

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Waiver of the Decision of the
Universal Service Administrator by
Shiprock Alternative High School
Flagstaff, Arizona
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-299171
CC Docket No. 02-6

ORDER

Adopted: November 18, 2005

Released: November 18, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Removable Media Solutions, Inc. (RMSI), on behalf of Shiprock Alternative High School, Flagstaff, Arizona (Shiprock), filed a Request for Waiver of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). The USAC decision at issue denied funding for discounted services for Funding Year 2002 of the schools and libraries universal service mechanism. For the reasons set forth below, we grant RMSI's Request for Waiver and remand Shiprock's application to USAC for appropriate action consistent with this Order.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications, Internet access, and internal connections services. Section 54.507(d) of the Commission's rules requires applicants to implement non-recurring services by September 30 following the close of the applicable funding year. Commission rules also provide that applicants whose funding commitment decision letters are issued by the Administrator on or after March 1 of the current funding year have until September 30 of the following year to complete implementation. An applicant may also request an extension of the implementation deadline for non-recurring services if its service provider is unable to complete implementation for reasons beyond the service provider's control.

1Letter from Mary Lusi, Removable Media Solutions, Inc., to Federal Communications Commission, filed May 18, 2005 (Request for Waiver).

247 C.F.R. §§ 54.502, 54.503.

347 C.F.R § 54.507(d).

447 C.F.R. § 54.507(d)(1); Federal-State Joint Board on Universal Service, Report and Order, 16 FCC Rcd 13510, 13513-15, paras. 12-14 (2001) (Non-Recurring Services Order).

547 C.F.R. § 54.507(d)(3); Non-Recurring Services Order, 16 FCC Rcd at 13513, para. 12-13, 15. See also Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, 15 FCC Rcd 21875, 21877-78, para. 7 (Com. Car. Bur. 2000) (November 2000 Extension Order).

3. On December 29, 2003, USAC issued a Funding Year 2002 funding commitment decision letter to Shiprock, a school eligible for discounts at the 90 percent level, granting Funding Request Number (FRN) 780744 for internal connections to be installed by RMSI.<sup>6</sup> Since the funding commitment decision letter was issued after March 1 of the funding year, implementation of the non-recurring services had to be completed by September 30, 2004.<sup>7</sup> Shiprock filed an FCC Form 500, Adjustment of Funding Commitment and Modification to Receipt of Service Confirmation Form, on January 9, 2004, extending the contract expiration date with RMSI until June 30, 2005.<sup>8</sup> USAC approved the request for the contract extension in February 2004, and so RMSI began on-site visits at Shiprock to prepare for installation.<sup>9</sup> The on-site visits and surveys had to be scheduled around student classes in the spring and summer months.<sup>10</sup> RMSI experienced further delays due to the unavailability of equipment and subsequent back-orders.<sup>11</sup> As a result, final commissioning, testing and acceptance of equipment did not occur until December 2004.<sup>12</sup>

4. On March 23, 2005, USAC denied \$466,301 in funding for the invoice for FRN 780744 because the actual service delivery date, December 13, 2004, was past the September 30, 2004 deadline for implementing non-recurring services.<sup>13</sup> RMSI appealed USAC's decision and requested an invoice deadline extension, noting that the invoice it submitted in December 2004 was within the June 30, 2005 deadline extension it obtained from USAC by filing an FCC Form 500.<sup>14</sup> USAC denied RMSI's appeal, noting that current deadline extension guidelines and procedures do not recognize extensions established by an FCC Form 500.<sup>15</sup> RMSI then filed the instant Request for Waiver, seeking waiver of the implementation deadline for non-recurring services. In its Request for Waiver, RMSI states that it was wrongly led to believe, after talking to a USAC representative and reading the *Non-Recurring Services Order*, that delivery of services could be performed up to the June 30, 2005 deadline extension it obtained by filing an FCC Form 500.<sup>16</sup> RMSI also notes that circumstances beyond its control led to the delays in installation of services to Shiprock.<sup>17</sup>

---

<sup>6</sup>Letter from Schools and Libraries Division, Universal Service Administrative Company, to Eugene Thomas, Shiprock Alternative High School, dated December 29, 2003 (Funding Commitment Decision Letter).

