

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Extension of the Deadline to
Implement Non-Recurring Services by
California Youth Authority, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-247568, et al.
CC Docket No. 02-6

ORDER

Adopted: March 9, 2007

Released: March 9, 2007

By the Acting Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant requests by California Youth Authority, Florence County School District 3, Lee County School District, and Moreno Valley Unified School District (collectively, Applicants) for an extension of the deadline for implementing non-recurring services under the schools and libraries universal service support mechanism (also known as the E-rate program). Specifically, we find that Applicants satisfy the standard set forth in section 54.507(d) of the Commission's rules for obtaining an extension of the deadline for implementing non-recurring services. Therefore, we extend, until September 30, 2008, the deadline for Applicants to complete installation of non-recurring services for the funding years at issue in their Extension Requests.

II. BACKGROUND

2. The E-rate program permits eligible schools, libraries, and consortia that include eligible schools and libraries to apply for funding in the form of discounts on eligible telecommunications, Internet access, and internal connections. Specifically, applicants must use recurring services within the funding year for which discounts were committed. Applicants, however, have until September 30 following the close of the funding year to complete installation of non-recurring services. The Commission provides applicants additional time to implement non-recurring services because they

1A list of these requests for an extension of the deadline for implementing non-recurring services (collectively, Extension Requests) is provided in the Appendix.

2Section 54.507(d) of the Commission's rules generally requires applicants to implement non-recurring services by September 30 following the close of the funding year for which discounts were committed. 47 C.F.R. § 54.507(d). However, applicants may receive an extension of this deadline if they meet certain criteria, as described herein. Id.; see also infra para. 3.

3Id. §§ 54.501-54.503.

4Id. § 54.507(d).

5Id.

typically involve the installation of equipment or wiring, which may occur during the summer months when classes are not in session.⁶

3. An applicant may obtain an extension of the deadline to implement non-recurring services from the Universal Service Administrative Company (USAC) if it satisfies one of four criteria set forth in section 54.507(d) of the Commission's rules:

- (1) the applicant's funding commitment decision letter (FCDL) is issued by USAC 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 provider substitution authorization from USAC 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 USAC investigates its application for program compliance.⁷

If the applicant satisfies one of the criteria before March 1 of the funding year, the applicant has until September 30 of that same funding year to complete implementation.⁸ Otherwise, the applicant has until September 30 of the following funding year to complete implementation.⁹

4. USAC considers whether criteria one and two have been satisfied, respectively, based on the date that the FCDLs are issued, or the date that service provider changes or service substitutions are authorized.¹⁰ The revised deadline for implementation of non-recurring services will then be determined based on the date that one of these events occurs.¹¹ For criterion three, an applicant must submit documentation showing that its service provider is unable to complete implementation for reasons beyond the service provider's control on or before the original non-recurring services deadline.¹² The revised deadline will be calculated based on the date of USAC's decision relating to the explanation.¹³ For criterion four, an applicant must certify to USAC, on or before the original non-recurring services installation deadline, that its service provider was unwilling to deliver or install non-recurring services before the expiration of the original non-recurring services installation deadline, because USAC had withheld payment for those services on a properly-submitted invoice for more than 60 days after the

⁶See *Federal-State Joint Board on Universal Service*, CC Docket No. 95-45, Order, 16 FCC Rcd 13510, 13511, para. 8 (2001) (*Non-Recurring Services Order*).

⁷47 C.F.R. § 54.507(d).

⁸*Non-Recurring Services Order*, 16 FCC Rcd at 13512, para. 13.

⁹*Id.*

¹⁰*Id.* at 13514, para. 14.

¹¹*Id.*

¹²*Id.* at 13514, para. 15.

¹³*Id.*

submission of the invoice.¹⁴ The revised implementation date will be calculated based on the date that the funds are released by USAC.¹⁵

5. USAC referred to the Commission four requests for extension of the deadline for implementing non-recurring services.¹⁶ Each of the four Applicants invoked criterion three, arguing that the service provider was unable to complete implementation for reasons beyond the service provider's control.¹⁷ Specifically, each Applicant argued that budget cuts or fiscal problems at the state level jeopardized funding for the non-discounted portion of the non-recurring services.¹⁸ One of the Applicants also invoked criterion one, noting that it received its FCDL well after March 1 of the funding year in question.¹⁹

6. USAC referred the instant Extension Requests to the Commission because it is uncertain whether it may grant the requested relief under the circumstances presented.²⁰ USAC notes that it issued FCDLs, in all but one case, prior to March 1 of the funding year for which discounts were authorized.²¹ USAC also questions whether state budget cuts or fiscal problems constitute a circumstance "beyond the service provider's control."²² Therefore, USAC requests that the Commission clarify that USAC has authority to grant the requested extensions based on these facts or, if USAC does not have authority, USAC requests that the Commission consider granting the Extension Requests itself.²³

III. DISCUSSION

7. In this Order, we grant Applicants' Extension Requests. Specifically, we find that Applicants satisfy criterion three of the standard for obtaining an extension of the deadline for implementing non-recurring services.²⁴ Based on the timeframe established in the Commission's *Non-*

¹⁴*Id.* at 13514, para. 17.

