

FCC MAIL SECTION

Federal Communications Commission

DA 99-2037

OCT 7 3 02 PM '99

Before the  
Federal Communications Commission  
Washington, DC 20554

DISPATCHED BY

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

### MEMORANDUM OPINION AND ORDER

**Adopted: September 30, 1999**

**Released: September 30, 1999**

By the Deputy Chief, Common Carrier Bureau:

#### I. INTRODUCTION

1. The Mesa Vista Consolidated Schools District (MVCSD) of El Rito, New Mexico, submitted a petition for waiver of the September 30, 1999, deadline for utilizing universal service discounts for non-recurring services distributed in the first year of the schools and libraries program.<sup>1</sup> The September 30, 1999, deadline was established by the Commission's *Tenth Reconsideration Order* in this docket, extending the previous deadline of June 30, 1999.<sup>2</sup> In this order, we conclude that MVCSD has demonstrated particular facts and special circumstances sufficient to warrant a departure from the general rule established in the *Tenth Reconsideration Order*. Accordingly, we grant MVCSD's petition to waive the September 30, 1999, deadline and, as requested by MVCSD, we extend the deadline by 30 days to October 30, 1999.

#### II. BACKGROUND

2. Section 54.507(d) of the Commission's rules requires schools and libraries "to file new funding requests for each funding year."<sup>3</sup> Section 54.507(e) limits the availability of discounts for a long-term contract covering eligible services to the funding year for which discounts are sought.<sup>4</sup> Moreover, section 54.507(b) states that, for the 1998-1999 funding year,

<sup>1</sup> See Letter from Bruce Peterson, Mesa Vista Consolidated Schools District (MVCSD), to Kathy Dole and Irene M. Flannery, FCC, dated September 15, 1999 (*MVCSD Petition*).

<sup>2</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983 (1999) (*Tenth Reconsideration Order*).

<sup>3</sup> 47 C.F.R. § 54.507(d).

<sup>4</sup> See 47 C.F.R. § 54.507(e).

“[s]chools and libraries filing applications within the initial 75-day filing window shall receive funding for requested services through June 30, 1999.”<sup>5</sup> These provisions, along with the Commission's orders, require schools and libraries to use services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought.<sup>6</sup>

3. A series of Commission orders have resulted in the current September 30, 1999, deadline for implementation of non-recurring services for Year 1 of the schools and libraries program. The Commission's May 8, 1997, *Universal Service Order* established a calendar funding year (January 1 – December 31) for schools and libraries receiving universal service support.<sup>7</sup> On June 22, 1998, however, the Commission issued its *Fifth Reconsideration Order*, which changed the funding year for schools and libraries support to a fiscal year method (July 1 of a given year – June 30 of the following year).<sup>8</sup> In order to ease the transition to the new fiscal year method, the Commission extended the first year funding period by six months to the new fiscal year end. As a result, the first year funding period for schools and libraries support ran from January 1, 1998 through June 30, 1999.<sup>9</sup> In order to account for delays in the implementation of the schools and libraries program, the Commission's *Tenth Reconsideration Order* further extended the implementation period deadline for schools and libraries to use their discounts on non-recurring services from June 30, 1999 (the end of the funding period) to September 30, 1999, an extension of 92 days.<sup>10</sup> The extended deadline gave schools and libraries with funding commitments more time in which to implement any discounted non-recurring services, such as the installation of internal connections, and thereby make greater use of their universal service discounts. This extension applied only to the 1998-99 funding year.

### III. MESA VISTA CONSOLIDATED SCHOOL DISTRICT'S PETITION

4. The Mesa Vista Consolidated School District (MVCSD) is located in El Rito, New Mexico. According to its petition, MVCSD is a very small and isolated school district located in rural northern New Mexico. The nearest town to MVCSD is 40 miles away. MVCSD maintains that it relies on universal service discount funding to complete its proposed network installation

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<sup>5</sup> 47 C.F.R. § 54.507(b).

<sup>6</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9062, para. 544 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, Errata, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed in part in Texas Office of Public Utility Counsel v. FCC and USA*, No. 97-60421 (5th Cir. July 30, 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds). See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14921, para. 9 (1998) (*Fifth Reconsideration Order*).

<sup>7</sup> See *Universal Service Order*, 12 FCC Rcd at 9057, para. 535, and 9143, para. 710.

<sup>8</sup> See *Fifth Reconsideration Order*, 13 FCC Rcd at 14916, para. 1, and 14920, para. 8.

<sup>9</sup> See *id.*

<sup>10</sup> See *Tenth Reconsideration Order*, 14 FCC Rcd at 5991-94, para. 17-23.

project, without which its students would be virtually cut off from the rest of the world.<sup>11</sup> Furthermore, MVCSD states that it lacked sufficient funding even to begin its proposed project without first obtaining universal service funding.

