

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of a Decision of the
Universal Service Administrator by
Twiggs County School District
Jeffersonville, Georgia
and
American Control Systems, Inc.
Macon, Georgia
Schools and Libraries Universal Service Support
Mechanism
File No. SLD-382006
CC Docket No. 02-6

ORDER

Adopted: April 13, 2011

Released: April 13, 2011

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this order, we deny the requests for review filed by Twiggs County School District (Twiggs County) and American Control Systems, Inc. (ACS) of a decision by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program) for funding year 2003. We affirm USAC's decision denying ACS's request for an extension of the service delivery deadline for the requested recurring services.

2. Background. Pursuant to the E-rate program requirements, eligible schools, libraries, and their consortia may apply for discounts for eligible services. In general, the applicant must use the funded services within the funding year, except that the Commission's rules give applicants three additional months (until September 30 following the close of the relevant funding year) to install one-time services known as non-recurring services. An applicant may request an extension of this deadline if one

1 See Letter from Carol Brown, Twiggs County Board of Education, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Sept. 13, 2004) (Twiggs County Request for Review); Letter from Kelli Mahler, American Control Systems, Inc., to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 11, 2004) (ACS 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).

2 47 C.F.R. §§ 54.501-54.503.

3 See 47 C.F.R. § 54.507(d); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 13510, 13512, para. 7 (2001) (Permanent Extension Order).

of certain criteria is met.<sup>4</sup> For example, USAC will grant an extension request if the applicant's service provider is unable to complete implementation for reasons beyond the service provider's control.<sup>5</sup> A request for an extension must be submitted to USAC on or before the September 30 deadline.<sup>6</sup> Applicants may seek extensions of time only for non-recurring services.

3. Requests for Review. In funding year 2003, Twiggs County decided to upgrade the internal connections for five of its schools in order to connect 25 additional classrooms to telephone service, connect 10 additional classrooms to the Internet, and install and rewire the fiber optics and other cables so that 75 additional computers could connect to the network.<sup>7</sup> Twiggs County posted a request for bids for these services on January 9, 2003, and subsequently signed contracts with several providers for these services, including ACS.<sup>8</sup> On February 6, 2003, Twiggs County filed its FCC Form 471 application with USAC.<sup>9</sup> On its FCC Form 471 application, Twiggs County described its payments to ACS as monthly charges of \$4,875 for 12 months of service for internal connections, for a total charge of \$58,500.<sup>10</sup> On May 12, 2003 and April 16, 2004, in subsequent correspondence to USAC regarding its application and type of services to be provided, Twiggs County described ACS's work to be monthly technical support including programming and maintenance of an existing wide area network previously purchased with E-rate funds as well as newly purchased servers and switches.<sup>11</sup> On May 5, 2004, USAC issued a funding commitment decision letter (FCDL) to Twiggs County for this application, noting that, except for technical support of a previously purchased private branch exchange printer and cabinet, Twiggs County's contract with ACS was eligible for support.<sup>12</sup>

4. Subsequently, on August 23, 2004, ACS requested a one-year extension of the service delivery deadline from USAC for implementation of the recurring services because the FCDL was not received by Twiggs County until May 5, 2004.<sup>13</sup> ACS explained to USAC that the extension was warranted because the arrival of the FCDL near the end of the funding year did not give ACS adequate

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<sup>4</sup> The qualifying criteria are: (1) the applicant's funding commitment decision letter 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 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 the application for program compliance. 47 C.F.R. § 54.507(d); *Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12.

<sup>5</sup> 47 C.F.R. § 54.507(d); *Permanent Extension Order*, 16 FCC Rcd at 13513, para. 12.

<sup>6</sup> See USAC website, Schools and Libraries, Service Delivery Deadlines and Extension Requests, <http://www.universalservice.org/sl/applicants/step11/service-deadlines-extension-requests.aspx> (retrieved Apr. 12, 2011); see also *Permanent Extension Order*, 16 FCC Rcd at 13514, para. 15.

<sup>7</sup> See FCC Form 470, Twiggs County School District (filed Jan. 9, 2003) (FCC Form 470); FCC Form 471, Twiggs County School District (filed Feb. 6, 2003) (FCC Form 471).

