

CORRECTED VERSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket 96-45
Universal Service)	

THIRD REPORT AND ORDER

Adopted: October 10, 1997

Released: October 14, 1997

By the Commission:

1. On May 8, 1997, the Commission issued an Order that established new federal universal service support mechanisms, consistent with the Communications Act of 1934, as amended.¹ In the *Universal Service Order*, the Commission concluded that support for services provided to schools and libraries and rural health care providers would begin to flow on January 1, 1998.² In addition, on July 18, 1997, the Commission released an Order establishing the structure of the three corporations that the Commission charged with administering the federal universal service support mechanisms.³ On September 10, 1997, the Common Carrier Bureau issued a Public Notice seeking comment on several issues with respect to the application process and the distribution of federal universal service support funds for schools, libraries, and rural health care providers.⁴ Among other things, the *September 10 Public Notice* sought comment on whether a "window" period or a series of "window" periods should be established that would give equal priority to all schools, libraries, and rural health care applicants filing for funds within

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, FCC 97-157 (rel. May 8, 1997) (*Universal Service Order*).

² *Id.* at para. 607.

³ Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21 and 96-45, *Report and Order and Second Order on Reconsideration*, FCC 97-253 at paras. 30, 57-60 (rel. Jul. 18, 1997) (*NECA Report and Order*) (creating the Universal Service Administrative Company, the Schools and Libraries Corporation, and the Health Care Corporation).

⁴ Common Carrier Bureau Seeks Comment on Universal Service Support Distribution Options for Schools, Libraries, and Rural Health Care Providers, CC Docket 96-45, *Public Notice*, DA 97-1957 (Sept. 10, 1997) (*September 10 Public Notice*). This Public Notice was published in the Federal Register on September 15, 1997. 62 Fed. Reg. 48280 (Sept. 15, 1997). Comments were filed on September 25, 1997.

that period.⁵ In this Order, we adopt a filing window period that begins on the date that the Schools and Libraries Corporation and the Health Care Corporation begin to receive applications for support. We also conclude that the administrative corporations will determine the length of the window and resolve other administrative issues necessary to implement our decision to adopt a window filing period consistent with our guidance set forth below. Therefore, we amend sections 54.507(e) and 54.623(c) of our rules to implement this change. In addition, we delegate authority to the Chief, Common Carrier Bureau to resolve unanticipated technical and operational issues relating to the new universal service mechanisms that may arise in the future.

2. In the *Universal Service Order*, we concluded that the Administrator would commit funds to applicants on a first-come first-served basis.⁶ We now conclude, based on the nearly unanimous comments received in response to the *September 10 Public Notice*, that all applications filed during the window will be treated as if simultaneously received.⁷ For the reasons discussed below, we find that adopting such a window period will best serve the needs of applicants for universal service discounts, and will assist the administrative corporations in processing these requests in a timely manner. We find that the window will reduce pressure on applicants to submit their contracts at the earliest possible moment and, thus, will improve the accuracy and care with which these contracts are negotiated and the accompanying forms are completed. By providing additional time to complete contract negotiations after the four-week competitive bid waiting period, a window will allow schools to negotiate their contracts with greater care.⁸ Further, this window will reduce disparities between applicants with substantial administrative resources and applicants with fewer resources.⁹ Adopting a window filing period that begins when the administrative corporations begin to receive applications for support will

⁵ *Id.*

⁶ *Universal Service Order* at para. 535; 47 C.F.R. § 54.507(c) (stating that "[f]unds shall be available to fund discounts for eligible schools and libraries and consortia or such eligible entities on a first-come-first-served basis . . ."); 47 C.F.R. § 54.623 (first-come-first-served rule for rural health care providers).

⁷ See, e.g., Alaska at 1-2; Anchorage School Dist. at 1; DataCast at 1; Great City Schools Council at 2; Kansas Hosp. Ass'n at 1; KM Broadcasting at 4; Maine Dept. of Ed. at 1; Missouri PSC at 1-2; Missouri Res. Ed. Net. at 4; Missouri State Library at 2; Mississippi Council for Ed. Tech. at 2-3; NJ Ratepayer Advocate at 2; New York City Dept. of IT&T at 2; NYSDPS/NYSED at 1; North Dakota PSC at 1; CNMI at 4; RUPRI at 1; South Carolina OIR at 1; Utah Ed. Net. at 1.

⁸ See 47 C.F.R. §§ 54.504(b)(3), 54.603(b)(3) (requiring an applicant to wait four weeks from the date its request for services is posted on a website to make commitments with a selected service provider).

