

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Petition for Waiver by)
Sprint Corporation)
)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: March 19, 2007

Released: March 19, 2007

By the Acting Deputy Chief, Wireline Competition Bureau:

1. In this Order, we deny the Petition for Waiver filed by Sprint Corporation (Sprint).¹ Sprint asks for a waiver of the Commission’s rule requiring that private branch exchange (PBX) and key systems be treated as “Priority Two” services under the schools and libraries universal service support mechanism (also known as the E-rate program).² Sprint asks that the Commission treat such services as “Priority One” services for the duration of those contracts that were signed prior to December 1, 2003, because the Universal Service Administrative Company (USAC) had treated these services as Priority One services prior to this date.³ For the reasons discussed below, we deny the Petition.

2. E-rate funds are allocated according to rules of priority.⁴ Under the Commission’s rules, first priority for E-rate funding is given to requests for telecommunications services and Internet access (Priority One services).⁵ The remaining available funds are allocated to requests for support for internal connections and basic maintenance of internal connections (Priority Two services).⁶ Requests for Priority Two services may be denied because available funds are exhausted. In its 1999 Tennessee Order, the Commission considered whether facilities located on the applicant’s premises should be recognized as part of an end-to-end Internet access service (Priority One service) or part of internal connections (Priority Two service).⁷ The Commission concluded that such on-premises equipment should be presumed to be internal connections, but that an applicant could rebut that presumption and receive

¹ See Sprint Corp. Petition for Waiver, CC Docket 02-6, filed Feb. 3, 2004 (Petition); see also Letter from Jeffrey Lanning, Embarq (formerly known as Sprint), to Federal Communications Commission, Mar. 12, 2007.

² Id.; see 47 C.F.R. § 54.507(g).

³ Petition at 5.

⁴ See 47 C.F.R. § 54.507(g).

⁵ 47 C.F.R. § 54.507(g)(1)(i).

⁶ 47 C.F.R. § 54.507(g)(1)(ii).

⁷ See Request for Review by the Department of Education of the State of Tennessee, Integrated Systems and Internet Solutions, Inc., and Education Networks of America, CC Docket Nos. 96-45, 97-21, Order, 14 FCC Rcd 13734, 13747-55, paras. 26-42 (1999) (1999 Tennessee Order).

Priority One funding for a request if the equipment satisfied a specific set of criteria.⁸ Those criteria included that the equipment at issue was not necessary for the functioning of the applicant's internal connections network, the applicant did not own the equipment or have any special right to purchase it in the future, and the service provider was responsible for maintenance and could use the equipment to serve other customers.⁹ Based on its understanding of that standard, USAC approved funding requests that treated payments for leases of PBX and key systems as payments for part of end-to-end telecommunications service arrangements, *i.e.*, Priority One service.

3. On December 1, 2003, USAC posted on its website a correction to its position, stating that Priority One funding would not be available for use of PBXs "because they are utilized to route calls within the premises of a school or library."¹⁰ The Commission's *Schools and Libraries Third Report and Order* affirmed USAC's position. The Commission observed that:

"a PBX, like most on-premises equipment, is presumed to be Priority Two internal connections. Moreover, it is unlikely that an applicant would be able to establish a rebuttal to the presumption [that the PBX should be treated as part of internal connections], because the PBX functions to transmit information from and between multiple locations within a local network. . . . [T]he PBX is necessary to maintain the internal communications network, but not its end-to-end access to telecommunications services."¹¹

4. Sprint asserts that the Commission's decision to alter USAC's previous practice of treating PBXs and key systems as Priority One services poses a serious hardship to schools and libraries in the midst of multi-year contracts.¹² Sprint states that applicants signed contracts based on the reasonable expectation that they would be able to receive E-rate support for PBX and key systems as Priority One services for the entire contract term, given that all requests for Priority One services filed within the filing window had always been funded.¹³ If these facilities are treated as Priority Two services after December 2003, Sprint observes that these applicants appear unlikely to receive any funding, given that the E-rate program funds for any given year are likely to be exhausted before many Priority Two service funding requests are considered.¹⁴ Verizon filed comments in support of Sprint's petition.¹⁵

⁸ *Id.* at 13753-54, paras. 37-38.

⁹ *Id.* at 13753-54, paras. 38-39.

¹⁰ See SLD Website, December 2003 Announcements, <http://www.sl.universalservice.org/whatsnew/2003/122003.asp#120103a> (retrieved Mar. 5, 2007).

¹¹ *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26931, para. 47 (2003) (*Schools and Libraries Third Report and Order*). As Sprint recognized, this policy also covers generally smaller, multiline phones also known as "key systems."

¹² Petition at 3-4.

¹³ *Id.* at 3.

¹⁴ *Id.* at 4 n.3.

¹⁵ See Verizon Comments, filed Feb. 13, 2004.

5. We deny Sprint's request for a waiver because Sprint failed to demonstrate that the special circumstances necessary to justify a waiver exist.¹⁶ Although the Commission permits the use of multi-year contracts,¹⁷ the Commission has never adopted a rule insulating applicants and service providers from changes in program rules or, as is the case here, from changes in how USAC administers the program rules simply because a multi-year contract was utilized. Indeed, the E-rate program is funded on a year-to-year basis and, thus, an applicant has no guarantee that a multi-year contract will continue to be funded for the duration of the contract.¹⁸

6. 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 pursuant to authority delegated in 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 Petition for Waiver filed by Sprint Corporation on February 3, 2004, IS DENIED.

7. IT IS FURTHER ORDERED that, pursuant to authority delegated under sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Renée R. Crittendon
Acting Deputy Chief
Wireline Competition Bureau

¹⁶ 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), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (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; Appendix C.

¹⁷ See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9062, para. 544 (1997) (*subsequent history omitted*).

¹⁸ See *id.* We also believe that Sprint and Verizon could permit their customers to switch from contracts for PBX service to contracts for comparable alternative services that remain eligible for Priority One funding, such as Centrex. See *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26931, n.89.