

Oct 7 3 02 PM '99 Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DISPATCHED BY

In the Matter of)	
Request for Review by)	
the Department of Education of the)	
State of Tennessee of the Decision of)	Application No. 18132
the Universal Service Administrator)	
)	
Request for Review by)	
Integrated Systems and Internet Solutions, Inc.)	
of the Decision of)	
the Universal Service Administrator)	
)	
Request for Review by)	
Education Networks of America)	
of the Decision of)	
the Universal Service Administrator)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45 ✓
)	
Changes to the Board of Directors)	
of the National Exchange Carrier)	CC Docket No. 97-21
Association, Inc.)	

ORDER

Adopted: September 30, 1999

Released: September 30, 1999

By the Deputy Chief, Common Carrier Bureau :

I. INTRODUCTION

1. By this Order, we grant the request for waiver and extension of time filed by the Department of Education of the State of Tennessee (Tennessee). This Order will permit Tennessee to use until December 20, 1999, the universal service discounts it was awarded as a result of its successful appeal of the denial of its application by the Universal Service Administrator (USAC) until December 20, 1999.

II. BACKGROUND

2. On August 11, 1999, the Commission granted in part and denied in part the requests for review filed by Tennessee and Education Networks of America (ENA).¹ The Commission found that Tennessee may receive discounts on Internet access service provided by ENA, but may not receive discounts on charges by ENA to Tennessee related to components of the ConnectEN network it previously owned, but sold to ENA.² The Commission required the Common Carrier Bureau (Bureau), through its oversight role, to work with USAC and Tennessee to implement its decision. The Commission stated that it expected Tennessee to provide USAC with the relevant information necessary to effectuate the Commission's decision, and expected the Bureau to monitor actively those activities to ensure that the Commission's decision was implemented expeditiously. Specifically, the Commission stated that a funding commitment decision letter must be delayed no longer than 10 working days from the receipt of information necessary to be provided by Tennessee to implement the Commission's decision. In addition, the Commission permitted the Bureau to waive any rules to the extent necessary to effectuate the Commission's decision in the Tennessee matter.³ USAC provided a funding commitment letter to Tennessee, consistent with the *Tennessee Order*, on September 20, 1999.

3. On September 17, 1999, Tennessee submitted a request for waiver and extension of time to allow it to use the universal service discounts awarded as a result of the *Tennessee Order* for a period of 90 days after release of the funding by USAC's Schools and Libraries Division.⁴ Specifically, Tennessee requested a waiver of the September 30, 1999, deadline for receipt of non-recurring services for the first year of the schools and libraries

¹ See *In the Matter of Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, FCC 99-216 (rel. August 11, 1999) (*Tennessee Order*).

² *Tennessee Order* at para. 1.

³ *Tennessee Order* at para. 48.

⁴ See Letter from William K. Coulter, Coudert Brothers, to Irene Flannery, FCC (dated September 17, 1999) (*Tennessee petition*). In a letter filed pursuant to section 1.1206 of the Commission's rules, following an *ex parte* meeting with Commission staff, Mr. Coulter also requested a waiver and a 90-day extension of time. See Letter from William K. Coulter, Coudert Brothers, to Sonja Rifken, FCC (dated August 6, 1999).

universal service support mechanism⁵ for a period of 90 days from the receipt of a funding commitment letter to use the non-recurring services eligible for support.⁶

III. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.⁷ 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."⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ 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.¹¹ The test for whether Tennessee may be granted a waiver, therefore, is whether it has shown such special circumstances that warrant deviation from the *Tenth Reconsideration Order's* determination that discounts for non-recurring services for year one of the schools and libraries universal service support mechanism must be used by September 30, 1999. We conclude that Tennessee has made that showing, and we grant its petition for waiver and extension of time until December 20, 1999.

5. Tennessee's situation raises the kind of particular facts and circumstances warranting waiver of the Commission's rules. It would be impossible for Tennessee to use the discounts awarded to it in the *Tennessee Order* in the 10 days between its receipt from USAC of a funding commitment decision letter and the September 30, 1999, deadline for using discounts on non-recurring services. Under these facts, we find that enforcement of the

⁵ Section 54.507(d) of the Commission's rules requires schools and libraries "to file new funding requests for each funding year." 47 C.F.R. § 54-507(d). In the *Tenth Reconsideration Order*, the Commission extended the date by which non-recurring services had to be received in year one of the schools and libraries universal service support mechanism from June 30, 1999 to September 30, 1999. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983, 5984, at para. 3 (1999) (*Tenth Reconsideration Order*).

⁶ Tennessee petition at 1-2.

⁷ 47 C.F.R. § 1.3.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*WAIT Radio*).

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) (*Northeast Cellular*).

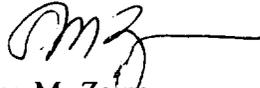
¹⁰ *WAIT Radio*, 418 F.2d at 1157.

¹¹ *Northeast Cellular*, 897 F.2d at 1166.

September 30, 1999, implementation deadline would be inconsistent with the public interest. Moreover, failure to grant Tennessee's petition would thwart the Commission's decision in the *Tennessee Order* that Tennessee was eligible to receive discounts on the Internet access service provided by ENA. The Commission specifically directed the Bureau to waive any rules to the extent necessary to implement the *Tennessee Order*.¹² Tennessee's petition for waiver of the September 30, 1999 deadline for receipt of non-recurring services, therefore, is granted. In addition, Tennessee's petition to extend the deadline by 90 days after its receipt of a funding commitment decision letter (i.e., to December 20, 1999) is also granted.

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 the Tennessee Department of Education's petition for waiver and extension of time IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION



Lisa M. Zaira
Deputy Chief, Common Carrier Bureau

¹² See *Tennessee Order* at para. 48.