

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Houston Independent School District)	File No. SLD-367296
Houston, Texas)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: October 27, 2005

Released: October 27, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this Order, the Telecommunications Access Policy Division grants a Request for Review filed by Houston Independent School District (Houston) seeking review of a decision by the Schools and Libraries Division of the Universal Service Administrative Company (USAC).¹ As explained below, USAC denied Houston's request for an extension of the deadline for installing Funding Year 2003 non-recurring services on the ground that Houston did not fulfill the requirements for an extension under our rules.² Based upon our review of the record, we find that Houston is entitled to receive an extension of the implementation deadline for non-recurring services in accordance with the criteria set forth in section 54.507(d) of the Commission's rules. Accordingly, for the reasons set forth below, we grant the Request for Review and remand Houston's application to USAC for further consideration consistent with this Order.

2. Under the schools and libraries universal service support mechanism, commonly referred to as the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ Pursuant to section 54.507(d) of the Commission's rules, the deadline for implementation of non-recurring services is September 30 following the close of the applicable funding year.⁴ Section 54.507(d) of the Commission's rules also states that applicants will qualify for an extension of the

¹Houston Independent School District Request for Review, filed November 4, 2004 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. § 54.719(c).

²Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jacqueline K. Martin, Houston Independent School District, dated September 28, 2004 (USAC's Decision on Implementation Extension Request).

³47 C.F.R. §§ 54.502, 54.503.

⁴47 C.F.R. § 54.507(d). Under the rule, schools and libraries receiving funding commitments for non-recurring services in Funding Year 2003 had until September 30, 2004 to implement these services.

implementation deadline for non-recurring services if they satisfy one of the following criteria: (1) applicants whose funding commitment decision letters are issued by USAC 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 USAC 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 USAC investigates their application for program compliance.⁵

3. The relevant facts are as follows. In October 2003, Houston's service provider began implementation of non-recurring services under Funding Request Number (FRN) 1000282.⁶ The service provider suspended implementation one month later, however, because USAC had not begun paying the service provider's invoices.⁷ Although Houston filed its FCC Form 486 on October 3, 2003,⁸ USAC notified Houston of errors in the form in early February 2004, and requested that Houston file a new, correct FCC Form 486.⁹ Houston submitted a corrected FCC Form 486 on February 5, 2004, and upon its approval on March 10, 2004, USAC proceeded to pay invoices for FRN 1000282.¹⁰ On June 1, 2004, USAC requested that Houston provide information regarding an audit Houston conducted of the non-recurring services that were the subject of FRN 1000282.¹¹ On August 23, 2004, Houston requested a service implementation deadline extension for FRN 1000282, asserting that it stopped implementation of

⁵47 C.F.R. § 54.507(d)(1) – (4).

⁶Request for Review at 1.

⁷Request for Review at 1-2.

⁸FCC Form 486, Houston Independent School District, dated October 3, 2003 (October 2003 FCC Form 486).

⁹Universal Service Administrative Company, Schools and Libraries Division, Application Activity Report, Houston Independent School District, January 15, 2004 (entry on February 4, 2004). After the funding year begins and the discounted service commences, approved recipients of discounted services must submit to USAC an FCC Form 486, which indicates, among other things, that service providers have begun providing supported services. The timely submission of FCC Form 486 ensures that disbursements for discounts on eligible services are done in a prompt and efficient manner. Because the FCC Form 486 indicates the actual start date of discounted services, USAC will only accept invoices from the service provider and issue disbursements for discounts on eligible services after receipt of a completed form. *See* Schools and Libraries Universal Service, Receipt of Service Confirmation Form, OMB 3060-0853 (August 2003) at 4-5 (FCC Form 486); Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (August 2003) at 2 (Form 486 Instructions). *See also* *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12444, para. 4 (2002) (CIPA II Order); 47 C.F.R. § 54.520. USAC determined that the postmark on the October 2003 FCC Form 486 was after the allowable FCC Form 486 early filing date, but prior to the actual start of service installation, and that the box indicating that the Form 486 was being filed prior to the service start date had not been checked. USAC Application Activity Sheet, entries dated January 15, 2004 and February 4, 2004.

¹⁰Request for Review at 2; FCC Form 486, Houston Independent School District, dated February 5, 2004 (February 2004 FCC Form 486); Letter from William L. Edwards, Houston Independent School District to Schools and Libraries Division, Universal Service Administrative Company, dated February 5, 2004 (Cancellation of October 3, 2003 Form 486); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jacqueline Martin, Houston Independent School District, dated March 10, 2004 (Form 486 Notification Letter). USAC approved \$7,712,169.84 for FRN 1000282. Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jacqueline K. Martin, Houston Independent School District, dated September 23, 2003, pp. 5-12 (Funding Commitment Decision Letter). Of that amount, invoices in the amount of \$ 416,283.03 were actually paid by USAC. USAC Remittance No. 519669, dated June 16, 2005.

