

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review and/or Waiver of the
Decision of the
Universal Service Administrator by
Glendale Unified School District
Glendale, California
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-143548
CC Docket No. 02-6

ORDER

Adopted: February 1, 2006

Released: February 1, 2006

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. Glendale Unified School District, Glendale, California, (Glendale) filed a Request for Review and/or Waiver of a decision by the Universal Service Administrative Company (USAC or Administrator).1 The USAC decision at issue denied funding for discounted services in Funding Year 2003 of the schools and libraries universal service mechanism. As explained below, we find that special circumstances exist to justify a waiver of the Commission’s rules and remand the application associated with this appeal to USAC for further action consistent with this Order.

II. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.2 Once the school or library has complied with the Commission’s competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the service providers with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.3 Also on the FCC Form 471, applicants must list the “service start date,” the date on which services will start in the funding year

1 Letter from Mary W. Boger and Michael F. Escalante, Glendale Unified School District, Glendale, California, to Federal Communications Commission, filed November 4, 2005 (Request for Review and/or Waiver). Section 54.719(c) of the Commission’s rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 47 C.F.R. §§ 54.501-54.503.

3 47 C.F.R. § 54.504(c); Instructions for Completing the Universal Service Schools and Libraries Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 2002) (FCC Form 471 Instructions).

for which applicants are applying.⁴ USAC then issues a funding commitment decision letter indicating the discounts, if any, to which the applicant is entitled. After the funding year begins and the discounted service commences, the approved recipient of discounted services submits to USAC an FCC Form 486, which indicates that the service has begun and demonstrates approval of technology plans.⁵ Applicants must list the actual service start date on the FCC Form 486.⁶ USAC will only accept invoices from the service provider and issue disbursements for discounts on eligible services after receipt of the FCC Form 486.⁷

3. Glendale filed its FCC Form 471 for Funding Request Numbers (FRNs) 980062 and 980113 on February 4, 2003, noting that the service start date for the two FRNs was July 1, 2003.⁸ Glendale received its Funding Commitment Decision Letter on March 3, 2004 and filed its FCC Form 486 on March 8, 2004.⁹ On its FCC Form 486, Glendale listed its funding year service start date as March 8, 2004, the date that it submitted the form to USAC, instead of July 1, 2003, the actual service start date.¹⁰ On June 22, 2004, Glendale submitted its FCC Form 472 Billed Entity Applicant Reimbursement Form (BEAR Form), seeking reimbursement for work billed from November 2003 to May 2004 pursuant to FRNs 980062 and 980113.¹¹ On November 19, 2004, USAC sent Glendale notification that it was not reimbursing certain expenses associated with the FRNs 980062 and 980113 because the service start date was before the services received date on the FCC Form 486.¹² On November 4, 2005, Glendale then filed the instant Request for Review and/or Waiver with the Commission.¹³

III. DISCUSSION

4. The Commission may waive any provision of its rules on its own motion and for good cause shown.¹⁴ A rule may be waived where the particular facts make strict compliance inconsistent with

⁴ FCC Form 471 Instructions at 25.

⁵ Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (August 2003) at 2 (FCC Form 486 Instructions).

⁶ FCC Form 486 Instructions at 12-13.

⁷ FCC Form 486 Instructions at 2. *See also Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12444, para. 4 (2002) (CIPA II Order); 47 C.F.R. § 54.520.

⁸ FCC Form 471, Glendale Unified School District, certified February 4, 2003 (Glendale FCC Form 471).

⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Patrick Kennedy, Glendale Unified School District, dated March 3, 2004 (Funding Commitment Decision Letter); FCC Form 486, Glendale Unified School District, dated March 8, 2004 (Glendale FCC Form 486).

¹⁰ Glendale FCC Form 486 at 4.

¹¹ FCC Form 472 Billed Entity Applicant Reimbursement Form, Glendale Unified School District, dated June 22, 2004 (Glendale BEAR Form).

¹² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Patrick Kennedy, Glendale Unified School District, dated November 19, 2004 (Form 472 (BEAR Form) Notification Letter).

¹³ Request for Review and/or Waiver.

¹⁴ 47 C.F.R. §1.3.

the public interest.¹⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁶ 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.¹⁷

5. Based on the facts and circumstances in this specific case, we waive the relevant Commission rules and procedures. We find that although Glendale committed an unintentional, clerical error when it listed the incorrect service start date on its FCC Form 486, it adhered to the core program requirements. As we recently noted, the E-rate program is fraught with complexity from the perspective of beneficiaries, resulting in a significant number of applications for E-rate support being denied for ministerial or clerical errors.¹⁸ We find that the action we take here promotes the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the “Act”), by helping to ensure that Glendale obtains access to discounted telecommunications and information services.¹⁹ Although processing standards are necessary for the efficient administration of the program, strict adherence to such application procedures in this case would result in an outcome conflicting with the statutory goal mandated by Congress of preserving and advancing universal service among schools and libraries most in need of support. As we consider fundamental reform to the schools and libraries universal service mechanism, the public interest and goals of section 254(h) of the Act are best served by waiving our rules pertaining to Glendale’s failure to insert the correct service start date on its FCC Form 486. We therefore grant a waiver to Glendale and remand its application to USAC for further action consistent with this order.

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁶ *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), *cert. denied*, 409 U.S. 1027 (1972).

¹⁷ *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Linkup, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*Comprehensive Review NPRM*).

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

IV. ORDERING CLAUSE

6. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Request for Review and/or Waiver filed by Glendale Unified School District, Glendale, California, IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the Request for Review and/or Waiver filed by Glendale Unified School District, Glendale, California, IS REMANDED to the Administrator for further consideration in accordance with the terms of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer
Deputy Chief
Wireline Competition Bureau