

FCC MAIL SECTION

Federal Communications Commission

DA 99-453

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

DISPATCHED BY

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No 96-45
Universal Service)	
)	
Requests for Waiver of Section 54.717)	
of the Commission's Rules Filed by:)	
)	
Universal Service Administrative Company)	
Schools and Libraries Division)	
Rural Health Care Division)	

ORDER

Adopted: March 31, 1999

Released: March 31, 1999

By the Chief, Accounting Policy Division:

I. INTRODUCTION

1. In this order, we grant the requests of the Universal Service Administrative Company (USAC), the Schools and Libraries Division (SLD) of USAC, and the Rural Health Care Division (RHCD) of USAC, for limited extensions of time to direct their auditors to submit draft audit reports for the 1998 calendar year audit period to the Common Carrier Bureau audit staff pursuant to section 54.717(f) of the Commission's rules.

II. BACKGROUND

2. Section 54.717 of the Commission's rules provides that the universal service Administrator shall obtain and pay for an annual audit conducted by an independent auditor to examine its operations and books of account.¹ Section 54.717(f) establishes the time period at the conclusion of each audit period within which the universal service Administrator must direct the independent auditor to submit a draft of its audit report to the Common Carrier Bureau audit staff.²

3. On February 26, 1999, USAC requested a 30-day extension of time for directing USAC's auditor to submit a draft audit report for the 1998 calendar year audit period to the Common Carrier Bureau audit staff pursuant to section 54.717(f) of the Commission's rules.³ On February 26, 1999, SLD and RHCD similarly requested 90-day and 60-day extensions of time, respectively, for directing

¹ 47 C.F.R. § 54.717.

² Section 54.717(f) provides that "[w]ithin sixty (60) calendar days after the end of the audit period, but prior to discussing the audit findings with the Administrator, the independent auditor shall be instructed by the Administrator to submit a draft of the audit report to the Common Carrier Bureau Audit Staff." 47 C.F.R. § 54.717(f).

³ Letter from Robert Haga, USAC, to Magalie Roman Salas, FCC, dated February 26, 1999 (*USAC Letter*).

their chosen auditors to submit draft audit reports to the Common Carrier Bureau audit staff.⁴ USAC, SLD, and RHCD each describe actions they have taken to date in satisfaction of the audit requirements contained in section 54.717 of the Commission's rules, including the submission of preliminary audit plans by each entity to the Common Carrier Bureau audit staff.⁵ The three entities further note that they have worked closely with the Common Carrier Bureau audit staff to finalize the audit plan, procedures, and scope to ensure that the audits are complete.⁶ The entities report that they also have made efforts to adopt consistent approaches for the calendar year 1998 annual audits so as to reduce the costs associated with next year's audit of the consolidated entity's⁷ calendar year 1999 operations.⁸

III. DISCUSSION

4. The Commission may waive any provision of its rules on its own motion, or on petition, upon a showing of good cause.⁹ A petitioner applying for a waiver must demonstrate that special circumstances warrant a deviation from the general rule, and that such a deviation will serve the public interest.¹⁰

5. We find that special circumstances warrant a deviation from the time period set forth in section 54.717(f) of the Commission's rules, and that such a deviation is in the public interest. Specifically, we recognize that the numerous changes stemming from the merger of USAC with the former Schools and Libraries Corporation and the former Rural Health Care Corporation have placed a significant administrative burden upon USAC and its constituent divisions. As a result, resources needed to meet the schedule set forth in section 54.717(f) for the calendar year 1998 audits have been diverted to facilitate implementation of the merger.

6. We conclude that the unique administrative burdens associated with the merger constitute a special circumstance warranting deviation from the general rule. We further find that such a deviation is in the public interest because, among other things, it will serve the Commission's goals of ensuring that the 1998 audits are comprehensive and that those audits are similarly structured so as to reduce the time and expense associated with auditing the consolidated USAC in 1999. Therefore, we grant

⁴ Letter from Kate L. Moore, SLD, to Magalie Roman Salas, FCC, dated February 26, 1999 (*SLD Letter*); Letter from Lee Bailey, RHCD, to Magalie Roman Salas, FCC, dated February 26, 1999 (*RHCD Letter*).

