254.

<sup>37</sup> 47 C.F.R. § 54.504(c).

<sup>38</sup> See Request for Waiver of Annunciation School (certifying its FCC Form 471 one day before the allowable contract date); Request for Review of Brevard County School District (signed contract one day before the allowable date); Request for Review of Coalinga-Huron Joint Union School District (signed contract three days before the allowable date after submitting a corrected FCC Form 470); Request for Review of Ducor Union Elementary School District (signed contract one day before the allowable date); Request for Review and/or Waiver of Gateway Regional School District (signed contract one day before the allowable date); Request for Review of Pharr-San Juan-Alamo Independent School District (signed contract one day before the allowable date); Request for Review of Salem City School District (signed contract one day before the allowable date); Request for Review of Saltsburg Free Library (filed FCC Form 471 two days before the allowable contract date); Request for Review of Walthill Public School (signed contract two days before the allowable contract date).

<sup>39</sup> See Request for Review of Edgewood City School District (application no. 564544) (posting both its FCC Form 470 and RFP for 28 days before entering into a contract, but inadvertently putting a submission date on its RFP that was nine days before the FCC Form 470 was posted). Good cause exists to grant Edgewood City a waiver of the 28-day RFP posting requirement because its FCC Form 470 contained sufficient information for bidders to bid on the services sought and the form was posted for 28 days before Edgewood City signed its contract. Request for Review of Humboldt Unified School District 22 (even though RFP submission date was seven days before the 28-day period expired, a second RFP without a submission date was also available to bidders).

<sup>40</sup> See 47 C.F.R. § 54.504(b)(4). Consistent with Commission precedent, we also find good cause to waive section 54.504(c) of our rules, stating that a contract must be signed before the FCC Form 471 is submitted, for All Saints (continued . . .)

Commission's *Aberdeen School District Order*, we find that these particular mistakes made by these petitioners do not warrant a complete rejection of their E-rate applications.<sup>41</sup> We have examined the facts of each of these appeals and found that a waiver is warranted based on the circumstances presented, and that there is no evidence in the record of waste, fraud or abuse. As the Commission found in the *Aberdeen School District Order*, the goal of the competitive bidding process is to ensure that E-rate funding is not wasted because an applicant agrees to pay a higher price than is otherwise commercially available.<sup>42</sup> We find no indication in the record that, as a result of these errors, the petitioners benefited from their mistakes and we believe that the likelihood that any service provider was harmed is very low. Specifically, there is no evidence in the record that the petitioners intentionally failed to consider other bids.

9. As in the *Aberdeen School District Order*, we find that the underlying policy of ensuring service providers a fair opportunity to bid on the services sought by E-rate applicants was not sufficiently compromised by the errors of the petitioners listed in Appendix B to warrant complete rejection of these E-rate applications, especially in the absence of any record evidence of fraud.<sup>43</sup> 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."<sup>44</sup> We therefore find that good cause exists to grant the petitioners listed in Appendix B a waiver of section 54.504(b)(4) of our rules.<sup>45</sup> Accordingly, we grant and remand these appeals to USAC for further processing consistent with this order.

10. *Appeals Granted on Merits.* Nine petitioners did not indicate they were posting for a multi-year contract or a contract with a voluntary renewal provision when they originally posted their FCC Forms 470.<sup>46</sup> Because these petitioners failed to include this information in their FCC Forms 470, USAC treated their E-rate applications in subsequent years as if they had not been subject to competitive bidding and were thus in violation of the Commission's rule requiring applicants to post requests for services for 28 days. In fact, these petitioners were in compliance with our competitive bidding rules

---

(Continued from previous page)

Catholic School. *See Request for Waiver of the Decision of the Universal Service Administrator by Adams County School District 14, Commerce City, Colo., 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). All Saints Catholic School inadvertently submitted its FCC Form 471 one day before signing a contract with its service provider. *See Request for Waiver of All Saints Catholic School.*

<sup>41</sup> *Aberdeen School District Order*, 22 FCC Rcd at 8762, para. 9.