<sup>7</sup>See *Non-Recurring Services Order*, 16 FCC Rcd at 13513-14, para. 13-14.

<sup>8</sup>FCC Form 500, Shiprock Alternative High School, dated January 9, 2004 (Shiprock FCC Form 500).

<sup>9</sup>Request for Waiver at 2.

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*; Service Certification, Removable Media Solutions, Inc., dated January 21, 2005 (Service Certification).

<sup>13</sup>Request for Waiver at 2; Service Certification.

<sup>14</sup>Letter from Mary Lusi, Removable Media Solutions, Inc., to Schools and Libraries Division, Universal Service Administrative Company, dated April 15, 2005.

<sup>15</sup>Letter from Schools and Libraries Division, Universal Service Administrative Company, to Patricia Sullivan, Removable Media Solutions, dated April 21, 2005 (Administrator's Decision on Invoice Deadline Extension Request).

<sup>16</sup>Request for Waiver at 2-3. RMSI states that it was not made aware of a specific delivery deadline or the need for an extension of this deadline in the funding commitment decision letter and in communications with a USAC representative. *Id.*

<sup>17</sup>*Id.* at 2.

5. Waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.<sup>18</sup> We find that RMSI has demonstrated special circumstances to warrant an extension of the deadline for implementation of the non-recurring services for Shiprock. In the *Non-Recurring Services Order*, the Commission noted that external circumstances may create situations where deadlines are both impractical and unreasonable.<sup>19</sup> The Commission has also found that applicants should not be penalized for delays that are not within their control.<sup>20</sup> In the *November 2000 Extension Order*, the Bureau noted that there may be situations beyond those described in the *Order* in which it may be consistent with the public interest to extend the deadline.<sup>21</sup> In addition, the Bureau has previously granted extensions where service providers, through no fault of their own, were unable to complete installation of non-recurring services because of manufacturing delays or equipment availability.<sup>22</sup> The Commission's rules expressly permit applicants to receive extensions of the September 30 deadline in cases where the "service provider is unable to complete implementation for reasons beyond the service provider's control."<sup>23</sup> In this case, RMSI was unable to complete installation by September 30, 2004 primarily because of shipment delays due to equipment availability. In addition, the record demonstrates that RMSI tried in good faith to comply with all applicable program rules, including the filing of a request to extend the deadline for delivery of services almost immediately after USAC approved the funding request.<sup>24</sup> Accordingly, we extend to September 30, 2005 the time RMSI needed to deliver and implement the non-recurring services for FRN 780744. This action should ensure that Shiprock, a school eligible to receive a 90-percent discount, will obtain the funding that USAC already approved for the installation of internal connections.

---

<sup>18</sup>*WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>19</sup>*Non-Recurring Services Order*, 16 FCC Rcd at 13512, para. 11.

<sup>20</sup>*Id.* See also *Request for Waiver of Pittsylvania County Schools, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-117260, CC Docket No. 02-6, 18 FCC Rcd 22895 (Wireline Comp. Bur. 2003) (*Pittsylvania Extension Order*); *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*, CC Docket No. 96-45, Order, 16 FCC Rcd 7053 (Com. Car. Bur. 2001) (*Baldwin Extension Order*).

<sup>21</sup>See *November 2000 Extension Order*, 15 FCC Rcd at 21877-21878, para. 6.

<sup>22</sup>*Pittsylvania Extension Order*, 18 FCC Rcd at 22897, para. 6 (granting installation extension because service provider was unable to complete installation due to manufacturing delays); *Baldwin Extension Order*, 16 FCC Rcd at 7055, para. 6 (granting installation extension because service provider was unable to complete installation due to delays in manufacturing and a component shortage).

<sup>23</sup>47 C.F.R. 54.507(d)(3).

<sup>24</sup>The purpose of the FCC Form 500 is to adjust funding commitments and modify the dates for receipt of services. Schools and Libraries Division, *Instructions for Completing the Universal Service for Schools and Libraries Adjustment of Funding Commitment and Modification to Receipt of Service Confirmation Form (FCC Form 500)*, OMB 3060-0853 (April 2000) at 1.

6. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j) and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-152 and 254, 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, that the Request for Waiver filed by Removable Media Solutions, Inc., on behalf of Shiprock Alternative High School, Flagstaff, Arizona, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Narda Jones  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau