

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

In the Matter of)	
)	
Request for Waiver by)	
)	
West Jasper School District)	File Nos. SLD-239168, 235057,
Bay Springs, Mississippi)	239949, 240432
)	
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 28, 2001**Released: November 29, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by West Jasper School District (West Jasper), Bay Springs, Mississippi.¹ West Jasper seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny West Jasper'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.³ 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 Dr. Mary Walters and George Duke, West Jasper School District, to Federal Communications Commission, filed May 22, 2001 (Waiver Request).

² *Id.*

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

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 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.⁷ Applications that are received outside 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.

4. In Block 6 of the FCC Form 471, applicants are required to make certain certifications, including certification of compliance with state and local procurement laws, and the status of the entity's technology plan.⁹ Applicants that file their FCC Forms 471 electronically, using the Administrator's website, are required to separately submit a signed Block 6 certification.¹⁰ Prior to Funding Year 4, the deadline by which these certifications had to be received by SLD to be considered within the window was later than the deadline for the filing of the FCC Form 471, so that applicants could file electronically on the last day of the filing window, and mail their certifications on or about that date.¹¹ However, because in previous years the delivery of a number of applications was significantly delayed by the postal service, SLD, starting in Funding Year 4, directed that all FCC Forms 471 would be deemed filed when postmarked, rather than when received by SLD.¹² This procedural change protects applicants from excessive mail delays. Consequently, all certifications must also be postmarked no later than the close of the filing deadline.¹³

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 47 C.F.R. § 54.507(g).

⁹ Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

¹⁰ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (FCC Form 471 Instructions), at 24.

¹¹ See, e.g., SLD website, What's New (January 2000) <<http://www.sl.universalservice.org/whatsnew/012000.asp#extended>> (noting that for Funding Year 3, the filing window for FCC Forms 471 closed on January 19, 2000, while the deadline for certifications was initially January 26, 2000, later extended to January 31, 2000).

¹² See SLD website, What's New (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>.

¹³ *Id.*

5. West Jasper requests a waiver of the Funding Year 4 application window, which closed on January 18, 2001.¹⁴ West Jasper filed its FCC Forms 471 on January 12, 2001, within the filing window.¹⁵ However, as West Jasper concedes, it did not postmark its certifications until after the close of the January 18, 2001 filing window, causing the entire application to be filed outside the window.¹⁶ West Jasper states, as justification for its untimely filing, that “[t]he new technology coordinator in charge of E-Rate filings was unaware of the mailed forms having to meet this deadline.”¹⁷

6. We conclude that West Jasper 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.¹⁸ 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.

7. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Applicants were on notice well before the close of the filing window in Funding Year 4 that certifications for FCC Forms 471 must be postmarked no later than the close of the filing window. The FCC Form 471 instructions refer applicants to the SLD website for annual filing deadline dates.¹⁹ The website, in turn, explicitly informed applicants:

Year 4 features NEW and FIRM filing requirements: The January 18 deadline is a POSTMARKING deadline. In order to make sure your application is in the window, all manually submitted materials must be postmarked no later than January 18. Unlike Year 3, all materials associated with the Form 471 have a January 18 deadline: the 471 Form itself (whether electronic or paper); the Block 6 certification for the Form 471 with an original signature by the authorized person; all attachments for Item 21; [and] the Block 5 certification of Form 470 filed for Year 4 (and which is cited in a Year 4 Form 471) with an original signature by the authorized person.²⁰

¹⁴ Waiver Request.

¹⁵ See FCC Forms 471, West Jasper School District, filed January 12, 2001.

¹⁶ Waiver Request.

¹⁷ *Id.*

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁹ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions).

²⁰ See SLD website, What’s New (November 2, 2000) <http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>. Emphasis in the original.

8. SLD further notified applicants about the postmark deadline: (1) through various outreach efforts; (2) through a November 6, 2000 letter mailed to 61,000 applicants, including previous applicants;²¹ (3) through a press release distributed on November 2, 2000 to approximately 100 news outlets;²² and (4) by posting several other notifications in different areas on the SLD website.²³

9. 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 rules and procedures.²⁴ 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. An applicant must further take responsibility for the actions of those employees or agents to whom it gives responsibility for submitting timely and proper requests for discounts on its behalf. Here, West Jasper 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.

10. 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 Jasper School District, Bay Springs, Mississippi, on May 22, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

²¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to applicants, dated November 6, 2000.

²² "Window Opens For Year Four E-rate Applications," Schools and Libraries Division, Universal Service Administrative Company, Press Release, November 2, 2000.

²³ See, e.g., SLD website, Reference Area/Program Description (November 2000) at 14, <<http://www.sl.universalservice.org/overview/sitemap.asp>>. Emphasis in the original.

²⁴ 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.").