¹¹Letter from George McDonald, Schools and Libraries Division, Universal Service Administrative Company, to Houston Independent School District, dated June 1, 2004 (USAC Inquiry Letter).

FRN 1000282, thereby preventing the service provider from completing implementation by September 30, 2004.¹² On September 28, 2004, USAC denied Houston's extension request for FRN 1000282, on the basis that Houston had not established that the delay in the service implementation was for "circumstances beyond the named service provider's control."¹³ On November 8, 2004, Houston filed the instant Request for Review.

4. In its Request for Review, Houston argues that its extension request for FRN 1000282 should be granted for two reasons. First, Houston reiterates that its service provider was unable to complete implementation for reasons beyond the service provider's control, and argues that this satisfies the third criteria of § 54.507(d).¹⁴ Houston contends that its service provider could not continue its work because USAC had not approved the FCC Form 486 filed on October 3, 2003, and would not honor the invoices.¹⁵ Second, Houston asserts that the service provider had insufficient time to complete implementation due to the work stoppage made necessary by the USAC Inquiry Letter.¹⁶

5. As an initial matter, we conclude that Houston's request for an extension does not satisfy the third criteria for an extension set forth in section 54.507(d)(3) of the Commission's rules, as argued in Houston's Request for Review.¹⁷ Although the third criterion entitles an applicant to an automatic extension of the implementation deadline when the applicant's service provider "is unable to complete implementation for reasons beyond the service provider's control," the Commission has specifically clarified that this clause is intended to cover events such as manufacturing delays and natural disasters, not the fact that a FCC Form 486 had not been approved.¹⁸ We conclude, however, that an extension of time is warranted under section 54.507(d)(4) of the Commission's rules, which entitles an applicant to an automatic extension of the implementation deadline when the applicant's service provider "is unwilling to complete installation because funding disbursements are delayed while the Administrator investigates their application for program compliance."¹⁹ The record indicates that funding disbursements were delayed while the Administrator investigated the application for program compliance. Specifically, the USAC Inquiry Letter requested information pertaining to reports on excess cabling inventory in the warehouses used by Houston's service providers, funds for which may have been obtained through the E-

¹²Initially, Houston cited general "reasons beyond their control" to justify their request for an extension. Letter from Jacqueline Martin, Houston Independent School District, to Schools and Libraries Division, Universal Service Administrative Company, dated August 23, 2004 (Extension Request). On September 15, 2004, Houston subsequently amended its Extension Request, further explaining that the service provider's inability to complete work was "due to the untimely approval of the Form 486." Letter from Jacqueline Martin, Houston Independent School District, to Schools and Libraries Division, Universal Service Administrative Company, dated September 15, 2004. Houston later clarified that it stopped implementation of FRN 1000282 due to the outstanding investigation. See Request for Review.

¹³USAC's Decision on Implementation Extension Request.

¹⁴Request for Review at 1-2.

¹⁵*Id.* at 1-2.

¹⁶*Id.* at 2.

¹⁷47 C.F.R. § 54.507(d)(3).

¹⁸47 C.F.R. § 54.507(d)(3). See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 13510, 13514, para. 16 (2001)(*Non-Recurring Services Order*). See also *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 00-2444, 15 FCC Rcd. 21875, 12879, para. 9 (2000) (stating that, to receive an extension of the deadline, the applicant must request 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.")

¹⁹47 C.F.R. § 54.501(d)(4).

rate program, and on alleged “unusual processes” for determining “prices for work performed and for testing whether cable has been properly installed and is in good working order.”²⁰ USAC requested a response to the USAC Inquiry Letter within sixty days. According to Houston, the request for a response and an associated internal review influenced Houston in making a decision to pause all new work associated with school cabling projects until all the inquiries were addressed.²¹ As a result, Houston’s service provider was not afforded sufficient time to complete installation of the non-recurring services ordered by Houston through FRN 1000282. We therefore find that Houston has met the criteria set forth in section 54.507(d)(4) of the Commission’s rules, and is entitled to an automatic extension of the implementation deadline for non-recurring services. Thus, we grant Houston’s Request for Review.

6. Finally, given the timing of this order, we extend the implementation deadline two years, until September 30, 2006. This action 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.²²

7. 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, and 54.722(a) of the Commission’s rules, 47 U.S.C. §§ 0.91, 0.291, and 54.722(a), the Request for Review filed by the Houston Independent School District, Houston, Texas, on November 8, 2004 is GRANTED to the extent provided herein.

8. IT IS FURTHER ORDERED that the Funding Year 2003 deadline for installation of non-recurring services pursuant to FRN 1000282 is extended for the Houston Independent School District, Houston, Texas, to September 30, 2006.

FEDERAL COMMUNICATIONS COMMISSION

Narda M. Jones
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

²⁰USAC Inquiry Letter at 1.

²¹Request for Review at 2.

²²*Non-Recurring Services Order*, 16 FCC Rcd at 13512, para. 11.