¹⁵*Id.*

¹⁶*See* Letter from D. Scott Barash, Vice President and General Counsel, USAC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6, filed Nov. 18, 2002 (Lee County School District Referral Letter); Letter from D. Scott Barash, Vice President and General Counsel, USAC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6, filed June 9, 2003 (Florence County School District 3 Referral Letter); Letter from D. Scott Barash, Vice President and General Counsel, USAC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6, filed Jan. 28, 2004 (California Youth Authority Referral Letter); Letter from D. Scott Barash, Vice President and General Counsel, USAC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6, filed Apr. 9, 2004 (Moreno Valley Unified School District Referral Letter).

¹⁷*See generally* Extension Request of California Youth Authority; Extension Request of Florence County School District 3; Extension Request of Lee County School District; Extension Request of Moreno Valley Unified School District. *See also supra* n.16.

¹⁸*See* Extension Request of California Youth Authority at 1; Extension Request of Florence County School District 3 at 2; Extension Request of Lee County School District at 2; Extension Request of Moreno Valley Unified School District at 1. *See also supra* n.16.

¹⁹Specifically, Moreno Valley Unified School District received its FCDL for FY 1999 on April 19, 2002. Extension Request of Moreno Valley Unified School District at 1; Moreno Valley Unified School District Referral Letter at 2.

²⁰*See, e.g.*, Lee County School District Referral Letter at 3.

²¹*See, e.g.*, Florence County School District 3 Referral Letter at 2.

²²*See, e.g.*, Moreno County Unified School District Referral Letter at 3.

²³*See, e.g.*, California Youth Authority Referral Letter at 3.

²⁴We also find that Moreno Valley Unified School District satisfies criterion one because it received its FCDL after March 1 of the funding year for which discounts were authorized. Moreno Valley Unified School District Referral

Recurring Services Order, we extend the deadline until September 30, 2008.²⁵ The extension is limited to the funding years at issue in Applicants' Extension Requests.

8. As noted above, section 54.507(d) states that "applicants will qualify for an extension of the implementation deadline for non-recurring services if they satisfy *one* of the ... criteria."²⁶ Given USAC's questions about section 54.507(d),²⁷ we clarify that the date on which USAC issued an FCDL has no bearing on whether USAC may grant an applicant's extension request unless the applicant is seeking an extension based on criterion one. For example, because Applicants invoked criterion three, Applicants must demonstrate that their service providers were unable to complete implementation for reasons beyond the service providers' control, but they are not required to demonstrate that USAC issued their FCDLs after March 1. In addition, we clarify that USAC has authority to determine which situations constitute circumstances beyond the service provider's control and therefore satisfy criterion three. In the *Non-Recurring Services Order*, the Commission recognized that there may be a wide range of situations under criterion three that constitute circumstances beyond the service provider's control.²⁸ Because the Commission was unable to "anticipate every type of circumstance," the Commission "direct[ed] [USAC] to address such situations on a case by case basis, consistent with the reasoning set forth in this Order."²⁹ That is, the Commission gave USAC discretion to determine which situations constitute circumstances beyond the service provider's control.

9. In the future, we expect USAC to decide which events satisfy criterion three based on the facts presented by the applicants and consistent with the *Non-Recurring Services Order*. In this case, however, remanding the Extension Requests to USAC at this stage would add unnecessary processing time, causing further delays and hardship for Applicants. We therefore conclude, based on the facts presented in these Extension Requests, that budget cuts or fiscal problems at the state level that jeopardize funding for the non-discounted portion of non-recurring services constitute circumstances beyond the service provider's control, and we grant the Extension Requests. Because we grant these Extension Requests after March 1 of this year, Applicants have until September 30, 2008, to complete installation of the non-recurring services for the funding years at issue in their Extension Requests.³⁰

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED, 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 pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the Extension Requests listed in the Appendix ARE GRANTED to the extent provided herein.

Letter at 2. As noted above, however, applicants need to satisfy only one of the four criteria set forth in section 54.507(d) to qualify for an extension of the non-recurring services implementation deadline. *See supra* para. 3.

²⁵*See Non-Recurring Services Order*, 16 FCC Rcd at 13512, para. 13.

²⁶47 C.F.R. § 54.507(d) (emphasis added). *See supra* para. 3.

²⁷*See* Lee County School District Referral Letter at 3; Florence County School District 3 Referral Letter at 3; California Youth Authority Referral Letter at 3; Moreno Valley Unified School District Referral Letter at 3.

²⁸*Non-Recurring Services Order*, 16 FCC Rcd at 13514, para. 16.

²⁹*Id.*

³⁰*See id.* at 13512, para. 13.

11. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Renée R. Crittendon
Acting Deputy Chief
Wireline Competition Bureau

APPENDIX

Extension Requests

Applicant	Application Number	Funding Year
California Youth Authority	247568	2001
Florence County School District 3	224402 224408 224412 224418 224419 227486	2001
Lee County School District	224073 224077 224200 224201 224205 224206 224207 224208 224211 227159 228076	2001
Moreno Valley Unified School District	208450	1999