<sup>8</sup> See FCC Form 470; FCC Form 471; Facsimile from Carol Brown, Twiggs County Board of Education, to Kenneth C. Stibitz, USAC, Schools and Libraries Division, at 2 (dated Apr. 16, 2004) (April 2004 Facsimile).

<sup>9</sup> See FCC Form 471.

<sup>10</sup> *Id.* at items 23a, 23d.

<sup>11</sup> See Facsimile from Carol Brown, Twiggs County Board of Education, to Russ Bauer, USAC, Schools and Libraries Division, at 3 (dated May 12, 2003) (May 2003 Facsimile); April 2004 Facsimile at 2.

<sup>12</sup> See Letter from USAC, Schools and Libraries Division, to Carol Brown, Twiggs County Board of Education (dated May 5, 2004).

<sup>13</sup> Letter from Ann Yancey, American Control Systems, Inc., to USAC, Schools and Libraries Division (dated Aug. 23, 2004).

time to implement the services.<sup>14</sup> USAC denied ACS's request for an extension of the service delivery deadline noting that Twiggs County's funding request at issue was approved for recurring services and, therefore, ineligible for an extension of the service delivery deadline.<sup>15</sup> On September 13, 2004, and November 11, 2004, Twiggs County and ACS, respectively, filed the instant requests for review.<sup>16</sup>

5. Twiggs County asserts that the E-rate rules are biased and exclude poor communities because they require non-recurring services to be rendered during the dates of an application period even if a poor school system cannot take the chance of expending funds that they are not sure will be awarded.<sup>17</sup> Thus, Twiggs County argues that the Commission should reconsider USAC's decision to deny ACS's request for an extension of the service delivery deadline in this instance.<sup>18</sup> In its request for review, ACS asserts that, because USAC did not release the FCDL until May 2004, it was impossible to complete the requested work with less than two months to complete a year's worth of work.<sup>19</sup> ACS further argues that Twiggs County could not afford to pay for the work without the funding and that ACS could not afford to finance the work itself until the E-rate funding was assured.<sup>20</sup>

6. Discussion: We affirm USAC's decision and deny Twiggs County's and ACS's requests for review. As indicated above, the Commission's rules provide for an extension of the service delivery deadline for non-recurring services.<sup>21</sup> Recurring services, on the other hand, must be delivered during the relevant funding year.<sup>22</sup> In this instance, Twiggs County contracted with ACS to perform 12 months of monthly technical support including programming and maintenance services.<sup>23</sup> Like monthly telephone service or Internet access service, monthly maintenance of internal connections is a recurring service and cannot be extended from one funding year to another.<sup>24</sup> Moreover, neither Twiggs County nor ACS has presented any special circumstances justifying a waiver of the Commission's rules.<sup>25</sup> Therefore, we deny Twiggs County's and ACS's requests for review and affirm USAC's decision.

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<sup>14</sup> See Letter from Ann Yancey, American Control Systems, Inc., to Joan DaSilva, USAC, Schools and Libraries Division (dated Sept. 2, 2004).

<sup>15</sup> See Letter from USAC, Schools and Libraries Division, to Ann Yancey, American Control Systems, Inc. (dated Sept. 7, 2004); *supra* para. 2.

<sup>16</sup> See Twiggs County Request for Review; ACS Request for Review.

<sup>17</sup> Twiggs County Request for Review.

<sup>18</sup> *Id.*

<sup>19</sup> ACS Request for Review.

<sup>20</sup> *Id.*

<sup>21</sup> See *supra* para. 2; 47 C.F.R. § 54.507(d).

<sup>22</sup> *Id.*

<sup>23</sup> See FCC Form 471; May 2003 Facsimile; April 2004 Facsimile.

<sup>24</sup> See 47 C.F.R. § 54.507(d); *supra* para. 2. In this situation, recipients like Twiggs County could have applied for the same recurring maintenance services for the following funding year instead of requesting an extension of the service delivery deadline.

<sup>25</sup> See Twiggs County Request for Review; ACS Request for Review. 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*); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), *cert. denied*, 409 U.S. 1027 (1972). 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*, 418 F.2d at 1157. Waiver of the Commission's rules is therefore appropriate only if special

7. 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 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), that the requests for review filed by Twiggs County School District on September 13, 2004, and by American Control Systems, Inc. on November 11, 2004, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade  
Deputy Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.