



Universal Service Administrative Company

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November 15, 2002

Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
c/o Capitol Heights Facility
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002

RE: In the Matter of Requests for Review of Decisions of the Universal Service
Administrator, Federal-State Joint Board on Universal Service, CC Docket No. 96-45;

In re Edcouch-Elsa Independent School District
471 Application: 248549; FRNs 653399; 653666
Administrator's Referral to Federal Communications Commission of Request for
Extension of Funding Year 2001 Deadline for Potential Waiver and Remand of
Request for Extension of Deadline for Implementation of Non-Recurring Services

Dear Ms. Dortch:

After thorough review, the Universal Service Administrative Company (USAC or Administrator) has completed its evaluation of the request for an extension of the Funding Year 2001 deadline for implementation of non-recurring services under the Schools and Libraries Universal Service Support Mechanism submitted by Avnet Enterprise Solutions (Service Provider), the service provider for EdCouch-Elsa Independent School District (Applicant). Because it appears that USAC may be precluded from providing a remedy under the circumstances presented, USAC respectfully refers this request for waiver to the Commission with a recommendation that the Commission consider granting the relief.

The circumstances giving rise to this request are as follows:

Under regulations governing the Schools and Libraries Universal Service Support Mechanism, applicants initially were required to complete installation of non-recurring services¹ by the close of the funding year for which support had been committed. In

¹ "Non-recurring" services are one-time charges associated with requests for discounted telecommunications service, Internet access or internal connections. "Recurring" charges are the regular billings, usually monthly, charged by service providers for telecommunications services and Internet access.

recognition of the fact that many schools and libraries required more time to install non-recurring services in order to make greater use of their universal service discounts, in June 2001 the Commission adopted a rule permanently extending the deadline for receipt of non-recurring services for certain qualified applicants from June 30 to September 30 following the close of the funding year. 47 C.F.R. §54.507(d).² The Commission also allowed applicants to seek an additional year, until September 30 of the year following the close of the funding year, if the applicant meets one of several criteria as determined by USAC. *Id.* The criteria are as follows:

- (1) The applicant's funding commitment decision letter is issued by the Administrator on or after March 1 of the funding year for which discounts are authorized;
- (2) The applicant receives a service provider change authorization or service substitution authorization from the Administrator on or after March 1 of the funding year for which discounts are authorized;
- (3) The applicant's service provider is unable to complete implementation for reasons beyond the service provider's control; or
- (4) The applicant's service provider is unwilling to complete installation because funding disbursements are delayed while the Administrator investigates their application for program compliance.

Id.

The Schools and Libraries Division (SLD) of USAC issued a Funding Commitment Decision Letter (FCDL) to Applicant for the Funding Year 2001³ FCC Form 471 Funding Request Numbers: 653399 and 653666. The FCDL was issued on September 4, 2001, prior to March 1, 2002. The *Permanent Extension Order* gives the Applicant until 90 days following the close of the funding year, September 30, 2002, to complete the implementation of non-recurring services associated with the FCDL. 47 C.F.R. §54.507(d). The Service Provider has petitioned USAC for an extension of the implementation deadline. The Service Provider has determined that it will not have sufficient time to complete the installation project for which funding was committed and has provided USAC with documentation in support of its view.

In support of its request for an extension, the Service Provider has invoked the fourth criterion pursuant to which USAC may grant an extension of the deadline; i.e., that it was unwilling to complete installation because funding disbursements were delayed while the

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 01-195 (rel. June 29, 2001) (*Permanent Extension Order*).

³ Funding Year 2001 of the Schools and Libraries Support Mechanism began on July 1, 2001 and will conclude on June 30, 2002.

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Administrator investigated the application for program compliance. *See* 47 C.F.R. §54.507(d)(4). The basis for Service Provider's unwillingness to complete implementation is the fact that USAC suspended disbursement of funds for these FRNs pending review for a potential funding commitment adjustment, or COMAD. Upon review, USAC determined that the funds were not subject to COMAD. USAC did not complete its review until after September 30, 2002, which prevented Applicant from seeking an extension by the September 30, 2002 deadline.

USAC has determined that its suspension of disbursements caused the Service Provider to stop work and caused delays past the September 30, 2002 deadline for Funding Year 2001. USAC is constrained by FCC rule from providing a remedy under the circumstances presented here. USAC believes it could have granted an extension under the fourth criterion if the request had been filed by September 30, 2002. However, because disbursements were held beyond that date, an extension was not requested prior to September 30, 2002, and USAC is constrained from granting the extension. *See* 47 C.F.R. §54.702(c).

Therefore, in the interest of fairness and administrative efficiency, USAC believes that the appropriate course of action is for USAC to transmit to the Commission a request that the Commission consider granting a waiver of program rules in this instance.

If the Commission agrees with the reading of the *Permanent Extension Order* and 47 C.F.R. §54.507(d) set forth above, the facts as presented by Service Provider have led the Administrator to conclude that, in the interest of fairness and administrative efficiency, the appropriate course of action is for USAC to convey the extension request to the Commission with a request that the Commission consider granting a waiver of 47 C.F.R. §54.507(d) to extend the date by which the Service Provider associated with the FRNs must complete any non-recurring services to September 30, 2003. Should the Commission grant the requested extension, the Commission should remand this matter to USAC.

We would be pleased to provide any additional information you may require and to answer any questions you may have about this matter.

Sincerely,

D. Scott Barash
Vice President and General Counsel

cc: Mark Seifert, Deputy Chief, Telecommunications Access Policy Division,
Wireline Competition Bureau, FCC
Jose Luis Tores, Edcouch-Elsa Independent School District
Michael Beeman, Avnet Enterprise Solutions