

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Missoula Public Library	)	File No. SLD-58189
Missoula, Montana	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: September 26, 2012**

**Released: September 26, 2012**

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

1. Consistent with precedent,<sup>1</sup> we grant a request for waiver filed by Missoula Public Library (Missoula).<sup>2</sup> Missoula requested a waiver of the Commission's rules regarding the timely submission of an appeal of a decision by the Universal Service Administrative Company (USAC) to the Commission after USAC denied Missoula's appeal of a commitment adjustment (COMAD) decision letter seeking to recover funds disbursed to Missoula under the E-rate program (more formally known as the schools and libraries universal service support program) for funding year 1998.<sup>3</sup>

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<sup>1</sup> See *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Albuquerque School District, et al.*, Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-548427, *et al.*, CC Docket No. 02-6, Order, 26 FCC Rcd 5878 (Wireline Comp. Bur. 2011) (waiving the Commission's filing deadline for six applicants because the Bureau found that these applicants could not submit their appeals to the Commission in a timely manner due to circumstances beyond their control or because the petitioner submitted its appeal to USAC within a reasonable period of time after receiving actual notice of USAC's adverse decision); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, 16 FCC Rcd 571 (2000) (*Iowa Communications Network (ICN) Order on Remand*) (finding that ICN was a telecommunications carrier and thus could receive direct reimbursement for the provision of discounted telecommunications services to schools and libraries); *Request for Review of Decisions of the Universal Service Administrator by Iowa Department of Education, Adair-Casey Community School District, et al.*, Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-108160, *et al.*, CC Docket No. 02-6, Order, DA 12-788 (Wireline Comp. Bur. rel. Aug. 21, 2012) (finding that the Commission's decision in the *ICN Order on Remand* that ICN was a telecommunications carrier should apply retroactively to funding years 1998 through 2000).

<sup>2</sup> See Letter from Bette Ammon, Missoula Public Library, to Federal Communications Commission, CC Docket No. 02-6 (filed Feb. 9, 2005) (Request for Waiver). 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).

<sup>3</sup> See Request for Waiver; 47 C.F.R. § 54.720(a) (requiring an affected party to submit an appeal to the Commission within 60 days of the issuance of a decision by a division of USAC). See also Letter from USAC, Schools and Libraries Division, to Bette Ammon, Missoula Public Library (dated Jan. 24, 2003) (Administrator's Decision on Appeal).

2. As an initial matter, we waive the appeal filing deadline in the instant matter because we find that Missoula did not receive notice of USAC's COMAD recovery decision until after the appeal deadline passed and promptly filed its appeal within 12 days of receiving actual notice of USAC's decision.<sup>4</sup> Thus, we find that Missoula made a good faith effort to comply with the Commission's rules as soon as it realized that USAC had issued a decision. Accordingly, we waive the 60-day deadline for filing appeals in section 54.720 of the Commission's rules.<sup>5</sup>

3. Moreover, we find that a waiver of the filing deadline in the instant matter is in the public interest so that USAC can reconsider its decision in light of the Commission's ICN Order on Remand.<sup>6</sup> In October 1999, USAC notified Missoula that it sought recovery of improperly disbursed funds because Missoula's service provider, Missoula County Department of Communications (MCC), was not a telecommunications carrier and was therefore ineligible to provide telecommunications services under the E-rate program.<sup>7</sup> It appears from the record that USAC determined that MCC was not a telecommunications carrier because MCC did not offer its services to the public.<sup>8</sup> The Commission had taken the position that state-owned telecommunications networks that offer their services only to governmental entities were not telecommunications carriers, because they do not offer their services to the public.<sup>9</sup> However, during the pendency of Missoula's appeal to USAC, the Commission issued the ICN Order on Remand, holding that a state-owned telecommunications network would be considered a telecommunications carrier if it: (1) served its statutorily-prescribed customers indifferently,<sup>10</sup> and (2) allowed those customers to transmit intelligence of their own design and choosing.<sup>11</sup> In light of the

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<sup>4</sup> See *supra* n.1. Generally, the Commission's rules may be waived if good cause is 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. See Request for Waiver.

<sup>5</sup> See 47 C.F.R. § 54.720.

<sup>6</sup> See *ICN Order on Remand*.

<sup>7</sup> See Letter from USAC, Schools and Libraries Division, to Bette Ammon, Missoula Public Library (dated Oct. 8, 1999) (USAC Letter). Subsequently, USAC granted an appeal by Missoula in part by reducing the amount to be recovered to \$3,423.90. See Administrator's Decision on Appeal at 1-2. Specifically, USAC reduced the recovery amount to reflect only funds disbursed for the services provided by MCC. *Id.*

<sup>8</sup> In order to be considered a "telecommunications carrier" eligible to receive E-rate support for the provision of "telecommunications services" a provider must "offer telecommunications on a common carrier basis." *ICN Order on Remand*, 15 FCC Rcd at 572, para. 2. The Commission has articulated a two part test to determine whether an entity is offering telecommunications on a common carrier basis, first, whether the provider holds itself out "to serve indifferently all potential users" and second whether it "allows customers to transmit intelligence of their own design and choosing." *Id.* at para. 5.

<sup>9</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Declaratory Ruling, 14 FCC Rcd 3040, 3041, para. 2 (1999).

<sup>10</sup> In the *ICN Order on Remand*, the Commission stated that legal restrictions on eligibility to use a carrier's services do not necessarily prohibit an entity from being considered a common carrier. See *ICN Order on Remand*, 15 FCC Rcd at 572, para. 8.

<sup>11</sup> *Id.* at 575, para. 14.

Commission's decision in the ICN Order on Remand, we remand MCC's appeal to USAC for a determination as to whether MCC was in fact a telecommunications carrier because it provided service to its statutorily-prescribed customers indifferently and permitted those customers to transmit intelligence/service of their own design and choosing.

4. ACCORDINGLY, IT IS ORDERED, pursuant to 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, 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 waiver filed by Missoula Public Library on January 4, 2005 IS GRANTED and the underlying application IS REMANDED to USAC for further action consistent with the terms of this order.

5. IT IS FURTHER ORDERED, pursuant to 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, 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 54.720 of the Commission's rules, 47 C.F.R. § 54.720, IS WAIVED to the limited extent provided herein.

6. 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 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 USAC SHALL discontinue its recovery actions against Missoula Public Library and SHALL COMPLETE its review of the underlying application and ISSUE a revised COMAD letter to Missoula County Department of Communications no later than 60 calendar days from the release date of this order.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau