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Before the
Federal Communications Commission
Washington, DC 20554

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

ORDER

Adopted: December 28, 1999 **Released: December 28, 1999**

By the Common Carrier Bureau:

I. INTRODUCTION

1. Pursuant to section 1.3 of the Commission's rules,[1] we find good cause to waive, on our own motion, Commission rules pertaining to the deadline for the implementation of non-recurring services during Year One of the schools and libraries universal service support mechanism.[2] As described in more detail below, we waive the September 30, 1999, deadline for implementation of non-recurring services during Year One for certain applicants in the following three categories: (1) applicants whose Year One funding requests were granted late in the funding year, or after the funding year had ended, pursuant to a favorable decision on a request for review; (2) applicants for whom valid Year One service provider changes were approved by the Universal Service Administrative Company (USAC or the Administrator) late in the funding year, or after the funding year had ended; and (3) applicants for whom disbursements of Year One discounts were temporarily delayed.

II. BACKGROUND

2. The Commission's rules require schools and libraries to implement services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought.[3] The Commission's May 8, 1997, *Universal Service Order*

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[1] 47 C.F.R. § 1.3 (allowing the Commission to waive Commission rules on its own motion); *see also* 47 C.F.R. § 0.91 (delegating to the Common Carrier Bureau the functions of the Commission except as reserved to the Commission under 47 C.F.R. § 0.291).

[2] For the purposes of the schools and libraries universal service support mechanism, "non-recurring services" refers to those services which are not consumed on an ongoing or periodic basis, but instead are received on a one-time basis, for example internal connections installations. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983, 5992, para. 18 (1999) *(Tenth Reconsideration Order)*.

[3] *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*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part in Texas Office of Public Utility Counsel v.*

established a calendar funding year (January 1 – December 31) for schools and libraries receiving universal service support.[4] 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 (July 1 – June 30).[5] To ease the transition to the new fiscal year method, the Commission extended the first year funding period by six months so that the Year One funding period for schools and libraries support ran from January 1, 1998 through June 30, 1999.[6] To account for delays in the implementation of the schools and libraries support mechanism, the Commission subsequently amended its rules to extend the 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.[7] 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.

3. There are three categories of applicants that have not been able to meet the September 30, 1999, deadline established in the *Tenth Reconsideration Order*. In the first category are those applicants whose funding requests have been granted as a result of a request for review filed with the Administrator or the Commission. Under the Commission's rules, any party affected by a decision of the Administrator may seek review of that decision from the Administrator or the Commission.[8] Many Year One applicants that were denied funding sought review from the Administrator or the Commission.[9] Because of the time required to give these requests for review due consideration, USAC released many of its decisions on requests for review either near, or after, the September 30, 1999, deadline.[10] Moreover, USAC continues to issue decisions on requests for review of Year One funding commitments.[11] Similarly, the

FCC, 183 F.3d 393 (5th Cir. 1999), *motion for stay granted in part*, (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied*, (Sept. 28, 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*). *See also* 47 C.F.R. § 54.507(d) (requiring schools and libraries "to file new funding requests for each funding year"); *and* 47 C.F.R. § 54.507(e) (limiting the availability of discounts for a contract covering eligible services to the *pro rata* portion of the contract scheduled for delivery during the funding year for which discounts are sought).

[4] *Universal Service Order*, 12 FCC Rcd at 9057, para. 535, and 9143, para. 710.

[5] *Fifth Reconsideration Order*, 13 FCC Rcd at 14916, para. 1, and 14920, para. 8.

[6] *Id.*

[7] *Tenth Reconsideration Order*, 14 FCC Rcd at 5991-94, para. 17-23; 47 C.F.R. § 54.507(b)(2). *See also supra* at n. 2.

[8] 47 C.F.R. § 54.719.

[9] If an applicant chooses to seek review initially from the Administrator, and the Administrator denies such request for review, the applicant has the opportunity to seek review of such denial from the Commission. *See* 47 C.F.R. § 54.719.

[10] Letter from D. Scott Barash, Universal Service Administrative Company, to Magalie R. Salas, FCC, dated September 29, 1999, at 2-3 (*USAC appeals ex parte*).

Commission issued decisions on requests for review near, or after the September 30, 1999, deadline and continues to issue decisions on Year One requests for review of decisions issued by USAC.[12] Because many of the services that received approval were complex, internal connections installations, requiring equipment and/or wiring to be received and installed, it is impossible for applicants whose requests for review were granted near, or after, the September 30, 1999, deadline to meet that deadline.