⁹ For example, a school that uses a courier service to deliver its signed contract on the morning of the first day of a window will be treated the same as a library that files its contract several days later. See also Maine Dept. of Ed. at 1 (staff in rural Maine will likely have to work in the evenings in order to prepare their submission for universal service support).

also promote equity between applicants using existing contracts and applicants complying with the Commission's competitive bidding requirement.¹⁰

3. In response to commenters' requests, we clarify that an applicant's "place in line," or seniority, with respect to funds will be determined by the date on which an applicant submits a contract to the applicable administrative corporation.¹¹ An applicant's submission of its initial request for services, which one of the administrative corporations will post on its website, does not determine the applicant's seniority for the purposes of allocating funding. Neither of the administrative corporations can determine the amount of funding to allocate prior to the date that it receives a signed contract, including the total contract price and information necessary to confirm the discount rate.¹²

4. We recognize, as noted by the commenters, that this window will not eliminate all disparities among applicants.¹³ The Commission adopted annual funding caps, \$2.25 billion for schools and libraries and \$400 million for health care providers, because it estimated that these monies would be sufficient for all applicants during the funding year. We emphasize that we have no reason to revise these estimates and have no reason to believe that either of the caps will be reached during the initial filing period, nor at any other point during the funding period. We are adopting a window primarily to allow applicants sufficient time to negotiate contracts properly and submit complete filings. Nevertheless, although we remain confident in the calculations we used to estimate the level of the both funding caps, we recognize, particularly because this program is in its first year, that we cannot guarantee that we will not reach the \$250 million trigger applicable to the mechanism for schools and libraries at some point during the funding

¹⁰ Applicants with existing contracts are exempt from the competitive bidding requirement and therefore will not submit a description of services to be posted on the websites for a four-week period. *See* 47 C.F.R. §§ 54.500(b), 54.511(c).

¹¹ *See, e.g.*, USTA at 2-3.

¹² We note that the Commission has received petitions asking it to reconsider the extent to which support will be available for contracts that schools and libraries entered into after November 8, 1996 and prior to the date that parties may begin to submit requests for support. Public Notice Report No. 2224 (rel. Sept. 12, 1997), 62 Fed. Reg. 48868 (Sept. 17, 1997). We plan to address that issue before schools and libraries begin to submit their applications to the administrative corporations.

¹³ *See, e.g.*, Great City Schools Council at 2 (noting that window will not stop large buyers such as statewide consortia from claiming sizable portions of the initial \$1 billion allotment); Montana PSC at 2 (should assure that all states receive at least some opportunity to receive funding); Montana School Boards Ass'n at 2 (windows will exacerbate problem, will only ensure that similarly situated entities are treated more equally and will not ensure equal distribution across all states).

period.¹⁴ We therefore clarify that the Schools and Libraries Corporation, as administrator, will allocate funds reasonably and in accordance with the rules of priority set forth in section 54.507(g) of our rules.¹⁵

5. In light of our decision to adopt a window filing period, we also conclude that the administrative corporations should determine the length of the window and resolve other administrative matters necessary to implement a window filing period. We conclude that this responsibility entails "administering the support mechanisms for eligible schools and libraries and rural health care providers," a function already within the scope of the corporations' general duties.¹⁶ We find that the goals of the universal service mechanisms will best be served if the administrative corporations are responsible for implementing the window filing periods because they will be performing the day-to-day functions of the schools, libraries, and rural health care universal service mechanisms and thus are better able to determine an appropriate window periods in light of their needs and resources. We remain committed to the general principle that funds will be allocated to applicants on a first-come first-served basis.¹⁷ Consistent with this principle, we direct the corporations to adopt a reasonable window period that is of sufficient duration to effectuate the administrative purposes of the window, as set forth above, but is short enough to ensure that funds are allocated without unnecessary delay and to encourage applicants to file requests for support without undue delay. In addition, to ensure that all applicants will be informed of the window periods with sufficient time to adjust their plans accordingly, we direct the administrative corporations to make a determination with respect to the initial window filing periods by October 31, 1997 and to publicize that decision promptly using appropriate media and other avenues that will notify the educational, library, and rural health care communities. In order to facilitate notification to the public, we direct the Bureau to issue a public notice announcing the administrative corporations' decisions.

6. We further find that unanticipated technical and operational issues may arise that will require prompt attention, but will not warrant Commission review. For example, such issues might include interpreting the Commission's rules with respect to the websites used to post applicants' descriptions of services. Because they directly administer these programs, we anticipate that, in many cases, the Universal Service Administrative Company, the Schools and

¹⁴ 47 C.F.R. § 54.507(g) (setting out rules of priority that go into effect when \$250 million remains before the \$2.25 billion cap will be reached).

¹⁵ *NECA Report and Order* at para. 65; *see also* 47 C.F.R. § 54.507(g). We note that we did not impose a trigger and rules of priority for the health care mechanism.

¹⁶ *NECA Report and Order* at para. 65.

¹⁷ *See Universal Service Order* at para. 535.

