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Federal Communications Commission

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

DISPATCHED

In the Matter of:)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)

ORDER

Adopted: March 20, 1998

Released: March 20, 1998

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. Pursuant to section 1.3 of the Commission's rules,¹ we find good cause to waive, on a temporary basis, the requirements of two Commission rules. First, we waive, on our own motion, the requirement in section 64.604(c)(4)(iii)(I) of the Commission's rules that the administrator of the Telecommunications Relay Services Fund (TRS Administrator)² use data obtained from TRS contributors only for purposes of administering the TRS Fund.³ We waive this rule to the extent necessary to permit the TRS Administrator to make available certain TRS data to the administrator of the universal service support mechanisms (Administrator)⁴ for purposes of comparing revenue information provided by contributors on the Universal Service Worksheet.

2. Second, we waive the requirements of section 54.515 of the Commission's rules, to the extent that section 54.515 provides that a telecommunications carrier seeking reimbursement from the Administrator for the provision of services to a school or library must

¹ 47 C.F.R. § 1.3.

² The TRS Fund supports telephone transmission services that allow people with hearing or speech disabilities to communicate by wire or radio with hearing individuals. All carriers providing interstate telecommunications services must contribute to the TRS Fund. See 47 C.F.R. § 64.604.

³ 47 C.F.R. § 64.604(c)(4)(iii)(I).

⁴ The term universal service Administrator refers to both the temporary Administrator (the Universal Service Administrative Company (USAC)) and the permanent Administrator of the federal universal service support mechanisms. See 47 C.F.R. § 54.5. USAC is responsible on a temporary basis for performing the billing, collection, and disbursement functions for all of the universal service support mechanisms. A Federal Advisory Committee will recommend to the Commission an entity to serve as the permanent administrator of the federal universal service support mechanisms.

apply the amount of the discount afforded to that school or library as an offset to the carrier's universal service contribution obligation. Such waiver is consistent with section 254(h)(1)(B) of the Communications Act of 1934, as amended.⁵

II. DISCUSSION

3. The Commission has general authority to suspend, waive, or amend its rules, on its own motion, for good cause.⁶ Courts have held that good cause exists to waive a Commission rule only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁷ As discussed more fully below, we find that special circumstances warrant a deviation from the general requirements of sections 64.604(c)(4)(iii)(I) and 54.515 and that such a deviation is in the public interest.

4. *Use of TRS Data by the Universal Service Administrator.* In the pending *NECA II Further Notice*,⁸ the Commission proposed to amend section 64.604(c)(4)(iii)(I) of the Commission's rules⁹ to permit the Administrator to review TRS data to verify revenue information provided by contributors to the universal service fund.¹⁰ In the *NECA II Further Notice*, the Commission also proposed to amend section 54.711(b) of the Commission's rules

⁵ 47 U.S.C. § 254(h)(1)(B) (allowing carriers either to apply the amount of a discount afforded to a school or library as an offset to their contribution obligation or to receive direct reimbursement for that amount from the Administrator).

⁶ 47 C.F.R. § 1.3.

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁸ Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21, 96-45, *Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 12437 (1997) (*NECA II Further Notice*).

⁹ Section 64.604(c)(4)(iii)(I) of the Commission's rules provides that:

[t]he administrator [of the TRS Fund] shall keep all data obtained from contributors and TRS providers confidential, and shall not disclose such data in company-specific form unless directed to do so by the Commission. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. . . .

47 C.F.R. § 64.604(c)(4)(iii)(I).

¹⁰ The Commission attached proposed rule amendments in Appendix A. Every carrier providing interstate telecommunications services must contribute to the TRS Fund on the basis of its gross interstate subject revenues. Carriers are required to complete the TRS Fund Worksheet, which requests information relating to their gross interstate telecommunications revenues. See 47 C.F.R. § 64.604(c)(4)(iii).

to clarify that the Administrator's confidentiality obligations extend to data obtained from the TRS Fund.¹¹ The Commission tentatively concluded that these proposed amendments would be sufficient to maintain the confidentiality of the TRS Fund revenue data disclosed to the Administrator.¹² The Commission sought comment on this tentative conclusion and on the rule amendments proposed in the *NECA II Further Notice*.

5. In this Order, we waive on our own motion the requirement in section 64.604(c)(4)(iii)(I) of the Commission's rules that the TRS Administrator use data obtained from TRS contributors only for purposes of administering the TRS Fund. Subject to the limitations set forth below, we waive this requirement to the extent necessary to permit the TRS Administrator to make available, and to permit the universal service Administrator to use, TRS contributor revenue information for purposes of permitting the universal service Administrator to compare revenue information provided by contributors on the Universal Service Worksheet. This waiver will remain in effect until such time as the Commission rules on the section 64.604(c)(4)(iii)(I) rule amendments that were proposed in the *NECA II Further Notice*.¹³ The universal service Administrator must keep confidential all data obtained from the TRS administrator and may not disclose such data in company-specific form unless directed to do so by the Commission.¹⁴

6. Permitting the Administrator to use TRS data for this purpose may assist the Administrator in monitoring contributors' compliance with the universal service contribution

¹¹ Section 54.711(b) of the Commission's rules provides that:

[t]he Commission shall have access to all data reported to the Administrator, Rural Health Care Corporation, and Schools and Libraries Corporation. Contributors may make requests for Commission nondisclosure of company-specific information under § 0.459 at the time that the subject data are submitted to the Administrator. The Commission shall make all decisions regarding nondisclosure of company-specific information. The Administrator, Rural Health Care Corporation, and Schools and Libraries Corporation shall keep confidential all data obtained from contributors, shall not use such data except for purposes of administering the universal service support programs, and shall not disclose such data in company-specific form unless directed to do so by the Commission.