⁵ *USAC Letter* at 1; *SLD Letter* at 1; *RHCD Letter* at 1.

⁶ *USAC Letter* at 1; *SLD Letter* at 1; *RHCD Letter* at 1.

⁷ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21, and Eighth Order on Reconsideration in CC Docket No. 96-45, FCC 98-306 (rel. Nov. 20, 1998) (*USAC Reorganization Order*). In the *USAC Reorganization Order*, the Commission directed the merger of the former Schools and Libraries Corporation and the former Rural Health Care Corporation into USAC and vested in USAC the responsibility for administering all of the universal service support mechanisms.

⁸ *USAC Letter* at 1-2; *SLD Letter* at 1; *RHCD Letter* at 1.

⁹ 47 C.F.R. § 1.3.

¹⁰ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Wait Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 C.F.R. § 1.3.

USAC's request for an additional 30 days, SLD's request for an additional 90 days, and RHCD's request for an additional 60 days before those entities must direct their independent auditors to submit draft audit reports to the Common Carrier Bureau audit staff.¹¹

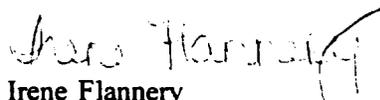
IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to sections 1, 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 155(c), and 254, 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 the Request for Waiver of Section 54.717(f) of the Commission's rules, 47 C.F.R. § 54.717(f), filed by the Universal Service Administrative Company on February 26, 1999 IS GRANTED.

8. IT IS FURTHER ORDERED, pursuant to sections 1, 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 155(c), and 254, 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 the Request for Waiver of Section 54.717(f) of the Commission's rules, 47 C.F.R. § 54.717(f), filed by the Schools and Libraries Division on February 26, 1999 IS GRANTED.

9. IT IS FURTHER ORDERED, pursuant to sections 1, 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 155(c), and 254, 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 the Request for Waiver of Section 54.717(f) of the Commission's rules, 47 C.F.R. § 54.717(f), filed by the Rural Health Care Division on February 26, 1999 IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION


Irene Flannery
Chief, Accounting Policy Division
Common Carrier Bureau

¹¹ We find it unnecessary to grant USAC's, SLD's, and RHCD's additional requests to extend the time for filing final audit reports with the Commission because the time for filing those reports is extended automatically as a result of the extensions granted herein. See 47 C.F.R. § 54.717(f)-(j). We find that USAC's request for an extension of time for completing its scheduled audit of universal service contributors and carriers filing universal service Worksheets, pursuant to section 54.707 of the Commission's rules, also is unnecessary insofar as that section contains no time period for completing audits of those contributors and carriers. See 47 C.F.R. § 54.707.

**SEPARATE STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re: Federal-State Joint Board on Universal Service; Requests for Waiver of Section 54.717 of the Commission's Rules; (CC Docket No. 96-45).

Today, the Common Carrier Bureau releases an Order granting the requests of the Universal Service Administrative Company (USAC), the schools and libraries division (SLD) of USAC, and the rural health care division (RHCD) of USAC, for an extension of time to submit draft audit reports for the 1998 calendar year pursuant to section 54.717(f) of the Commission's rules. The Commission's rules require that "within sixty (60) calendar days after the end of the audit period, but prior to discussing the audit findings with the Administrator, the independent auditor shall be instructed by the Administrator to submit a draft of the report to the Common Carrier Bureau Audit Staff."¹ Thus, the draft audit reports were due to be submitted to the Commission on March 1, 1999.

On February 26, 1999 USAC, the rural health care division, and the schools and libraries division requested extensions of the filing deadline by 30, 60, and 90 days respectively. With the grant of today's extensions, USAC's draft audit report will be due on April 1, 1999; RHCD's draft audit report will be due on May 3, 1999; and the schools and libraries division's draft audit report will not be due until June 1, 1999.

The annual audit of these organizations is vital to ensuring that these new programs are held accountable to this agency and to the public. Indeed, the Commission has repeatedly assured Congress that these annual audits are one of the important mechanisms that will be used to ensure that the universal service organizations "will remain accountable to the Commission."² As such, I fully support the extension of time needed to ensure that the audits of these programs are completed in a professional manner. These audits must be sufficiently exhaustive to withstand the public scrutiny that will surely follow.

