

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of)	
the Universal Service Administrator by)	
)	
North Country Library System)	File No. SLD-135248
Watertown, New York)	
)	
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: March 29, 2001

Released: March 30, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by North Country Library System (North Country), Watertown, New York, on behalf of Henderson Free Library (Henderson), Henderson, New York on June 9, 2000, pursuant to section 54.719(c) of the Commission's rules.¹ North Country seeks review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying its requests for Funding Year 2 because of a violation of the 28-day posting requirement for signing and submitting its FCC Form 471 to SLD. For the reasons discussed below, we deny the Request for Review.

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 The Commission's rules require that the applicant make a bona fide request for services by filing with SLD an FCC Form 470, which is posted to the Administrator's website for all potential

¹ Letter from Yvonne Reff, North Country Library System, to Federal Communications Commission, filed June 9, 2000 (Request for Review). Section 54.719(c) provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² 47 C.F.R. §§ 54.502, 45.503.

competing service providers to review.³ After the FCC Form 470 is posted, the applicant must wait at least 28 days before signing and submitting an FCC Form 471, which requests support for eligible services.⁴ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules. Section 54.507(g) of the Commission's rules provides, *inter alia*, that applicants filing applications during a filing window receive priority for support as compared to applicants that file their applications after the window has closed.⁵ In Funding Year 2, the filing window for priority funding closed on April 6, 1999.⁶ The Commission's rules also provide that applicants filing outside the established window will be funded, if funds are available, on a first come, first serve basis.⁷

3. By letter dated August 24, 1999, SLD denied Henderson's request for funding of telecommunications services, Funding Request Number 202012, because "[t]he [F]orm 471 was signed and/or submitted prior to the expiration of the 28-day waiting period from the day of the posting of the FCC Form 470 to the SLD Web Site."⁸ On behalf of Henderson, North Country appealed to the Administrator, arguing that, although Henderson filed its Form 470 on December 10, 1998, SLD did not post the FCC Form 470 on its web site until March 9, 1999.⁹ This posting delay, asserted North Country, made it impossible for Henderson to file its FCC Form 471 before the priority funding application window closing deadline of April 6, 1999 and still remain in compliance with the 28-day rule.¹⁰ In the Administrator's Decision on Appeal, SLD affirmed its earlier decision denying funding because Henderson's FCC Form 471 was signed and received by

³ See Schools and Libraries Universal Service, Description of Service Requested and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service First Report and Order*), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (*affirming Universal Service First Report and Order in part and reversing and remanding on unrelated grounds*), *cert. denied, Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S.Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S.Ct. 423 (November 2, 2000).

⁴ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 471).

⁵ 47 C.F.R. § 54.507(g).

⁶ <<http://www.sl.universalservice.org>>

⁷ 47 C.F.R. § 54.507(c).

⁸ Letter from Schools and Libraries Division, Universal Administrative Company, to Cheryl A. Shutts, Henderson Free Library, dated August 24, 1999 (Funding Commitment Decision Letter).

⁹ See Letter from Yvonne Reff, North Country Library System, to Schools and Libraries Division, Universal Service Administrative Company, filed August 31, 1999.

¹⁰ See *id.*

SLD prior to the expiration of the 28th day after it was posted on the SLD's web site.¹¹

4. In the instant Request for Review, North Country again argues that SLD's delay in posting Henderson's FCC Form 470 prevented Henderson from filing its FCC Form 471 in a manner that complied with the Commission's rules.¹² North Country faults SLD for delaying the posting of Henderson's Form 471 without accounting for such delay and claims that Henderson is unaware of any problems encountered by SLD that caused that delay.¹³

5. We affirm SLD's decision to deny Henderson's funding request on the basis that Henderson violated the 28-day posting requirement. Consistent with the Commission's rules, FCC Form 470 instructions clearly state that applicants must wait at least 28 days after the posting of FCC Form 470 on the SLD Web site before filing their FCC Form 471.¹⁴ Our examination of the record indicates that SLD received Henderson's FCC Form 470 on December 14, 1998, and posted the form on its website on March 9, 1999.¹⁵ Consistent with the 28-day rule, as part of this posting, SLD indicated that the earliest date on which Henderson could submit its Form 471, was April 6, 1999.¹⁶ Henderson, however, submitted its FCC Form 471 on March 29, 1999.¹⁷

