

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

In the Matter of
Request for Waiver or Review of a Decision of
the Universal Service Administrator by
Plaquemines Parish School Board
Belle Chasse, Louisiana
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-494789
CC Docket No. 02-6

ORDER

Adopted: July 21, 2016

Released: July 21, 2016

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

1. Consistent with precedent, we grant Plaquemines Parish School Board's (Plaquemines PSB) request for waiver of E-rate program's (more formally known as the schools and libraries universal service support program) service implementation deadline and equipment transfer rules. Based on the facts and special circumstances of this specific case, we find that good cause exists to issue a waiver because strict compliance of these rules was impracticable for Plaquemines PSB in the immediate aftermath of Hurricane Katrina.

2. Background. Pursuant to the E-rate program, eligible schools, libraries, and their consortia may apply for discounts for eligible telecommunications services, Internet access, and internal connections. E-rate rules require applicants to install and implement non-recurring services by September 30 after the close of the applicable funding year. E-rate recipients may transfer equipment purchased with E-rate support from the entities specified on their FCC Form 471 to other eligible entities if either (1) three years have passed since the equipment was purchased or (2) the equipment is being transferred from a school or library that closed. If the transfer occurs from a location that has closed, the transferring entity must notify USAC of the transfer.

1 See Requests for Review of Decisions of the Universal Service Administrator by Approach Learning and Assessment Centers et al., CC Docket No. 02-6, 23 FCC Rcd 15510, 15515, paras. 11-12 (WCB 2008) (excusing E-rate program rules violation when it was reasonable for the applicant to commit the violation in light of tribulations in the aftermath of Hurricane Katrina).

2 Section 54.719 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 CFR § 54.719.

3 47 CFR §§ 54.502-54.503 (2005).

4 See 47 CFR § 54.507(d). See also Request for Review of a Decision of the Universal Service Administrator by Covert Public School District, Order, CC Docket No. 02-6, 26 FCC Rcd 15144, 15144, para. 2 (WCB 2011).

5 See 47 CFR § 54.513(c) (2005); Schools and Libraries Universal Service Support Mechanism, Third Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 26912, 26924, paras. 27-28 (2010). In 2010, the equipment transfer rules that had been codified in 47 CFR § 54.513(c) were moved to 47

(continued....)

3. On August 29, 2005, Hurricane Katrina made landfall in Plaquemines Parish, a parish at the base of the Mississippi River delta. The hurricane severely damaged or destroyed six of the nine schools in the Plaquemines PSB system.⁷ As a result of this destruction, students in the six damaged or destroyed buildings moved to the three operational facilities when classes resumed after the hurricane, and later moved to temporary schools closer to the site of their original schools.

4. In response to the devastation caused by Hurricane Katrina, the Commission implemented a number of measures to assist affected schools and libraries, including instituting a special funding window for funding year 2005 that ran from October 14, 2005 through December 13, 2005 for affected E-rate applicants.⁸ The Commission reminded applicants that took advantage of these measures that they may be subject to audits.⁹

5. After Hurricane Katrina, more than half of the residents of Plaquemines Parish were homeless or living in temporary housing. Plaquemines PSB personnel were tasked with planning temporary schools to replace those that were severely damaged or destroyed. In the midst of these extreme circumstances, Plaquemines PSB prepared its E-rate application for the special window without having access to details about how the temporary schools would be configured.¹⁰

6. On its E-rate application, Plaquemines PSB sought support for internal connections for the temporary schools that were being constructed. As part of its application, Plaquemines PSB requested 26 wireless access points (WAPs) for the temporary schools that were not yet constructed.¹¹ On August 14, 2006, a Plaquemines PSB employee certified on its FCC Form 486 that the services from that funding request had been, were planned to be, or were being provided.¹²

7. Several years later, USAC conducted an audit of the funding request at issue in this appeal.¹³ When the auditor visited Plaquemines PSB, the auditor could not find any of the 26 WAPs purchased with E-rate funds in their approved locations.¹⁴ Subsequently, USAC sent Plaquemines PSB a Notification of Improperly Disbursed Funds letter seeking to recover \$23,381, the amount of funding disbursed for the WAPs that were not in their approved locations.¹⁵

8. In its request for waiver, Plaquemines PSB argues that it attempted to install the WAPs in

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CFR § 54.513(d). *See also Requests for Review of Decision of the Universal Service Administrator by Iberia Parish School Board*, Order, CC Docket No. 02-6, 30 FCC Rcd 3676, 3676-77, para. 2 (WCB 2015).

⁶ *See id.*

⁷ *See* Letter from Lucien Cusimano, IT Director, Plaquemines Parish School Board, to Marlene Dortch, FCC Office of the Secretary, at 2 (filed Oct. 20, 2010) (Request for Waiver).

⁸ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 et al., Order, 20 FCC Rcd 16883, 16904-05, paras. 41-42 (2005) (*Hurricane Katrina Order*) (re-opening the funding year 2005 application window and providing other relief to affected E-rate applicants).

⁹ *See id.* at 16913, para. 59.

¹⁰ Request for Waiver at 2.

¹¹ *See* Plaquemines Parish School Board, FCC Form 471 no. 494789 (dated Jan. 1, 2005).

¹² *See* Plaquemines Parish School Board, FCC Form 486 (filed Aug. 14, 2006).

¹³ *See* School and Libraries Beneficiary Audit Report, Plaquemines Parish School Board, Beneficiary No. 139217 (dated Sept. 9, 2009) (Audit Report).

¹⁴ The auditor could not locate 18 of the WAPs, five of the WAPs were still in their original box, and three had signs of usage, but were not being used at the time of the audit. *See id.*

¹⁵ *See* Letter from USAC, Schools and Libraries Division, to Lucien Cusimano, IT Director, Plaquemines Parish School Board (dated August 25, 2010).

the temporary schools, but that the WAPs' signals could not permeate the 8-inch thick concrete walls and ceilings in those facilities.¹⁶ At the time it filed its applications, Plaquemines PSB had no way of knowing that the WAPs would not work in the temporary schools.

9. Once Plaquemines PSB became aware that the WAPs would not work with the unexpected configurations of the temporary schools, it purchased WAPs that would work in the new schools, without using E-rate funds.¹⁷ Plaquemines PSB explained that the WAPs were moved to other settings throughout the school district. Twenty of the WAPs were in use at the time of the waiver request, five were destroyed by lightning, and one was destroyed during construction.¹⁸

10. *Discussion.* Based on our review of the unique circumstances in the record, we grant Plaquemines PSB's request for waiver.¹⁹ As an initial matter, we find that that Plaquemines PSB failed to follow the E-rate program rules for equipment transfers. However, based on our review of the record, we find that the special circumstances presented in this case by the challenges created for the school district by Hurricane Katrina merit a deviation from the general rule and this deviation will serve the public interest. Because of the need to quickly relocate into temporary facilities in the aftermath of Hurricane Katrina, district officials could not have anticipated that the temporary schools' walls would be too thick for the E-rate supported WAPs to function. Plaquemines PSB could have, but did not, exchange the WAPs for ones that worked within the buildings in question and file a service substitution request for the new WAPs. That failure is understandable in light of the myriad of problems the district faced in the wake of Hurricane Katrina.²⁰ The WAPs that did not work in the temporary buildings did not go unused by the school district; instead they were used in other parts of the district. In light of the public interest in supporting Plaquemines PSB's ability to expeditiously open temporary schools and in recognition of the challenges it faced in opening them, we find that the public interest is served by granting the waiver, rather than seeking repayment of funds from the district.

11. In granting a waiver, we emphasize the limited nature of this decision and the extraordinary circumstances presented here. In the wake of the costliest natural disaster in American history, school administrators had to develop a technology plan and request E-rate support for services at temporary schools for which the administrators were not aware of the physical configuration. When the administrators realized that the concrete walls in the temporary schools were too thick for the signal of the WAPs to travel, their failure to return E-rate funding for the WAPs is excusable in light of the destruction and turmoil caused by Hurricane Katrina. We caution that the extreme facts presented in this case mean that this appeal will serve as precedent for very few, if any, appeals we address in the future.

12. Finally, we emphasize that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. The Commission remains 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.

13. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4

¹⁶ See Request for Waiver at 2.

¹⁷ See *id.*

¹⁸ See Audit Report at 11.

¹⁹ See 47 CFR § 1.3 (the Commission may waive any provision of the rules on its own motion or on petition if good cause is shown); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("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.")

²⁰ See *Approach Learning and Assessment Centers*, 23 FCC Rcd at 15515, paras. 11-12 (excusing E-rate program rules violations when it was reasonable for the applicant to commit the violation in light of tribulations in the aftermath of Hurricane Katrina).

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 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), that 54.500 et seq. of the Commission's rules, 47 CFR § 54.500 et seq., ARE WAIVED for the petitioner with respect to funding request at issue in this appeal.

FEDERAL COMMUNICATIONS COMMISSION

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