

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Requests for Review and/or Waiver of Decisions of) File Nos. SLD-814759 et al.
the Universal Service Administrator by)
Academy of Detroit West)
Redford, Michigan et al.)
Schools and Libraries Universal Service Support) CC Docket No. 02-6
Mechanism)

ORDER

Adopted: March 5, 2020

Released: March 5, 2020

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

I. INTRODUCTION

1. In this order, we address 12 requests seeking review of decisions by the Universal Service Administrative Company (USAC) or a waiver of the Commission’s rules concerning requests by E-Rate program¹ funding recipients to change their vendors through an operational service provider identification number (SPIN) change.² We grant requests where the applicant established a legitimate reason to change service providers, such as where the applicant experienced an unexpectedly long transition period to its new service provider or required a new vendor due to unsatisfactory service from the initial service provider. We deny requests, however, where the applicant failed to provide such a legitimate reason to change service providers after receipt of a funding commitment decision letter. Our decisions here are consistent with precedent and reiterate the Commission’s determination that after selection of an initial service provider following completion of a fair and open competitive bidding process, the change to another service provider should only be permitted in limited circumstances.

II. BACKGROUND

2. The E-Rate program provides eligible schools, libraries and consortia that include eligible schools and libraries funding for the purchase of Internet access, internal connections, basic maintenance of internal connections, and managed internal broadband services, telecommunications and telecommunications services.³ To obtain support, an applicant must comply with the Commission’s competitive bidding rules, enter into an agreement with a service provider, and file an FCC Form 471 with USAC to request E-Rate discounts for the purchase of the services.⁴ The completed FCC Form 471

¹ The E-Rate program is more formally known as the schools and libraries universal service support mechanism.

² These requests were filed by several entities and pertain to funding commitment decisions for funding years 2011, 2012, 2013, 2015 and 2017. See Appendices A-C. A SPIN is a unique nine-digit number assigned to service providers by USAC when an FCC Form 498 is filed, also known as the service provider’s 498 ID, which is used as an identifier and tracker throughout the E-Rate process. See USAC Website, Step 1: Obtain a SPIN, available at https://www.usac.org/e-rate/service-providers/step-1-obtain-a-spin/ (last visited Jan. 13, 2020)

³ 47 CFR §§ 54.501, 54.502.

⁴ 47 CFR § 54.503.

notifies USAC of the eligible services the applicant has ordered from the service provider, and sets forth the amount of E-Rate funds the applicant is requesting for those eligible services.⁵

3. After USAC reviews an applicant's funding request, USAC issues a funding commitment decision letter (FCDL), which approves support for the specified purchases in full or in part, or denies them. Once it has received an FCDL, an applicant can change its service provider(s) only if it meets the requirements for an operational SPIN change. Although the Commission has previously addressed circumstances in which a SPIN change would be appropriate on multiple occasions, the 2010 *Sixth Report and Order* limited operational SPIN changes to only those cases where both (1) applicants have a legitimate reason to change providers and (2) the newly selected service provider received the next highest point value in the original bid evaluation, assuming there were multiple bidders.⁶ The reasons that the Commission recognized as "legitimate" included if the incumbent service provider went out of business or was otherwise unable to perform.⁷ Guidance accompanying the order also explained that when a new provider is delayed in starting to provide service, the applicant may remain with a previous provider during the transition period, even if that provider was not the second highest bidder, although the applicant's total funding level may not exceed the amount approved in its FCDL.⁸

III. DISCUSSION

4. Based on the record before us, and consistent with precedent, we grant relief in those instances where the requested SPIN changes were for legitimate reasons, such as when an applicant experiences unexpectedly long transition periods to its new service provider and where the applicant required a new vendor due to unsatisfactory service from the initial service provider. We deny relief, however, where applicants failed to provide a legitimate reason for their requests to change service providers after receipt of their respective E-Rate funding commitment decision letters.

A. New Provider Delay in Starting Service

5. *Archdiocese of St. Louis Schools*. Archdiocese of St. Louis Schools (St. Louis) was granted support for one of its schools, Cardinal Ritter College Prep School, to receive Internet access for FY 2017 from Charter Communications (Charter).⁹ Nevertheless, St. Louis states that Charter was unable to provide service during the funding year and ultimately commenced service on June 29, 2018, one day before the end of the funding year.¹⁰ Meanwhile, St. Louis continued to receive Internet access from its incumbent provider from the previous year, Windstream.¹¹ When St. Louis requested USAC for an operational SPIN change from Charter to Windstream, however, USAC rejected the request because Windstream was not the second most cost-effective provider in the bidding.¹² St. Louis explained that it

⁵ See 47 CFR § 54.501.

⁶ See *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18802, para. 91 (2010) (*Sixth Report and Order*).

⁷ *Id.*

⁸ *Wireline Competition Bureau Provides Guidance Following Schools and Libraries Universal Service Support Program Sixth Report and Order*, CC Docket No. 02-6, GN Docket No. 09-51, Public Notice, 25 FCC Rcd 17332, 17338 (WCB 2010) (*Guidance on Sixth Report and Order*).

⁹ See Letter from USAC, Schools and Libraries Division, to Dick Porzel, Archdiocese of St. Louis Schools (dated Oct. 6, 2017) (FCC Form 471 Application No. 171046083, FRN 1799105656).

¹⁰ See Letter from Richard Senturia, on behalf of Archdiocese of St. Louis Schools, to Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 9, 2018) (St. Louis Request for Review).

¹¹ *Id.*

¹² See Letter from USAC, Schools and Libraries Division, to Dick Porzel, Archdiocese of St. Louis Schools (dated Sept. 10, 2017).

did not seek service from the second vendor because it continued to hope that Charter would begin providing the promised service.¹³

6. As discussed in the 2010 *Sixth Report and Order* guidance, when a new provider is delayed in starting to provide service, the applicant may remain with a previous provider during the transition period, even if that incumbent provider was not the second highest bidder.¹⁴ As described, St. Louis's situation appears to represent a bona fide, though extremely long, transition period. It continued to receive service from its incumbent provider, Windstream, and its funding did not exceed the amount approved on the FCDL. We therefore grant St. Louis's appeal and direct USAC to grant its requested SPIN change.

7. *Guilford Preparatory Academy*. Guilford Preparatory Academy (Guilford) was granted support to receive voice over Internet protocol (VoIP) and broadband service for FY 2011 from Windstream.¹⁵ Guilford states that construction delays made it technically infeasible for Windstream to provide that service.¹⁶ While waiting, Guildford remained with its incumbent provider and, as the funding year came to an end, Windstream recommended that Guildford request a SPIN change to the incumbent for the entire FY 2011, which it did.¹⁷ USAC, however, rejected that SPIN change request given that Guildford did not seek a switch to the second most cost-effective provider.¹⁸ Guildford noted that service from the second vendor would have faced the same construction delays as the first.¹⁹ For the same reason that we grant St. Louis's appeal,²⁰ we grant Guilford's appeal and direct USAC to grant its requested SPIN change.

8. *The Meridian School*. The Meridian School (Meridian) was granted support for Internet service from Wave Division Holdings (Wave) for FY 2017, but later that year, Wave informed Meridian that it would not be able to provide service until FY 2018.²¹ Therefore, Meridian requested a SPIN change to its incumbent carrier, Comcast, for the entire year, while it waited.²² USAC denied both the SPIN change and Meridian's appeal, stating that Comcast was only the third-highest bidder in the competitive bidding process, and that Meridian should have gone with the second-place provider.²³ Meridian appealed to the Commission asserting that it wants to use Wave, but during the transition it was remaining with Comcast, as the SPIN change rules allow.²⁴ For the same reason that we grant St. Louis's

¹³ See St. Louis Request for Review.

¹⁴ See *supra* note 8 and accompanying text.

¹⁵ See Letter from USAC, Schools and Libraries Division, to Charlotte Ward, Guilford Preparatory Academy (dated Nov. 15, 2011) (FCC Form 471 Application No. 805384, FRN 2184617); Letter from USAC, Schools and Libraries Division, to Charlotte Ward, Guilford Preparatory Academy (dated Jan. 24, 2012) (FCC Form 471 Application No. 807347, FRN 2191422).

¹⁶ See Letter from Greg Weisiger, on behalf of Guilford Preparatory Academy, to Federal Communications Commission, CC Docket No. 02-6 at 2 (filed Jan. 4, 2013) (Guilford Request for Review).

¹⁷ *Id.*

¹⁸ See Letter from USAC, Schools and Libraries Division, to Kedrick Garland, Guilford Preparatory Academy (dated Nov. 8, 2012).

¹⁹ See Guilford Request for Review at 2.

²⁰ See *supra* para. 6.

²¹ See Letter from Pamela Jones, Meridian School to USAC (Apr. 24, 2018).

²² *Id.*

²³ See Letter from USAC, Schools and Libraries, to Jill Stone, on behalf of The Meridian School (Sept. 10, 2018).

