

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

In the Matter of	)	
	)	
Request for Guidance	)	
with Respect to	)	
	)	
Keya Paha County School District	)	File Nos. SLD-267176, 267192,
Springview, Nebraska	)	267195, 267781, 267792
	)	
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: November 19, 2001**

**Released: November 20, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division of the Common Carrier Bureau has under consideration a Request for Guidance from the Schools and Libraries Division of the Universal Service Administrative Company (Administrator).<sup>1</sup> In the Request for Guidance, the Administrator requests that the Commission waive its competitive bidding requirement with respect to certain applications submitted by Keya Paha County School District (Keya Paha), Springview, Nebraska, for Funding Year 4 support under the universal service support mechanism.<sup>2</sup> For the reasons discussed below, we grant the Administrator’s request and direct the Administrator to take further action consistent with this Order.

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.<sup>3</sup> In order to receive discounts on eligible services, the Commission’s rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.<sup>4</sup> Once the applicant has

<sup>1</sup> Letter from the Schools and Libraries Division, Universal Service Administrative Company, to the Federal Communications Commission, filed September 26, 2001 (Request for Guidance).

<sup>2</sup> *Id.* Under section 54.702(c) of the Commission’s rules, the Administrator may seek guidance from the Commission where its rules do not address a particular situation.

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> 47 C.F.R. § 54.504(b)(1), (b)(3).

complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.<sup>5</sup>

3. On December 11, 2000, Keya Paha submitted completed FCC Forms 470 for five separate schools for Funding Year 4.<sup>6</sup> The package submitted by Keya Paha also included a Block 5 Certification Form (Certification Form) for Keya Paha's FCC Forms 470 for Funding Year 3. Through no fault of Keya Paha, the Administrator inadvertently filed all of the forms in one Keya Paha Funding Year 3 application file and did not post Keya Paha's Funding Year 4 FCC Forms 470 to its web site.<sup>7</sup>

4. On January 16, 2001, the Administrator realized its error and advised Keya Paha to submit its FCC Forms 471 within the established filing window.<sup>8</sup> The Administrator confirms that Keya Paha completed its FCC Forms 471, met all filing requirements, and postmarked the FCC Forms 471 within the established filing window.<sup>9</sup> Because the Administrator failed to post Keya Paha's FCC Forms 470, however, Keya Paha was unable to comply with the 28-day posting requirement set forth in section 54.504(b)(4) of our rules.

5. On September 26, 2001, the Administrator filed a letter with the Commission pursuant to section 54.702(c) of the Commission's rules.<sup>10</sup> In the letter, the Administrator related the above facts, sought guidance, and urged the Commission to grant Keya Paha a waiver of the 28-day posting requirement consistent with the Commission's decision in *Runnemedede Public Schools*.<sup>11</sup>

6. We conclude that a waiver of section 54.504(b)(4) of the Commission's rules is warranted in this case. Generally, the Commission may waive any provision of its rules, but a

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<sup>5</sup> 47 C.F.R. §54.504(b)(4), (c).

<sup>6</sup> FCC Form 470, Keya Paha County District School 001, filed December 11, 2000; FCC Form 470, Keya Paha County District School 003, filed December 11, 2000; FCC Form 470, Keya Paha County District School 21, filed December 11, 2000; FCC Form 470, Keya Paha County District School 56, filed December 11, 2000; Keya Paha County District School 64, filed December 11, 2000.

<sup>7</sup> See Request for Guidance.

<sup>8</sup> See Facsimile from Nila Gierau, Keya Paha County School District, to Universal Service Administrative Company, dated January 17, 2001.

<sup>9</sup> *Id.* See also FCC Form 471, Keya Paha County District School 001, filed January 18, 2001; FCC Form 471, Keya Paha County District School 003, filed January 18, 2001; FCC Form 471, Keya Paha County District School 21, filed January 18, 2001; FCC Form 471, Keya Paha County District School 56, filed January 18, 2001; Keya Paha County District School 64, filed January 18, 2001.

<sup>10</sup> See Request for Guidance.

<sup>11</sup> See *id.*; *Runnemedede Public Schools*, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2957 (rel. December 21, 1999).

request for waiver must be supported by a showing of good cause.<sup>12</sup> In the case at hand, strict compliance with our rules is inconsistent with the public interest. We find that the failure in posting Keya Paha's Funding Year 4 FCC Forms 470 was solely attributable to the Administrator. It would be unfair, therefore, for Keya Paha to bear the weight of the error of the Administrator, particularly when this error may have resulted in Keya Paha being denied substantial support it otherwise would have received.

7. The public interest is served by the effective operation of the schools and libraries universal support service mechanism, which generally requires competitive bidding for all services eligible for support. We conclude, however, that, in these particular circumstances, the public interest weighs in favor of correcting the error committed by the Administrator so that Keya Paha's application may be processed without further delay and considered on the merits. Therefore, we grant the Administrator's request and direct the Administrator to process Keya Paha's Funding Year 4 FCC Forms 471 consistent with this Order.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.702(c) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.702(c) that the Request for Guidance filed by the Administrator with respect to Keya Paha County School District, Springview, Nebraska IS GRANTED.

9. IT IS FURTHER ORDERED that the Administrator IS DIRECTED to take further action consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>12</sup> 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("Waiver is [] appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest").