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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	AAD/USB File No. 98-34
Universal Service	)	

MEMORANDUM OPINION AND ORDER

Adopted: November 17, 1998 **Released:** November 18, 1998

By the Acting Deputy Chief, Common Carrier Bureau :

I. INTRODUCTION

1. Seven school districts[1] have submitted petitions for waiver of the designations of their districts as urban under section 54.505(b)(3) of the Commission's rules.[2] The designation of a school or library as urban or rural partially determines the universal service discount for which it is eligible.[3] In this Order, we conclude that the seven school districts have not demonstrated good cause to justify a waiver. Accordingly, we deny each of the seven petitions.

II. BACKGROUND

2. The Communications Act of 1934, as amended ("the Act"), requires the Commission, with respect to interstate services, and the states, with respect to intrastate services, to establish a discount on designated services provided to eligible schools and

[1] River Valley School District Petition for Waiver (filed Jan. 28, 1998) (*River Valley Petition*); Maine School Administrative District No. 6 Petition for Waiver (filed Jan. 28, 1998) (*District No. 6 Petition*); Old Orchard Beach School Department Petition for Waiver (filed Feb. 11, 1998) (*Old Orchard Beach Petition*); Long Island School District and Long Island Community Library Petition for Waiver (filed Feb. 11, 1998) (*Long Island Petition*); School Union 87 Petition for Waiver (filed July 8, 1998) (*School Union 87 Petition*); Maine School Administrative District No. 60 Petition for Waiver (filed July 8, 1998) (*District No. 60 Petition*); Unified School District 267 Petition for Waiver (filed July 8, 1998) (*District 267 Petition*).

[2] 47 C.F.R. § 54.505(b)(3). *See also* 47 C.F.R. § 54.5 (defining "rural area" for purposes of universal service support).

[3] *See* 47 U.S.C. §§ 54.505(b)(3) and 54.505(c).

libraries.[4] Section 254(h)(1)(B) provides that the discount must be an amount that is "appropriate and necessary to ensure affordable access to and use of " the services designated eligible for support.[5] Moreover, the Act requires that the discount take into account the principles set forth in section 254(b)(5) and mandated in section 254(d) that the federal universal service support mechanisms be "specific, predictable, and sufficient."[6]

3. In the *Universal Service Order*, the Commission adopted the recommendation of the Federal-State Joint Board on Universal Service (Joint Board) that all eligible schools and libraries should receive discounts of between 20 percent and 90 percent on all eligible services.[7] As is illustrated in the discount matrix reproduced in Appendix A, the level of discount is determined primarily by level of economic disadvantage, with some schools and libraries receiving an additional incremental discount by virtue of location in a rural area. The Commission directed the administrator to classify schools and libraries as urban or rural in accordance with definitions adopted by the Department of Health and Human Services'

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[4] 47 U.S.C. § 254(h)(1)(B).

[5] 47 U.S.C. § 254(h)(1)(B).

[6] 47 U.S.C. §§ 254(b)(5) and 254(d).

[7] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 9035 (1997), as corrected by Federal-State Joint Board on Universal Service, *Errata*, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), appeal pending in *Texas Office of Public Utility Counsel v. FCC and USA*, No. 97-60421 (5th Cir. 1997); Federal-State Joint Board on Universal Service, *Order on Reconsideration*, CC Docket No. 96-45, 12 FCC Rcd 10095 (rel. July 10, 1997); 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, *Report and Order and Second Order on Reconsideration*, 12 FCC Rcd 18400 (1997), as corrected by Federal-State Joint Board on Universal Service, Errata, CC Docket No. 96-45, DA 97-2477 (rel. Dec. 3, 1997); 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 12444 (1997); Federal-State Joint Board on Universal Service, CC Docket Nos. 96-45, 97-160, *Third Report and Order*, 12 FCC Rcd 22485 (1997), as corrected by Federal-State Joint Board on Universal Service, *Erratum*, CC Docket Nos. 96-45 and 97-160 (rel. Oct. 15, 1997); Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, CC Docket No. 97-21, *Report and Order and Second Order on Reconsideration in CC Docket 97-21*, 12 FCC Rcd 22423 (1997); Federal-State Joint Board on Universal Service, CC Docket No. 96-24, *Third Order on Reconsideration*, 12 FCC Rcd 22801 (1997); Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, *Fourth Order on Reconsideration*, 13 FCC Rcd 5318 (1997), as corrected by Federal-State Joint Board on Universal Service, *Errata*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, DA 98-158 (rel. Jan 29, 1998), appeal pending in *Alenco Communications, Inc., et al. v. FCC and USA*, No. 98-60213 (5th Cir. 1998); Federal-State Joint Board on Universal Service, *Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45*, FCC 98-120 (rel. June 22, 1998); Federal-State Joint Board on Universal Service, *Order and Order on Reconsideration*, CC Docket No. 96-45, FCC 98-160 (rel. July 17, 1998). *See also* 47 U.S.C. § 54.505(c).

