

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Waiver by)	
)	
Smackover Public Schools)	File No. SLD-205330
Smackover, Arkansas)	
)	
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 19, 2001

Released: December 20, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by Smackover Public Schools (Smackover), Smackover, Arkansas.¹ Smackover 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 Smackover’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

¹ Letter from Leland Watts, Smackover Public Schools, to Federal Communications Commission, filed July 18, 2000 (Waiver Request).

² *Id.*

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 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.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 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.

3. Smackover requests a waiver of the Funding Year 3 application window, which closed on January 19, 2000 at 11:59 p.m. Eastern Standard Time.⁹ 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, which was 28 days before the filing window closed.¹⁰ Smackover filed its FCC Form 470 by mail on December 20, 1999.¹¹ However, SLD did not post Smackover's FCC Form 470 until January 5, 2000 because there was an omission in Block 4, Item 16 on FCC Form 470.¹² The record shows that SLD tried to contact Smackover between December 22, 1999 and December 29, 1999. On January 3, 2000, SLD was finally able to contact Smackover and get the problem resolved. Smackover was, therefore, not eligible to file its FCC Form 471 until the end of the 28-day competitive bidding period, on February 2, 2000, which was after the filing window had closed.¹³

4. On January 24, 2000, Smackover filed a waiver request with SLD, requesting that its FCC Form 470 be considered filed within the window.¹⁴ SLD declined this request on June 20, 2000.¹⁵ Smackover filed the instant Waiver Request with the Commission on July 18, 2000.¹⁶

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

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

¹¹ Waiver Request.

¹² FCC Form 470, Smackover Public Schools, Smackover, Arkansas, filed January 5, 2000 (Form 470).

¹³ *Id.* Smackover filed its FCC Form 471 on February 17, 2000. FCC Form 471, Smackover Public Schools, Smackover, Arkansas, filed February 17, 2000.

¹⁴ Letter from Leland Watts, Smackover Public Schools, Smackover, Arkansas, to Schools and Libraries Division, Universal Service Administrative Company, filed January 24, 2000.

5. First, we note that Smackover's FCC Form 470 was, in fact, filed within the window on January 5, 2000.¹⁷ The relief that Smackover seeks, namely a complete "in-window" application, would require us to grant a waiver so that Smackover's FCC Form 471 is considered as filed within the window. Accordingly, in this Order we analyze whether the facts presented by Smackover merit a waiver of the filing window for its FCC Forms 471 filed on February 17, 2000.

6. We conclude that Smackover 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 deadlines 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. The basis of Smackover's Waiver Request is that (1) an SLD Client Services representative assured Smackover that if SLD received its FCC Form 470 by December 20, 1999, its FCC Form 471 could be filed before the filing window closed on January 19, 2000; and (2) SLD unduly delayed posting Smackover's FCC Form 470 until January 5, 2000, so that Smackover could not comply with the 28-day bidding period in time to submit its FCC Form 471 before the filing window closed on January 19, 2000.¹⁹

8. As to Smackover's first complaint, that it received assurances from SLD's Client Services Bureau that Smackover would be able to file its FCC Form 471 within the window as long as it filed its FCC Form 470 by December 20, 1999, Commission precedent establishes that 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 Thus, Smackover's claim of incorrect advice from SLD does not merit granting its Waiver Request.

9. Secondly, we are unpersuaded that SLD unreasonably delayed before posting Smackover's FCC Form 470. The record reflects that SLD attempted unsuccessfully to contact Smackover three times between December 22 and December 29, 1999, seeking information in order to allow SLD to complete Smackover's FCC Form 470, Block 4, regarding the number of eligible

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Leland Watts, dated June 20, 2000.

¹⁶ Waiver Request.

¹⁷ Form 470.

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

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)).

sites for which Smackover sought discounts.²¹ After SLD successfully contacted Smackover on January 3, 2000, it resolved the outstanding issues, and posted the FCC Form 470 two days later on January 5, 2000.²²

10. Further, we observe that Smackover did not file its FCC Form 470 until December 20, 1999, just one day before the December 21 date by which FCC Forms 470 needed to be posted in order to allow time for the applicant to comply with the 28-day competitive bidding rule and file its FCC Form 471 within the filing window.²³ SLD had little time, given the workload demands of the end of the filing period, in which to remedy the problem before December 21. Applicants that wait until near the end of the filing period before submitting their FCC Forms 470 risk filing their applications outside the window if, as was the case here, SLD must take steps to verify or complete their FCC Forms 470.²⁴

11. 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.²⁵ 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, Smackover fails to demonstrate a sufficient basis for waiving the Commission's filing window deadline.

²¹ SLD Problem Resolution Form Detail Log, Smackover Public Schools, Smackover, Arkansas, December 22, 1999—January 3, 2000.

²² *Id.*; Form 470.

²³ Form 470.

²⁴ *See, e.g., Request for Waiver by Stephen-Argyle Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-228975, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 15879 (Acc. Pol. Div. 2001); *FCC Overrules Caldwell Television*, 58 RR 2d 1706, 1707 (1985).

²⁵ *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.”).

12. 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 Smackover Public Schools, Smackover, Arkansas, on July 18, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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