4. In the second category are those applicants that, as a result of extenuating circumstances, received approval from USAC to change service providers during the Year One funding period.[13] Several of these applicants submitted service provider change requests that were approved by the Administrator late in Year One or after the funding year ended.[14] As a result, these applicants did not have sufficient time to complete installation of their non-recurring services before the September 30, 1999, deadline.[15]

5. In the third category are applicants that were issued funding commitments by the Administrator, but for whom the disbursement of discounts to the applicants' service providers pursuant to those funding commitments had to be delayed.[16] During that time, some of the affected applicants suspended their purchase of eligible services until disbursement of the discounts resumed. Because in some cases disbursement of the discounts resumed late in the funding year, or after the funding year ended, some applicants did not have sufficient time in which to apply their discounts towards non-recurring services before the September 30, 1999, deadline.[17]

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[11] *Id.*

[12] Recently released Commission orders have granted extensions of the September 30, 1999, deadline for applicants receiving funding commitments for non-recurring services. This Order would obviate the need to grant individual extensions of the September 30, 1999, deadline on requests for review that are issued after the effective date of this Order.

[13] For example, when a service provider went out of business, the Administrator permitted the applicant to choose a new service provider, provided that the new service provider had been part of the original competitive bidding process or the applicant chose the new service provider in conformity with the Commission's competitive bidding rules. *See* 47 C.F.R. §§ 54.504 and 54.511.

[14] Letter from D. Scott Barash, Universal Service Administrative Company, to Magalie R. Salas, FCC, dated November 4, 1999, at 2-3 (*USAC service provider changes ex parte*).

[15] *Id.*

[16] Letter from D. Scott Barash, Universal Service Administrative Company, to Magalie R. Salas, FCC, dated November 9, 1999, at 2 (*USAC disbursements ex parte*). In its letter, USAC explains that, during its annual audit and internal post-commitment management review of applications, concerns arose regarding support provided to particular applicants and that, until such concerns were resolved, USAC did not issue reimbursements to such applicants' service providers.

[17] *Id.*

III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.[18] As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.[19] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[20] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[21] Waiver of the deadline for implementation of non-recurring services as established in the *Tenth Reconsideration Order*, therefore, is appropriate if special circumstances warrant a deviation from the general rule established in that order, and such deviation would better serve the public interest than strict adherence to the general rule.[22] We conclude that such special circumstances exist with respect to the three categories of Year One applicants described above, thus warranting a waiver of the September 30, 1999, deadline.

7. Unlike most eligible schools and libraries receiving discounts, these applicants face the situation of having waited well into the Year One funding period for decisions regarding their requests for review, their requests for service provider changes, or the disbursement of their discounts. As a result of these delays, and due to no fault of the applicants, there was insufficient time before the September 30, 1999, deadline for the applicants to complete implementation of non-recurring services. Many of these applicants simply were unable to receive completed services in that time. Thus, enforcing the September 30, 1999, deadline would deprive the students and patrons of these applicants of the benefits of the communications technologies their funding commitments would otherwise make possible. For the applicants described above, we find that enforcement of the Commission's September 30, 1999, implementation deadline for the receipt of non-recurring services would be inconsistent with the public interest. Accordingly, all such applicants will receive an additional 180 days, as defined below, to complete installation of their non-recurring services.[23]

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[18] 47 C.F.R. § 1.3.

[19] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

[20] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

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

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

[23] We note that, in a separate proceeding, the Commission has proposed a 180 day extension for the implementation of non-recurring services following a successful request for review. *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration in CC Docket No. 97-21, Eleventh Order on Reconsideration in CC Docket No. 96-45, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 6033, 6038, para. 11 (1999). In its comments pursuant to that proceeding, USAC agrees with the Commission's proposal of a 180 day extension. *See* Comments of the Universal Service Administrative Company in *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 and 96-45, Further Notice of Proposed Rulemaking, 14 FCC Rcd 6033, at pp. 4-5 (dated Jun 30, 1999). Based on the tentative conclusion that further notice of proposed rulemaking, and based on USAC's comments on that proposal, the Bureau that it is reasonable here to grant applicants a 180 day extension of the September 30, 1999, deadline

8. With respect to Year One schools and libraries funding commitments issued pursuant to requests for review granted by USAC or the Commission and issued on or after the 180th day before October 1, 1999 (i.e., on or after April 4, 1999), the September 30, 1999, deadline for implementation of non-recurring services in Year One of the schools and libraries support mechanism is waived, and the deadline for implementation of non-recurring services under each such funding commitment is extended to 180 days after the date on which a funding commitment letter is issued by USAC to the applicant pursuant to its successful request for review.[24]

9. With respect to each Year One applicant for whom USAC issued, on or after the 180th day before October 1, 1999 (i.e., on or after April 4, 1999), a notification to a new service provider of USAC's approval of the applicant's request to change service providers, the September 30, 1999, deadline for implementation of Year One non-recurring services is waived. The deadline for implementation of Year One discounted non-recurring services by each such new service provider is extended to 180 days after the date on which USAC issued its notification to the new service provider of its approval of the applicant's request.[25]

10. With respect to Year One funding commitments for non-recurring services for which discounts were not disbursed, whether in whole or in part, to approved service providers until, or until after, the 180th day before October 1, 1999 (i.e., until, or until after, April 4, 1999), for which USAC has not disbursed all discounts as of the date of this Order, and for which the applicant properly submitted to SLD an FCC Form 486 ("Receipt of Service Confirmation Form") and corresponding invoices prior to the date of this Order, the September 30, 1999, deadline for implementation of non-recurring services in Year One of the schools and libraries support mechanism is waived. The deadline for implementation of non-recurring services under such funding commitments that have not already been implemented is extended by 180 days from the date USAC issues a notification to the applicant of its eligibility for a waiver and extension of the deadline. To effectuate this extension, the Bureau directs USAC to examine its records of discount disbursements and identify the Year One funding commitments for non-recurring services for which discounts were not disbursed, whether in whole or in part, to approved service providers until, or until after, the 180th day before October 1, 1999 (i.e., until, or until after, April 4, 1999), for which USAC has not disbursed all discounts as of the date of this Order, and for which the applicant properly submitted to SLD an FCC Form 486 ("Receipt of Service Confirmation Form") and corresponding invoices prior to the date of this Order. The Bureau further directs USAC to notify, within 30 days of the release of this order, each such

[24] April 4, 1999, is the first day, and September 30, 1999, is the last day, of the final 180 days that eligible schools, libraries, and consortia have to complete implementation of Year One non-recurring services. October 1, 1999, therefore, is the beginning of the time period during which eligible entities may no longer implement Year One non-recurring services. The effect of the extensions in this Order is to give all applicants in the three categories described above, who received funding commitments or discount disbursements within or after the last 180 days of the current time period for implementing Year One non-recurring services, a full 180 days to implement their non-recurring services from the date applicants are issued a notice of that funding commitment or disbursement. This ensures that all applicants in the three categories described above have a full 180 days to complete implementation of their non-recurring services.

[25] *See supra* n. 23 and 24.

applicant that its deadline for implementation of any Year One non-recurring services discounted under such funding commitments that have not already been implemented is extended by 180 days from the date of issuance of USAC's notification.[26]

11. Finally, to effectuate the waivers and extensions granted in this Order of the September 30, 1999, implementation deadline, we waive Section 54.515(b) of the Commission's rules with respect to any funding commitments by the Administrator for which the September 30, 1999, implementation deadline has been extended by this Order.[27] This waiver will allow Year One discounts to continue to flow to service providers as services are implemented under the extended deadlines created in this Order.

IV. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED that, 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, the Order is ADOPTED.

13. IT IS FURTHER ORDERED that the deadline for implementation of non-recurring services under each funding commitment letter issued pursuant to a successful request for review by the Administrator on or after April 4, 1999, is extended to 180 days after the date on which such funding commitment letter was issued.

14. IT IS FURTHER ORDERED that the deadline for implementation of non-recurring services under each funding commitment for which the Administrator issued on or after April 4, 1999, a notice of its approval of a request to change service providers, is extended to 180 days after the date on which the Administrator's notice of approval to the new service provider was issued.

15. IT IS FURTHER ORDERED that, with respect to funding commitments for which discounts were not disbursed for non-recurring services until, or until after, April 4, 1999, and for which USAC has not disbursed all discounts for non-recurring services as of the date of this Order, the September 30, 1999, the deadline for implementation of non-recurring services under such funding commitments is extended to 180 days after the date on which the Administrator notifies each such applicant that its discounts were delayed in the manner described.

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[26] *See id.*

[27] 47 C.F.R. § 54.515(b). Section 54.515(b) of the Commission's rules requires that "[a]ny . . . reimbursement due a carrier shall be submitted to that carrier no later than the end of the first quarter of the calendar year following the year in which the costs were incurred and the offset against the carrier's universal service obligation was applied." Because funding Year One ends on December 31, 1999, this rule prevents SLD from disbursing Year One discounts to carriers after March 31, 2000, the end of the first quarter after funding Year One.

16. Finally, IT IS FURTHER ORDERED that Section 54.515(b) of the Commission's rules, 47 C.F.R. § 54.515(b), is waived with respect to any funding commitments by the Administrator for which the September 30, 1999, deadline for implementing non-recurring services has been extended by this Order.

FEDERAL COMMUNICATIONS COMMISSION

Yog R. Varma
Deputy Chief, Common Carrier Bureau