²⁴ See Letter from Jill Stone, on behalf of The Meridian School, to Federal Communications Commission, CC Docket No. 02-6 (filed Sept. 20, 2018).

and Guildford's appeals,²⁵ we grant Meridian's appeal and direct USAC to grant its requested SPIN change.

B. Unsatisfactory Service From Initial Service Provider

9. *Met School District.* Met School District (Met School) sought both VoIP and broadband Internet services for FY 2011.²⁶ It received two bids for each type of service and eventually chose Conversent Communications (Conversent) for both VoIP and broadband Internet access ahead of Jive (which bid only for the VoIP service) and RINET (which bid only for the Internet service).²⁷ Met School signed a three-year contract with Conversent and was granted E-Rate funding support.²⁸ During the first years of service, Met School states it had significant problems with the quality of Conversent's service, which the district claimed hampered the educational process at the school.²⁹ Therefore, during the third year of the contract, it sought a replacement of both the VoIP and the Internet access services.³⁰ Believing that the best quality of service would come from a provider of both VoIP and Internet access, it sought to purchase both services from the same company.³¹ Met School said it contacted Jive (the other VoIP bidder) about providing both services, but Jive was only interested in providing VoIP and it did not have direct access to the Internet.³² Met School said it also tried to contact RINET (the other Internet access service bidder) but discovered that RINET had been absorbed into a new company.³³ Since neither of the other original bidders could offer the combined services, Met School sought new bids and chose Verizon for the last five months of service associated with funding year 2013.³⁴ Met School then applied for an operational SPIN change.³⁵ USAC denied its SPIN change request and an appeal of that decision, finding that Met School had not met the operational SPIN change requirements because it did not select the second lowest bidder for VoIP, which was Jive.³⁶

10. Based on our review of the record, Met School's actions were motivated by its dissatisfaction with the quality of service provided by Conversent, which would constitute a legitimate reason for a SPIN change. USAC's valid concern, however, was that under the circumstances, Met School would be required to use Jive for VoIP and find a different provider for broadband. In this case,

²⁵ See *supra* paras. 6 & 7.

²⁶ See Letter from Richard Larson, on behalf of Met School District, to Federal Communications Commission, CC Docket No. 02-6 at 2 (filed Dec. 15, 2014) (Met School Request for Review).

²⁷ *Id.*

²⁸ See Letter from USAC, Schools and Libraries Division, to John Harvey, Met School District at 4 (dated Dec. 6, 2013) (FCC Form 471 Application No. 900441, FRN 2448484).

²⁹ Met School Request for Review at 2-3.

³⁰ *Id.*

³¹ *Id.* at 3.

³² *Id.*

³³ *Id.*; Email from John Harvey, erate360, to Rajani Ram, USAC (dated Apr. 9, 2014), indicating that RINET was dissolved and absorbed by Oshean. Met School does not state whether it asked Oshean whether Oshean could provide the required service.

³⁴ *Id.* While Met School also notes that Cox's bid was lower than Jive's, the Commission does not allow SPIN changes to shift service providers that skipped the competitive bidding process simply because they offered lower prices. See *supra* para. 3.

³⁵ Met School Request for Review at 3.

³⁶ See Letter from USAC, Schools and Libraries Division, to Kathleen Piccione, St. Mary's School (dated June 23, 2011) at 3, 5; see Letter from USAC, Schools and Libraries Division, to Richard Larson, on behalf of Met School District (dated Oct. 14, 2014).

however, we find that this would impose an unnecessary and significant burden on Met School. Once it had an established arrangement of using a single provider for both services and would seek that same type of arrangement when it sought service after the final year of the three-year contract, it would seem wasteful and unreasonable to expect it take VoIP for one year from Jive and broadband Internet for one year from a new provider. The facts before us do not suggest, nor do we believe, that Met School is seeking to circumvent or undermine the competitive bidding process. Rather, we consider this to be a situation where an applicant, nearing the end of a long-term contract, attempted to respond to unsatisfactory service in a manner that was reasonable. Therefore, we grant Met School's appeal.

