



Universal Service Administrative Company

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April 9, 2004

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. 02-6;

In re Moreno Valley Unified School District – 471 Application # 208450

Administrator's Referral to Federal Communications Commission of Request for
Extension of Funding Year 1999 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 1999 deadline for implementation of non-recurring services under the Schools and Libraries Universal Service Support Mechanism submitted by Moreno Valley Unified School District (Applicant) with regard to Funding Request Numbers: 903686; 903699; 903700; 903701; 903702 (FRNs). Because it appears that USAC may be precluded from providing Applicant with a remedy under the circumstances presented, USAC respectfully refers Applicant's request for waiver to the Commission with a recommendation that the Commission consider granting the relief sought by Applicant.

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

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 of USAC issued a Funding Commitment Decision Letter (FCDL) to Applicant for Funding Year 1999³ on April 19, 2002. The *Permanent Extension Order* gives Applicant until September 30, 2003, to complete the implementation of non-recurring charges associated with the FCDL. 47 C.F.R. §54.507(d). Applicant has petitioned USAC for an extension of the implementation deadline. Applicant has determined that the service provider 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.

billings, usually monthly, charged by service providers for telecommunications services and Internet access.

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 concluded on June 30, 2002.

In support of its request for an extension, Applicant has invoked the third criterion pursuant to which USAC may grant an extension of the deadline; i.e., that the service provider is unable to complete implementation for reasons beyond the service provider's control. *See* 47 C.F.R. §54.507(d)(3). Applicant asserts that state funding cuts have restricted its ability to fund the non-discounted portion of the project. The Applicant stated as follows in its request: "The delayed receipt of the [FCDL] requiring a change in budget years and subsequent freezing of the District's expenditures due to the fiscal crisis of the State of California [were] circumstances beyond the control of both Spectrum Communications and the Moreno Valley Unified School District." The basis for Applicant's argument that the service provider is unable to complete implementation "for reasons beyond the service provider's control," *see* 47 C.F.R. §54.507(d)(3), is that due to the late receipt of the FCDL and state budget cuts, the District was unable to secure available funds in its 2002-2003 budget. The combination of these events delayed the District's availability to funding until the 2003-2004 fiscal year. Further, as the District explains, "The District's fiscal year 2003-2004 budget did not come into effect until July 1, 2003." Unfortunately, this does not give the District's vendor, Spectrum Communications, a sufficient amount of time to complete all of the projects to be funded by the Schools and Libraries Support Mechanism the current deadline of September 30, 2003.

USAC is uncertain whether it can provide the relief sought by Applicant because it is unclear as to whether state budget cuts are the kind of circumstance "beyond the service provider's control" within the meaning of 47 C.F.R. §54.507(d)(3) as contemplated in the *Permanent Extension Order*. In a situation such as this, where USAC issued the FCDL before March 1, 2003, USAC could be constrained from granting the extension sought by Applicant. Thus, USAC is seeking Commission guidance on this question. *See* 47 C.F.R. §54.702(c).

If the Commission believes that pursuant to the *Permanent Extension Order* USAC does in fact have authority to grant the requested extension, under the circumstances presented here, to this Applicant and would have the authority to provide relief to similarly situated applicants in the future, then USAC respectfully requests that the Commission or Wireline Competition Bureau staff clarify that understanding.

Alternatively, however, 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 Applicant have led the Administrator to conclude that in the interest of fairness and administrative efficiency, the appropriate course of action is for USAC to transmit Applicant's extension request to the Commission with a request that the Commission

Ms. Marlene H. Dortch

April 9, 2004

Page 4

consider granting a waiver of 47 C.F.R. §54.507(d) to extend the date by which the service providers associated with Applicant's FCDL must complete any non-recurring services to September 30, 2005. 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: Narda Jones, Deputy Chief, Telecommunications Access Policy Division,
Wireline Competition Bureau, FCC
Aaron Barnett, Moreno Valley School District