

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Waiver by)	
)	
Lake Eola Charter School)	File No. SLD-197557
Orlando, Florida)	
)	
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: October 30, 2001

Released: October 31, 2001

By the Common Carrier Bureau, Accounting Policy Division:

1. The Accounting Policy Division has under consideration a Waiver Request filed by Lake Eola Charter School (Lake Eola), Orlando, Florida. Lake Eola seeks 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 deny Lake Eola’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 In order to receive discounts on eligible services, the Commission’s rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.³ 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

¹ Letter from Sharon Morell, Lake Eola Charter School, to Federal Communications Commission, filed November 8, 2000 (Waiver Request).

² 47 C.F.R. §§ 54.502, 54.503.

³ 47 C.F.R. § 54.504(b)(1), (b)(3).

selected service provider.⁴ 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.⁵ The Commission's rules allow the Administrator to implement an internal 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.⁶ Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.⁷ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Lake Eola requests a waiver of the Funding Year 3 application window, which closed on January 19, 2000 at 11:59 p.m. Eastern Standard Time.⁸ Lake Eola asserts that in attempting to submit its FCC Form 471 on that date, it experienced "technical difficulties."⁹ Lake Eola further asserts that it was told by SLD client services representatives on January 19, 2000 that because the web site could not handle all the applications, SLD would accept any applications filed by January 31, 2000.¹⁰ Lake Eola filed its FCC Form 471 on January 31, 2000.¹¹

4. We conclude that Lake Eola has not demonstrated a sufficient basis for waiving the Commission's rules. 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.¹² In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of getting its forms and other information to SLD for processing within the established deadline if the applicant wishes to be considered with other in-window applicants.

5. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Lake Eola contends that it experienced unspecified "technical difficulties" attempting to file its FCC Form 471 electronically on January 19, 2000.¹³ The

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

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. § 54.507(c).

⁷ 47 C.F.R. § 54.507(g).

⁸ Waiver Request; SLD web site, What's New (December 6, 1999) <<http://www.sl.universalservice.org/whatsnew/121999.asp>>.

⁹ Waiver Request.

¹⁰ *Id.*

¹¹ FCC Form 471, Lake Eola Charter School, Orlando, Florida, filed January 31, 2000.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ Waiver Request.

Commission is not aware of any failures of the SLD server on January 19, 2000, other than one that took place at approximately 11:25 p.m. Eastern Standard Time. The Commission recognized in its *Year 3 Server Failure Order* that SLD experienced a network server failure at approximately 11:25 p.m. on January 19, 2000, an estimated 35 minutes before the filing window closed for Funding Year 3.¹⁴ In that Order, the Commission directed SLD to waive its filing deadline for applicants that had initiated their applications online and that would have completed their applications before the filing window closed, but for SLD's server failure.¹⁵ The Commission directed SLD to provide waivers for two groups of applicants: (1) those that SLD had identified as having begun their applications online on January 19, 2000, and that would have completed them on January 19 had the server not failed, but that completed them on January 20; and (2) those that began their applications on January 19, 2000 and that would have completed their applications on January 19 had the server not failed, but that did not complete their applications on January 20, and informed SLD by the end of January 20 of their inability to complete their application online due to the server failure.¹⁶ This latter group of applicants was allowed until July 8, 2000 to file their applications.¹⁷

6. Based on our review of the record, however, we find that Lake Eola does not fall within either of the two groups of applicants for which the Commission directed SLD to waive its filing deadline. SLD records demonstrate that Lake Eola did not begin working on its FCC Form 471 online until January 27, 2000, after the filing window closed on January 19, 2000. In the *Year 3 Server Failure Order*, the Commission directed SLD to waive the deadline only for applicants that had begun their applications online by the time of the server failure.¹⁸

7. Lake Eola also contends that it should receive a waiver because an SLD representative allegedly gave it incorrect advice concerning an extension of the filing window, and it followed that advice in waiting until January 31, 2000, after the filing window closed, to file its application.¹⁹ We decline to grant Lake Eola's Waiver Request on those grounds. Where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule.²⁰

8. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant

¹⁴ *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, 15 FCC Rcd 13932 (2000) (*Year 3 Server Failure Order*).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Universal Service Administrative Company, Schools and Libraries Division Data Set, FY 3 Server Crash Entities, Report Run for Lake Eola Charter Schools, File No. SLD-197557.

¹⁹ Waiver Request.

²⁰ *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990)).

rules and procedures.²¹ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its application materials if it wishes to be considered within the window. Here, Lake Eola fails to present good cause as to why it could not timely file its application. We therefore find no basis for waiving the filing window deadline.

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 Lake Eola Charter School, Orlando, Florida, on November 8, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

²¹ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-13364, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), at para. 8 (“In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.”).