11. *Texarkana Arkansas School District.* Texarkana Arkansas School District (Texarkana) was granted support for mobile phone service from Sprint for FY 2012.³⁷ Before the funding year started, however, Texarkana concluded that Sprint could not provide satisfactory service due to poor cellular service coverage for the school district's area. Texarkana then reached out to the other bidder, AT&T Mobility (AT&T).³⁸ AT&T, however, informed Texarkana that the school district was "not in the local service AT&T footprint." At that point, Texarkana contacted Verizon Wireless, which had not previously bid.³⁹ After Texarkana was assured that Verizon Wireless could provide satisfactory service, it asked USAC for an operational SPIN change to Verizon Wireless.⁴⁰ USAC denied that request, observing that since AT&T had not expressly stated that it could not provide satisfactory service, and AT&T's previous bid implied that it could, Texarkana should not have dismissed AT&T so quickly.⁴¹ While we understand USAC's reasoning, given that Texarkana had already found that one bidder could not provide satisfactory service, we find that it was reasonable for Texarkana to interpret AT&T's email as indicating that AT&T would also not be able to provide a level of service that was satisfactory. Having rejected both bidders for a legitimate reason – their inability to provide adequate service – we find that it was reasonable for Texarkana to seek out other providers who could provide the service, such as Verizon Wireless. Once Verizon Wireless confirmed that it could provide Texarkana with mobile phone service that provided adequate cell coverage to the school district, USAC should have approved the applicant's switch to Verizon Wireless. Therefore, we grant Texarkana's appeal, and direct USAC to grant its requested SPIN change.

12. *Yeshiva Beth David.* Yeshiva Beth David (Beth David) was granted support for service from Verizon New York for FY 2011.⁴² During the funding year, however, Beth David requested a SPIN change to Xchange Telecom for one of its funding requests (FRNs) noting that the customer service it received from Verizon New York was too slow.⁴³ Although the Commission permits operational SPIN

³⁷ See Letter from USAC, Schools and Libraries Division, to Debi Sovereign or Jane Kellogg, Texarkana Arkansas School District (dated Dec. 4, 2012) (FCC Form 471 Application No. 832230, FRN 2343715).

³⁸ See Letter from Deborah Sovereign, on behalf of Texarkana Arkansas School District, to Federal Communications Commission, CC Docket No. 02-6 at Attach 2 (filed Oct. 24, 2013) (FCC Form 471 Application No. 832230, FRN 2343715).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at Attach 1.

⁴² See Letter from USAC, Schools and Libraries Division, to Rabbi Lichter, Yeshiva Beth David School at 3 (dated Sept. 13, 2011) (FCC Form 471 Application No. 772322, FRNs 2096772 & 2096777).

⁴³ See Facsimile from Rabbi Lichter, Yeshiva Beth David, to USAC, Schools and Libraries Division (noted by USAC on Feb. 1, 2012) (SPIN Change Request for 2096772). USAC had previously granted a SPIN change for Beth David, allowing it to switch from Verizon to Xchange Telecom on one of its other FRNs for the same reason—poor customer service. See Facsimile from Rabbi Lichter, Yeshiva Beth David, to USAC, Schools and Libraries Division (noted by USAC on Jan. 4, 2012) (concerning FRN 2096777) (SPIN Change Request for 2098777); Letter from USAC, Schools and Libraries Division, to Rabbi Lichter, Yeshiva Beth David (dated Jan. 9, 2012) (concerning

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changes where the provider is unable to perform the requested service, USAC denied Beth David's request because it found that the school's reason for switching—unsatisfactory customer service—was not recognized as a legitimate reason for a SPIN change.⁴⁴ Beth David appealed to the Commission.⁴⁵

13. We affirm USAC's decision. In the *Sixth Report and Order*, the Commission was concerned that an applicant might identify a service provider as the winning bidder but intend to change providers through the SPIN change process as soon as USAC issued a funding commitment, thereby circumventing the competitive bidding process.⁴⁶ It therefore instituted a requirement that there be a legitimate reason to change providers, such as when the service provider is unable to perform.⁴⁷ In this case, Beth David sought a SPIN change to Xchange—a service provider that had not participated in the competitive bidding process—because of concerns with Verizon New York's customer service and not because of Verizon New York's failure to perform the underlying service. Indeed, Beth David acknowledged in its SPIN change request that the underlying service Verizon New York was selected to provide was reliable.⁴⁸ Under these circumstances and given the Commission's concerns of the potential for E-Rate participants to circumvent the competitive bidding process via SPIN changes,⁴⁹ we do not find that Beth David had a legitimate reason to change providers. Since the revisions to the SPIN rules adopted in that order became effective for funding year 2011,⁵⁰ USAC was correct to apply them to Beth David's FY 2011 SPIN change request.⁵¹ As a result, we deny Beth David's request.

C. Request to Shift Unused Funding

14. *Capital Region BOCES*. Capital Region BOCES (CR BOCES) was granted support for wireless service from two different carriers – Verizon Wireless (Verizon) and Nextel of New York (Nextel) (Nextel is now Sprint) for FY 2011.⁵² When the funding for Verizon was exhausted and there appeared to be more funding for Nextel than would be needed, CR BOCES asked USAC to shift some of the Nextel funding to Verizon by granting a partial SPIN change for the Nextel funding request number (FRN).⁵³ USAC denied that request and CR BOCES appealed to the Commission.

