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

JUN 27 2002

In the Matter of	)	
	)	
Buffalo City School District West Seneca, New York	))	File No. SLD-262700
	)	
Federal-State Joint Board on Universal Service	))	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association	))	CC Docket No. 97-21

ORDER

Adopted: June 20, 2002 **Released: June 21, 2002**

By the Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants the request of the Buffalo City School District, West Seneca, New York (Buffalo City), for a waiver of the September 30, 2002 deadline for installation of non-recurring services for schools and libraries receiving universal service funding for Funding Year 4 of the program.[1] Specifically, we find that Buffalo City is entitled to a waiver of section 54.507(d) of the Commission's rules, which requires recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services by September 30 following the close of the funding year.[2] We grant Buffalo City a one-year extension of the September 30, 2002 deadline, to September 30, 2003. This waiver will provide Buffalo City with sufficient time to install their Funding Year 4 non-recurring services, and thereby fully utilize their universal service discounts.

II. BACKGROUND

2. Pursuant to section 254 of the Act, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounted eligible telecommunications,

[1] Electronic mail from George McDonald, Schools and Libraries Division, Universal Service Administrative Company, to Mark Seifert, Federal Communications Commission, dated May 20, 2002, forwarding Letter from Mat Dziuba, Buffalo City School District, to Schools and Libraries Division, Universal Service Administrative Company, dated May 16, 2002 (Request for Waiver). *See* 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 Wireline Competition Bureau the functions of the Commission except as reserved to the Commission under 47 C.F.R. § 0.291).

[2] *See* 47 C.F.R. § 54.507(d).

Internet access, and internal connections services.[3] Applicants must apply for discounts on an annual basis, in each funding year of the program.[4] The Commission's rules also 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.[5]

3. In the *Universal Service Order*, the Commission established a calendar funding year (January 1-December 31) for schools and libraries receiving universal service support.[6] The Commission revised its rules in the *Fifth Order on Reconsideration*, and changed the funding year for schools and libraries to a fiscal year (July 1-June 30).[7] In order to ease transition to the new fiscal year method, the Commission extended the first year by six months so the Funding Year 1 funding period ran from January 1, 1998-June 30, 1999.[8] In the first Funding Year of the universal service program for schools and libraries, however, the Commission extended the deadline for schools and libraries to use their discounts on Funding Year 1 non-recurring services from June 30, 1999 (the end of the funding period) to September 30, 1999.[9] This extension recognized delays in the implementation of the schools and libraries universal service support mechanism in the first year of the program, and provided applicants with additional flexibility in light of that delay.

4. Consistent with this order, the Common Carrier Bureau subsequently extended the deadline to install non-recurring services in Funding Years 2 and 3.[10] The extended deadline was intended to give schools and libraries more time to implement non-recurring services, and make greater use of their universal service discounts. Furthermore, the Bureau concluded that extending the deadline until September 30 would allow schools to implement non-recurring services over the summer months when schools were in recess.[11]

5. In 2001, the Commission recognized that a non-recurring charge was necessary.

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[3] 47 U.S.C. § 254. *See also* 47 C.F.R. §§ 54.502, 54.503.

[4] *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*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

[5] *Id. 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 Order on Reconsideration*); 47 C.F.R. § 54.507(d), (e).

[6] *Universal Service Order*, 12 FCC Rcd at 9057, para. 535, and 9234, para. 710.

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

[8] *Id.*

[9] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983, 5991-94, paras. 17-23 (1999) (*Tenth Order on Reconsideration*).

[10] *See Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 15 FCC Rcd 8064 (Com. Car. Bur. 2000).

[11] *Id.*, 15 FCC Rcd at 8067, paras. 5-6.

Specifically, the Commission recognized as a general matter that it is reasonable for schools and libraries to have additional time to implement non-recurring services, given the fact that many of these services must be installed during the summer months when classes are not in session.[12] The Commission therefore modified section 54.507(d) of its rules to allow schools and libraries to implement non-recurring services by September 30, following the close of the funding year.[13] The Commission found that non-recurring services often involve the installation of equipment or wiring, for which schools and libraries incur a one-time cost.[14] As a result, many non-recurring services need to be performed while students are not in school or over the summer months, and the Commission thus modified its rules to permanently minimize disruptions for classrooms and students.[15]

6. Pursuant to section 54.507(d) of the Commission's rules, applicants will qualify for an extension of the implementation deadline for non-recurring services if they satisfy one of the following criteria: (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.[16] The Commission also noted that if an applicant satisfies one of the four criteria, then March 1 will be the key date for calculating the extended deadline.[17] If one of the conditions is satisfied before March 1 (of any year), the applicant will have until September 30 of the instant year to complete implementation. If one of the conditions is satisfied after March 1, the applicant will have until September 30 of the following year to complete implementation.[18]

7. Buffalo City filed its Request for Waiver with the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) on May 16, 2002. Since SLD has no authority to waive Commission rules, SLD forwarded Buffalo City's request to the Bureau for consideration. In its Request for Waiver, Buffalo City asserts that its selected vendor will be unable to meet the September 30, 2002 deadline for installation of non-recurring services for Funding Year 4.[19] Buffalo City states that its Funding Commitment Decision Letter (FCDL) was issued on January 14, 2002, and attaches a letter from its vendor, Ronco Communications (Ronco), which states that Ronco was unable to begin work on the installation of the non-

[12] *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 01-195, 16 FCC Rcd 13510 (2001) (*Non-Recurring Services Order*).

