

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

In the Matter of)	
)	
Request for Review by)	
)	
Jennings City Library)	File No. SLD-250234
Jennings, Kansas)	
)	
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 Associations, Inc.)	

ORDER

Adopted: June 27, 2002

Released: June 28, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review by Jennings City Library (Jennings), Jennings, Kansas, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Specifically, Jennings requests review of a determination that Jennings filed its application outside the Funding Year 4 filing window for discounts under schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the Request for Review. To the extent that Jennings requests a waiver of the Commission's rules, we deny that request as well.

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 Administrator a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from Sonya A. Gillespie, Jennings City Library, to Federal Communications Commission, filed August 14, 2001 (Request for Review).

² See Request for Review. See also Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sonya A. Gillespie, Jennings City Library, dated July 26, 2001 (Administrator's Decision on Waiver Request). Section 54.719(c) of the Commission's rules 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).

³ 47 C.F.R. §§ 54.501–54.503.

technological needs and the services for which it seeks discounts.⁴ Once the applicant has 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.⁵ In the FCC Form 471 instructions, SLD has clearly set forth its standards for processing a FCC Form 471 application.⁶ Specifically, the FCC Form 471 instructions state that if a school or library does not provide the information requested, "the processing of your application may be delayed or your application may be returned to you without action."⁷

3. Section 54.507(c) of the Commission's rules states that fund discounts will be available on a first-come, first-served basis.⁸ The Commission's rules also allow the Administrator to implement an initial 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.⁹ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.¹⁰ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. In Funding Year 4, the window closed on January 18, 2001.¹¹

4. Applicants may file their FCC Form 471 electronically.¹² In order to have successfully completed the submission of the FCC Form 471 application in Funding Year 4, applicants who filed electronically must also have completed and mailed to SLD the Item 21 description of services, and a paper copy of the Block 6 certification, the latter of which applicants must also have signed.¹³ Prior to Funding Year 4, the deadline by which these items 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 and attachments thereafter. 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.¹⁴ This procedural change protects

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ 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). *See also* 47 C.F.R. § 54.504(c).

⁷ Form 471 Instructions at 2.

⁸ 47 C.F.R. § 54.507(c).

⁹ *Id.*

¹⁰ 47 C.F.R. § 54.507(g).

¹¹ In Funding Year 4, SLD processed applications as "in-window," if they were postmarked by January 18, 2001. *See* SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for Funding Year 4, <<http://www.sl.universalservice.org/reference/471mps.asp>> (Funding Year 4 Minimum Processing Standards).

¹² Form 471 Instructions at 4-5.

¹³ Block 6 is the section of the FCC Form 471 where applicants must sign the form and make certifications required under program rules. *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000).

¹⁴ *See* SLD website, What's New (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/110200.asp#110200>>.

applicants from excessive mail delays. Consequently, SLD notified all potential applicants that all Block 6 certifications and Item 21 attachments must also be postmarked no later than the close of the filing deadline.¹⁵

5. Jennings submitted the electronic portion of its FCC Form 471 on January 18, 2001.¹⁶ Jennings states that it delivered its “application 471” to the post office on January 18, 2001.¹⁷ However, Jennings does not explain whether that refers to the Block 6 certification page and/or Item 21 attachments, and does not specifically discuss the certification page or attachments in its Request for Review. The record before us shows that Jennings’s Block 6 certification page and Item 21 attachments were postmarked January 19, 2001.¹⁸ Jennings offers the following assertions to support its claim that it sent its “application” on January 18, 2001: (1) the assertion that its librarian’s notes indicate it was sent; (2) the assertion that its librarian spoke to the post office and confirmed that 34 cents was withdrawn from the library’s account that day; and (3) the assertion that, in a conversation after the window closed, an SLD representative agreed that the application was postmarked on that date.¹⁹ In addition, Jennings notes that it is important for the small rural library that it receives support from the schools and libraries funding mechanism.²⁰ We treat the latter argument as support for Jennings’s implicit request for waiver of the Commission’s rules.

6. Based on our review of the record, we find that Jennings filed its Block 6 certification page and Item 21 attachments outside the filing window, causing its entire application to be filed outside the window. As noted above, the Block 6 certification page and Item 21 attachments were postmarked on January 19, 2001, and were therefore ineligible to be considered within the filing window. We are not persuaded by Jennings’s assertion to the contrary. Jennings has not offered any evidence that outweighs the proof of the postmark.²¹ Furthermore, Jennings’s claim as to what an SLD representative said after the filing deadline had passed is not relevant here.²² Faced with the postmark on the envelope, and no documentation to the contrary, we are not persuaded by Jennings’s claim that the Block 6 certification and Item 21 attachments were timely

¹⁵ *Id.*

¹⁶ FCC Form 471, Jennings City Library, filed January 18, 2001 (Jennings Form 471) (electronic copy).

¹⁷ Request for Review.

¹⁸ Jennings Form 471 (postmarked envelope).

¹⁹ Request for Review.

²⁰ *Id.*

²¹ The Commission’s rules state that an applicant seeking review of a decision made by the Administrator shall submit to the Commission a statement of relevant material facts with supporting affidavits and documentation. 47 C.F.R. § 54.721(b). Jennings does not offer any documents to support its assertions.

²² By way of explanation, we note that the SLD online filing system automatically places the date of electronic submission of the FCC Form 471 in a data field titled “Appl. Postmark Date.” However, for electronic filings that field only lists the date when the electronic portion of the application was submitted. There are separate fields that SLD completes with the dates when the certification page and attachments were postmarked after they are filed. In the case of the Jennings FCC Form 471, the latter two fields are blank.

filed on January 18, 2001.²³ Therefore, we deny the Request for Review.

7. To the extent that Jennings requests a waiver of the Commission's rules, we conclude that Jennings has not demonstrated a sufficient basis for doing so. A waiver is not appropriate unless 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.²⁴ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.²⁵ Jennings states that the discounts from the program are important to the library.²⁶ We have held in the past that an applicant's assertion that a denial of an application may have a detrimental impact on a particular school or library does not create the special circumstances that warrant waiver of the Commission's rules.²⁷ Therefore, we find that Jennings has failed to demonstrate good cause necessary to justify waiving the filing window deadline.

8. 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 Request for Review filed by Jennings City Library, Jennings, Kansas, on August 14, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

²³ Jennings's arguments concerning the date on which money was withdrawn from its account, without more, cannot overcome the documentary evidence of a postmark that demonstrates conclusively the late filing of the paper portion of the Form 471.

²⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁵ *Id.* (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

²⁶ Request for Review.

²⁷ *See Request for Review by Northern Waters Library Service, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-183124, CC Docket Nos. 96-45 and 97-21, Order, DA 02-227 (Com. Car. Bur. rel. Jan. 30, 2002) (denying a request for waiver of the Commission's rules based on the assertion that denial would cause the applicant hardship); *Request for Review by Lansingburgh 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-109845, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 6999 (Com. Car. Bur. 1999) ("To simply advert...to its limited resources and the needs of its students, does not distinguish its situation from other applications the SLD must process each funding year in accordance with its filing deadlines.").