15. CR BOCES's request seeks to use a SPIN change to shift funds granted for one FRN to a different FRN.⁵⁴ The E-Rate SPIN change rules do not recognize this purpose as a legitimate reason for an operational SPIN change. When CR BOCES was granted funding for its Nextel FRN, the grant was

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FRN 2096777); Letter from USAC, Schools and Libraries Division, to Yeshiva Beth David (dated Apr. 9, 2012) (Beth David Appeal Concerning FRN 2096772).

⁴⁴ See Letter from USAC, Schools and Libraries Division, to Yeshiva Beth David (dated Apr. 9, 2012).

⁴⁵ See Beth David Appeal Concerning FRN 2096772.

⁴⁶ *Sixth Report and Order*, 25 FCC Rcd at 18803, para. 91.

⁴⁷ *Id.*

⁴⁸ SPIN Change Request for 2096772.

⁴⁹ *Sixth Report and Order*, 25 FCC Rcd at 18803, para. 91 (noting that a legitimate reason to switch service providers exists where the service provider breaches its contract or the service provider is unable to perform).

⁵⁰ See *Guidance on Sixth Report and Order*, 25 FCC Rcd at 17337.

⁵¹ Our decision to affirm USAC's denial of the SPIN change is not affected by the fact USAC earlier erroneously failed to deny an identical request for a SPIN change, as described in note 43, *supra*.

⁵² See Letter from USAC, Schools and Libraries Division, to Winston Himsworth, Capital Region BOCES (dated Nov. 8, 2011) at 14 and 39 (FCC Form 471 Application No. 821711: FRNs 2237787 & 2237812).

⁵³ See Letter from Winston Himsworth, Capital Region BOCES, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 4, 2013).

⁵⁴ It seeks to shift funds from FRN 2237787 to FRN 2237812.

for the purchase of the designated services for the set of users indicated; it was not a general grant to CR BOCES, available for reallocation to other FRNs – even those for a similar service. An applicant that overestimates its demand in one FRN cannot allocate its unneeded funding to a different FRN. Rather, any unused funding granted in an FRN must be returned to the universal service fund.⁵⁵ Therefore, we conclude that CR BOCES cannot use a SPIN change to reallocate funds from one FRN to another; under the circumstances presented here, any unused funding allocated for FRN 2237787 must be relinquished. Accordingly, we deny CR BOCES's request.

D. Delay in Funding Commitment Decision

16. *Academy of Detroit West.* Academy of Detroit West (Detroit West) requested funding for telephone and T-1 Internet services from CMC Telecom, Inc. (CMC) for FY 2011.⁵⁶ Detroit West said the new agreement with CMC was an upgrade from its current service with AT&T but also cost significantly more.⁵⁷ USAC did not issue the funding commitment approving E-Rate funding for the service until October 18, 2011, more than four months after the funding year started.⁵⁸ During those four months, Detroit West was unsure whether its E-Rate funding would be approved for CMC and delayed switching from its cheaper existing service provider, AT&T, to CMC until November 2, 2011.⁵⁹ After receiving the positive funding commitment, Detroit West requested a SPIN change from CMC to AT&T for the months of July through October of 2011.⁶⁰ USAC denied the request, explaining that Detroit West did not provide an acceptable reason for the operational SPIN change,⁶¹ and we agree.

17. While E-Rate rules permit applicants to continue to take service from their incumbent carriers and receive E-Rate support after a SPIN change request if their new service provider is not able to provide service at the start of the funding year,⁶² from the record before us, it does not appear that Detroit West faced such an obstacle here. Detroit West states that it declined to take service from CMC at the start of FY 2011 because it could not afford the service if it was denied E-Rate funding. We find that the operational SPIN change rules do not grant applicants the right to remain with incumbent providers, rather than the newly-selected service provider, when technical problems do not prevent that transition. Detroit West has failed to demonstrate that there was a legitimate reason for its requested operational SPIN change and that it should be permitted to receive E-Rate funding for purchasing service from an unapproved provider, simply to avoid potential undesirable outcomes associated with the risk that its E-Rate funding request will be denied. Therefore, we deny its appeal.

⁵⁵ *Requests for Waiver of Sections 54.504(c), 54.504(f), 54.507(c), and 54.507(g) of the Commission's Rules, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 1653, 1663, 1670-71, paras. 19 & 34 (2010).