<sup>42</sup> *Id.* at 8763, para. 9.

<sup>43</sup> *Id.* at 8758, para. 3.

<sup>44</sup> *Id.* at 8763, para. 9.

<sup>45</sup> 47 C.F.R. § 54.504(b)(4).

<sup>46</sup> *See Request for Review and/or Waiver for Athens City Schools; Request for Review of Cherokee Independent School District; Request for Review of Goldthwaite Independent School District; Request for Review of Lohn Independent School District; Request for Review of Lometa Independent School District; Request for Review of Richland Springs Independent School District; Request for Review of Rochelle Independent School District; Request for Review of Rumney Memorial School; Request for Review of Star Independent School District.*

when their requests for service were initially posted because the FCC Form 470 in effect at the time did not require an applicant to disclose whether it was seeking a contract with terms of more than one year.<sup>47</sup> Applicants are not required to rebid multi-year contracts each year.<sup>48</sup> Accordingly, we grant and remand these appeals to USAC for further processing consistent with this order.<sup>49</sup>

11. Grant of the 39 appeals in this order should have minimal effect on the universal service fund.<sup>50</sup> Therefore, we remand the underlying applications associated with these 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 Appendices A through C and issue an award or denial based upon a complete review and analysis no later than 120 days from the release date of this order.<sup>51</sup> In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.<sup>52</sup> 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.

12. 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

---

<sup>47</sup> *Compare* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) at 2 (October 2004 FCC Form 470) (requiring applicants to “[c]heck if you are seeking (1) a multi-year contract and/or (2) a contract featuring voluntary extensions”) *with* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (May 2003) at 3 (May 2003 FCC Form 470) (noting that applicants “may provide” information on the intent to enter into a multi-year contract or a contract featuring an option for voluntary extensions).

<sup>48</sup> *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732, 6736, para. 10 (1999) (noting that applicants can enter into agreements of any length without subsequent FCC Form 470 postings).

<sup>49</sup> During post-funding review, USAC determined that Cherokee Independent School District, Ducor Union Elementary School District, Goldthwaite Independent School District, Lohn Independent School District, Lometa Independent School District, Pharr-San Juan-Alamo Independent School District, Richland Springs Independent School District, Rochelle Independent School District and Star Independent School District were in violation of the Commission's competitive bidding rules. These applicants were then subject to funding commitment adjustments by USAC which rescinded their funding commitments. In light of decision in this order, we direct USAC to discontinue recovery actions against these petitioners or to process any outstanding invoices.

<sup>50</sup> We estimate that the appeals granted in this order involve applications for approximately \$6.7 million in funding for funding years 1999-2008. 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 2009 (Jan. 30, 2009). Thus, we determine that the action we take today should have a minimal impact on the universal service fund as a whole.

<sup>51</sup> 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.

<sup>52</sup> 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.



schools and libraries.<sup>53</sup> 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. 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.

13. 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 as detailed herein, 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 our rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or our rules. To the extent we find that funds were not used properly, we 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.

14. Denial of Section 54.504 Waivers. In the appeals listed in Appendix D, some petitioners entered into agreements with service providers before posting an FCC Form 470, thus violating the requirement that the FCC Form 470 be posted for 28 days before entering into an agreement with a service provider.<sup>54</sup> Other petitioners requested services on their FCC Form 471 without first filing an FCC Form 470,<sup>55</sup> or without filing an FCC Form 470 that included the type of service the applicant requested.<sup>56</sup>

---

<sup>53</sup> See *supra* para. 3.

<sup>54</sup> See Request for Review of Birmingham City Schools; Request for Review of Maud Independent School District; Request for Review of Morris Hills Regional School District; Request for Review and/or Waiver of Wells Central School District.

