

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

In the Matter of)	
)	
Request for Waiver of the Decision of the Universal Service Administrator by)	
)	
Great Rivers Education Cooperative Forrest City, Arkansas)	File No. SLD-371294
)	
I-K Electric Company Little Rock, Arkansas)	
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket 02-6
)	

ORDER

Adopted: December 4, 2006

Released: December 4, 2006

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the Requests for Waiver filed by Great Rivers Education Cooperative (Great Rivers) and its service provider, I-K Electric Company (I-K Electric) (the Appellants), appealing a decision by the Universal Service Administrative Company (USAC) that denied I-K Electric payment for services provided to Great Rivers under the schools and libraries universal service support mechanism because those services were provided outside of the relevant funding year.¹ As explained below, we find that special circumstances exist to grant these waivers and remand the application to USAC for further action consistent with this Order. To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the underlying invoice, and disburse funding based on a complete review and analysis no later than 60 days from release of this Order.

II. BACKGROUND

2. Under the schools and libraries universal service support mechanism (also known 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 connection services. Section 54.507(d) of the Commission's rules requires applicants to implement non-recurring

¹ Appeal to the Federal Communications Commission, Great Rivers Education Cooperative; Appeal from "Administrator's Decision on Invoice Appeal" dated June 29, 2006; and Request for Review and Request for Waiver, CC Docket No. 02-6, filed Aug. 23, 2006 (Great Rivers Request); Request for Waiver by I-K Electric Company, CC Docket No. 02-6, Request for Waiver, filed July 28, 2006 (I-K Electric Request). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

services by September 30 following the close of the applicable funding year.² The Commission's rules also provide that applicants whose funding commitment decision letters (FCDLs) are issued by USAC on or after March 1 of the current funding year have until September 30 of the following year to complete installation of non-recurring services.³ Alternatively, an applicant may request from USAC an extension of the implementation deadline for non-recurring services if the applicant's service provider is unable to complete implementation for reasons beyond the service provider's control.⁴ An applicant, however, must submit documentation to support this request to USAC on or before September 30 following the close of the funding year.⁵

3. Great Rivers' and I-K Electric's Requests for Waiver. Great Rivers represents 13 rural school districts in Arkansas.⁶ In Funding Year 2003 (July 1, 2003 to June 30, 2004), Great Rivers applied for funding for equipment for a computer network from I-K Electric for each school in 13 districts.⁷ One person, the cooperative's technology coordinator, was responsible for installing all of the equipment purchased under the funding request.⁸ Neither the cooperative nor its members had secure space available to store the equipment, so the technology coordinator planned to order and install the equipment in stages.⁹ On March 3, 2004, USAC issued an FCDL to Great Rivers, approving three requests for non-recurring services provided by I-K Electric (Funding Request Numbers (FRNs) 1034630, 1034708, and 1034883) for Great Rivers' Funding Year 2003 application.¹⁰

4. On June 18, 2004, in an attempt to extend its service delivery deadline and contract expiration date with I-K Electric, Great Rivers filed an FCC Form 500 with USAC, requesting a change in the contract expiration date for the three funding requests at issue from June 30, 2004, to January 28, 2006.¹¹ Great Rivers also contacted the Schools and Libraries Division Consumer Service Bureau (CSB), which, according to Great Rivers, confirmed that the FCC Form 500 was the appropriate form and that no other action was required.¹² On July 5, 2004, USAC sent I-K Electric an FCC Form 500 Notification

² 47 C.F.R. § 54.507(d).

³ 47 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*).

⁴ 47 C.F.R. § 54.507(d)(3). See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 13510 (2001); *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*); USAC Website, Step 11: Service Delivery Deadlines and Extension Requests, at <http://www.usac.org/sl/applicants/step11/service-deadlines-extension-requests.aspx> (retrieved Oct. 20, 2006) (*Service Delivery Deadlines and Extension Requests*). There are two other situations provided in the Commission's rules in which applicants can extend the service delivery implementation deadline. See 47 C.F.R. § 54.507(d)(2), (4).

⁵ See *Service Delivery Deadlines and Extension Requests*.

⁶ Great Rivers Request at 3.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Funding Commitment Decision Letter from Schools and Libraries Division, Universal Service Administrative Company, to Tim Vent, Great Rivers Education Cooperative, dated Mar. 3, 2004.

¹¹ The purpose of the FCC Form 500 is to adjust funding commitments and modify the dates for receipt of services. See *Schools and Libraries Universal Service, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form*, OMB 3060-0853 (June 18, 2004) (June 2004 FCC Form 500).

¹² I-K Electric Request at 4.

Letter confirming the contract expiration date change from June 30, 2004, to January 28, 2006.¹³ Accordingly, on October 4, 2005, Great Rivers placed an order for equipment from I-K Electric.¹⁴ Prior to filling the order, however, I-K Electric also contacted CSB to confirm that the service delivery deadline had been extended.¹⁵ CSB confirmed to I-K Electric that the service delivery deadline had been extended to January 28, 2006.¹⁶ Relying on the FCC Form 500 Notification Letter it received from USAC and CSB's assurances, I-K Electric filled the order.¹⁷ Nevertheless, on November 21, 2005, USAC rejected Invoice Number 614810 for FRN 1034708, because the billed date was outside of the relevant funding year.¹⁸

5. On January 20, 2006, I-K Electric filed an appeal of USAC's rejection of Invoice Number 614810.¹⁹ USAC denied I-K Electric's appeal on June 2, 2006, because services were delivered outside the relevant funding year.²⁰ Additionally, on January 20, 2006, Great Rivers filed a second FCC Form 500 with USAC, changing the contract expiration date for the same three funding requests (FRNs 1034630, 1034708, and 1034883) from January 28, 2006, to June 30, 2006.²¹ On January 30, 2006, USAC sent I-K Electric an FCC Form 500 Notification Letter confirming the contract expiration date change from June 30, 2004 to June 30, 2006.²² When I-K Electric received another order from Great Rivers, it again contacted the CSB, which again confirmed that the service delivery deadline had been extended a second time, to June 30, 2006, and that I-K Electric could continue to provide services until that date.²³ Although CSB assured I-K Electric that it could fill Great Rivers' order, I-K Electric did not provide further services to Great River under FRN 1034708 after USAC rejected Invoice Number 614810.²⁴

6. Subsequently, on February 2, 2006, Great Rivers also filed an appeal of USAC's rejection of the invoice and a Service Delivery Extension Request for FRNs 1034708, 1034630, and 1034883.²⁵ USAC denied Great Rivers' appeal on May 10, 2006, because services were delivered outside

¹³ FCC Form 500 Notification Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mike Seitz, I-K Electric Company, dated July 5, 2004.

¹⁴ I-K Electric Request at 4.

¹⁵ *Id.*

¹⁶ *Id. See also id.*, Ex. 10 (E-mail from Scott Korenblat, I-K Electric, to Paul Stankus, Universal Service Administrative Company, dated July 18, 2006, noting that during a conference call, USAC confirmed I-K Electric's conversation with the CSB).

¹⁷ I-K Electric Request at 4.

¹⁸ *Id.*

¹⁹ Web Appeal from Mike Seitz, I-K Electric Company, to Schools and Libraries Division, Universal Service Administrative Company, dated Jan. 30, 2006.

²⁰ Administrator's Decision on Appeal from Schools and Libraries Division, Universal Service Administrative Company, to Mike Seitz, I-K Electric Company, dated June 2, 2006.

²¹ Schools and Libraries Universal Service, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form, OMB 3060-0853 (Jan. 20, 2004) (January 2006 FCC Form 500).

²² FCC Form 500 Notification Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mike Seitz, I-K Electric Company, dated Jan. 30, 2006.

²³ *Id.* at 4-5.

²⁴ I-K Electric Request at 5, n.5.

