

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

In the Matter of)	
)	
Request for Review by)	
)	
Minneapolis Public Schools)	
Minneapolis Minnesota Special School)	File Nos. SLD-246006, SLD-225073,
District No. 1)	SLD-257346, SLD-258498
Minneapolis, Minnesota)	
)	
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 filed by Minneapolis Public Schools (Minneapolis Public) on behalf of Minneapolis Special School District No. 1 (District No. 1), Minneapolis, Minnesota, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Minneapolis Public requests review of the determination that four applications filed by District No. 1 were filed outside the Funding Year 4 filing window for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Minneapolis Public's Request for Review. To the extent that Minneapolis Public 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

¹ Letter from Carol Johnson, Minneapolis Public Schools, on behalf of Minneapolis Special School District No. 1, to the Federal Communications Commission, filed September 10, 2001 (Request for Review).

² See Request for Review. See also Letters from Schools and Libraries Division, Universal Service Administrative Company, to Daniel Cincoski, Minneapolis Public Schools, dated August 13, 2001 (Administrator's Decisions 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.

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 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 A commitment of support is contingent upon the timely filing of the applicants' completed FCC Form 471.¹⁴ 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

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 Form 471 Instructions at 3-6.

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.¹⁵ This procedural change protects 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.¹⁶

5. District No. 1 filed the electronic portion of its FCC Forms 471 with SLD on January 18, 2001.¹⁷ In its Request for Review, Minneapolis Public does not provide a date when the Block 6 certification pages and Item 21 attachments were mailed, but concedes that they were mailed subsequently.¹⁸ Although there is no clear postmark in the record on the copy of the envelope that contained the certification pages and attachments, the record demonstrates that SLD received these envelopes on February 2, 2001, more than two weeks after the close of the window.¹⁹ In July 2001, SLD mailed postcards to District No. 1 stating that its applications, Block 6 certification pages, and/or Item 21 attachments were postmarked after the 2001-2002 filing window closed on January 18, 2001.²⁰

6. On appeal, Minneapolis Public has not contested, and, in fact, concedes that SLD's finding that its Block 6 certifications and Item 21 attachments were postmarked after January 18, 2001. Rather, Minneapolis Public asserts that District No. 1 met the January 18, 2001 deadline by filing the electronic portion of its FCC Form 471. Alternatively, Minneapolis Public asserts as a justification for the untimely filings, that adequate notice of the change in filing procedure was not given, and that, furthermore, incorrect information was provided by SLD.²¹ In addition, Minneapolis Public claims that the denial of the application as timely filed has resulted in harm. We treat the alternative assertion and related claims as support for Minneapolis Public's request for a waiver.

7. Based on our review of the record, we find that District No. 1 filed its Block 6 certification pages and Item 21 attachments outside the filing window, causing the entire applications to be considered outside the window. Minneapolis Public concedes that its Block 6 certification pages and Item 21 attachments were postmarked after January 18, 2001, and were therefore ineligible to be considered within the filing window. We reject Minneapolis Public's assertion that there was insufficient notice of the deadline. There were several ways in which SLD notified applications about the change. The FCC Form 471 instructions refer applicants to

¹⁵ See SLD website, What's New (November 2, 2000) <<http://www.sl/universalservice.org/whatsnew/110200.asp#110200>> (SLD Year 4 Change Notice).

¹⁶ *Id.*

¹⁷ FCC Forms 471, Minneapolis Public Schools District No. 1, filed January 18, 2001 (District No. 1 Forms 471) (electronic copies).

¹⁸ Request for Review at 2 ("mailed the application that contained the signatures immediately after that date" of January 18, 2001).

¹⁹ District No. 1 Form 471 (bar code sticker on certification pages dated February 2, 2001).

²⁰ See Postcards from Schools and Libraries Division, Universal Service Administration, to Jerry Dalluge, Minneapolis School District No. 1, dated July 12 and 24, 2001 (for applications SLD-246006, SLD-225073, SLD-257346, and SLD-258498).

