

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
 )  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )

**ORDER**

**Adopted: October 31, 2000**

**Released: November 1, 2000**

By the Common Carrier Bureau:

**I. INTRODUCTION**

1. We previously waived the June 30, 2000 deadline for applicants under the schools and libraries universal service support mechanism to implement non-recurring services for Year Two.<sup>1</sup> In this Order, we provide additional time to those applicants who were unable, through no fault of their own, to complete installation of non-recurring services by September 30, 2000. Specifically, we extend the deadline for those applicants whose Year Two funding commitment letters were issued by the Universal Service Administrative Company (USAC or the Administrator) on or after April 4, 2000, who received service provider change authorizations or service substitution authorizations from USAC on or after April 4, 2000, whose service providers were unable to complete implementation for reasons beyond the service provider's control, or who have had their funding disbursements delayed while USAC investigates their application for program compliance.

**II. BACKGROUND**

2. The Commission's rules require schools and libraries to implement services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought.<sup>2</sup> The Commission's May 8, 1997, *Universal Service Order* established a calendar funding year (January 1 – December 31) for schools and libraries

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 00-1003, 15 FCC Rcd. 8064 (Common Carrier Bur., rel. May 4, 2000) (*May 2000 Extension Order*).

<sup>2</sup> *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*) (subsequent history omitted). 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 Reconsideration Order*). See also 47 C.F.R. § 54.507(d) (requiring schools and libraries "to file new funding requests for each funding year"); and 47 C.F.R. § 54.507(e) (limiting the availability of discounts for a contract covering eligible services to the *pro rata* portion of the contract scheduled for delivery during the funding year for which discounts are sought).

receiving universal service support.<sup>3</sup> The Commission subsequently issued its *Fifth Reconsideration Order*, which changed the funding year for schools and libraries support to a fiscal year (July 1 – June 30).<sup>4</sup>

3. In the *Tenth Reconsideration Order*, the Commission extended the deadline for schools and libraries to use their discounts on non-recurring services from June 30, 1999 to September 30, 1999, which allowed schools and libraries to implement non-recurring services in the summer months, when schools were in recess.<sup>5</sup> On May 4, 2000, the Common Carrier Bureau (Bureau) extended the Year 2 deadline for schools and libraries to use their discounts on non-recurring services from June 30, 2000 (the end of the funding period) to September 30, 2000.<sup>6</sup> The extended deadline was intended to give schools and libraries more time to implement any discounted non-recurring services, such as the installation of internal connections, and thereby make greater use of their universal service discounts.

4. There are a number of applicants who were not able to meet the September 30, 2000 extended deadline because they did not receive their funding commitment decision letter, or a determination on their service provider change or service substitution requests,<sup>7</sup> from USAC in time to implement non-recurring services. Some applicants may also have not been able to meet the September 30, 2000 deadline because their funding disbursements were delayed while USAC investigated the applicant's program compliance, or because their service provider was unable to complete implementation due to reasons beyond the service provider's control.

### III. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.<sup>8</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>9</sup>

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<sup>3</sup> *Universal Service Order*, 12 FCC Rcd at 9057, para. 535, and 9143, para. 710.

<sup>4</sup> *Fifth Reconsideration Order*, 13 FCC Rcd at 14916, para. 1, and 14920, para. 8.

<sup>5</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983 (1999) (*Tenth Reconsideration Order*).

<sup>6</sup> See *May 2000 Extension Order*, *passim*.

<sup>7</sup> The Commission issued further guidance and clarification on service provider change and service substitution policies in the middle of the Year Two funding period. See *Request for Review of Decision of the Universal Service Administrator by Copan Public Schools, Copan, Oklahoma*, Order, File No. SLD-26231, CC Dockets No. 96-45, 97-21, FCC 00-100, 15 FCC Rcd 5498 (rel. March 16, 2000). USAC filed a Petition for Clarification and/or Reconsideration of the Commission's revised policy. *Request for Review of the Decision of the Universal Service Administrator by Copan Public Schools, Copan, Oklahoma; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-26231, CC Docket Nos. 96-45, 97-21, Administrator's Petition for Clarification and/or Reconsideration, filed April 14, 2000. USAC's petition is still pending before the Commission.

<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>10</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>11</sup> Waiver of the deadline for implementation of non-recurring services deadline therefore, is appropriate if special circumstances warrant a deviation from the general rule established in that order, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>12</sup>

6. The Bureau has already waived the original June 30, 2000 deadline in light of special circumstances.<sup>13</sup> At that time, we believed applicants would have sufficient time to complete installation if the deadline were extended to September 30, 2000. We now conclude that a further extension of the deadline for implementing non-recurring services is warranted. Unlike most eligible schools and libraries receiving discounts, the affected applicants, for a variety of reasons, have waited well into the Year Two funding period for funding commitment decisions, decisions on their requests for service provider changes, or decisions on their service substitution requests. Other situations in which the applicant may have been unable to complete installation by September 30, 2000 include when the service provider could not complete installation due to events beyond its control, or when USAC did not disburse funds for a variety of reasons. As a result of these situations, and due to no fault of the applicants, there was insufficient time before the September 30, 2000, deadline for the applicants to complete implementation of non-recurring services. Thus, enforcement of the September 30, 2000 deadline would deprive the students and patrons of these applicants of the benefits of the communications technologies their funding commitments would otherwise make possible.

7. Our original decision in the *May 2000 Extension Order* to waive the June 30, 2000 deadline and extend it to September 30, 2000 was premised on the rationale that applicants should not be penalized when they are unable to implement non-recurring services on time, due to circumstances beyond their control and for which they are not at fault.<sup>14</sup> Because there are still applicants who, through no fault of their own, have been unable to meet the extended deadline, we conclude that it is necessary for us to extend the deadline set up in the *May 2000*

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<sup>10</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>11</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>12</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>13</sup> *May 2000 Extension Order*.

<sup>14</sup> See *May 2000 Extension Order*, at para. 5. There are a number of reasons why an applicant may not have received its funding commitment decision letter in sufficient time to complete installation of non-recurring services prior to September 30, 2000, including pending requests for review filed with USAC or the Commission, or delay because the applicant filed its application outside of the annual "filing window." The Commission's rules allow the Administrator to implement an initial filing period ("filing window") that treats all schools and libraries filing within that period as if their applications were simultaneously received. 47 C.F.R. § 54.507(c). On the other hand, applications that are received outside of this filing window are subject to different rules of priority, with the most economically disadvantaged schools receiving first consideration, and any residual amount after that distributed on a "first come, first served" basis. See 47 C.F.R. § 54.507(g)(2).

*Extension Order.* We have recognized in the past that eligible schools and libraries should have at least 180 days from the date of receipt of a funding decision to implement non-recurring services.<sup>15</sup> These services include complex internal connections which require the installation of equipment and wiring. Consistent with the reasoning of the *Tenth Reconsideration Order*, however, we believe that the public interest would be served if these eligible schools and libraries have an additional summer in which to schedule necessary to implement non-recurring services.<sup>16</sup> Scheduling such work over the summer months allows many applicants to lower costs and minimize classroom disruptions. Many of these applicants, due to no fault of their own, lost the opportunity to complete this work during the summer of 2000. For the applicants described in this Order, therefore, we find that enforcement of the September 30, 2000 implementation deadline for the receipt of non-recurring services would be inconsistent with the public interest. Accordingly, all such applicants will receive an additional year, until September 30, 2001, to complete installation of their non-recurring services. There may be situations beyond those described in this Order in which an applicant through no fault of its own was unable to complete installation by September 30, 2000. Because it may also be consistent with the public interest to extend this deadline to those applicants as well, we direct USAC to address such situations consistent with the reasoning set forth in this Order.

8. Therefore, for all Year Two schools and libraries applicants that received funding commitments, service provider change authorizations, and service substitution approvals issued on or after the 180<sup>th</sup> day before September 30, 2000 (i.e., on or after April 4, 2000), we extend the September 30, 2000 deadline for implementation of non-recurring services in Year Two of the schools and libraries support mechanism. We extend the deadline for implementation of non-recurring services under each such funding commitment to September 30, 2001.

9. Moreover, to the extent an applicant has not met the September 30, 2000 deadline because its service provider has been unable, due to circumstances beyond the service provider's control, to complete delivery of non-recurring services prior to the deadline, the applicant shall also receive an extension of the deadline until September 30, 2001. The applicant must have submitted documentation to USAC prior to the expiration of the September 30, 2000 deadline 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. In addition, an applicant may also qualify for an extension of the September 30, 2000 deadline to September 30, 2001, if the applicant has certified to USAC that its service provider was unwilling to deliver or install non-recurring services before the expiration of the September 30, 2000 deadline, because USAC had withheld payment for those services on a properly-submitted invoice for more than 60 days after the submission of the invoice. If an applicant believes it qualifies for relief under this second scenario, but has not yet certified to USAC that its service provider has been unwilling to implement non-recurring services due to the withholding of payments on its invoices, the applicant shall have sixty (60) days from the release date of this

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<sup>15</sup> See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 99-3013, 15 FCC Rcd. 45 (Com. Car. Bur. 1999).

<sup>16</sup> *Tenth Reconsideration Order* 14 FCC Rcd at 5992, para. 21; see also *May 2000 Extension Order*, at para. 5.

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Order to make such certification to USAC.<sup>17</sup> Concurrent with the release of this Order, we shall seek emergency approval of the certification requirement from the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13.

#### IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the Order is ADOPTED.

11. IT IS FURTHER ORDERED that the deadline for implementation of non-recurring services under each funding commitment letter issued by the Administrator on or after April 4, 2000, IS EXTENDED to September 30, 2001.

12. IT IS FURTHER ORDERED that the deadline for implementation of non-recurring services under each funding commitment for which the Administrator issued on or after April 4, 2000, a notice of its approval of a request to change service providers, or a notice of its approval to substitute services, IS EXTENDED to September 30, 2001.

13. IT IS FURTHER ORDERED that, to the extent an applicant has not been able to meet the September 30, 2000 deadline, because its service provider has been unable to complete delivery of non-recurring services prior to September 30, 2000, and the applicant had submitted documentation to the Administrator prior to September 30, 2000 requesting relief on the grounds that its service provider was unable to deliver the services due to events beyond the service provider's control, the deadline for implementation of non-recurring services IS EXTENDED for such applicants to September 30, 2001.

14. IT IS FURTHER ORDERED that, to the extent that an applicant has already certified, or certifies to the Administrator within sixty (60) days of the release date of this Order, that its service provider was unwilling to deliver or install non-recurring services before September 30, 2000 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, the deadline for implementation of non-recurring services IS EXTENDED for such applicants to September 30, 2001.

15. Finally, IT IS FURTHER ORDERED that any and all pending requests for review or relief before the Commission that fall within the categories outlined in this Order, including the requests of the applicants identified in Appendix A of this Order, ARE REMANDED to the Administrator for processing in accordance with the terms of this Order.

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<sup>17</sup> To the extent that an applicant has requested relief that fits within these categories from the Commission, we will remand such requests to USAC for processing in accordance with this Order. See Appendix A for a list of applicants that have requested an extension of the deadline to date from the Commission, which we are remanding to USAC.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief, Common Carrier Bureau

**APPENDIX A**  
**LIST OF APPLICANT REQUESTS REMANDED**

Armory School District  
Paterson Public Schools  
Richton School District