Office of Rural Health Policy (ORHP/HHS).[8] ORHP/HHS uses the Office of Management and Budget's (OMB) Metropolitan Statistical Area (MSA) designation of metropolitan and non-metropolitan counties (or county equivalents), adjusted by the most currently available Goldsmith Modification, which identifies rural areas within large metropolitan counties.[9] The Commission adopted this approach because it represented the least administratively burdensome approach for schools and libraries to determine eligibility for the additional incremental discount and because it was consistent with the approach adopted with respect to health care in the *Universal Service Order*.[10]

4. Seven school districts, one located in Kansas and the remainder located in Maine, filed petitions for waiver based on the urban designation assigned to their districts under Commission rules and asked that their districts be classified as rural for purposes of receiving universal service support.[11] On February 13, 1998, the Common Carrier Bureau (Bureau) released a Public Notice seeking comment on four of those petitions.[12] No comments were received in response to the Public Notice.

III. POSITION OF PARTIES

5. The River Valley School District of Turner, Maine contends that it should be granted a waiver of its urban designation because the towns of Greene and Turner are small rural communities, with separate government structures and school systems.[13]

6. Maine School Administrative District No. 6 of Bar Mills, Maine contends that the four towns of Buxton, Hollis, Limington, and Standish should be granted a waiver of their urban designation because of their small size and low population. The District further asserts that the towns have no industrial base, public transportation system, public water, or

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[8] *See* 47 C.F.R. § 54.505(b)(3).

[9] *Universal Service Order*, 12 FCC Rcd at 9042, para. 504. *See also* 47 U.S.C. § 54.505(b)(3).

[10] *Universal Service Order*, 12 FCC Rcd at 9042-43, para. 505..

[11] *See River Valley Petition*; *District No. 6 Petition*; *Old Orchard Beach Petition*; *Long Island Petition*; *School Union 87 Petition*; *District No. 60 Petition*; and *District 267 Petition.*

[12] Four School Districts in Maine Seek Waiver of Urban-Rural Designation, CC Docket No. 96-45, *Public Notice*, DA 98-291 (rel. Feb. 13, 1998). Three additional school districts subsequently filed similar petitions. Parties had an opportunity to comment on those petitions pursuant to section 1.45 of the Commission's rules. 47 C.F.R. § 1.45.

[13] *River Valley Petition* at 1.

municipal sewerage. In addition, the towns "depend on county sheriffs for public safety," have only a "small municipal police force," and have all-volunteer fire departments.[14]

7. The Old Orchard Beach School Department of Old Orchard Beach, Maine contends that it should be granted a waiver of its urban designation because it is "a small coastal community of 7,500 people" and it is "not tied to any major metropolitan area." Moreover, Old Orchard Beach states that the fact that it requires a toll call to telephone Portland, the largest metropolitan area in Maine, further supports the district's "rural" status.[15]

8. The Long Island School District and the Long Island Community Library, both of Long Island, Maine contend that they should be granted a waiver of the urban designation of their town because the island community has less than 200 year round citizens, no established year-round business, and the island is quite small (three miles by one mile). The city of Portland is an hour away by ferry and, although the city does have a well-equipped library, it is difficult to access because of a limited ferry schedule.[16]