⁵⁶ See Letter from USAC, Schools and Libraries Division, to Valerie Nelson, on behalf of Academy of Detroit West at 3 (dated Oct. 18, 2011) (FCC Form 471 Application No. 814759, FRN 2215772).

⁵⁷ See Letter from Valerie Nelson, on behalf of Academy of Detroit West, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed May 29, 2012) (Detroit West Request for Review) corrected by Letter from Valerie Nelson, on behalf of Academy of Detroit West, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 24, 2012).

⁵⁸ See Letter from USAC, Schools and Libraries Division, to Valerie Nelson, on behalf of Academy of Detroit West at 3 (dated Oct. 18, 2011) (FCC Form 471 Application No. 814759, FRN 2215772).

⁵⁹ See Detroit West Request for Review.

⁶⁰ See *id.*

⁶¹ See Letter from USAC, Schools and Libraries Division, to Valerie Nelson, on behalf of Academy of Detroit West, (dated May 17, 2012).

⁶² See *supra* note 8 and accompanying text.

E. Compliance with State Bidding Requirements

18. *Glendale Elementary School District #40.* Glendale Elementary School District #40 (Glendale) applied for E-Rate funding in FY 2011 for structured cabling services provided by Sentinel Technologies, chosen as the most cost-effective of two vendors bidding.⁶³ USAC approved funding for the purchase in March 2012.⁶⁴ Later, Glendale realized that Arizona law prevented it from purchasing the services from Sentinel and the other bidder.⁶⁵ Glendale then requested a SPIN change to get service from a third company, Logicalis, which offered structured cabling services under an awarded cooperative purchasing contract.⁶⁶ USAC denied the SPIN change request and subsequent appeal of that decision, finding that the request was inconsistent with the requirements of the Commission's rules.⁶⁷ We agree. As we explained above, the E-Rate rules permit operational SPIN changes when service providers are unable to provide the service they promised, but here the obstacle was the failure of Glendale to have followed Arizona's formal competitive bidding requirements. Had Glendale followed those requirements, there would have been no need for a SPIN change. Under these circumstances, we find that the E-Rate rules do not permit an operational SPIN change and we deny Glendale's appeal.

F. Need Upgraded Service

19. *St. Mary School.* St. Mary School (St. Mary) was granted E-Rate funding for telecommunications from Centurylink Corp and Verizon Business Global LLC for FY 2011.⁶⁸ In March 2012, however, the school decided to upgrade to digital service to support iPads for its science classes for May 2012.⁶⁹ It states that neither Centurylink nor Verizon could provide the upgraded, combined digital service for both voice and Internet access that it desired and that it was available from Cox Communications (Cox). Thus, St. Mary switched to Cox and requested an operational SPIN change for the months of May and June 2012.⁷⁰ USAC denied both that SPIN change request and St. Mary's subsequent appeal, finding that the change did not meet the requirements for an operational SPIN change.⁷¹ St. Mary appealed to the Commission, and we uphold USAC's denial.⁷² E-Rate program rules

⁶³ See Letter from Ernest Nicely, on behalf of Glendale Elementary School District #40, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 at 2-3 (filed June 19, 2015) (Glendale Request for Review).

⁶⁴ Letter from USAC, Schools and Libraries Division, to Mike Daniel, Glendale Elementary School District #40 at 3 (dated Mar. 27, 2012).

⁶⁵ Arizona law requires that, for purchases of more than \$50,000, schools must either follow a formal bidding process or buy from the state contract or approved cooperative purchasing contract. Glendale Request for Review at 2-3. Glendale had not followed a formal bidding process and neither bidder offered structured cabling services on the contractual terms required by state law for schools. *Id.*

⁶⁶ *Id.* at 3.

⁶⁷ See Letter from USAC, Schools and Libraries Division, to Ernie Nicely, Glendale Elementary School District #40 (dated Dec. 29, 2014); Letter from USAC, Schools and Libraries Division, to Ernie Nicely, Glendale Elementary School District #40 (dated May 11, 2015).

⁶⁸ See Letter from USAC, Schools and Libraries Division, to Kathleen Piccione, St. Mary's School (dated June 23, 2011) (FCC Form 471 Application No. 805803, FRNs 2220315 & 2231615). Centurylink Corp was formerly known as Embarq and Verizon Business Global LLC was MCI.

⁶⁹ See Facsimile from Kathleen Piccione, St. Mary School, to USAC, Schools and Libraries Division (dated June 13, 2012).

