

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
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Federal-State Joint Board on)
Universal Service)
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Universal Service Support for Eligible)
Schools and Libraries)
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)
Edumaster.net, dba Mastermind Learning)
Center, or Mastermind Internet Services)
)
)
Year 3 Filing Window)

CC Docket No. 96-45

ORDER

Adopted: July 21, 2000

Released: August 11, 2000

By the Commission:

1. In this Order, we waive, on our own motion, the Year 3 filing window requirements for certain applicants for support from the universal service support mechanism for eligible schools and libraries (“affected applicants”).¹ We also direct the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“Administrator”) to take steps to ensure that the applicants affected by this waiver receive the opportunity to re-file their entire Year 3 applications for support from the universal service support mechanism for eligible schools and libraries. This action is necessary due to the Administrator’s recent denial of funding to the affected applicants for services in light of evidence of irregularities uncovered by the Administrator while reviewing the affected applicants’ Year 3 funding requests. Since the affected applicants may have been unwillingly prejudiced by the actions of their proposed service provider during the application process, the public interest compels us to waive the Year 3 filing window for the affected applicants to allow them to re-submit their applications for support.

I. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for

¹ See Appendix A, *infra*, for a listing of the individual school and library applicants that shall receive waivers of the filing window requirements pursuant to this Order.

discounts on eligible telecommunications services, Internet access, and internal connections.² The Commission's rules require eligible schools and libraries to seek competitive bids for all services eligible for discounts.³ To comply with the competitive bidding requirement, the Commission's rules first require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and lists the services for which it seeks discounts.⁴ The Administrator must post the FCC Form 470 to its web site, where all potential service providers can consider it.⁵ Once the FCC Form 470 has been posted for 28 days and the applicant has signed a contract for eligible services with a service provider, the applicant must then submit a completed FCC Form 471 application to notify the Administrator of the services that have been ordered, the service provider with which the applicant has signed a contract, and an estimate of the funds needed to cover the discounted portion of the price of the eligible services.⁶

3. The Commission's rules allow the Administrator to implement an initial filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁷ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.⁸ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. Applicants may file a completed FCC Form 471 in paper form, or online at the SLD website prior to the close of the filing window. The funding period for the third year of the schools and libraries program will run from July 1, 2000 to June 30, 2001. The filing window for this Year 3 funding period was scheduled by the Administrator to close at 11:59 PM Eastern time on January 19, 2000.

4. On July 7, 2000, the Administrator filed a letter with the Common Carrier Bureau.⁹ In its letter, the Administrator stated that it intended to deny any funding requests for support for "distance learning" services, with telecommunications services to be provided by AT&T Corporation (AT&T), and Internet access and internal connections to be provided by

² 47 C.F.R. §§ 54.502, 503. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8766 (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, reversed in part, and remanded in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (*affirming Universal Service Order in part and reversing and remanding on unrelated ground*), *petitions for cert. pending*.

³ 47 C.F.R. § 54.504.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(b)(3).

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. § 54.507(c).

⁸ 47 C.F.R. § 54.507(g).

⁹ See Letter of D. Scott Barash, General Counsel, Universal Service Administrative Company, to Carol Matthey, Deputy Chief, Common Carrier Bureau, dated July 7, 2000 (*USAC Letter*).

Edumaster.net, dba Mastermind Learning Center or Mastermind Internet Services (“Mastermind”).¹⁰ The affected applicants had all entered into agreements for “distance learning” services to be jointly provided by AT&T and Mastermind. AT&T and Mastermind did not enter into a subcontractor or resale relationship with each other. AT&T was to provide telecommunication services directly to the affected applicants while Mastermind was to provide the internal connections and Internet access directly to the affected applicants. AT&T, however, agreed to allow Mastermind to serve as the point of contact in negotiations with the affected applicants as they prepared their funding requests.¹¹

