

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
South Kingstown Public Library	)	File No. NEC.471.03-08-00.8500001
Peace Dale, Rhode Island	)	
	)	
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: December 3, 2001**

**Released: December 4, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by South Kingstown Public Library (South Kingstown), Peace Dale, Rhode Island.<sup>1</sup> South Kingstown seeks a waiver of the Commission’s rules governing discounts for services under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we deny South Kingstown’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.<sup>3</sup> 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.<sup>3</sup> The Administrator must post the FCC Form

<sup>1</sup> Letter from Connie Lachowicz, South Kingstown Public Library, to Federal Communications Commission, filed July 3, 2000 (Waiver Request).

<sup>2</sup> *Id.*

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

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

470 on its website, and the applicant is required to wait 28 days before making a commitment with a selected service provider.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.<sup>8</sup> It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. South Kingstown requests a waiver of the Funding Year 3 application window, which closed on January 19, 2000 at 11:59 p.m. Eastern Standard Time.<sup>9</sup> Because the window closed on that date, in order to be in compliance with the program's competitive bidding requirements and also file an application within the filing window, it was incumbent upon applicants in Funding Year 3 to have their FCC Forms 470 posted by December 21, 1999.<sup>10</sup> The record shows that SLD received South Kingstown's mailed FCC Form 470 on December 20, 1999.<sup>11</sup> However, SLD did not post South Kingstown's FCC Form 470 until January 25, 2000.<sup>12</sup> South Kingstown was therefore not eligible to file its FCC Form 471 until February 22, 2000, which was well after the filing window had closed.<sup>13</sup>

4. On March 8, 2000, South Kingstown filed a Request for Waiver with SLD, requesting that its FCC Form 471 be considered filed within the window.<sup>14</sup> SLD declined this request on June

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<sup>5</sup> 47 C.F.R. §§ 54.504(b)(3), (4); § 54.511.

<sup>6</sup> 47 C.F.R. § 54.504(c).

<sup>7</sup> 47 C.F.R. § 54.507(c).

<sup>8</sup> 47 C.F.R. § 54.507(g).

<sup>9</sup> Waiver Request; SLD web site, What's New (December 6, 1999) <<<http://www.sl.universalservice.org/whatsnew/121999.asp>>>.

<sup>10</sup> 47 C.F.R. § 54.504(b)(3), (4); § 54.511.

<sup>11</sup> FCC Form 470, South Kingstown Public Library, filed December 20, 1999 (South Kingstown FCC Form 470).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* South Kingstown filed its FCC Form 471 on March 8, 2000. FCC Form 471, South Kingstown Public Library, Peace Dale, Rhode Island, filed March 8, 2000.

<sup>14</sup> Letter from Connie Lachowicz, South Kingstown Public Library, Peace Dale, Rhode Island, to Schools and Libraries Division, Universal Service Administrative Company, filed March 8, 2000.

20, 2000.<sup>15</sup> South Kingstown filed the instant Waiver Request with the Commission on July 3, 2000.<sup>16</sup>

5. We conclude that South Kingstown 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.<sup>17</sup> 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.

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. The basis of South Kingstown's Waiver Request is that SLD unduly delayed posting South Kingstown's FCC Form 470 until January 25, 2000, after the filing window for FCC Forms 471 closed on January 19, 2000, so that South Kingstown could not submit its FCC Form 471 before the filing window closed.<sup>18</sup>

7. The record does not support South Kingstown's claim that SLD's delay caused South Kingstown's FCC Form 471 to be filed outside the filing window. SLD did not receive South Kingstown's FCC Form 470 until December 20, 1999, immediately before the end of the period for FCC Forms 470, as explained above.<sup>19</sup> The record reflects that there was a contradiction between the application and SLD's internal records identifying whether South Kingstown was a consortium or a single entity.<sup>20</sup> Moreover, South Kingstown failed to indicate the number of eligible sites in Block 4, item 16.<sup>21</sup>

8. SLD contacted or attempted to contact South Kingstown several times between January 3, 2000 and January 25, 2000, in order to resolve these problems.<sup>22</sup> The record reflects that SLD was able to resolve these issues by January 10, 2000.<sup>23</sup> However, SLD contacted South Kingstown

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<sup>15</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Connie Lachowicz, dated June 20, 2000.

<sup>16</sup> Waiver Request.

<sup>17</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>18</sup> Waiver Request.

<sup>19</sup> South Kingstown FCC Form 470.

<sup>20</sup> Universal Service Administrative Company, Schools and Libraries Division, Problem Resolution Form Detail Logs, South Kingstown Public Library, Year 3, January 3 to 25, 2000.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

again on January 25, 2000, to inquire whether South Kingstown was a single entity, an issue that SLD had resolved by January 10.<sup>24</sup> SLD then posted the form on January 25, 2000.<sup>25</sup>

9. After a thorough review of the record, we find that SLD should have posted South Kingstown's FCC Form 470 on or about January 10, 2000, because SLD had resolved the problems with the form by then. However, even if SLD had posted it on January 10, South Kingstown would have been unable to file its FCC Form 471 within the filing window that ended January 19, 2000, because of the 28-day competitive bidding requirement. South Kingstown submitted its incomplete application only one day before the end of the period in which FCC Forms 470 could be filed (allowing time for the 28-day period and the filing of the FCC Form 471 within the window). Because of SLD's workload and its duties in verifying and processing FCC Forms 470, applicants that wait until near the end of the filing period before submitting their FCC Forms 470 risk filing their FCC Form 471 applications outside the window.<sup>26</sup>

10. 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.<sup>27</sup> 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, South Kingstown fails to demonstrate a sufficient basis for waiving the Commission's filing window deadline.

11. 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 South Kingstown Public Library, Peace Dale, Rhode Island, on July 3, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>24</sup> *Id.*

<sup>25</sup> South Kingstown FCC Form 470.

<sup>26</sup> *See, e.g., FCC Overrules Caldwell Television*, 58 RR 2d 1706, 1707 (1985).

<sup>27</sup> *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.").