

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
West Allegheny School District)	File No. NEC.471.02-18-00.07300002
Imperial, Pennsylvania)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: August 22, 2001

Released: August 23, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by West Allegheny School District (WASD), Imperial, Pennsylvania, seeking a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.¹ For the reasons set forth below, we grant WASD's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.² The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.³ In accordance with the Commission's

¹ Letter from Jerry Wessel, West Allegheny School District, Imperial, Pennsylvania, to Federal Communications Commission, filed June 30, 2000 (Waiver Request).

² 47 C.F.R. §§ 54.502, 54.503.

³ 47 C.F.R. §§ 54.504, 54.511(c).

rules, an applicant must file a FCC Form 470 requesting services with SLD.⁴ The Administrator must post the FCC Form 470 on its website, and the applicant is required to wait 28 days before making a commitment with a selected service provider.⁵ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for 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 Section 54.507(c) of the Commission's rules states that fund discounts will be available on a first-come-first-served basis.⁸ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.⁹ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. In Funding Year 3 the filing window closed on January 19, 2000. Therefore, December 21, 1999 was the last day that applicants could file their FCC Form 471 and still file an in-window FCC Form 471 in compliance with the FCC's 28-day competitive bidding rules.

4. WASD filed its FCC Form 470 on December 16, 1999, requesting discounted services for Funding Year 3. On December 21, 1999, SLD contacted WASD concerning information missing from the FCC Form 470 in Block 4 Item 16.¹⁰ Review of internal SLD tracking logs confirms that in a December 21, 1999 telephone conversation with SLD staff, WASD provided the requested information.¹¹ SLD posted WASD's FCC Form 470 on January 18, 2000, one day before the close of the filing window for Funding Year 3.¹² WASD filed its FCC Form 471 on February 18, 2000.¹³

⁴ See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 September 1999 (FCC Form 470).

⁵ 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. § 54.507(c).

⁸ *Id.*

⁹ 47 C.F.R. § 54.507(g).

¹⁰ Waiver Request.

¹¹ See SLD Problem Resolution Form Detail Log, dated December 21, 1999.

¹² FCC Form 470, West Allegheny School District, filed January 18, 2000.

¹³ Letter from Jerry Wessel, West Allegheny School District, to Schools and Libraries Division, Universal Service Administrative Company, filed June 16, 2000.

5. SLD notified WASD that its application had been submitted outside the filing window. WASD then filed a request for waiver with SLD.¹⁴ By letter dated June 21, 2000, SLD informed WASD that SLD was not permitted to consider the request for waiver and directed WASD to request a waiver from the Commission.¹⁵ WASD filed the instant Waiver Request with the Commission on June 30, 2000.¹⁶

6. The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹⁷ Absent special circumstances warranting a deviation from the general rule, waivers of filing deadlines should not be granted. We have reviewed the record before us and conclude that WASD has demonstrated special circumstances upon which to grant its waiver request. Although WASD timely submitted a complete FCC Form 470 by the effective cut off date for an in-window FCC Form 471, SLD delayed its posting until such time that it was impossible for WASD to comply with our 28-day competitive bidding rule prior to the FCC Form 471 filing deadline.

7. The record reflects that on December 21, 1999, SLD contacted WASD by telephone for clarification about the number of eligible sites (Block 4 Item 16c). The record shows that WASD complied with the program's requirements in providing additional information to SLD during the December 21, 1999 phone conversation. Thus, WASD's FCC Form 470 should have been posted to SLD's website pursuant to the December 21, 1999 conversation. However, SLD did not post WASD's FCC Form 470 until January 18, 2000. The Administrator's error resulted in a circumstance that essentially forced WASD to choose between (1) complying with the 28-day waiting period required by the Commission's competitive bidding rules and, as a result, filing outside the window, and (2) filing its FCC Form 471 within the filing window in contravention of the 28-day waiting period requirement. In *Runnemedede*, the Bureau waived the 28-day waiting period for an applicant that chose to file during the window rather than wait 28 days when faced with the same choice.¹⁸ Similarly, in light of the fact that SLD's failure to post WASD's FCC Form 470 to its website resulted in WASD's failure to file its application within the Year 3 filing window, the Bureau believes that a waiver of the filing window deadline is warranted.

8. We therefore grant WASD's Waiver Request. We direct SLD to process WASD's FCC Form 471 as timely filed, and if otherwise appropriate, to issue an appropriate Funding Commitment Letter. However, we make no determination as to whether WASD is ultimately entitled to discounts.

¹⁴ *Id.*

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jerry Wessel, West Allegheny School District, dated June 21, 2000.

¹⁶ See Waiver Request.

¹⁷ 47 C.F.R. § 1.3; See e.g. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), (“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.”)

¹⁸ *Runnemedede Public Schools*, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2957 (rel. December 21, 1999).

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated 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 Waiver Request filed by West Allegheny School District, Imperial, Pennsylvania on June 30, 2000, IS GRANTED to the extent provide herein, and WASD's application is REMANDED to SLD for further consideration in light of this decision.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau