

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

010

In the Matter of)	DOCKET FILE COPY ORIGINAL
)	
Request for Waiver by)	
)	
Edcouch-Elsa Independent School District)	File No. SLD-248549
Edcouch, Texas)	
)	
Federal-State Joint Board on)	CC Docket No. <u>96-45</u>
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association)	

ORDER

Adopted: September 22, 2003

Released: September 23, 2003

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1 In this Order, the Telecommunications Access Policy Division (Division) grants Edcouch-Elsa Independent School District, Edcouch, Texas, 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 2001 of the program.¹ Specifically, we find that Edcouch-Elsa Independent School District 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 Edcouch-Elsa Independent School District an extension of the September 30, 2002 deadline, to September 30, 2003. This waiver will provide Edcouch-Elsa Independent School District with sufficient time to install their Funding Year 2001 non-recurring services, and thereby fully utilize their universal service discounts.

2 Edcouch-Elsa Independent School District filed its Request for Waiver with the Schools and Libraries Division (SLD) of the Universal Service Administrative Company

¹ Electronic mail from Tracey Beaver, Schools and Libraries Division, Universal Service Administrative Company, to Mark Seifert, Federal Communications Commission, dated November 15, 2002, forwarding Letter from Mike Beeman, Edcouch-Elsa Independent School District, to Schools and Libraries Division, Universal Service Administrative Company, dated November 1, 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)

(USAC) on November 1, 2002.³ Edcouch-Elsa Independent School District requests a waiver of section 54.507(d) of the Commission's rules. Since SLD has no authority to waive Commission rules, SLD forwarded Edcouch-Elsa Independent School District's request to the Bureau for Consideration.⁴

3. Pursuant to section 54.507(d) of the Commission's rules, schools and libraries are required to implement non-recurring services by September 30, following the close of the funding year.⁵ Section 54.507(d) of the Commission's rules also states that 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.⁶ With regard to criteria (4), applicants must certify to the Administrator that its service provider was unwilling to deliver or install non-recurring services before the expiration of the original non-recurring services installation deadline, because the Administrator had withheld payment for those services on a properly-submitted invoice for more than 60 days after the submission of the invoice.⁷ Applicants must make this certification on or before the original non-recurring services installation deadline. The revised implementation date will be calculated based on the date that the funds are released by the Administrator.

4. In its Request for Waiver, Edcouch-Elsa Independent School District asserts that SLD held up funds while doing research to make a determination over the status of the funds, and as a result, Avnet was forced to stop work pending resolution of the issue.⁸ Consequently, Edcouch-Elsa Independent School District states that it did not have sufficient time to complete the installation project for which funding was committed.⁹ Further, Edcouch-Elsa Independent School District asks that it receive an extension of the non-recurring services deadline because

³ Letter from Mike Beeman, Edcouch-Elsa Independent School District, to Schools and Libraries Division, Universal Service Administrative Company, dated November 1, 2002

⁴ Request for Waiver

⁵ 47 C F R § 54.507(d) Under the rule, schools and libraries receiving funding commitments for non-recurring services in Funding Year 2001 had until September 30, 2002 to implement these services.

⁶ 47 C F R § 54.507(d)(1) - (4) The Commission noted in the *Non-Recurring Services Order* that if an applicant satisfies one of the four criteria, then March 1 will be the key date for calculating the extended deadline. If one of the conditions is satisfied before March 1 (of any year), the applicant will have until September 30 of the same 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. *Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, 16 FCC Rcd 13510, 13513-13514 (2001) (Non-Recurring Services Order)*.

⁷ See *Non-Recurring Services Order*, 16 FCC Rcd 13514

⁸ Request for Waiver at 1

⁹ *Id*

USAC suspended disbursement of funds pending review for a potential funding commitment adjustment, or COMAD.¹⁰ Edcouch-Elsa Independent School District states that USAC did not complete its review until after September 30, 2002, which prevented it from seeking an extension by the September 30, 2002 deadline.¹¹

5. We conclude that Edcouch-Elsa Independent School District's request for an extension does not satisfy one of the four criteria for an automatic one-year extension under section 54.507(d)(1)–(4) of the Commission's rules.¹² Edcouch-Elsa Independent School District received its FCDL prior to March 1, 2002, and therefore pursuant to the Commission's rules, its original non-recurring services deadline was September 30, 2002. Due to an investigation by USAC, disbursement of funds for Edcouch-Elsa Independent School District were suspended.¹³ Because Edcouch-Elsa Independent School District did not certify on or before the original non-recurring deadline that its service provider was unwilling to deliver or install non-recurring services before the expiration of the deadline, we must treat Edcouch-Elsa Independent School District's request as a request for a waiver of section 54.507(d) of our rules.

6. The Commission may waive any provision of its rules on its own motion and for good cause shown.¹⁴ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁶ 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.¹⁷

7. We conclude that special circumstances exist to justify a waiver of section 54.507(d) of the Commission's rules as requested by Edcouch-Elsa Independent School District. Specifically, USAC did not complete its review of Edcouch-Elsa Independent School District's application until after the September 30, 2002 deadline, which prevented Edcouch-Elsa Independent School District from seeking an extension by the September 30, 2002 deadline. In this situation, requiring strict adherence to section 54.507(d) of the Commission's rules would impose an impractical and unreasonable hardship on Edcouch-Elsa Independent School District.

8. We conclude, based on the record before us, that it would be consistent with the public interest and the intent of section 254 of the Communications Act to grant Edcouch-Elsa Independent School District's request and thus extend the deadline for installation of Funding

¹⁰ *Id*

¹¹ *Id.*

¹² 47 C F R § 54.507(d)(1)–(4)

¹³ See Request for Waiver at 2-3

¹⁴ 47 C F R §1.3

¹⁵ *Northeast Cellular Telephone Co v FCC*, 897 F 2d 1164, 1166 (D C. Cir. 1990) (*Northeast Cellular*).

¹⁶ *WAIT Radio v FCC*, 418 F 2d 1153, 1157, (D.C Cir 1969), affirmed by *WAIT Radio v. FCC*, 459 F 2d 1203 (D C Cir 1972).

¹⁷ *Northeast Cellular*, 897 F 2d at 1166

Year 2001 non-recurring services for Edcouch-Elsa Independent School District 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.¹⁸

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 Edcouch-Elsa Independent School District, Edcouch, Texas on November 1, 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 Edcouch-Elsa Independent School District, Edcouch, Texas, to September 30, 2003.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁸ *Non-Recurring Services Order*, 16 FCC Rcd at 13512, para. 11 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)