⁷⁰ *Id.*

⁷¹ See Letter from USAC, Schools and Libraries Division, to Kathleen Piccione, St. Mary's School (dated Oct. 10, 2012); Letter from Kathleen Piccione, St. Mary School, to USAC, Schools and Libraries Division (dated Dec. 6, 2012); Letter from USAC, Schools and Libraries Division, to Kathleen Piccione, St. Mary's School (dated Dec. 18, 2012).

require an applicant to conduct a formal competitive bidding process resulting in the selection of the most cost-effective choice among the bidders for any particular services for which it seeks E-Rate support.⁷³ While the operational SPIN change rules permit an applicant to replace a service provider who is failing to provide the expected, underlying service the applicant competitively bid (e.g., a service provider that cannot provide connectivity to certain locations as promised), they do not permit an applicant to abandon its chosen provider because the provider is unable to provide a new, different service that was never properly competitively bid in the first place.⁷⁴

G. Opportunity for Lower Price

20. *St. Thomas the Apostle School*. St. Thomas the Apostle School (St. Thomas) was approved to receive E-Rate support for telecommunications service from AT&T Mobility for FY 2012.⁷⁵ Soon afterwards, St. Thomas requested an operational SPIN change to switch to Sprint Spectrum, which offered the same service at a lower price.⁷⁶ USAC rejected the SPIN change request and subsequent appeal, explaining that E-Rate rules do not recognize the availability of a lower price as an acceptable reason for an operational SPIN change.⁷⁷ Although not raised in its SPIN change request or its appeal to USAC, St. Thomas states in its appeal to the Commission that some of its cell phone users appeared to have reception problems.⁷⁸ It also asks us to waive the E-Rate requirements for operative SPIN changes due to the special circumstances of the Commission's number portability rules.⁷⁹

21. We deny St. Thomas's waiver request.⁸⁰ First, St. Thomas fails to demonstrate how the number portability rules are relevant to our resolution of the issues raised in this appeal. Further, if St. Thomas had initially asked for a SPIN change due to reception problems, then USAC would have had the opportunity to consider the merits of St. Thomas's SPIN change request on those grounds. However, St.

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⁷² See Letter from Kathleen Piccione, St. Mary School, to Marlene Dortch, Federal Communications Commission, CC Docket No. 02-6 (filed Feb. 15, 2013).

⁷³ See *supra* para. 2.

⁷⁴ Applicants may, however, request service substitutions meeting the requirements of 47 CFR § 54.504(d). See *supra* para. 3.

⁷⁵ See Letter from USAC, Schools and Libraries Division, to Sun Chang, St. Thomas the Apostle School at 4 (dated July 10, 2012) (FCC Form 471 Application No. 842430, FRN 2286051).

⁷⁶ See E-mail from Susan Fagundus, on behalf of Immaculate Conception School, to USAC (dated Aug. 24, 2012); E-mail from Susan Fagundus, on behalf of St. John School, to USAC (dated Aug. 24, 2012); communication from Sun Chang, St. Thomas the Apostle School, to USAC, Schools and Libraries Division (dated July 25, 2012) and amended (dated Sep. 25, 2012).

⁷⁷ See Letter from USAC, Schools and Libraries Division, to St. Thomas the Apostle School (dated Oct. 26, 2012); Letter from Stephen Weiss, on behalf of St. Thomas the Apostle School, to USAC, Schools and Libraries Division (dated Dec. 25, 2012); Letter from USAC, Schools and Libraries Division, to Stephen Weiss, on behalf of St. Thomas the Apostle School (dated Jan. 17, 2013).

⁷⁸ See Letter from Stephen Weiss, on behalf of St. Thomas the Apostle School, to Federal Communications Commission, CC Docket No. 02-6 at 6 (filed Mar. 18, 2013) (St. Thomas Request for Waiver).

⁷⁹ *Id.* at 4-5.

⁸⁰ Generally, the Commission's rules may be waived if good cause is shown. 47 CFR § 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. *Northeast Cellular*, 897 F.2d at 1166.