²¹ *Id.*

the SLD Client Service Bureau or its website for annual filing deadline dates.²² 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.²³

8. In addition, SLD further notified applicants about the postmark deadline: (1) through a November 6, 2000 letter mailed to 61,000 applicants, including previous applicants;²⁴ (2) through a press release distributed on November 2, 2000, to approximately 100 news outlets;²⁵ and (3) by posting several other notifications in different areas on the SLD website.²⁶ We therefore reject Minneapolis Public's argument that there was not adequate notice of the requirement that Block 6 certification pages and Item 21 attachments be postmarked by January 18, 2001.

9. Minneapolis Public also claims that incorrect information was provided by SLD to a consultant for Minneapolis Public. Specifically, Minneapolis Public asserts that SLD's representatives stated that the supporting documentation did not have to be postmarked by the deadline as long as the FCC Form 471 was submitted electronically by January 18, 2001.²⁷ It is well established that an applicant's claim of receiving incorrect advice from SLD is insufficient to merit a waiver of the Commission's rules.²⁸ Therefore, we conclude that Minneapolis Public's claim of receiving incorrect advice from SLD does not amount to erroneous notice. We reject Minneapolis Public's argument that incorrect advice would relieve District No. 1 of the requirements clearly presented in the documentation described above. Therefore, we find that District No. 1's complete application was not timely filed and deny the instant Request for Review.

²² Form 471 Instructions.

²³ See SLD Year 4 Change Notice.

²⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to applicants, dated November 6, 2000. SLD records indicate that a copy of the letter was mailed to Laurene Rohn at Minneapolis School District 1.

²⁵ "Window Opens For Year Four E-rate Applications," Schools and Libraries Division, Universal Service Administrative Company, Press Release, November 2, 2000.

²⁶ See, e.g., SLD website, Program Description for the 2001-2002 Funding Year (November 2000) at 1, 4-5, 14-15 <<http://www.sl.universalservice.org/data/doc/ProgramDescriptionY4.doc>>; Funding Year 4 Minimum Processing Standards at 3.

²⁷ Request for Review.

²⁸ See *Request for Review by Smackover Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-205330, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2963, para. 8 (Com. Car. Bur. rel. December 19, 2001).

10. To the extent that Minneapolis Public requests a waiver of the Commission's rules, we conclude that Minneapolis Public has not demonstrated a sufficient basis for such waiver. Minneapolis Public claims that harm resulted because 1) notification of the rejection was untimely and therefore District No. 1 was prevented from taking other actions, 2) there is a loss of anticipated revenue that will have a harmful impact upon the students and staff of the area, and 3) the budget for District No. 1 was adopted under the assumption that the applications would be funded again.²⁹ Minneapolis Public asks if it is reasonable and appropriate for SLD to reject the application when the sole reason for the decision is that the paper material was submitted after the due date set by SLD rules.

11. 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.³⁰ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.³¹

12. We are not persuaded that any of Minneapolis Public's justifications rise to the level of good cause sufficient for the Commission to waive its rules. SLD is not under any duty to inform applicants within a set time period of its decision not to grant an application. Secondly, Minneapolis Public's assertion that denial of its application may have a detrimental impact on students and staff does not create the special circumstances or particular facts that warrant a waiver of the Commission's rules.³² Finally, SLD had not made any type of funding commitment to Minneapolis Public for Funding Year 4, therefore we reject any claim that Minneapolis Public relied upon SLD's approval of Minneapolis Public's applications in previous funding years. As a result, none of these arguments rises to the level of good cause necessary to justify a waiver our rules.

13. 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.³³ The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Moreover, as explained above, applicants were on notice well before the close of the filing

²⁹ Request for Review.

³⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³¹ *Id.* (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

³² 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.").

³³ See *Request for Review by Winnebago Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-196317, SLD-196417, SLD-196438, SLD-196460, SLD-196469, SLD-196478, SLD-196481, SLD-196491, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 20966 (Com. Car. Bur. 2001), para. 8.

window in Funding Year 4 that certifications for FCC Forms 471 must be postmarked no later than the close of the filing window.³⁴ 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. We therefore find no basis for waiving the filing window deadline.

14. 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 Minneapolis Public Schools on behalf of Minneapolis Special School District No. 1, Minneapolis, Minnesota, on September 10, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

³⁴ See *supra* paras. 7, 8.