

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Waiver
of the Decision of the
Universal Service Administrator by
Illinois School for the
Visually Impaired, Jacksonville, IL
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-419654
CC Docket No. 02-6

ORDER

Adopted: April 3, 2006

Released: April 3, 2006

By the Chief, Wireline Competition Bureau:

1. In this Order, we grant the appeal of a decision by the Universal Service Administrative Company (USAC) rescinding funding already committed to the Illinois School for the Visually Impaired (Illinois School) for discounted services under the schools and libraries universal service mechanism. We waive section 54.504 of the Commission's rules, which states that an applicant for schools and libraries funding must have a legally binding agreement in place when it submits its FCC Form 471. We remand the appeal to USAC for action consistent with this Order, and, to ensure that it is resolved expeditiously, we direct USAC to reinstate the funding commitment no later than 30 days from the release of this Order.

2. Background. 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, Internet access, and internal connections. The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium must seek competitive bids for all services eligible for support. In accordance with the Commission's rules, an applicant must file with USAC an FCC Form 470 requesting services, which USAC posts onto its website. The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471. The Commission's rules state that the FCC Form 471 requesting support for the services ordered by the applicant shall be

1 47 C.F.R. § 54.504.

2 47 C.F.R. §§ 54.502, 54.503.

3 47 C.F.R. §§ 54.504, 54.511(c).

4 See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470).

5 47 C.F.R. § 54.504(c); see also Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

submitted “upon signing a contract for eligible services.”<sup>6</sup> Specifically, the instructions state that applicants must have a “signed contract” or a “legally binding agreement” with the service provider “for all services” ordered.<sup>7</sup>

3. The Illinois School has requested review of USAC’s decision to rescind funding because it did not have a legally binding agreement in place when its FCC Form 471 was submitted.<sup>8</sup> On February 4, 2004, the Illinois School filed an FCC Form 471 which included Funding Request Number (FRN) 1191492 for internal connections.<sup>9</sup> The contract award date provided for FRN 1191492 was February 3, 2004, which was before the FCC Form 471 was certified and therefore in compliance with E-rate program rules.<sup>10</sup> On April 14, 2005, the Illinois School requested a delivery deadline extension.<sup>11</sup> In its request, the Illinois School noted that that it did not sign the contract with the service provider until April 2005, well after the date the Illinois School’s FCC Form 471 was submitted.<sup>12</sup> On November 4, 2005, USAC notified the Illinois School that it was rescinding funding for FRN 1191492 due to the fact that the Illinois School submitted its FCC Form 471 before signing its contract.<sup>13</sup> On November 22, 2005, the Illinois School appealed USAC’s decision to rescind its funding, acknowledging that the contract was not signed until April 1, 2005.<sup>14</sup> USAC denied its appeal.<sup>15</sup> The Illinois School then filed a request for review with the Commission.<sup>16</sup>

4. In its request for review, the Illinois School concedes that, on its FCC Form 471, it mistakenly listed the date it identified the successful bidder as the contract award date, instead of the date it executed the contract.<sup>17</sup> Because the Illinois School is fully funded by the State of Illinois Department of Human Services, it must follow the State of Illinois Office of Central Management Services procedures

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<sup>6</sup> *Id.* See also *Request for Review of Waldwick School District, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket No. 02-6, Order, 18 FCC Rcd 22994, 22995, para. 3 (Wireline Comp. Bur. 2003) (*Waldwick Order*); *Request for Review of St. Joseph High School, Schools and Libraries Universal Service Support Mechanisms*, File No. SLD-234540, CC Docket Nos. 96-45, 97-21, Order, 17 FCC Rcd 22499, 22500-01, para. 4 (Wireline Comp. Bur. 2002) (*St. Joseph Order*).

<sup>7</sup> 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).

<sup>8</sup> Letter from Brenda Stewart, Illinois School for the Visually Impaired, to Schools and Libraries Division, Universal Service Administrative Company (filed March 16, 2006) (Request for Review). See 47 C.F.R. § 54.504(c).

<sup>9</sup> FCC Form 471, Illinois School for the Visually Impaired, certified February 4, 2004 (Illinois School FCC Form 471).

<sup>10</sup> See 47 C.F.R. § 54.504(c).

<sup>11</sup> Letter from Brenda Stewart, Illinois School for the Visually Impaired, to Schools and Libraries Division, Universal Service Administrative Company (dated April 14, 2005) (Request for Delivery Deadline Extension).

