

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of a
Decision of the
Universal Service Administrator by
Expanets of North America
Englewood, Colorado
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-171164
CC Docket No. 02-6

ORDER

Adopted: May 20, 2010

Released: May 20, 2010

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request for review of a decision by the Universal Service Administrative Company (USAC) that rescinded funds committed to the Rock Point Community School (Rock Point) for discounted services under E-rate program (formally known as the schools and libraries universal service support program) because the service was not installed by the September 30 annual deadline. We find that special circumstances exist to justify a waiver of the Commission's rules because the service provider, Expanets of North America (Expanets), was at most only a month late in installing its services and such a short delay in service implementation does not warrant the complete rejection of funding. Accordingly, we grant the request for review and remand the underlying application to USAC for processing consistent with this order. To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the application and issue an award or denial based upon a complete review and analysis no later than 90 calendar days from the release date of this order.

II. BACKGROUND

2. Pursuant to the E-rate program, eligible schools, libraries, and their consortia may apply for discounts for eligible telecommunications services, Internet access, and internal connections. Section 54.507(d) of the Commission's rules requires applicants to implement non-recurring services by September

1 Letter from Cariann Betts, Expanets of North America, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21 (filed Dec. 24, 2002) (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 USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). Expanets, a service provider, filed this appeal related to the E-rate application filed by Rock Point Community School, Rock Point, Arizona.

2 47 C.F.R. §§ 54.501-54.503.

30 following the close of the applicable funding year.³ The Commission's rules also provide that applicants whose funding commitment decision letters (FCDLs) are issued by USAC on or after March 1 in the current funding year have until September 30 of the following year to complete installation of non-recurring services.⁴ 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.⁵ An applicant, however, must submit documentation to support this request to USAC on or before September 30 following the close of the funding year.⁶

3. On February 2, 2001, USAC approved Rock Point's funding year 2000 request for non-recurring services.⁷ The deadline for implementation was September 30, 2001.⁸ On June 25, 2001, Rock Point filed its Receipt of Service Confirmation Form, FCC Form 486, in which it stated that its start date for service implementation was August 1, 2000.⁹ Expanets said it submitted its invoice in September 2001, resubmitted the invoice in May 2002, and resubmitted it again on July 3, 2002.¹⁰ USAC denied the invoice on December 9, 2002, stating that the documentation attached to the invoice indicated that the

³ 47 C.F.R. § 54.507(d). A funding year under the E-rate program starts on July 1 and ends on June 30 in the next calendar year. 47 C.F.R. § 54.507(b).

⁴ 47 C.F.R. § 54.507(d)(1); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 13510, 13513-15, para. 12-14 (2001) (*Permanent Extension Order*).

⁵ 47 C.F.R. § 54.507(d)(3); *see also Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12-13, 15; *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> (last visited May 19, 2010) (Service Delivery Deadlines and Extension Requests). Applicants can also extend the service delivery implementation deadline if they 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, or if their service providers are unwilling to complete installation because funding disbursements are delayed while USAC investigates the application for program compliance. *See* 47 C.F.R. § 54.507(d)(2), (4).

⁶ For example, in funding year 2000, applicants were required to implement non-recurring services by September 30, 2001. If an applicant's FCDL was issued on or after March 1, 2001, or if its service provider was unable to complete implementation for reasons beyond the service provider's control, the applicant could request an extension of the September 30, 2001 deadline. The applicant was required, however, to submit documentation to support its request for an extension of time on or before September 30, 2001. *See* Service Delivery Deadlines and Extension Requests; *see also Permanent Extension Order*, 16 FCC Rcd at 13514, para. 15.

⁷ Letter from USAC, Schools and Libraries Division, to Greg Sargen, Expanets of North America, LLC (dated Feb. 2, 2001) (Funding Commitment Decision Letter (FCDL)). The February 2, 2001 letter allowed Expanets to substitute for a service provider that had been approved in a prior funding commitment letter. Letter from USAC, Schools and Libraries Division, to Jimmie C. Begay, Rock Point Community School (dated July 7, 2000).

⁸ Letter from USAC, Schools and Libraries Division, to Martha Martinez, Expanets of Tampa (dated Dec. 9, 2002); *see also* 47 C.F.R. § 54.507(d).

⁹ Letter from USAC, Schools and Libraries Division, to Greg Sargen, Expanets of North America, LLC (dated July 4, 2001) (Form 486 Notification Letter). Rock Point had previously submitted its FCC Form 486 twice, but USAC returned it to obtain additional information. Letter from USAC, Schools and Libraries Division, to Kent M. Weisner, Rock Point Community School (dated May 15, 2001); Letter from USAC, Schools and Libraries Division, to Kent M. Weisner, Rock Point Community School (dated June 13, 2001) (Form 486 Return Letters).

¹⁰ Request for Review at 1.

work invoiced was completed on October 9, 2001, after the September 30, 2001 deadline.¹¹ In its request for review, Expanets says that the October 9, 2001 entry was a clerical error, and that the work was actually completed by August 29, 2001, before the deadline.¹²

III. DISCUSSION

4. Based on the facts and circumstances of this case, we waive section 54.507(d) of the Commission's rules and grant Expanets' request for review.¹³ We note that the record is inconclusive as to the date when the work was completed.¹⁴ We find, however, that even if Expanets was a month late in implementing its services, such a short delay in service implementation does not warrant the complete rejection of funding.¹⁵ We find, consistent with the *Great Rivers Order*, that there is no reason to penalize the service provider by denying payment for equipment already delivered, albeit potentially shortly after the implementation deadline.¹⁶ We note that there is no evidence at this time in the record that Expanets engaged in activity intended to defraud or abuse the E-rate program. We therefore grant the applicant's appeal and remand the application to USAC.¹⁷ To ensure that the underlying application is resolved expeditiously, we direct USAC to complete its review of the application and issue an award or denial

¹¹ Letter from USAC, Schools and Libraries Division, to Martha Martinez, Expanets of Tampa (dated Dec. 9, 2002) (Administrator's Decision on Invoice Deadline Extension Request).

¹² Request for Review at 1.

¹³ 47 C.F.R. § 54.507(d). Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule 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, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

¹⁴ While Expanets says that the work was completed on August 29, 2001, before the September 30, 2001 deadline, its FCC Form 474, the Service Provider Invoice Form, lists October 15, 2001 under the column, "Shipping Date to Customer or Last Day of Work Performed." FCC Form 474, Expanets of North America (dated Mar. 6, 2002) (Expanets FCC Form 474). Moreover, Expanets submitted with its invoice deadline extension request an invoice with both an "invoice date" and an "order date" of October 31, 2001. Letter from Martha Martinez, Expanets of Tampa, to USAC, Schools and Libraries Division (dated July 3, 2002) (Expanets Invoice Deadline Extension Request).

¹⁵ See, e.g., *Request for Waiver of the Decision of the Universal Service Administrator by Great Rivers Education Cooperative and I-K Electric Company*, CC Docket No. 02-6, Order, 21 FCC Rcd 14115 (Wireline Comp. Bur. 2006) (*Great Rivers Order*) (granting waiver to applicant implementing services after the September 30 deadline).

¹⁶ See *Great Rivers Order*, 21 FCC Rcd at 14119, para. 10.

¹⁷ We estimate that the appeal granted in this order involves an application for approximately \$598,365 in funding. We note that USAC has already reserved sufficient funds to address outstanding appeals. See, e.g., *Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2010* (Jan. 29, 2010). Thus, we determine that the action we take today should have minimal impact on the universal service fund as a whole.

based upon a complete review and analysis no later than 90 calendar days from the release date of this order.¹⁸

5. We emphasize the limited nature of this decision. This order does not diminish applicants' obligations to adhere to the E-rate program's procedures and deadlines. Although we grant the request for review addressed here, this order does not alter the obligation of participants in the E-rate program to comply with the Commission's rules. In remanding this application to USAC, we make no finding as to the ultimate eligibility of the services or the petitioner's application.¹⁹

6. Finally, we are committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the request for review addressed here, this action in no way affects the authority of the Commission or USAC to conduct audits and investigations to determine compliance with the 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 the Commission's rules, such proceedings can reveal instances in which universal service funds were disbursed improperly 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 that waste, fraud, or abuse of program funds occurred and that 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 the Commission's procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

7. 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 authority under 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 the request for review filed by Expanets of North America, Englewood, Colorado, on December 24, 2002, IS GRANTED and REMANDED to USAC for further consideration in accordance with the terms of this order.

8. IT IS FURTHER 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 sections 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 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 to the extent provided herein.

9. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a),

¹⁸ In performing a complete review and analysis of the underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

¹⁹ Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

that USAC SHALL COMPLETE its review of this application and ISSUE an award or a denial based on a complete review and analysis no later than 90 days from the release date of this order.

10. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Wireline Competition Bureau