²⁵ *See* Invoice Appeal from Tim Vent, Great Rivers Education Cooperative, to Schools and Libraries Division, Universal Service Administrative Company, received Feb. 2, 2006; Service Delivery Extension Request from Tim

(continued....)

the relevant funding year.²⁶ USAC also denied Great Rivers' Service Delivery Extension Request on June 29, 2006, because the extension request was submitted after the service end date of September 30, 2005.²⁷

7. On July 28, 2006, I-K Electric filed a Request for Waiver with the Commission.²⁸ Specifically, I-K Electric requests that the Commission waive the requirement that a request for extension of the service delivery deadline be filed on or before the original service delivery deadline.²⁹ I-K Electric also requests that the Commission authorize Great Rivers to submit a request for extension to such a date as necessary to enable I-K Electric to provide all services authorized by FRN 1034708.³⁰ Further, I-K Electric requests that the Commission order USAC to pay I-K Electric for Invoice Number 614810.³¹ I-K Electric argues that Great Rivers' mistake could not have resulted in it receiving more funding than it was entitled to, nor is there evidence of waste, fraud, or abuse, or failure to adhere to core program requirements.³²

8. On August 23, 2006, Great Rivers also filed a Request for Waiver and Request for Review with the Commission appealing USAC's decision to deny payment for invoices submitted by Great Rivers' service provider, I-K Electric, because services were provided outside of the funding year.³³ Great Rivers requests that the funding be approved and that the September 30, 2005 deadline be waived sufficiently to cover the installation and invoicing of its funding requests.³⁴ Great Rivers argues that if it had received proper notice from USAC that its service delivery deadline had not been extended, it would have complied with the deadline or abandoned the project.³⁵ It contends that it proceeded in good faith reliance on the submission of its FCC Form 500.³⁶ It also asserts that it has never had any prior findings of non-compliance with program rules.³⁷ Great Rivers further notes that granting its appeal would cause no detriment to USAC because its application has been fully approved, the goods and services received are in compliance with program rules, and the funds would be used for the purpose for which they were

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Vent, Great Rivers Education Cooperative, to Schools and Libraries Division, Universal Service Administrative Company, received Feb. 2, 2006 (Service Delivery Extension Request).

²⁶ See Administrator's Decision on Implementation Extension Request from Schools and Libraries Division, Universal Service Administrative Company, to Tim Vent, Great Rivers Education Cooperative, dated May 10, 2006.

²⁷ See Administrator's Decision on Invoice Appeal from Schools and Libraries Division, Universal Service Administrative Company, to Tim Vent, Great Rivers Education Cooperative, dated June 29, 2006.

²⁸ See I-K Electric Request.

²⁹ *Id.* at 6.

³⁰ *Id.* I-K Electric's Request for Waiver only refers to FRN 1034708. Neither I-K Electric nor Great Rivers address, and it is unclear from the record, whether I-K Electric has provided service to Great Rivers under the other two funding requests – FRNs 1034630 and 1034883.

³¹ *Id.*

³² *Id.* at 5. I-K Electric also notes that service providers may refuse to participate in the program if minor mistakes by the applicant may result in a service provider not being paid for services already provided. *Id.* at 6.

³³ See Great Rivers Request.

³⁴ *Id.* at 6.

³⁵ *Id.* at 4.

³⁶ *Id.*

³⁷ *Id.*

intended and approved.³⁸ In addition, it has no other sources of funding for the equipment already installed.³⁹

III. DISCUSSION

9. Based on the facts and circumstances of this specific case, we grant Great Rivers' and I-K Electric's Requests for Waiver.⁴⁰ We find that the Appellants have demonstrated special circumstances to warrant an extension of the deadline for implementation of non-recurring services for Great Rivers.⁴¹ In the *November 2000 Extension Order*, we noted that there are situations in which it may be consistent with the public interest to extend the deadline.⁴² Thus, we have granted requests for extensions of the service delivery deadline in order to alleviate potential hardships that would be incurred by schools without an extension.⁴³ Here, the record demonstrates that Great Rivers tried, in good faith, to comply in a timely manner with all applicable program rules, including contacting CSB for guidance, and filing two FCC Forms 500 and a Service Delivery Extension Request.⁴⁴ Great Rivers filed its first FCC Form 500 on June 18, 2004, more than three months prior to the September 30 deadline.⁴⁵ Had USAC noticed that Great Rivers was attempting to extend its contract expiration date beyond its service delivery deadline and alerted Great Rivers of its mistake, Great Rivers would still have had ample time to submit a Service Delivery Extension Request prior to the September 30 deadline.⁴⁶

