DOCKET FILE COPY ORIGINAL

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

RECEIVED & INSPECTED
FEB 26 2002
FCC - MAILROOM

In the Matter of	)	
	)	
Request for Waiver of the Funding Year Deadline for the Implementation of Non-Recurring Services by	)	
	)	
Cleveland Municipal School District Cleveland, Ohio	)	File No. SLD-190883
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

ORDER

Adopted: February 20, 2002 **Released: February 22, 2002**

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Waiver and Extension of Time filed by Cleveland Municipal School District (Cleveland), Cleveland, Ohio.[1] Cleveland seeks a waiver of the September 30, 2001 deadline for completion of Funding Year 3 non-recurring services under the schools and libraries universal service mechanism and extensions of that deadline for two of Cleveland's service requests to June 30 and May 31, 2002, respectively.[2] For the reasons discussed below, we deny Cleveland's Waiver Request.

2. The Commission's rules historically have required schools and libraries to implement services for which discounts have been committed by the Universal Service Administrative Company (Administrator) within the funding year the discounts were sought.[3] On April 30, 2001, the Commission issued the *Funding Year 3 Extension Order*, waiving the deadline for the implementation of non-recurring services in Funding Year 3 of the schools and libraries support mechanism and extending that deadline for all applicants from June 30, 2001 to

[1] Letter from Nathaniel Hawthorne on behalf of Cleveland Municipal School District, to Federal Communications Commission, filed September 28, 2001 (Waiver Request).

[2] *Id.*

[3] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9062, para. 544 (1997) (subsequent history omitted). *See also Federal-State Joint Board on Universal Service*, CC Docket No. 96045, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14921, para. 9 (1998) (*Fifth Reconsideration Order*); 47 C.F.R. § 54.507(d), (e). Funding years begin on July 1 and end on June 30; schools and libraries thus were required to use their discounts for non-recurring services by June 30 of each funding year. *See Fifth Reconsideration Order*, 13 FCC Rcd, at 14916, para. 1, and 14920, para. 8.

September 30, 2001.[4] The *Funding Year 3 Extension Order* also granted Funding Year 3 applicants a limited exemption from the Commission's competitive bidding rules, permitting them to extend existing contracts for Funding Year 3 non-recurring services until September 30, 2001, without having to subject the extension to competitive bidding.[5] On June 29, 2001, the Commission adopted this approach for all funding years in a rulemaking order that permanently extended the June 30 deadline for implementation of non-recurring services in a funding year to September 30 following the close of the funding year (*Permanent Extension Order*).[6] The *Permanent Extension Order* further provided that an applicant could request and receive from the Administrator a further extension beyond September 30 if it demonstrated that it satisfied one of four conditions specified in the Order.[7] The *Permanent Extension Order* made clear that, in order to qualify for an extension, irrespective of the particular circumstances, eligible schools and libraries applying for universal service support may not bear any fault for failure to complete installation of the non-recurring services by September 30 following the close of the funding year in question.[8]

3. In the *Permanent Extension Order*, the Commission also adopted a rule granting a limited extension of the Commission's competitive bidding requirements for the universal service support mechanism for eligible schools and libraries with existing contracts for non-recurring services.[9] Under the rule, applicants eligible for an extension of the September 30 deadline are permitted to extend their existing contracts for non-recurring services voluntarily until the appropriate deadline for implementation, without having to comply with the Commission's competitive bidding process.[10]

4. At issue are two Funding Year 3 requests by Cleveland for discounted internal connections. Specifically, Funding Request Number (FRN) 422674 seeks discounts on the installation of 137 ComWeb Knowledge WEB switches.[11] FRN 423038 seeks discounts on the installation of full-roaming wireless local area networks at three Cleveland sites.[12]

---

[4] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rule Making and Order, 16 FCC Rcd 9880, 9891 (2001) (*Funding Year 3 Extension Order*).

[5] *Id.*

[6] *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, Report and Order, FCC 01-195 (rel. June 29, 2001) (*Permanent Extension Order*).

[7] *See Permanent Extension Order*.

[8] *Id.*, paras. 10, 15-16, and 18.

[9] *Id.*, para. 19.

[10] *Id.*

[11] Waiver Request, Exhibit A, at 1.

[12] Waiver Request, Exhibit B, at 1.

