

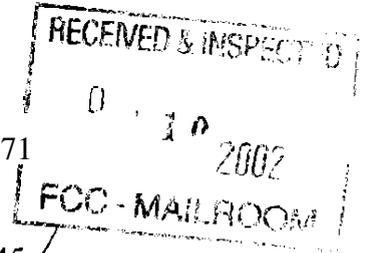
Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Lynwood Unified School District)
Lynwood, California)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-2522971

CC Docket No. 96-45

CC Docket No. 97-21



ORDER

Adopted: October 7, 2002

Released: October 8, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this Order, the Telecommunications Access Policy Division grants the request of Lynwood Unified School District (Lynwood), Lynwood, California, for a waiver of the September 30, 2002 deadline for installation of non-recurring services for Funding Year 2001 of the schools and libraries universal service mechanism.¹

2. In prior cases, the Wireline Competition Bureau has addressed the special deadline needs of applicants and providers that are charged with installing non-recurring services.² The core problem faced by applicants and providers is that these services often involve disruptive installation of equipment or wiring that is best done in the summer months, when the student loads on schools and libraries are lessened. Yet the universal service funding year deadlines have typically fallen during the summer months. These one-time installations

¹ Letter from D. Scott Barash, Universal Service Administrative Company, to Marlene H. Dortch, Federal Communications Commission, dated August 16, 2002 (Referral Letter), forwarding Letter from Dr. Harold L. Cebrun, Sr., Lynwood Unified School District, to Schools and Libraries Division, Universal Service Administrative Company, tiled July 31, 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). The Universal Service Administrative Corporation (USAC) referred Lynwood's waiver request to the Commission because USAC is precluded from providing the applicant with a remedy under the circumstances presented. Referral Letter at 1.

² See generally *In the Matter of Buffalo City School District, Federal-State Joint Board on Universal Service*. File No. SLD-262700, CC Docket Nos. 96-45 and 97-21, Order, DA 02-1464 (Wireline Comp. Bur. rel. June 21, 2002), paras. 2-6. (*Buffalo City*); *In the Matter of Chicago Public Schools, Federal-State Joint Board on Universal Service*, File No. SLD-263338, CC Docket Nos. 96-45 and 97-21, Order, DA 02-1975 (Wireline Comp. Bur. rel. August 9, 2002), paras. 2-7 (*Chicago Public Schools*).

also may be so extensive that by the time they are actually funded, they cannot be completed in any practical matter in what amounts to only a portion of the remaining funding year.

3. Lynwood's situation presents such a circumstance. The Year 2001 funding year began July 1, 2001, but Lynwood did not receive its funding commitment decision letter (FCDL) until February 8, 2002.³ Lynwood's deadline for installation of non-recurring services is September 30, 2002.⁴ On April 19, 2002, Lynwood appealed to the Schools and Libraries Division (SLD) of USAC for a one-year extension of the **deadline**.⁵

4. Lynwood bases its waiver request on two grounds: (1) the "size and scope" of the work to be completed may be too great to permit completion by September 30, 2002 in a manner that does not disrupt its classes; and (2) Lynwood's circumstances are close to entitling it to **an** automatic one-year extension anyway.⁶ The latter ground refers to the Commission's *Non-Recurring Services Order*, in which the Commission gave applicants a one-year extension if they met one of four criteria.⁷

5. Lynwood's circumstances do not fit any of the four criteria specified by the Commission, Lynwood received its FCDL prior to March 1, 2002; and Lynwood makes no assertion of changes by its provider.⁸ The third criterion refers to delays due to "reasons beyond the service provider's control," but here the Commission intended events such as manufacturing delays and natural disasters, not the fact that the FCDL was issued within only twenty days of **an** automatic extension provided under section 54.507(d) of the Commission's rules.⁹ The fourth criterion applies to program compliance funding investigations, and does not apply here.¹⁰

6. Because Lynwood's situation does not fit within any of the four criteria under section 54.507(d) of the Commission's rules, we must address Lynwood's request as a request for a waiver under 47 C.F.R. § 1.3. Waiver is appropriate if special circumstances warrant a

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Phil Urabe, Lynwood Unified School District, dated February 8, 2002.

⁴ *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*), para. 8.

⁵ Request for Waiver

⁶ *Id.*

⁷ *Non-Recurring Services Order*, paras. 12-13; C.F.R. § 54.507(d)(1)-(4).

⁸ 47 C.F.R. § 54.507(d)(1); 47 C.F.R. § 54.507(d)(2).

⁹ 47 C.F.R. § 54.507(d)(3); see *Non-Recurring Services Order*, para. 16, and *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 001-2444, 15 FCC Rcd. 21,875 (2000), para. 9 ("The applicant must have submitted documentation to USAC . . . requesting relief on **the** grounds that its service provider **was** unable to deliver the services due to **events** beyond the service provider's control, **such** as labor walk-outs or natural disasters.")

¹⁰ 47 C.F.R. § 54.507(d)(4).

deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.”

7. We conclude that special circumstances exist to justify a waiver of section 54.507(d) of the Commission’s rules. The record indicates that Lynwood will not be able to meet the current deadline of September 30, 2002 without a substantial disruption of its class schedule.¹² In addition, the issuance of the FCDL and the waiver request late in Funding Year 2001 make it questionable whether Lynwood’s service provider will be **able** to meet the September 30, 2002 deadline in any case.

8. Granting Lynwood’s request to extend the deadline is consistent with the public interest and the intent of section 254 of the Communications Act. **An** extension will increase the likelihood that Lynwood may successfully utilize discounts available from the schools and libraries universal service mechanism. **An** extension also 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.¹³

9. 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 Schools and Libraries Division of the Universal Service Administrative Company, on behalf of the Lynwood Unified School District, Lynwood, California, on April 19, 2002 IS GRANTED to the extent provided herein.

10. IT IS FURTHER ORDERED that the Funding Year 2001 deadline for installation of non-recurring services is extended for the Lynwood Unified School District, Lynwood, California, to September 30, 2003.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert

Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹¹ 47 C.F.R. § 1.3; see also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). See also *Buffalo City*, para. 9; *Chicago Public Schools*, para 9.

¹² Request for Waiver

¹³ *Non-Recurring Services Order*, para. 11. See also paras. 3-5 and n. 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 (Conn. Car. Bur. 2001).