<sup>55</sup> See Request for Review of Hemphill Independent School District; Request for Review of Klamath Falls City Schools; Request for Waiver of Lourdesmont School; Request for Review of Mineral Elementary School District; Request for Waiver of Valley Union High School District #22; Request for Review of Virden Community Unit School District 4; Request for Review of West Iron County School District.

<sup>56</sup> See Request for Review of Alden-Hebron School District 19; Request for Review of Cardinal McCarrick High School; Request for Review and/or Waiver by Charleston County School District; Request for Review of Cochise County Library District; Request for Review and/or Waiver of Edgewood Independent School District (application no. 507520); Request for Waiver of Finger Lakes Library System; Request for Review of Garvey School District; Request for Waiver of Georgetown County School District; Request for Waiver of Grenora Public School District No. 99; Request for Review of Hoquiam School District #28; Request for Review of Moore Public Library; Request for Review of Morris County School of Technology; Request for Review of Pasadena Independent School District; Request for Waiver by Port Angeles School Dist 121; Request for Review and/or Waiver by Richland County School District 1; Request for Review of Star Independent School District (application no. 406737); Request for Review of Visitation BVM School; Request for Review of Wagner Public Library; Request for Review of Western Wayne School District; Request for Review of Wolfe County Board of Education .

15. We find that the petitioners that did not file an FCC Form 470 or entered into agreements with a selected service provider before posting an FCC Form 470 did not seek competitive bids required by section 54.504 of the Commission's rules and these petitioners' contracts were therefore not subject to the competitive bidding process.<sup>57</sup> Similarly, we find that petitioners that filed FCC Forms 470 that did not include the types of services for which the petitioners later requested E-rate funding did not seek competitive bids for those services. While these petitioners filed FCC Forms 470, the petitioners did not properly provide notice to service providers that they were seeking bids on the omitted services. As such, these petitioners also did not comply with the Commission's competitive bidding rules, in violation of section 54.504 of the Commission's rules.<sup>58</sup>

16. The Commission grants waivers only when 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.<sup>59</sup> Because the petitioners did not comply with the Commission's competitive bidding rules and therefore did not ensure that the requested services were the most cost-effective, we find that the petitioners listed in Appendix D have not demonstrated that special circumstances warrant deviation from the general rule. Consistent with the Commission's *Aberdeen School District Order*, we therefore deny these petitioners' appeals.<sup>60</sup>

#### IV. ORDERING CLAUSES

17. 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 waivers of sections 54.504(b) and (c) of the Commission's rules, 47 C.F.R. §§ 54.504(b) and (c), ARE GRANTED to the petitioners listed in Appendices A and B and their applications ARE REMANDED to USAC for further consideration consistent with this order.

---

<sup>57</sup> 47 C.F.R. § 54.504; *Aberdeen School District Order*, 22 FCC Rcd at 8763, para. 10. One petitioner, Hemphill Independent School District (Hemphill), relied on an FCC Form 470 filed in funding year 2003 to support a contract for month-to-month Internet access services in the next funding year. Request for Review of Hemphill Independent School District. Although Hemphill claims in its appeal that its contract was for a multi-year term, it listed the contract expiration date as June 30, 2004 in its 2003 FCC Form 471. Regardless of whether Hemphill's contract was for month-to-month services or a contract with an expiration date of June 30, 2004, it was required to rebid the contract and submit a new FCC Form 470 for the 2004 funding year. See May 2003 FCC Form 470 at 2 (noting in block 7, that for month-to-month services, "a new [FCC] Form 470 must be filed for these services for each funding year"); see also *Request for Review by Chickasaw Regional Library System, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-142924, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 683, 685, para. 7 (Com. Car. Bur. 2002); *Request for Review by Dickenson County Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-239477, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 9410, 9414, para. 11 (Wireline Comp. Bur. 2002); *Request for Review of North Carolina Department of Commerce, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-172952, 201160, 178479, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd. 21400, 21405, para. 8 (Wireline Comp. Bur. 2002) (all finding that an FCC Form 470 must be filed each year for discounts on month-to-month service under program rules).