5. MVCSD petitions for waiver and an extension of the deadline for implementing non-recurring services because of project delays resulting from a change in the vendor providing MVCSD with discounted services. The original vendor selected by MVCSD, TAMSCO of New Mexico, ceased doing business in New Mexico subsequent to the Schools and Libraries Division's (SLD)<sup>12</sup> award of a discount to MVCSD. According to MVCSD, upon learning of this situation, SLD advised MVCSD to begin another bidding process which took place in May through June of 1999. Once this second bidding process was completed, MVCSD submitted a request to SLD to change its vendor to Coyote Cabling. SLD then advised MVCSD that SLD and the Commission were still implementing their processes for managing requests to change vendors who had ceased doing business. At the end of July, MVCSD was informed that these processes were in place, and that MVCSD's request was under review at SLD. In August 1999, however, SLD informed MVCSD that, in order to comply with FCC rules, the Form 470 pertaining to MVCSD's second bidding process would have to be posted on SLD's website for a 28-day period, which ended on August 31, 1999.<sup>13</sup> MVCSD was informed on September 6, 1999, that SLD had approved its request to change vendors.<sup>14</sup>

6. According to MVCSD, it lacked sufficient funding to begin its proposed project without first obtaining a universal service discount. Furthermore, its second vendor was unwilling to proceed with the project until receiving SLD's final approval of the vendor change on September 6, 1999. This left MVCSD with at most 24 days within which to complete its network installation. Because MVCSD maintains that it would be impossible for its network project to be completed in this time, MVCSD requests a waiver of the September 30, 1999, deadline for implementation of non-recurring services, as well as a 30-day extension of the deadline to October 30, 1999.

#### IV. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.<sup>15</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid, and "an

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<sup>11</sup> See *MVCSD Petition* at p. 2.

<sup>12</sup> The Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) was formerly known as the Schools and Libraries Corporation (SLC). SLC merged with USAC, effective January 1, 1999. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, 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, 13 FCC Rcd 25058 (1998) (Eighth Reconsideration Order)*.

<sup>13</sup> See 47 C.F.R. § 54.504(b)(4). See also 63 F.R. 70563 (Dec. 21, 1998).

<sup>14</sup> See *MVCSD petition* at p. 1.

<sup>15</sup> 47 C.F.R. § 1.3.

applicant for waiver faces a high hurdle even at the starting gate.”<sup>16</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>17</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>18</sup> 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.<sup>19</sup> The test for whether MVCSD may be granted a waiver, therefore, is whether it has shown such special circumstances that warrant departure from the rules established in the *Fifth Reconsideration Order* and the *Tenth Reconsideration Order*. We conclude that MVCSD has successfully made that showing.

8. MVCSD’s situation raises the kind of particular facts and special circumstances warranting a waiver of the Commission’s rules. Unlike most eligible schools and libraries receiving discounts, MVCSD was faced with the uncommon situation of its vendor ceasing to do business, requiring MVCSD to conduct a second bidding process. Moreover, MVCSD’s effort to change vendors was delayed as a result of SLD and the Commission implementing the processes for managing requests to change vendors who had ceased doing business. Despite MVCSD’s best efforts, as a result of these unpredictable, unusual, and lengthy delays over which MVCSD had no control, MVCSD was left with a mere 24 days before the September 30, 1999, deadline within which to complete its network installation. MVCSD states that it will be unable to complete its project in that time. Thus, enforcing this deadline will mean that the students in MVCSD’s schools will be denied the benefits of the new communications technologies and opportunities that MVCSD’s networking project will make possible. Under these facts, we find that enforcement of the Commission’s September 30, 1999, implementation deadline would be inconsistent with the public interest.

9. We note that the waiver standard is a difficult one to meet and, in situations such as those presented by MVCSD’s petition, where we must maintain universal service support mechanisms that are “specific, predictable, and sufficient,”<sup>20</sup> we must consider carefully the consequences of making exceptions to rules designed to provide predictability. In section 54.507 of its rules, the Commission set forth clear guidelines for the time frame within which schools and libraries must use their discounts.<sup>21</sup> In considering MVCSD’s petition for waiver, therefore, we must take into account the impact on universal service if other school districts in the United States requested similar extensions of the deadline for implementation of non-recurring services. Unlike most eligible schools and libraries, MVCSD faced extraordinary delays in

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<sup>16</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*WAIT Radio*).

<sup>17</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>18</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>19</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>20</sup> 47 U.S.C § 254(b)(5).

<sup>21</sup> See *supra* at para. 2.

implementation of its proposed networking project, despite its best efforts and due to circumstances beyond its control. We conclude that, on these facts, granting MVCSD's petition would not undermine the Commission's method for ensuring that universal service support mechanisms are "specific, predictable and sufficient."<sup>22</sup> MVCSD's petition for waiver of the September 30, 1999, deadline for implementation of non-recurring services is, therefore, granted. Furthermore, MVCSD's petition to extend the deadline for MVCSD by 30 days to October 30, 1999, is also granted.

#### V. CONCLUSION

10. 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 the Mesa Vista Consolidated School District's petition for waiver IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

  
Lisa M. Zaina  
Deputy Chief, Common Carrier Bureau

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<sup>22</sup> See 47 U.S.C. § 254(b)(5).