5. With respect to Funding Request Number 422674, Cleveland asserts that it is still in the process of installing the necessary infrastructure "to appropriately use its e-rate funding."[13] In Exhibit A to its Waiver Request, Cleveland states that the service provider has been unable to complete installation of the switches because installation depended on submission by the school principals of an education proposal to the District and approval of these proposals.[14] Cleveland states that only a few of the schools managed to get approved proposals by the deadline.[15] Cleveland further explains that twelve of the 137 systems were installed by July 23, 2001 following receipt of the proposals from the school principals and/or teachers, including the initial six systems installed as part of the pilot program.[16]

6. With respect to Funding Request Number 423038, Cleveland asserts that it "has been unable to timely complete its wireless network connectivity."[17] In Exhibit B to its Waiver Request, Cleveland elaborates that, although it has fully installed its three wireless networks, network connectivity is incomplete because the service provider has not yet finished configuring laptops to be able to ride on motorized carts when not in use, which will be a feature of the completed wireless network system.[18] Cleveland states that the service provider was unable to complete these configurations of laptops for reasons beyond its control because Cleveland has not secured the necessary laptops for three such installations.[19] Cleveland explains that it is currently exploring ways to obtain the necessary laptops.[20]

7. Although Cleveland requests a waiver of Commission rules, we note that the Commission's rules as modified by the *Permanent Extension Order* specifically address the circumstances under which an applicant may seek an extension of the September 30, 2001 deadline for implementation of non-recurring services.[21] Cleveland has not requested that these extension standards be waived, and indeed, argues in terms that seek to satisfy those standards.[22] Therefore, we resolve Cleveland's request for waiver under the standards established in the *Permanent Extension Order* for permissible extensions of the deadline for completion of non-

[13] Waiver Request, at 2.

[14] Waiver Request, Exhibit A, at 1-2.

[15] *Id.*

[16] *Id.*

[17] Waiver Request, at 2.

[18] Waiver Request, Exhibit B, at 1.

[19] *Id.* Laptops are not eligible services, and Cleveland is using its own funds to obtain the laptops that will be used with its network. *Id.*

[20] *Id.*

[21] *Permanent Extension Order*, para. 12.

[22] Waiver Request, Exhibit A, at 1; Waiver Request, Exhibit B, at 1.

recurring services.

8. Initially, we note that, as a general matter, the *Permanent Extension Order* contemplated that extension requests would be presented to the Administrator for review in the first instance.[23] Thus, in the future, when reviewing extension requests made directly to the Commission, we expect to transfer such requests to the Administrator for initial review. In the instant case, because we find that the issues are clear and the merits easily resolved, and because it may not have been clear to applicants that the Commission envisioned that such requests would always be filed with the Administrator in the first instance, we will address the pending request on the merits without a prior decision by the Administrator. In the future, however, we caution applicants that such requests should be filed with the Administrator.

9. The *Permanent Extension Order* provided that an applicant would qualify for an extension of the September 30 implementation deadline if it could demonstrate that it fell into one of four categories: (1) applicants whose funding commitment decision letters are issued by the Administrator on or after March 1 of the funding year for which discounts are authorized; (2) applicants who receive service provider change authorizations or service substitution authorizations from the Administrator on or after March 1 of the funding year for which discounts are authorized; (3) applicants whose service providers are unable to complete implementation for reasons beyond the service provider's control; or (4) applicants whose service providers are unwilling to complete installation because funding disbursements are delayed while the Administrator investigates their application for program compliance.[24]

10. Cleveland argues that, with respect to both FRNs, the service provider for each FRN is unable to complete implementation for reasons beyond its control.[25] Thus, Cleveland seeks an extension pursuant to the third criterion discussed above. However, as noted above, the *Permanent Extension Order* makes clear that reasons "beyond the service provider's control" must be also be reasons for delay resulting through "no fault of [the applicant's] own . . . ."[26] Here, we find that the proffered delays are directly attributable to Cleveland's actions. Specifically, the record demonstrates that Cleveland's service provider was unable to complete installation by September 30, 2001 due to delays by Cleveland or its member schools in obtaining authorization for the internal connections and in procuring the necessary laptops to complete installation.[27] We conclude that Cleveland does not, therefore, satisfy the third grounds for an extension and that its request for an extension must be denied.

---

[23] *See Permanent Extension Order*, para. 14 ("The *Administrator* will consider whether" criteria are satisfied) (emphasis added).

[24] *Permanent Extension Order*, para. 12.

[25] Waiver Request, Exhibit A, at 1; Waiver Request, Exhibit B, at 1.

[26] *Permanent Extension Order*, para. 16.

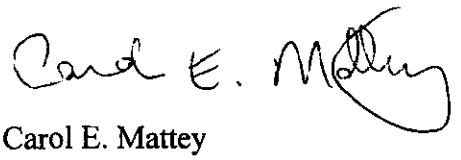
[27] *See* Waiver Request, Exhibit A, at 1-2; Waiver Request, Exhibit B, at 1.

11. Finally, even assuming that Cleveland has requested a waiver of the standards established in the *Permanent Extension Order*, it does not present grounds for such a waiver. Waiver is 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.[28] We find that Cleveland has not indicated any special circumstances that would warrant a deviation from the standards established in the *Permanent Extension Order*.

12. Because we deny Cleveland's Waiver Request, we do not reach the issue of whether to grant a limited waiver of the Commission's competitive bidding rules.

13. 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 Request for Waiver and Extension of Time filed by Cleveland Municipal School District, Cleveland, Ohio, on September 28, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Mattey
Deputy Chief, Common Carrier Bureau

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