5. In its letter, the Administrator explained that in the course of its review of the funding requests for the AT&T/Mastermind “distance learning” package to be provided to the affected applicants, AT&T brought certain irregularities to the Administrator’s attention.¹² For example, AT&T notified the Administrator that standard AT&T rate and term sheets were altered before being provided to the applicants by Mastermind, and that the prices were increased, so that there were material discrepancies between the AT&T services and prices presented to the applicants by Mastermind and the services and tariff rates actually offered by AT&T to Mastermind, which would result in excess universal service funding being appropriated for the applicants, and thus would amount to wastage of the fund.¹³ The Administrator also stated that on numerous instances, the funding request for AT&T telecommunications services was presented as including only non-recurring (one-time) charges, which contradicted the standard terms and conditions offered by AT&T.¹⁴ AT&T employees, as far as the Administrator can ascertain, did not participate in, and indeed, acted appropriately to expose, Mastermind’s apparent inflation of rate quotes or alteration of AT&T rate sheets.¹⁵

6. The Administrator, therefore, determined that the irregularities associated with these funding requests necessitated denial of all requests for funding for the affected applicants that included the AT&T/Mastermind distance learning package. The Administrator referred to the Commission the issue of whether the applicants should receive a waiver of the filing window deadline for Year 3.¹⁶

II. DISCUSSION

7. As a consequence of the Administrator’s denial of funding to the affected applicants based upon its duty to prevent fraud and waste in the universal service support

¹⁰ *USAC Letter* at 1.

¹¹ *USAC Letter* at 1.

¹² *USAC Letter* at 1.

¹³ *USAC Letter* at 1.

¹⁴ *USAC Letter* at 1.

¹⁵ *USAC Letter* at 1.

¹⁶ *USAC Letter* at 2.

mechanism,¹⁷ the affected applicants, through no fault of their own, are faced with few choices. The affected applicants must either forgo universal service support funding for Year 3 of the support mechanism for eligible schools and libraries, and thus not receive the benefits and services that Congress intended schools and libraries to have access to pursuant to section 254 of the Act, or go through the process of re-bidding for services and re-applying for support. If the affected applicants re-apply now, their applications will be processed under different rules of priority for funding that could have a negative impact on the amount of discounted services that they receive, since those re-submitted applications will be received by the Administrator outside of the Year 3 filing window.¹⁸ As a matter of fundamental fairness, therefore, we are compelled to take action to restore the affected applicants to the position they would have been in but for the evidence of possible irregularities by Mastermind uncovered by the Administrator.

8. In this Order, therefore, we waive on our own motion the Year 3 filing window deadline established by the Administrator pursuant to section 54.507(c) of our rules, for certain applicants, listed in Appendix A, *infra*, for universal service support for schools and libraries for the July 1, 2000 – June 30, 2001 funding year.¹⁹ The Commission may waive any provision of its rules on its own motion and for good cause shown.²⁰ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.²¹ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²² 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.²³

9. We conclude that special circumstances, namely the evidence of possible irregularities by Mastermind in the application process, which, if true, would result in wasteful expenditure of program funds, and which, as far as the Administrator can ascertain at this point, the affected applicants were unaware, justifies a waiver of section 54.507(c) of our rules for the

¹⁷ 47 C.F.R. § 54.702(h).

¹⁸ Applicants that file their applications within the filing window established by the Administrator pursuant to section 54.507(c) of the Commission's rules will be subject to the rules of priority set forth at section 54.507(g)(1) of the Commission's rules. Applicants that file their applications outside of the window, however, shall be subject to the rules of priority set forth at section 54.507(g)(2) of the Commission's rules, which are substantially different from the rules of priority at section 54.507(g)(1) and heavily favor the most economically disadvantaged schools first. *See* 47 C.F.R. §§ 54.507(g)(1), (2).

¹⁹ Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, allows for waiver of Commission rules if special circumstances warrant deviation from the general rule and such deviation will serve the public interest. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), *cert. denied*, 409 U.S. 1027 (1972).

²⁰ 47 C.F.R. §1.3.

²¹ *Northeast Cellular*, 897 F.2d at 1166.

²² *WAIT Radio*, 418 F.2d at 1157.