6. The record further indicates that the delay in posting the form to the SLD website was caused by the filing of a defective FCC Form 470 by Henderson. Specifically, Henderson left certification items 24, 25, and 26 blank on its Form 470.¹⁸ The record reflects that, in an effort to notify Henderson of this omission, SLD telephoned Henderson on eleven separate occasions between December 1998 and March 1999 without success.¹⁹ In light of the thousands of

¹¹ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Yvonne Reff, North Country Library System, dated May 29, 2000 (Administrator's Decision on Appeal).

¹² See Request for Review.

¹³ See *id.*

¹⁴ See Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form (FCC Form 470) (December 1998) (Form 470 Instructions) at page 3.

¹⁵ See Schools and Libraries Universal Service, Description of Services Requested and Certification Form (Aug. 8, 2000) <<http://www.sl.universalservice.org>>.

¹⁶ After SLD has completed data entry of an applicant's FCC Form 470, SLD notifies the applicant by letter of its allowable contract date.

¹⁷ See Schools and Libraries Service Program, Services Ordered and Certification Form, 471 Application Display (Aug. 8, 2000) <<http://www.sl.universalservice.org>>.

¹⁸ See FCC Form 470, Henderson Free Library, filed Dec. 9, 1998; 47 C.F.R. § 54.504(b)(2) (establishing the certification process for Form 470).

¹⁹ See Schools and Libraries Service Program, Callback Detail For Problem Resolution and Problem Resolution Form Detail Log, Henderson Free Library, Funding Year 1999-2000.

applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding and complying with all the relevant program rules and procedures.²⁰ It therefore is incumbent on the applicant to ascertain the date its Form 470 has been posted, so that it can wait the appropriate period of time before entering into an agreement.²¹

6. We conclude, moreover, that North Country has not presented adequate grounds for grant of a waiver of the 28-day posting requirement. We have strictly enforced both the 28-day posting requirement and the section 54.507(g) filing window deadline.²² Only in rare cases, have we granted waivers of these rules.²³ In those instances, the applicants properly submitted their FCC Form 470 but SLD failed to post them to its web site in a timely manner causing the waiting period to extend past the filing window deadline.²⁴ In this instance, however, Henderson's defective Form 470, not SLD, caused the posting delay. Therefore, a waiver of the Commission's rules is not warranted.

²⁰ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association*, File No. SLD-13364, CC Dockets No. 96-45 and 97-21, Order, DA 00-2630 (Com. Car. Bur. rel. Nov. 24, 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").

²¹ In this case, although SLD was under no obligation to notify Henderson of its incomplete Form 470, SLD made repeated attempts to do so.

²² See *Request for Review by Minor High School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association*, File No. SLD-139210, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 13,790 (Com. Car. Bur. 2000) (affirming denial of request for funding based on violation of the 28-day posting requirement where applicant signed Form 471 one day before expiration of 28-day waiting period); *Request for Review by Currituck County Schools*, File No. SLD-111040, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 5564 (Com. Car. Bur. 2000) (denying waiver of 28-day posting requirement where applicant signed contracts one day before expiration of 28-day waiting period). Section 54.507(g) provides, among other things, that applicants filing Form 471 application during a filing window receive priority for support over applicants that file after the window has closed. 47 C.F.R. § 54.507(g).

²³ See *Request for Waiver by Council Bluffs Community Schools*, File No. SLD-E007282, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 18,836 (Com. Car. Bur. 2000); *Request for Review by Runnemedede Public Schools*, File No. SLD-154153, CC Dockets No. 96-45 and 97-21, Order, DA 99-2957 (Com. Car. Bur. rel. Dec. 21, 1999) (*Runnemedede*).

²⁴ See *id.*

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by North Country Library System, Watertown, New York, on behalf of Henderson Free Library, Henderson, New York, on June 9, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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