47 C.F.R. § 54.711(b).

¹² *NECA II Further Notice* at para. 25.

¹³ See *NECA II Further Notice*, *supra* n. 8.

¹⁴ We note that in response to the *NECA II Further Notice*, MCI, BellSouth, and NECA supported the Commission's proposal to require the Administrator to keep TRS data confidential. MCI petition and comments at 3; BellSouth comments at 1-2; NECA comments at 2. Both MCI and BellSouth stressed that TRS data should not be disclosed in company-specific form. MCI petition and comments at 3; BellSouth comments at 1-2.

requirements by revealing any inconsistencies between revenue data reported on the TRS Fund Worksheet and revenue data reported on the Universal Service Worksheet. In addition, as NECA suggests in response to the *NECA II Further Notice*,¹⁵ we believe that the use of TRS data for this purpose may provide a more efficient method of monitoring contributors' compliance with the contribution requirements than if the Administrator were forced to rely on audits alone. MCI, BellSouth, and NECA support the Commission's proposed use of TRS data for this purpose,¹⁶ and no parties filed comments opposing the Commission's proposal.

7. Contributors to universal service will be required to file the Universal Service Worksheet by March 31, 1998. We believe that this waiver will enhance the Administrator's performance of the collection function for which it is responsible and thereby better ensure the integrity and efficient administration of the universal service support mechanisms. We conclude, therefore, that good cause exists to waive the general requirements of section 64.604(c)(4)(iii)(I), as detailed herein, and that such deviation is in the public interest.

8. *Choice of Offset or Reimbursement.* Section 254(h)(1)(B) of the Act states that a telecommunications carrier applying for support for the provision of services to an eligible school or library either shall apply the amount of the discount afforded to the school or library as an offset to its universal service contribution obligation or shall be reimbursed for that amount from the universal service support mechanisms.¹⁷ In paragraph 586 of the *Universal Service Order*, the Commission concluded that section 254(h)(1)(B) requires that telecommunications carriers be permitted to choose either reimbursement or offset.¹⁸ Section 54.515(a) of our rules, however, provides that: "[a] telecommunications carrier providing services eligible for support . . . to eligible schools and libraries shall treat the amount eligible for support . . . as an offset against the carrier's universal service support obligation for the year in which the costs for providing eligible services were incurred."¹⁹ Section 54.515(b) states: "[i]f the total amount of support owed to a carrier . . . exceeds its universal service obligation, calculated on an annual basis, the carrier may receive a direct reimbursement in the amount of the difference."²⁰ Finally, section 54.515(c) states that: "[a]ny reimbursement

¹⁵ NECA comments at 2.

¹⁶ MCI petition and comments at 3; BellSouth comments at 1-2; NECA comments at 2. *See also* Letter from Kenneth Rust, Bell Atlantic, to Magalie Roman Salas, FCC, dated January 29, 1998.

¹⁷ 47 U.S.C. § 254(h)(1)(B).

¹⁸ Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, 9083 (rel. May 8, 1997) (*Universal Service Order*).

¹⁹ 47 C.F.R. § 54.515(a).

²⁰ 47 C.F.R. § 54.515(b).

due a carrier shall be made after the offset is credited against that carrier's universal service obligation."²¹

9. In a recent letter, USAC points out an apparent conflict between paragraph 586 of the *Universal Service Order* and section 54.515 of our rules.²² Specifically, USAC notes that paragraph 586 appears to give a carrier the choice of applying the amount of a discount afforded to a school or library as an offset to its universal service contribution obligation or receiving direct reimbursement for that amount from the Administrator.²³ On the other hand, USAC points out, section 54.515 appears to permit direct reimbursement only if the amount owed the carrier exceeds the amount of the carrier's universal service obligation and only for the difference that is owed the carrier after any offset has been credited against the carrier's universal service obligation. USAC asks the Commission to amend section 54.515 of our rules to conform the text of the rule to that of paragraph 586 of the *Universal Service Order* by providing carriers a choice between reimbursement or offset.²⁴

10. We agree that section 54.515 of the Commission's rules instructs telecommunications carriers seeking to receive support for providing services to schools and libraries to seek an offset to their contribution obligations and appears to allow carriers to receive direct reimbursement only when the total amount owed to the carrier exceeds the amount of its universal service contribution. In light of the apparent inconsistency that has been brought to our attention between section 254(h)(1)(B) of the Act and section 54.515 of the Commission's rules, and to provide certainty to carriers, we find that special circumstances warrant a deviation from the general requirements of section 54.515. Pending Commission action reconciling the apparent inconsistency, we waive the requirements of section 54.515 of the Commission's rules, to the extent that section 54.515 provides that a telecommunications carrier seeking reimbursement from the Administrator for the provision of services to a school or library must apply the amount of the discount afforded to that school or library as an offset to the carrier's universal service contribution obligation. We waive this rule to the extent necessary to permit telecommunications carriers a choice, consistent with section 254(h)(1)(B), of applying the amount of a discount afforded to a school or library as an offset to their contribution obligation or receiving direct reimbursement for that amount from the Administrator.

²¹ 47 C.F.R. § 54.515(c).

²² Letter from Ed English, USAC, to Lisa Gelb, FCC, dated March 5, 1998 (*USAC March 5 ex parte*).

²³ *USAC March 5 ex parte*.

²⁴ *USAC March 5 ex parte*.

IV. ORDERING CLAUSE

11. IT IS ORDERED that, pursuant to authority contained in sections 1, 4, 201-205, 218-20, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 218-220, and 254, and sections 0.91, 0.291, 1.102, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, and 1.3, this ORDER is ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman
Deputy Chief, Common Carrier Bureau