²³ *Northeast Cellular*, 897 F.2d at 1166.

affected applicants. We are, as a general matter, reluctant to grant waivers of Commission rules, especially waivers of the filing window requirements. We stress, however, that the unique circumstances of this situation, as well as the hardship that the possible irregularities by Mastermind have caused the affected applicants, has compelled us to take action to grant relief to the affected applicants. We have no evidence before us, or reason to believe, that the affected applicants may have been able to discover the possible irregularities in which Mastermind apparently may have engaged during the application process.²⁴

10. With these waivers, the affected applicants will have the opportunity to re-submit their Year 3 applications subject to the same rules of priority as if they were filed inside the filing window. We believe that it would be contrary to the public interest if applicants who, solely through the possible irregularities of a service provider in the application process, are unable to receive universal service support that they may otherwise have received had their service provider not possibly engaged in the allegedly unlawful conduct. While our rules do allow applicants to apply for support at any time during the funding year, we note that, unless the affected applicants receive a waiver of the filing window requirements, they will still be prejudiced by Mastermind's possible irregularities in the application process. Without waivers of section 54.507(c) of our rules, the denial of support, and subsequent re-filing of applications outside of the filing window, would cause their application to be subject to different rules of priority than in-window applications that could cause a negative impact on the amount of the discounted services that they receive.

11. We therefore direct the Administrator to waive its January 19, 2000 filing deadline for in-window consideration for the affected applicants listed in Appendix A of this Order. The listed applicants shall be allowed to resubmit their applications for support, and must initiate the re-application process within 30 days of the release date of this Order. In order to receive full consideration as in-window applicants for Year 3 support, the affected applicants must comply with all stages of the original application process. Specifically, the affected applicants must seek competitive bids for all services eligible for discounts, and submit to the Administrator completed FCC Forms 470 on or before September 11, 2000. The Administrator must then post the FCC Forms 470 to its web site, and once the FCC Forms 470 have been posted for 28 days and the applicant has signed a contract for eligible services with a service provider, the applicants must then submit completed FCC Forms 471. In all cases, the applicants must file their completed FCC Forms 471 on or before December 11, 2000. Finally, the affected applicants shall, in their re-submitted applications, be limited to the amount of pre-discount funding that they sought in their original applications. We direct the Administrator to ensure that no affected applicant receives funding in excess of the amount for which the applicant originally applied.

12. We believe that the waivers we are granting to the affected applicants in this Order, and the measures we are directing the Administrator to take, are reasonable and equitable steps that will ensure that all applicants who were potentially harmed by the possible irregular actions of a service provider will be placed in the position they would have been but for the

²⁴ The Commission may in the future take all appropriate action if evidence comes before us that a particular applicant was aware that Mastermind apparently made misrepresentations during the application process.

actions of the service provider.²⁵ While we are hesitant to grant waivers of the filing window requirements, and believe that the Administrator's decision to deny funding to the affected applicants was wholly an appropriate exercise of its obligation to prevent abuses and waste in the universal service support mechanism, we believe that it would thwart the goals of section 254 of the Act if schools are unable to receive the funding necessary to obtain telecommunications services and advanced services solely because of the possible irregular actions of a service provider.²⁶

III. ORDERING CLAUSE

13. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and section 1.3 of the Commission's rules, 47 U.S.C. § 1.3, that the Year 3 filing window deadline established by the Schools and Libraries Division of the Universal Service Administrative Company pursuant to section 54.507(c) of the Commission's rules IS WAIVED for the affected applicants listed in Appendix A of this Order, and the Schools and Libraries Division shall take the steps outlined above to effectuate this Order.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

²⁵ We stress that this Order does not represent formal findings of fact or a finding of any liability or wrongdoing on the part of any party to this action, including Mastermind. The Administrator has indicated that it may consider referring specific instances of program fraud, waste or abuse involving Mastermind to the Commission for formal investigation and/or enforcement action.

²⁶ The Commission has previously granted waivers of the filing window requirement in only one situation, involving a failure of the Administrator's online application filing server prior to the close of the filing window, another circumstance beyond the control of the applicants. See *Federal-State Joint Board on Universal Service, Universal Service Support for Eligible Schools and Libraries, Year 3 Filing Window*, CC Docket No. 96-45, Order, FCC 00-204 (rel. June 8, 2000). The issue before us in this Order is different from situations in which an applicant's own error or failure to exercise due diligence caused it to miss the filing window.