10. Moreover, since the funding has already been approved and committed by USAC, we find no harm in granting Great Rivers' request for an extension of the service delivery deadline. I-K Electric has already delivered equipment under Invoice Number 614810. There is no reason to penalize the service provider by denying payment for equipment already delivered when it had received two Form 500 Notification Letters seemingly indicating that the deadline had been extended and, prior to filling Great Rivers' order, it contacted USAC to confirm that it was proper to do so.⁴⁷ Accordingly, we grant Great Rivers' and I-K Electric's Requests for Waiver and extend the service delivery deadline to September 30, 2007, so that I-K Electric may provide all the services authorized by FRN 1034708.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). 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. *Northeast Cellular*, 897 F.2d at 1166.

⁴¹ 47 C.F.R. § 54.507(d)(3).

⁴² See *November 2000 Extension Order*, 15 FCC Rcd at 21877-21878, para. 6.

⁴³ See *In the Matter of Chicago Public Schools, Chicago, Illinois*, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 17086, 17090, paras. 10-11 (Wireline Comp. Bur. 2002); *In the Matter of Buffalo City School District, West Seneca, New York*, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 11881, 11885, paras. 10-11 (Wireline Comp. Bur. 2002).

⁴⁴ See I-K Electric Request at 3-4.

⁴⁵ See June 2004 FCC Form 500.

⁴⁶ USAC approved Great Rivers' FCC Form 500 in less than a month, sending a letter to I-K Electric on July 5, 2004. See July 2004 I-K Electric FCC Form 500 Notification Letter.

⁴⁷ See I-K Electric Request at 4.

Additionally, we remand Invoice Number 614810 for FRN 1034708, to USAC for further processing consistent with this Order no later than 60 days from release of this Order. These actions should ensure that Great Rivers will obtain the funding that USAC already approved for the installation of internal connections.

11. We emphasize, however, the limited nature of this decision. Although we grant the requests before us, our action here does not eliminate the Commission's current rule that non-recurring services be implemented by September 30 following the close of the funding year, with limited exceptions.⁴⁸ Thus, we continue to require E-rate applicants to submit complete and timely information to USAC as part of the application review process.

12. Finally, we are committed to guarding against waste, fraud, and abuse, and to ensuring that funds disbursed through the E-rate universal service mechanism are used for appropriate purposes.⁴⁹ Although we grant the requests addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits or investigations to determine compliance with E-rate program rules and requirements. Because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules, such proceedings can reveal instances in which universal service funds were improperly disbursed or in a manner inconsistent with the statute or the Commission's rules. To the extent we find that funds were not used properly, we will require USAC to recover such funds through its normal processes. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis whether waste, fraud, or abuse of program funds occurred and whether recovery is warranted. We remain committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and the authority delegated in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that section 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d), IS WAIVED and the service delivery deadline for the funding request at issue SHALL BE EXTENDED to September 30, 2007.

14. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and the authority delegated in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that Great Rivers Education Cooperative Request for Review/Request for Waiver and I-K Electric Company Request for Waiver ARE GRANTED and ARE REMANDED, as described herein.

15. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and the authority delegated in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), USAC SHALL COMPLETE its review of the underlying invoice submitted by I-K

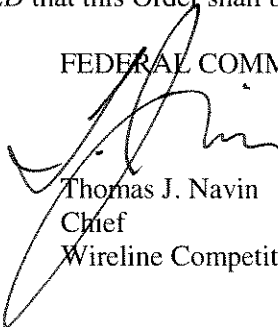
⁴⁸ See 47 C.F.R. § 54.507(d)(1)-(4).

⁴⁹ See *Request for Review of the Decision by the Universal Service Administrator by Bishop Perry Middle School, New Orleans, Louisiana, et al.*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006).

Electric Company and ISSUE and disburse funding based on a complete review and analysis no later than 60 days from release of this Order.

16. IT IS FURTHER ORDERED that this Order shall be effective upon release.

FEDERAL COMMUNICATIONS COMMISSION



Thomas J. Navin
Chief
Wireline Competition Bureau