[13] *Id.* Under the revised rule, schools and libraries receiving funding commitments for non-recurring services in Funding Year 4 have until September 30, 2002 to implement these services.

[14] *Id.*, 16 FCC Rcd at 13511, para. 8.

[15] *Id.*

[16] 47 C.F.R. § 54.507(d)(1) – (4).

[17] *Non-Recurring Services Order*, 16 FCC Rcd at 13512, para. 13.

[18] *Id.*

[19] Request for Waiver at 2.

recurring services until the FCDL was received.[20] Ronco states that due to the delay in receiving the FCDL, it would only have 8.5 months to complete a 15-month project.[21] Ronco further states that compressing the project to meet the September 30, 2002 deadline would result in significant added costs.[22] Buffalo City recognizes that its FCDL was received before March 1, 2002, but nonetheless asks that it receive an automatic one-year extension of the non-recurring services deadline, to September 30, 2003, to allow its vendor sufficient time to complete the installation of the services.[23]

II. DISCUSSION

8. At the outset, we note that Buffalo City's request for an extension does not satisfy any of the four criteria for an automatic one-year extension under section 54.507(d)(1) – (4) of the Commission's rules.[24] Buffalo City received its FCDL prior to March 1, 2002, and therefore pursuant to the Commission's rules, its vendor must complete installation of the Funding Year 4 non-recurring services prior to September 30, 2002.[25] Buffalo City also does not satisfy the criterion at section 54.507(d)(3) of the Commission's rules, which allows for an automatic extension if the applicant's service provider cannot complete the installation before the scheduled deadline due to circumstances beyond its control.[26] Ronco has stated that it does have the capability to meet the September 30, 2002 deadline, albeit with increased hardship.[27] Because Buffalo City's situation does not fit within any of the four criteria under section 54.507(d) of our rules, we must treat Buffalo City's request as a request for a waiver of section 54.507(d) of our rules.

9. The Commission may waive any provision of its rules on its own motion and for good cause shown.[28] A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.[29] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[30] In sum, 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.[31]

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[20] Request for Waiver at 1-2. *See* Letter from Ronco Communications and Electronics, Inc., to Mel Alston, Buffalo Board of Education, dated March 21, 2002 (Ronco Letter).

[21] *See* Ronco Letter.

[22] *Id.*

[23] Request for Waiver.

[24] 47 C.F.R. § 54.507(d)(1) – (4).

[25] *See* 47 C.F.R. § 54.507(d)(1).

[26] 47 C.F.R. § 54.507(d)(3).

[27] *See* Ronco Letter.

[28] 47 C.F.R. §1.3.

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

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

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

10. We conclude that special circumstances exist to justify a waiver of section 54.507(d) of the Commission's rules as requested by Buffalo City. Specifically, we find that the potential hardships that would be incurred by Buffalo City, including financial hardships, if its vendor were forced to compress its 15-month installation schedule into an 8-month schedule justifies a waiver in this instance. In this situation, requiring strict adherence to section 54.507(d) of the Commission's rules would impose an impractical and unreasonable hardship on Buffalo City. The significant added costs of a compressed construction schedule would undermine the statutory purpose of supporting eligible schools and libraries.

11. This waiver of the Commission's rules is consistent with the Commission's commitment to providing support for schools and libraries. A waiver, in this instance, will increase the likelihood that Buffalo City may successfully utilize discounts available from the schools and libraries universal service mechanism, and Buffalo City will not be penalized for missing the installation deadline, through no fault of its own. We believe, in summary, that it would be consistent with the public interest and the intent of section 254 of the Communications Act to grant Buffalo City's request and thus extend the deadline for installation of Funding Year 4 non-recurring services for Buffalo City by one year, to September 30, 2003. This is consistent with the Commission's finding in the *Non-Recurring Services Order* that external circumstances such as delayed funding decisions can create situations where deadlines are both impractical and unreasonable, as well as the Commission's and the Bureau's long-standing policy of ensuring that applicants for non-recurring services are not penalized for delays that are not within their control.[32]

III. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 U.S.C. §§ 0.91, 0.291, 1.3, and 54.722(a) that the request for waiver of section 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d), filed by the Buffalo City School District with the Schools and Libraries Division of the Universal Service Administrative Company on May 16, 2002, IS GRANTED to the extent provided herein.

[32] *Non-Recurring Services Order*, 16 FCC Rcd at 13512, para. 11. *See also* paragraphs 3-5 and note 11, *supra*. *See also Request for Waiver of the September 30, 2000 Deadline for Implementation of Non-Recurring Services by Baldwin County Board of Education, Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA No. 01-747, 16 FCC Rcd 7053 (Com. Car. Bur. 2001).

13. IT IS FURTHER ORDERED that the Funding Year 4 deadline for installation of non-recurring services IS EXTENDED for the Buffalo City School District, West Seneca, New York, to September 30, 2003.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey
Deputy Chief, Wireline Competition Bureau