**APPENDIX A
LIST OF AFFECTED APPLICANTS**

Adrian Independent School District
Afton Independent School District 26
Agra Independent School District 134
AJO Unified School District 15
Allison Independent School District
Alpaugh Unified School District
Alter Valley School District 51
Arlington School District 47
Armored Public School District
Ashley Community Consolidated School District 15
Atoka Independent School District 15
Auburn Vocational School District
Augusta Public School District
Bakker School District 10
Barnsdall School District
Bearden School District 29
Bellevue Union Elementary School District
Billings Independent School District 2
Blair Independent School District 64
Bluejacket Public Schools
Boynton-Moton Independent School District 4
Brunswick School District R 2
Butner Independent School District 15
Callao School District C 8
Caney Independent School District 26
Carthage Public School District
Caston School Corporation
Chandler Unified School District 80
Cisco Independent School District
Coalgate Independent School District 1
Colleton County School District
Columbine Elementary School District
Commerce Public Schools
Coolidge Unified School District 21
Cordell Independent School District 78
Crutcho School District 74
Culberson County-Allamore Schools
Darlington School District 70
Davis Independent School District 10
Delta Special School District
Dewar Independent School District 8

Dickson Independent School District 77
Doniphan School District 1
Dora School District R 3
Drumright Independent School District 39
East Dubuque School District 119
Eminence Consolidated School District
Eudora School District
Fairland Independent School District 31
Florence City School District
Florence County School District 3
Forrest Grove School District
Gerber Union Elementary School District
Glades County School District
Goshen-Lempster Cooperative School District
Grand Community School District
Granite Independent School District 3
Grant Independent School District 3
Greasy School District 32
Green Country Voc-Tech
Gruver ISD
Halfway School District R 3
Harrah Independent School District 7
Healdton ISD 55
Henryetta Public Schools
Hobart Independent School District 11
Hugo Independent School District 151
Idabel School District 5
Indianola Independent School District 25
Jennings School District 2
Justus-Tiawah School District 9
Ketchum Independent School District 6
Keystone School District 15
Konawa Independent School District 4
Liberty School District COO 9
Life Christian School
Locus Grove School District 17
Logan CC School District 110
Lone Tree School District 6
Lone Wolf Independent School District 2
Lowrey School District 10
Macomb Independent School District 4
Maple School District 162
Maryetta School District 22
Mason Independent School District 2
Matagorda Independent School District

Maysville Independent School District
McLoud Public Schools
Meadow Heights School District R2
Meeker Independent School District IO-95
Miami Independent School District 23
Middlesboro ISD
Milfay School District 1
Moffett School District 68
Morrison Public Schools
Navajo Independent School District 1
Newkirk Independent School District 29
North Loup-Scotia Public Schools
North Rock Creek School
Oilton Independent School District 20
Okmulgee Independent School District 1
Olive Independent School District 17
Olustee Independent School District 35
Ophir Elementary School District
Osage School District 43
Our Lady Of Guadalupe School
Pawhuska Independent School District 2
Pawhuska Public Library
Picher-Cardin Independent School District 15
Pickett-Center School District 20
Pleasant Grove School District 05
Pleasant Grove School District 29
Pomerene School District 16
Prettywater School District 34
Prue Independent School District 50
Quapaw Independent School District 14
Randolph Southern School Corporation
Reynolds School District
Ringling ISD 14
Ripley Independent School District 13
Riverside School District 29
Round Valley JT Elementary School District
Rural Vista School District 481
Ryal School District 3
Sallisaw Independent School District 1
Santa Rita Union School District
Schulter Independent School District 6
Scranton Public School District
Skiatook Independent School District 7
South Coffeyville District 51
South Haven Unified School District

Turner Independent School District 5
Tuttle Independent School District 97
Twin Hills School District 11
Union City Independent School District 57
Velma Alma Independent School District 15
Vernon Elementary District
Wanette Independent School District 115
Washington Independent School District 5
Watts School District 4
Weed Union Elementary School District
Weleetka Independent School District 31
Wellston Independent School District 4
Wetumka Independent School District 5
White Rock School District 5
Wilson Independent School District 7
Woodlawn Public School District
Wynona Independent School District 30
Zaneis School District 72
Zion School District 28
Zion School District 6