<sup>58</sup> 47 C.F.R. § 54.504.

<sup>59</sup> *Northeast Cellular*, 897 F.2d at 1166; see also 47 C.F.R. § 1.3 (the Commission may waive any provision of its rules on its own motion and for good cause shown).

<sup>60</sup> *Aberdeen School District Order*, 22 FCC Rcd at 8763, para. 10.

18. 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, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the appeals filed by the petitioners listed in Appendix C ARE GRANTED and their applications ARE REMANDED to USAC for further consideration consistent with this order.

19. 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 the appeals filed by the petitioners listed in Appendix D ARE DENIED.

20. 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 the authority delegated pursuant to sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that USAC SHALL COMPLETE its review of each remanded application as listed in Appendices A through C and ISSUE an award or a denial based on a complete review and analysis no later than 120 calendar days from the release date of this order.

21. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee  
Acting Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

## APPENDIX A

## Waiver of Section 54.504(c) Granted

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Appeal Filed</b>
Albert Lea Area Schools Albert Lea, MN	517274	2006	March 21, 2007
Autauga County Board of Education Prattville, AL	502044	2006	May 18, 2007
Bedford County Department of Education Shelbyville, TN	523265	2006	March 19, 2007
Benicia Unified School District Benicia, CA	527450	2006	April 17, 2007
Crestline Exempted Village Schools Crestline, OH	528447	2006	May 7, 2007
Grant County Schools Williamstown, KY	529951	2006	Feb. 2, 2007
Hanover County Public Schools Ashland, VA	513799	2006	Feb. 5, 2007
Los Angeles Leadership Academy Los Angeles, CA	472181	2005	Jan. 9, 2007
Mark Twain Union Elementary School District Angels Camp, CA	515679	2006	Jan. 16, 2007
New Education for the Workplace, Inc. (NEWCorp.) Vista, CA	536824, 537090, 537176, 537265	2006	March 29, 2007
Piggott School District Piggott, AK	535694	2006	Jan. 16, 2007
Polk County Department of Education Benton, TN	524456	2006	April 4, 2007
Presidio School Tucson, AZ	483216	2005	Jan. 6, 2006

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Appeal Filed</b>
Queen Anne's County Board of Education Centreville, MD	494714	2006	March 5, 2007
San Diego City Unified School District San Diego, CA	508523	2006	April 18, 2007
San Luis Coastal Unified School District San Luis Obispo, CA	500641	2006	Feb. 6, 2007
San Miguel Joint Unified Elementary District San Miguel, CA	503163	2006	April 20, 2007
The School for Integrated Academics and Technologies, Inc. (SIATech) Vista, CA	536126	2006	March 29, 2007

## APPENDIX B

## Waiver of Section 54.504(b)(4) Granted

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Appeal Filed</b>
All Saints Catholic School Rossford, OH	538517	2006	Dec. 11, 2006
Annunciation School Denver, CO	637791	2008	Sept. 18, 2008
Brevard County School District Viera, FL	509122	2006	April 2, 2007
Coalinga-Huron Joint Union School District Coalinga, CA	464865	2005	Dec. 19, 2006
Ducor Union Elementary School District Ducor, CA	523750	2006	Jan. 7, 2008
Edgewood City School District Trenton, OH	564544	2007	Dec. 22, 2008
Gateway Regional School District Huntington, MA	632806	2008	Feb. 19, 2009
Humboldt Unified School District 22 Prescott, AZ	584367	2007	March 17, 2008
Pharr-San Juan-Alamo Independent School District Pharr, TX	303671	2002	July 6, 2007
Salem City School District Salem, NJ	537179, 536745	2006	June 27, 2006
Saltsburg Free Library Saltsburg, PA	583693	2007	Nov. 20, 2007
Walthill Public School Walthill, NE	594569	2008	Oct. 7, 2008