Libraries Corporation, and the Health Care Corporation will be in the best position to identify unanticipated problems, analyze these problems, and propose solutions. The administrative corporations' general authority to administer support mechanisms should largely enable them to resolve these problems. To the extent clarification of our rules are necessary, however, we delegate to the Chief, Common Carrier Bureau the authority to issue orders interpreting our rules as necessary to ensure that support for services provided to schools and libraries and rural health care providers operate to further our universal service goals. We find that this action is "necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business."¹⁸ Any action taken pursuant to this delegation of authority "shall have the same force and effect and shall be made, evidenced, and enforced in the same manner as actions of the Commission."¹⁹

7. IT IS ORDERED, pursuant to Sections 1, 4(i) and (j), and 254 of the Communications Act as amended, 47 U.S.C. §§ 151, 154(i) and (j), and 254, that part 54 of the Commission's rules, 47 C.F.R. Part 54, ARE AMENDED as set forth in Appendix A attached hereto.

8. IT FURTHER IS ORDERED, that, pursuant to Sections 0.201-.204 of the Commission's rules, 47 C.F.R. § 0.201-.204, and Section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(1), the Chief, Common Carrier Bureau IS DELEGATED AUTHORITY to act as described herein.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

¹⁸ 47 U.S.C. § 155(c)(1).

¹⁹ 47 C.F.R. § 0.203; *see also* 47 U.S.C. § 155(c)(3).

Appendix A -- Amendments to Rules**AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS**

1. Part 54 of Title 47 of the Code of Federal Regulations (CFR) is amended as follows:

PART 54 -- UNIVERSAL SERVICE

2. Section 54.507(c) is amended to read as follows:

(c) Requests. * * * The Schools and Libraries Corporation shall implement an initial filing period that treats all schools and libraries filing within that period as if they were simultaneously received. The initial filing period shall begin on the date that the Schools and Libraries Corporation begins to receive applications for support, and shall conclude on a date to be determined by the Schools and Libraries Corporation. The Schools and Libraries Corporation may implement such additional filing periods as it deems necessary.

3. Section 54.623(c) is amended to read as follows:

(c) Requests. * * * The Rural Health Care Corporation shall implement an initial filing period that treats all health care providers filing within that period as if they were simultaneously received. The initial filing period shall begin on the date that the Rural Health Care Corporation begins to receive applications for support, and shall conclude on a date to be determined by the Rural Health Care Corporation. The Rural Health Care Corporation may implement such additional filing periods as it deems necessary.

**Appendix B -- PARTIES FILING COMMENTS
ON UNIVERSAL SERVICE SUPPORT DISTRIBUTION OPTIONS FOR SCHOOLS,
LIBRARIES, AND RURAL HEALTH CARE PROVIDERS
CC Docket 96-45
DA 97-1957**

<u>Commenter</u>	<u>Abbreviation</u>
AG Communications Systems Corp.	AG Comm. Sys. Corp.
State of Alaska	Alaska
Anchorage School District	Anchorage School Dist.
Archdiocese of New York	
Clark, Robert (informal comment)	Robert Clark
Colorado Department of Education	Colorado Dept. of Ed.
DataCast Learning Network	DataCast
Delta-Schoolcraft Intermediate School District	Delta-Schoolcraft School Dist.
Education and Library Networks Coalition	Edline
Florida Department of Management Services	Florida DMS
The Council of the Great City Schools	Great City Schools Council
Illinois State Board of Directors	Illinois St. Bd. of Dirs.
Kansas Hospital Association	Kansas Hospital Ass'n
KM Broadcasting	
State of Maine Department of Education	Maine Dept. of Ed.
Missouri Public Service Commission	Missouri PSC
The Missouri Research and Education Network	Missouri Res. Ed. Net.
Missouri State Library	
The Mississippi Council for Education Technology	Mississippi Council for Ed. Tech.
The Montana Public Service Commission	Montana PSC
Montana School Boards Association	Montana School Boards Ass'n
New Hampshire State Library	NH State Library
New Jersey Division of the Ratepayer Advocate	NJ Ratepayer Advocate
New Jersey State Library	NJ State Library
New York Public Library	NY Pub. Library
The City of New York Department of Information Technology and Telecommunications	New York City Dept. of IT&T
New York State Department of Public Service and The New York State Education Department	NYDPS/NYSED
North Dakota Public Service Commission	North Dakota PSC
The Commonwealth of the Northern Mariana Islands	CNMI

Rural Policy Research Institute Rural Telecommunications

Task Force

South Carolina Area Health Education Consortium

South Carolina Budget and Control Board,

Office of Information Resources

The United States Telephone Association

Utah Education Network

Weisiger, George

RUPRI

South Carolina AHEC

South Carolina OIR

USTA

Utah Ed. Net.

George Weisiger