<sup>12</sup> *Id.*

<sup>13</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Les Stevens, Illinois School for the Visually Impaired (dated November 4, 2005) (Notification of Commitment Adjustment Letter).

<sup>14</sup> Letter from Brenda Stewart, Illinois School for the Visually Impaired, to Schools and Libraries Division, Universal Service Administrative Company (dated November 22, 2005) (Request for Appeal).

<sup>15</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Brenda Stewart, Illinois School for the Visually Impaired (dated February 24, 2006) (Administrator’s Decision on Appeal).

<sup>16</sup> Request for Review.

<sup>17</sup> *Id.* at 4.

to obtain a contract for a service provider.<sup>18</sup> Consequently, the Illinois School was required by state regulations to wait until it received official notification from USAC that its application was fully funded before entering into an agreement with its service provider.<sup>19</sup> Because this notification did not occur until January 11, 2005, the Illinois School had to wait until April to finalize and sign its contract with its service provider.<sup>20</sup>

5. The Commission may waive any provision of its rules on its own motion and for good cause shown.<sup>21</sup> A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>22</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>23</sup> 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.<sup>24</sup>

6. *Discussion.* We grant the appeal of the decision by USAC rescinding funding of the Illinois School for discounted services under the schools and libraries universal service mechanism. We find that good cause exists to waive section 54.504 of the Commission's rules, which states that an applicant for schools and libraries funding must have a legally binding agreement in place when it submits its FCC Form 471.<sup>25</sup>

7. Competitive bidding requirements are necessary to ensure more efficient pricing for telecommunications and information services purchased by schools and libraries. Section 54.504 requires that an applicant have a signed agreement in place before filing its FCC Form 471.<sup>26</sup> The record demonstrates that the Illinois School technically missed the program deadline for having a written contract in place because its commitment had to be approved by the state and because it had to adhere to state procurement laws.<sup>27</sup> As a result, the Illinois School was unable to sign a legally binding agreement prior to the close of the FCC Form 471 window.<sup>28</sup> Furthermore, while it missed the deadline, the Illinois School had a legally binding contract in place during the funding year and before the vendor began providing services.<sup>29</sup> We find, therefore, that in these cases the policy behind the rule was satisfied even if the Illinois School did not technically meet the requirements of the rule.

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<sup>18</sup> *Id.* at 5.

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

<sup>20</sup> *Id.* at 4-5.

<sup>21</sup> 47 C.F.R. § 1.3.

<sup>22</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>23</sup> *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).

<sup>24</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>25</sup> 47 C.F.R. § 54.504.

<sup>26</sup> *Id.*

<sup>27</sup> Request for Review at 5.

<sup>28</sup> The Funding Year 2004 FCC Form 471 window closed February 4, 2004. See USAC Website, FY2004 Form 471 Window Dates Set, available at <http://www.universalservice.org/sl/tools/news-archive/2003/092003.asp#091703>.

<sup>29</sup> Request for Review at 4-5.

8. We emphasize that our competitive bidding rules are a central tenet of the E-rate program, and a tool for preventing waste, fraud and abuse. Here, we note there is no evidence in the record that the Illinois School engaged in activity intended to defraud or abuse the schools and libraries program. Finally, we find that, for this applicant, denying its requests for funding would create undue hardship and prevent it from receiving E-rate funding. Accordingly, we find that good cause exists to grant the Illinois School a waiver of section 54.504 of the Commission's rules, and remand this appeal to USAC for further processing consistent with our decision. To ensure that it is resolved expeditiously, we direct USAC to reinstate the funding commitment no later than 30 days from the release of this Order.

9. We are committed to guarding against waste, fraud, and abuse, and to ensuring that funds disbursed through the E-rate universal service mechanism are used for appropriate purposes. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the E-rate mechanism and to determine on a case-by-case basis whether waste, fraud, or abuse of program funds occurred and whether recovery is warranted. If we find that funds were not used properly, we will require USAC to recover such funds through its normal processes. Although we grant the appeal addressed here, we reserve the right to conduct audits and investigations to determine compliance with the program rules and requirements.

#### **IV. ORDERING CLAUSES**

10. 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 filed by the Illinois School for the Visually Impaired IS GRANTED.

11. 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 section 47. C.F.R. § 54.504 IS WAIVED.

12. 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 filed by the Illinois School IS REMANDED to USAC for further consideration in accordance with the terms of this Order.

13. 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, USAC SHALL REINSTATE the funding commitment no later than 30 calendar days from release of this Order.

Thomas J. Navin  
Chief  
Wireline Competition Bureau