Thomas raised this basis for relief for the first time on appeal to the Commission and did not address why it was unable to present this argument earlier. Moreover, St. Thomas does not present evidence now that this was a “legitimate” reason that AT&T Mobility was unable to perform, thus necessitating a change of service providers. We therefore rely on its initial reason for requesting a SPIN change: to receive a lower price that had not been offered during the competitive bidding process. As discussed above, the *Sixth Report and Order* specifically found that changing providers to secure a lower price is not a legitimate reason to qualify for an operational SPIN change.⁸¹

H. New Location

22. *Stemcivics*. Stemcivics was approved to receive E-Rate support for Internet access from Verizon Online, LLC (Verizon Online) for FY 2015.⁸² Soon after, Stemcivics sought an operational SPIN change after it moved to an entirely new location where its service provider could not provide service.⁸³ USAC denied that SPIN change request and the subsequent appeal by Stemcivics, stating that the request failed to provide a “legitimate reason” for changing service providers.⁸⁴ In its appeal to the Commission, Stemcivics observes that the original service provider’s inability to perform the requested service is expressly recognized as a legitimate reason for an operational SPIN change and asks us to grant its appeal.⁸⁵

23. We deny Stemcivics’s appeal. We reject the claim that Verizon Online could not provide the service for which Stemcivics contracted. Rather, Verizon Online could not provide service to a new location that was not included in the bid nor contract to provide service. While an applicant may seek E-Rate support for new locations that it expects to occupy, it must follow E-Rate program competitive bidding rules and make potential bidders aware of any future locations. As a result, we find that an applicant cannot use an operational SPIN change to obtain E-Rate funding for a new service provider to serve locations for which the applicant did not seek competitive bids.⁸⁶

IV. ORDERING CLAUSES

24. 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, sections 0.91, 0.291, 1.3, 1.106, and 54.722(a) of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 1.3, 1.106 and 54.722(a), the appeals listed in Appendix A ARE GRANTED to the extent provided herein.

25. 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, sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 1.3, 54.722(a), that sections

⁸¹ See *supra* para. 3.

⁸² See Letter from USAC, Schools and Libraries Division, to Kristin Sniecinski, on behalf of Stemcivics, at 5 (dated July 31, 2015) (FCC Form 471 Application No. 1028223, FRN 2792931).

⁸³ See Facsimile from Kristin Sniecinski, on behalf of Stemcivics, to USAC, Schools and Libraries Division (dated Aug. 3, 2015).

⁸⁴ See Letter from USAC, Schools and Libraries Division, to Kristin Sniecinski, on behalf of Stemcivics (dated Sep. 14, 2015); Letter from Kristin Sniecinski, on behalf of Stemcivics, to USAC, Schools and Libraries Division (dated Sep. 18, 2015); Letter from USAC, Schools and Libraries Division, to Kristin Sniecinski, on behalf of Stemcivics (dated Nov. 25, 2015).

⁸⁵ See Letter from Kristin Sniecinski, on behalf of Stemcivics, to Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 31, 2015).

⁸⁶ 47 CFR § 54.503(c)(1)(ii); see also *Federal-State Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (subsequent history omitted) (noting that the completed FCC Form 470 seeking E-rate services must provide a description of the requested services sufficient to enable potential bidders to accurately determine the needs of the applicant).

54.504(a), 54.507(d), and 54.514(a) of the Commission’s rules, 47 CFR §§ 54.504(a), 54.507(d), and 54.514(a) ARE WAIVED to the limited extent described herein.

26. 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, sections 0.91, 0.291, and 54.722(a) of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 54.722(a), that the appeals listed in Appendix B ARE DENIED.

27. 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, sections 0.91, 0.291, and 54.722(a) of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 54.722(a), that the waiver request listed in Appendix C IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Ryan B. Palmer
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A

Requests for Review Granted

Petitioner	Application Number(s)	Funding Request Number	Funding Year	Date Request for Review/Waiver Filed
Archdiocese of St. Louis Schools	171046083	1799105656	2017	Nov. 9, 2018
Guilford Preparatory Academy	805384, 807347	2184617, 2191422	2011	Jan. 4, 2013
The Meridian School	171036627	1799082009	2017	Sept. 20, 2018
Met School District	900441	2448484	2013	Dec. 15, 2014
Texarkana Arkansas School District	832230	2343715	2012	Oct. 24, 2013

APPENDIX B

Requests for Review Denied

Petitioner	Application Number	Funding Request Number (s)	Funding Year	Date Request for Review/Waiver Filed
Academy of Detroit West	814759	2215772	2011	May 29, 2012
Capital Region BOCES	821711	2237787, 2237812	2011	Mar. 4, 2013
Glendale Elementary School District #40	803971	2208461	2011	June 19, 2015
St. Mary School	805803	2220315, 2231615	2011	Feb. 15, 2013
Stemcivics	1028223	2792931	2015	Dec. 31, 2015
Yeshiva Beth David	772322	2096772	2011	July, 5, 2012

APPENDIX C

Requests for Waiver Denied

Petitioner	Application Number	Funding Request Number	Funding Year	Date Request for Review/Waiver Filed
St. Thomas the Apostle School	842430	2286051	2012	Mar. 18, 2013