9. School Union 87 of Orono, Maine, contends that it should be granted a waiver of its urban designation because the town has a population of 2,011, a single kindergarten through eighth grade school building with a population of 195, and a kindergarten through twelfth grade school population of 282. Moreover, School Union 87 asserts that, because the community is too small to support a high school, the town's secondary school students are sent to other area high schools. School Union 87 also contends that its community government and municipal services are independent.[17]

10. Maine School Administrative District No. 60, of North Berwick, Maine asserts that the town of Berwick should be granted a waiver of its urban designation because it is "self-sufficient," having its own municipal government and services. Moreover, Berwick has a population of 6,140 and occupies only 40 square miles. The District contends that other cities within Maine having larger and more dense populations are classified as rural, and argue that the designation of Berwick as urban is derived from its close proximity to Portland.[18]

11. The Unified School District 267, representing the Renwick Public Schools of Andale, Kansas, contends that it should be granted a waiver of its urban designation because,

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[14] *District No. 6 Petition* at 1.

[15] *Old Orchard Beach Petition* at 1.

[16] *Long Island Petition* at 1.

[17] *School Union 87 Petition* at 1.

[18] *District No. 60 Petition* 1-2.

except for the fact that it is located in the same county as Wichita, it meets the United States Census Bureau's criteria for "ruralness." District 267 also contends that its community meets the definition of "rural farm" because 50% of the households in Renwick have sold over $1000 of agricultural products in 1989. Moreover, District 267 cites its size and the distance between schools as additional factors supporting its petition, stating that the intent of a higher universal service discount for schools located in rural areas is to provide financial assistance to those areas where costs are greater because of the need to connect computers over long distances.[19]

IV. DISCUSSION

12. Generally, the Commission's rules may be waived for good cause shown.[20] As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid, and "an applicant for waiver faces a high hurdle even at the starting gate."[21] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[22] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[23] Waiver is, therefore, 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.[24] The test for whether the above-mentioned petitioners may be granted a waiver, therefore, is whether they have shown such special circumstances that warrant deviation from the designations of their districts as urban. We conclude that each of the districts listed above has failed to make that showing.

13. The classification of a school or library as rural or urban under Commission rules is a two-part process. First, a school or library must determine whether it is located in a metropolitan (urban) county, as defined by the MSA lists published by OMB.[25] Second, if it

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[19] *District 267 Petition* at 1.

[20] 47 C.F.R. § 1.3.

[21] *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

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

[23] *WAIT Radio*, 418 F.2d at 1157.

[24] *Northeast Cellular*, 897 F.2d at 1166.

[25] 47 C.F.R. § 54.505(b)(3)(ii). *See Universal Service Order*, 12 FCC Rcd at 9114, para. 647 n. 1698 (stating that OMB, with assistance from the Bureau of Census, designates counties as metropolitan or non-metropolitan in character based on the size of the largest urban aggregation in a county and patterns of commuting between counties).

is located in a metropolitan county, a school or library may nevertheless be classified as rural if its location falls within one of the rural pockets within metropolitan counties identified by the Goldsmith Modification list used by ORHP/HHS.[26] The Commission found that adopting the MSA/Goldsmith Modification approach to classifying schools and libraries for purposes of the universal service support mechanism was consistent with the Joint Board's recommendation to make the method for determining the additional incremental discount "calibrate the cost of service in a 'reasonable, practical, and minimally burdensome manner.'"[27] A significant benefit of adopting the MSA/Goldsmith approach was to provide a clear and certain standard for determining whether an entity is rural. The petitioners have not challenged that method for classifying whether a school or library is rural.