I am concerned, however, that the delay in submitting the draft audit results to the Commission may adversely impact this agency's ability to determine an appropriate level of funding for these programs next year. It would be irresponsible for this agency to approve an additional funding year, much less an increase in funding above current levels, prior to even receiving the initial audit results. In fact, the final audit results should be made publicly available before an additional year of public funding is approved. Thus, I am particularly concerned that the schools and libraries division draft audit results will not even be submitted to the Commission until June 1, 1999. By that point, if the final audit reports

¹ 47 C.F.R. Section 54.717(f).

² Report to Congress in response to Senate Bill 1768 and Conference Report on H.R. 3579, May 8, 1998, at para. 9.

were available and subject to public scrutiny, the Commission would otherwise be trying to determine the appropriate fund size for the next calendar year. Obviously, the Commission cannot now responsibly proceed with consideration of next year's funding for the schools and libraries program until those audit results have been finalized, submitted to the Commission, and made available for public comment and scrutiny.

As I have repeated on several occasions, I believe the Commission has been derelict in its supervision of this organization and the schools and libraries excessive administrative expenses in particular.³ In objecting to the second quarter contribution factors, I noted that schools and libraries program was allocated almost four times as much money for administrative expenses as the high-cost/low income funds and that the administrative budget increased from \$2.7 million to \$4.4 million or by 65% in just that one quarter. In objecting to the next quarter's contribution factors, I noted that these increased administrative expenses continued in the third quarter, despite the fact that, at that time, the schools and libraries program could not even provide an accurate estimate of all its administrative costs for the first quarter.⁴ Despite my raising these concerns for almost the entire year, the Commission continued with the program's budget with virtually no oversight; the Commission has provided assurances that the program would undergo scrutiny in its annual audit.

Conclusion

I reiterate my observation that it is irresponsible that the Commission has not become more involved in the oversight of this program and the burden its administrative expenses are placing on the telecommunications ratepayers.

³ See Testimony of Commissioner Harold Furchtgott-Roth Regarding Universal Service before the Ways and Means Committee of the House of Representatives. See also, Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding Federal State Joint Board on Universal Service, CC Docket 96-45, *Third Order on Reconsideration*, 12 FCC Rcd 22801 (1997); Statement of Commissioner Harold Furchtgott-Roth Regarding the Second Quarter 1998 Universal Service Contribution Factors, rel. March 20, 1998; Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Federal-State Joint Board Report to Congress, rel. April 10, 1998; Dissenting Statement of Commissioner Harold Furchtgott-Roth Regarding the Report to Congress in Response to Senate Bill 1768 and Conference Report on H.R. 3579, rel. May 8, 1998; Statement of Commissioner Harold Furchtgott-Roth Regarding the Common Carrier Bureau's Proposed Revisions of 1998 Collection Amounts For Schools and Libraries and Rural Health Care Universal Service Support Mechanisms, rel. May 13, 1998; Statement of Commissioner Harold Furchtgott-Roth Regarding the Common Carrier Bureau's Clarification of "Services" Eligible for Discounts to Schools and Libraries, rel. June 11, 1998; Statement of Commissioner Harold Furchtgott-Roth Regarding the Common Carrier Bureau's Third Quarter 1998 Universal Service Contribution Factors, rel. June 12, 1998; Statement of Commissioner Harold Furchtgott-Roth Regarding the Common Carrier Bureau's First Quarter 1999 Universal Service Contribution Factors, rel. December 4, 1998.

⁴ Third Quarter 1998 Fund Size Requirements for the Schools and Libraries Universal Service Program, dated May 1, 1998. In their subsequent filings, the Schools and Libraries Corporation now calculates their actual First Quarter administrative expenses -- with no offset for interest income earned -- as \$4.4 million. This amount is well in excess of the \$2.7 million that was actually budgeted, and does not even include the additional 1.9 million which was paid to NECA during the first quarter for additional start-up expenses. Fourth Quarter 1998 Fund Size Requirements for the Schools and Libraries Universal Service Program, dated July 31, 1998, at page 3.