## APPENDIX C

## Appeals Granted on the Merits

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Appeal Filed</b>
Athens City Schools Athens, TN	476573	2005	May 25, 2007
Cherokee Independent School District Cherokee, TX	352696	2003	Nov. 19, 2007
Goldthwaite Independent School District Goldthwaite, TX	344731	2003	Nov. 14, 2007
Lohn Independent School District Lohn, TX	342069	2003	Nov. 26, 2007
Lometa Independent School District Lometa, TX	342072	2003	Nov. 19, 2007
Richland Springs Independent School District Richland Springs, TX	346732	2003	Dec. 5, 2007
Rochelle Independent School District Rochelle, TX	346760	2003	Dec. 1, 2007
Rumney Memorial School Middlesex, VT	536536	2006	May 7, 2007
Star Independent School District Star, TX	351691	2003	Nov. 21, 2007

## APPENDIX D

## Appeals Denied

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Appeal Filed</b>
Alden-Hebron School District 19 Hebron, IL	288242	2002	Dec. 20, 2007
Birmingham City Schools Birmingham, AL	293880	2002	Feb. 25, 2004
Cardinal McCarrick High School South Amboy, NJ	488924	2005	Dec. 29, 2005
Charleston County School District Charleston, SC	494060	2006	April 18, 2007
Cochise County Library District Bisbee, AZ	135658, 176372, 250814, 313496, 362392	1999, 2000, 2001, 2002	Dec. 21, 2004
Edgewood Independent School District San Antonio, TX	507520	2006	Dec. 1, 2006
Finger Lakes Library System Ithaca, NY	597101	2008	Aug. 19, 2008
Garvey School District Rosemead, CA	520887	2006	June 17, 2008
Georgetown County School District Georgetown, SC	528889	2006	Dec. 21, 2006
Grenora Public School District No. 99 Grenora, ND	625458	2008	Aug. 11, 2008
Hemphill Independent School District Hemphill, TX	411655	2004	Oct. 14, 2004
Hoquiam School District #28 Hoquiam, WA	528263	2006	Jan. 29, 2007
Klamath Falls City Schools Klamath, OR	575579	2007	March 6, 2008
Lourdesmont School Clarks Summit, PA	564660	2007	Dec. 20, 2007



<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Appeal Filed</b>
Maud Independent School District Maud, OK	536422	2006	April 20, 2007
Mineral Elementary School District Red Bluff, CA	472812	2005	Jan. 5, 2006
Moore Public Library Lexington, MI	598742	2008	Oct. 23, 2008
Morris County School of Technology Denville, NJ	448973	2005	May 22, 2006
Morris Hills Regional School District Rockaway, NJ	530618	2006	May 30, 2007
Pasadena Independent School District Pasadena, TX	531600	2006	Nov. 21, 2006
Port Angeles School Dist 121 Forks, WA	291855	2002	Sept. 24, 2007
Richland County School District 1 Columbia, SC	503003, 507760	2006	Jan. 5, 2007
Star Independent School District Star, TX	406737	2004	Nov. 9, 2004
Valley Union High School District #22 Elfrida, AZ	551802	2007	Nov. 13, 2007
Virden Community Unit School District 4 Virden, IL	549832	2007	Dec. 1, 2007
Visitation BVM School Philadelphia, PA	509139	2006	Oct. 2, 2006
Wagner Public Library Wagner, SD	501810	2006	March 23, 2007
Wells Central School District Wells, NY	599713	2008	Nov. 21, 2008
Western Wayne School District South Canaan, PA	575894	2007	April 24, 2008
West Iron County School District Iron River, MI	613715	2008	May 27, 2008

---

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Appeal Filed</b>
Wolfe County Board of Education Campton, KY	504750	2006	Dec. 19, 2006