14. Schools and libraries in the seven school districts will benefit from universal service support, regardless of whether their classification is urban or rural. Eligible schools and libraries in the seven school districts at issue are qualified for discounts, ranging from 20 percent to 90 percent, determined by economic need as well as location in a rural area.[28] It is only the additional incremental discount that would be added if they were designated rural for which the schools and libraries in the seven school districts will not qualify. In fact, schools and libraries eligible for an 80 percent or 90 percent discount based on economic need will receive that level of discount whether they are urban or rural.[29] We conclude, therefore, that the seven petitions for waiver fail to meet the "good cause" standard because the petitioners have not demonstrated that, absent a waiver, the discount matrix will not provide discount rates that are "specific, predictable and sufficient."[30] The evidence submitted by the seven school districts, including size of the population,[31] physical size of the district or town, [32]

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[26] 47 C.F.R. § 54.505(b)(3)(ii). *See Universal Service Order*, 12 FCC Rcd at 9115, para. 647 n. 1700 (stating that the Goldsmith Modification identifies small town and open-country parts of large metropolitan counties by census tract or block-numbered area, as defined by the Bureau of Census).

[27] *Universal Service Order*, 12 FCC Rcd at 9042, para. 504 (citing Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87, 372 (1996)).

[28] *See Universal Service Order*, 12 FCC Rcd at 9050, para. 520 (adopting discount matrix showing discounts ranging from 20 to 90 percent fulfills statutory obligation to ensure schools and libraries receive supported services at rates less than those charged to other parties).

[29] *See Universal Service Order*, 12 FCC Rcd at 9050, para. 520. *See also* Appendix A.

[30] *See* 47 U.S.C. § 254(b)(5).

[31] *See River Valley Petition* at 1; *District No. 6 Petition* at 1; *Old Orchard Beach Petition* at 1; *Long Island Petition* at 1; *School Union 87 Petition* at 1; *District No. 60 Petition* at 1; *District 267 Petition* at 1.

[32] *See District No. 6 Petition* at 1; *Old Orchard Beach Petition* at 1; *Long Island Petition* at 1; *District No. 60 Petition* at 1.

governmental structure,[33] and fulfillment of other criteria for "ruralness"[34] does not demonstrate that a waiver of our rule is justified. Accordingly, we find that the evidentiary showing presented by the seven school districts does not establish the "special circumstances" that would justify a waiver of the Commission's general rule.

15. We also note that the waiver standard is a difficult one to meet and, in situations such as those presented in the seven petitions, where we must maintain universal service support mechanisms that are "specific, predictable, and sufficient,"[35] we must consider carefully the consequences of making exceptions to rules designed to provide predictability. The Commission set forth clear guidelines for determining whether, and to what extent, schools and libraries are eligible for discounts.[36] In considering these petitions for waiver, therefore, we must take into account the impact on universal service if other school districts in the United States requested similar relief for non-rural communities in their states that have rural characteristics. We conclude that granting the seven petitions for waiver would undermine the Commission's method for ensuring that universal service support mechanisms are "specific, predictable and sufficient."[37]

16. It is THEREFORE ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that each of the above-listed requests for waiver ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Zaina
Acting Deputy Chief, Common Carrier Bureau

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[33] *See District No. 6 Petition* at 1; *School Union 87 Petition* at 1; *District No. 60 Petition* at 1; *River Valley Petition* at 1.

[34] *See District 267 Petition* at 1.

[35] 47 U.S.C § 254(b)(5).

[36] For example, the Commission adopted the discount matrix for determining the discount rate for which a school or library is eligible, based on two factors: economic need and location in a rural area. *See Universal Service Order*, 12 FCC Rcd at 9050, para. 520.

[37] *See* 47 U.S.C. § 254(b)(5).

APPENDIX A
UNIVERSAL SERVICE DISCOUNT MATRIX FOR SCHOOLS AND LIBRARIES
12 FCC Rcd at 9050

SCHOOLS AND LIBRARIES DISCOUNT MATRIX		DISCOUNT LEVEL	
HOW DISADVANTAGED?		urban discount (%)	rural discount (%)
% of students eligible for national school lunch program	(estimated % of US schools in category)		
< 1	3	20	25
1-19	31	40	50
20-34	19	50	60
35-49	15	60	70
50-74	16	80	80
75-100	16	90	90