

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

In the Matter of
Requests for Wavier by
Puerto Rico Department of Education
San Juan, PR
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-918308, et al.
CC Docket No. 02-6

ORDER

Adopted: December 2, 2014

Released: December 2, 2014

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

1. Consistent with precedent, with respect to its funding requests seeking E-rate support for priority one services in funding year 2013, we grant the request of the Puerto Rico Department of Education (PRDE) seeking a waiver of the Commission's then-existing rules requiring E-rate applicants to have a signed contract in place prior to filing an application for E-rate support. Also consistent with precedent, we dismiss as moot PRDE's request for a waiver of the same rule with respect to its request

1 See Requests for Waiver of the Decision of the Universal Service Administrator by Adams County School District 14, Commerce City, CO et al., CC Docket No. 02-6, Order, 22 FCC Rcd 6019, 6022-23, para. 9 (2007) (Adams County Order) (granting waiver of signed contract requirement where applicants had agreements with vendors, but applicants did not have signed contracts in place at the deadline because agreements with service providers had not been approved by district governing boards in accordance with state and local procurement laws); see also Request for Waiver of the West Virginia Department of Education, Charleston, WV, CC Docket No. 02-6, Order, 20 FCC Rcd 12890, 12892-93, para. 9 (Wireline Comp. Bur. 2005) (West Virginia Order); Request for Waiver of the Kentucky Department of Education, Frankfort, KY, CC Docket No. 02-6, Order, 22 FCC Rcd 4742, 4744-45, para. 9 (Wireline Comp. Bur. 2007) (both orders granting waiver of signed contract requirement because a state law prohibited extending state master contracts until 30 days before expiration of the contract).

2 The E-rate program is more formally known as the schools and libraries universal service support program.

3 The funding requests with respect to which we grant the waiver are identified in Appendix A.

4 See Letter from Maribel Picó, Chief Information Officer, Puerto Rico Department of Education, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Aug. 15, 2014) (Request for Waiver). 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).

5 See Request for Review of a Decision of the Universal Service Administrator by Loving Municipal Schools, CC Docket No. 02-6, Order, 26 FCC Rcd 10428, 10430-31, para. 6 (Wireline Comp. Bur. 2011); Request for Waiver and Review of Decisions of the Universal Service Administrator by Montgomery County School District, CC Docket No. 02-6, Order, 29 FCC Rcd 320, 321, para. 2 (Wireline Comp. Bur. 2014) (both affirming USAC's denial of funding requests that fell below the priority two funding threshold for the relevant funding years).

for support for priority two services for funding year 2013 in light of USAC's proper denial of those funding requests, because no priority two funding is available for funding year 2013.<sup>6</sup>

2. *Background.* Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.<sup>7</sup> The Commission's rules provide that an eligible school, library, or consortium that includes eligible schools and libraries must seek competitive bids for all services eligible for support.<sup>8</sup> In addition to following the Commission's competitive bidding requirements, applicants are required to follow state and local procurement procedures.<sup>9</sup>

3. Once an applicant has selected a provider in accordance with the Commission's competitive bidding rules and entered into a service contract, the applicant must file an FCC Form 471 requesting support for eligible services.<sup>10</sup> Under the rules in existence for funding year 2013, applicants were required to have a signed contract with their selected providers before filing their FCC Forms 471.<sup>11</sup>

4. The Commission's rules for funding year 2013 require USAC to first provide available funds for priority one funding requests for telecommunications and Internet access services.<sup>12</sup> The rules permit USAC to fund priority two requests for internal connections and basic maintenance of internal connections only after all priority one requests had been committed.<sup>13</sup> USAC has sufficient funds available to provide support for all eligible priority one services for funding year 2013.<sup>14</sup> It does not have sufficient funds to commit funding for any eligible priority two services for funding year 2013.<sup>15</sup>

5. In 2012, PRDE conducted a competitive bidding process for E-rate supported services, and awarded a one-year contract with two one-year renewal options to Puerto Rico Telephone Company d/b/a Claro (Claro) for FY 2012.<sup>16</sup> For funding year 2013, PRDE chose to exercise the renewal option with Claro.<sup>17</sup> However, PRDE's ability to exercise the renewal option was complicated by an executive order signed by Puerto Rico Governor Alejandro García Padilla on January 3, 2013, only 60 days before the close of the E-rate funding window for funding year 2013, prohibiting any department within the Puerto Rico executive branch, including the PRDE, from awarding contracts without the written authorization of the Puerto Rico Secretariat of Governance.<sup>18</sup>

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<sup>6</sup> The funding requests being denied are identified in Appendix B.

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

<sup>8</sup> See 47 C.F.R. § 54.503.

<sup>9</sup> See 47 C.F.R. § 54.504(a)(1)(vi).

<sup>10</sup> See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (Oct. 2010) (FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 2013) (current FCC Form 471).

<sup>11</sup> See 47 C.F.R. § 54.504(a) (2013).

<sup>12</sup> See 47 C.F.R. § 54.507(g)(1)(i) (2013).

<sup>13</sup> See 47 C.F.R. § 54.507(g)(1)(ii) (2013).

<sup>14</sup> See USAC website, Schools and Libraries Program, Update on Priority 2 Commitments 2013 (Feb. 27, 2014), <http://www.usac.org/sl/tools/news/news-archive.aspx>.

<sup>15</sup> See *id.*

<sup>16</sup> See Request for Waiver at 2-3.

<sup>17</sup> See *id.* at 3.

<sup>18</sup> See *id.* at 4-5, Attach. (Puerto Rico Executive Order No. OE-2013-002 (dated Jan. 3, 2013)).

6. Pursuant to the Executive Order, on February 25, 2013, before the FCC Form 471 filing deadline, PRDE presented a Request for Approval of Renewal Agreements to the Secretariat of Governance for approval to renew the contract with Claro for funding year 2013.<sup>19</sup> Although the Secretariat of Governance had not yet approved PRDE's renewal of its contract with Claro, PRDE filed its FCC Forms 471 for funding year 2013 on March 12, 2013, two days before the close of the filing window.<sup>20</sup> The Secretariat of Governance finally approved and signed the Renewal Agreement on June 28, 2013, after the close of the funding window.<sup>21</sup> PRDE filed this Request for Waiver on August 15, 2014.<sup>22</sup>

7. In addition to filing applications for E-rate support for the services to be provided by Claro, PRDE filed an application for priority two funding for funding year 2013.<sup>23</sup> USAC denied this request because it did not have sufficient funds to commit funding for any eligible priority two services for funding year 2013.<sup>24</sup>

8. *Discussion.* After reviewing the record before us, we find that good cause exists to justify a limited waiver of the requirement in section 54.504(a) that an applicant have a signed contract in place before filing an FCC Form 471 and to direct USAC to review PRDE's application for support for priority one services provided by Claro for funding year 2013. The Commission's rules may be waived for good cause shown.<sup>25</sup> Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>26</sup>

9. The Commission has previously found that good cause exists to grant a waiver of section 54.504(a) where a state or local procurement law or process requirement has prevented an applicant from entering into a signed contract with a properly selected vendor before it files an FCC Form 471 application for E-rate support. For example, in the *Adams County Order*, the Commission found a waiver was appropriate when a local procurement law required that a district governing board approve the contract and approval was not granted until after the deadline.<sup>27</sup> In the *West Virginia Order*, the Wireline Competition Bureau granted a waiver of section 54.504(a) when a state law that prohibited the extension of state contracts until 30 days before expiration of the contract made it impossible for applicants to have signed contracts when they filed their FCC Forms 471.<sup>28</sup> Here, PRDE had an agreement in place by the deadline, but was prohibited by executive order from entering into a formal contract until the Secretariat of Governance approved the contract, the timing of which was outside PRDE's control.<sup>29</sup> Under these circumstances, we find that special circumstances exist that warrant a deviation from the signed contract

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<sup>19</sup> See Request for Waiver at 5.

<sup>20</sup> Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806, FCC Form 471 No. 918308 (Oct. 2010) (filed Mar. 12, 2013); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806, FCC Form 471 No. 919592 (Oct. 2010) (filed Mar. 12, 2013).

<sup>21</sup> See Request for Waiver at 5, Attachs. (Commonwealth of Puerto Rico, Department of Education, Contract Amendment for Internet Services (signed June 28, 2013); Commonwealth of Puerto Rico, Department of Education, Contract Amendment for Telecommunications Services (signed June 28, 2013)).

<sup>22</sup> See Request for Waiver at 1.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> See *id.*

<sup>25</sup> 47 C.F.R. § 1.3.

<sup>26</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>27</sup> See *Adams County Order*, 22 FCC Rcd at 6022-23, para. 9.

<sup>28</sup> See *West Virginia Order*, 20 FCC Rcd at 12892-93, para. 9.

<sup>29</sup> See Request for Waiver at 5.

requirement and that it is in the public interest to do so. Therefore, with respect to the funding requests listed in Appendix A, we find that good cause exists to grant a limited waiver of section 54.504(a) of our rules and remand those funding requests to USAC for further processing consistent with our decision.

10. On our own motion, we also waive sections 54.507(d) and 54.514(a) of the Commission's rules and any USAC procedural deadlines that might be necessary to effectuate our ruling.<sup>30</sup> We find good cause to waive sections 54.507(d) and 54.514(a) because filing an appeal of a denial of funding is likely to cause petitioners to miss the program's subsequent procedural deadlines for that funding year.

11. We remand the underlying applications listed in Appendix A 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 Appendix A and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

12. We deny the Request for Waiver for the priority two funding requests listed in Appendix B because no funding is available for priority two requests for any applicants for funding year 2013.<sup>31</sup> Therefore, USAC has already appropriately denied PRDE's requests for priority two funding for funding year 2013 and a waiver is not appropriate.<sup>32</sup>

13. 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), the requests for waiver listed in Appendix A ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

14. 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 54.500 *et seq.* of the Commission's rules, 47 C.F.R. § 54.500 *et seq.*, ARE WAIVED for the petitioner with respect to the requests for waiver listed in Appendix A to the limited extent provided herein.

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<sup>30</sup> 47 C.F.R. § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

<sup>31</sup> See USAC website, Schools and Libraries Program, Update on Priority 2 Commitments 2013 (Feb. 27, 2014), <http://www.usac.org/sl/tools/news/news-archive.aspx>.

<sup>32</sup> See Letter from USAC, Schools and Libraries Division, to Maribel Picó Piereschi, Puerto Rico Department of Education (dated June 19, 2014).

15. 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), the requests for waiver listed in Appendix B are DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

## APPENDIX A

**Waiver of Signed Contract Requirement  
in 47 C.F.R. 54.504(a) Granted**

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Request Number</b>	<b>Funding Year</b>	<b>Date Request for Waiver Filed</b>
Puerto Rico Department of Education San Juan, PR	918308	2513542	2013	Aug. 15, 2014
Puerto Rico Department of Education San Juan, PR	919592	2514232	2013	Aug. 15, 2014

**APPENDIX B****Waiver Denied Because No Priority Two Funding Available**

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Request Number</b>	<b>Funding Year</b>	<b>Date Request for Waiver Filed</b>
Puerto Rico Department of Education San Juan, PR	919475	2516471	2013	Aug. 15, 2014
Puerto Rico Department of Education San Juan, PR	919475	2516519	2013	Aug. 15, 2014