

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

In the Matter of)	
)	
Request for Review by)	
)	
Randolph School District)	File No. SLD-253456
Randolph, Vermont)	
)	
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 Randolph School District (Randolph), Randolph, Vermont.¹ Randolph seeks review of a determination by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) that Randolph's application was filed outside the filing window for Funding Year 4.² For the reasons set forth below, we deny Randolph's Request for Review. To the extent that Randolph 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 technological needs and the services for which it seeks discounts.⁴ Once the applicant has

¹ Letter from Stephen Metcalf, Randolph School District, to the Federal Communications Commission, filed September 10, 2001 (Request for Review).

² See Request for Review. See also Letter from Schools and Libraries Division, Universal Service Administrative Company, to Stephen Metcalf, Randolph School District, dated August 13, 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.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

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 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

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.

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

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. Randolph filed the electronic portion of its FCC Form 471 with SLD before the close of the filing window at 11:59 Eastern Standard Time on January 18, 2001.¹⁷ Randolph states that it mailed its Block 6 certification page on January 19, 2001, one day after the filing window closed.¹⁸ The copy in the record of the envelope sent to SLD enclosing the certification page and attachments has a postmark of January 22, 2001.¹⁹ In July, SLD informed Randolph that its application, Block 6 Certifications, and/or Item 21 attachments were postmarked after the 2001-2002 filing window closed on January 18, 2001.²⁰

6. On appeal to the Commission, Randolph concedes that its Block 6 certification page was filed after the close of the filing window.²¹ Randolph asserts, as a justification for its untimely filings, that it did not have sufficient notice from SLD's website as of October 2000 that the Block 6 certification page needed to be postmarked by January 18, 2001.²² In support of its contention, Randolph claims that SLD posted instructions and then changed them substantively in addition to the filing dates. Randolph states that it followed the directions posted on the SLD website as of October 2000 and did not have reason to anticipate that they would change within that funding year. Randolph argues that the instructions for the form, including the section titled "Electronic Filing," contained no statement that the paper form had to meet any postal deadline.²³ Randolph also notes that the Receipt Notification Letter for the FCC Form 470 from SLD dated December 11, 2000, did not mention the postmark deadline either. In addition, Randolph argues that the policy is unfair and harms the school. We treat the latter argument as support for Randolph's implicit request for a waiver of the Commission's rules.

7. Based on our review of the record, we find that Randolph filed its Block 6 certification page and Item 21 attachments outside the filing window, causing the entire application to be filed outside the window. As noted above, the record shows that Randolph's Block 6 certification page and Item 21 attachments were postmarked after January 18, 2001, and were therefore ineligible to be considered within the filing window.

8. We reject Randolph's claims that there was insufficient notice of the deadline. Specifically, SLD notified applications about the change in deadline in a variety of ways. The

¹⁶ *Id.*

¹⁷ FCC Form 471, Randolph School District, to the Federal Communications Commission, filed January 18, 2001 (Randolph Form 471) (electronic copy).

¹⁸ Request for Review (attaching copy of Letter from Stephen Metcalf, Randolph Elementary School, to the Schools and Libraries Division, Universal Service Administrative Company, dated July 25, 2001 (SLD Appeal Letter)). Randolph filed the SLD Appeal Letter with SLD on July 30, 2001. SLD Appeal Letter (file copy).

¹⁹ Randolph Form 471.

²⁰ Postcard from Schools and Libraries Division, Universal Service Administration, to Stephen Metcalf, Randolph School District, dated July 24, 2001.

²¹ *See* Request for Review.

²² *Id.*

²³ *Id.* (*see* SLD Appeal Letter).

FCC Form 471 instructions from October 2000 refer applicants to the SLD Client Service Bureau or its website for information about annual filing deadline dates.²⁴ SLD notified applicants about the postmark deadline in the following ways: (1) through a November 6, 2000 letter mailed to 61,000 applicants, including previous applicants;²⁵ (2) through a press release distributed on November 2, 2000, to approximately 100 news outlets;²⁶ and (3) by posting several other notifications in different areas on the SLD website.²⁷ On November 2, SLD posted notices on the website which explicitly informed applicants of the postmarking deadline.²⁸

9. Randolph acknowledges the November 2, 2000 notice, but claims that an applicant should not be penalized for beginning preparations early and using material found on the website in October.²⁹ We note again that the instructions said to check the website for later updates as to deadline information. In addition, there was a notice of the postmarking deadline posted by SLD in January of 2001, which Randolph could have seen when it entered the website to file its application online.³⁰ We reject Randolph'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. Therefore, we find that Randolph's complete application was not timely filed and deny the instant Request for Review.

10. To the extent that Randolph requests a waiver of the Commission's rules, we conclude that Randolph has not demonstrated a sufficient basis for such waiver. Randolph claims it has suffered a penalty in the form of lost revenue and that this in turn will have a harmful impact upon the small rural district of Vermont in which Randolph is located.³¹ Randolph also questions the purpose of the strict January deadline when it took SLD until July to complete its review of the applications.

11. A waiver is not appropriate unless special circumstances warrant a deviation from

²⁴ Form 471 Instructions.

²⁵ 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 Stephen Metcalf at the Randolph School District.

²⁶ "Window Opens For Year Four E-rate Applications," Schools and Libraries Division, Universal Service Administrative Company, Press Release, November 2, 2000.

²⁷ 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.

²⁸ See SLD Year 4 Change Notice ("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").

²⁹ Request for Review.

³⁰ SLD website, Urgent Reminder of Filing Requirements for Year 4 (January 12, 2001), <<http://www.sl.universalservice.org/whatsnew/012001.asp#011201>>("All materials associated with Form 471 must be postmarked no later than January 18").

³¹ Request for Review.

the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.³² A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.³³ In requesting funds from the schools and libraries universal service support mechanism, 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.³⁴

12. We are not persuaded that any of Randolph's justifications rise to the level of good cause sufficient for the Commission to waive its rules. We have held that an applicant's assertion that denial of its application may have a detrimental impact does not create the special circumstances that warrant a waiver of the Commission's rules.³⁵ Therefore, we reject Randolph's argument that the rule should be waived because the local community would suffer for lack of the discounts. We also must reject Randolph's argument based on an alleged "penalty." Randolph only applied for discounts under the universal service support mechanism, and therefore did not possess the funding it claims to have lost. As such, no "penalty" was imposed on Randolph. Furthermore, we reject the assertion that SLD's delay in informing Randolph of the status of the filing invalidates the need for a filing window. The length of time it takes SLD to inform applicants that they did not file within that window is not related to the purpose of having a filing window.³⁶ Moreover, as we explain above, applicants were on notice well before the close of the filing window in Funding Year 4 that certifications for FCC Forms 471 must be postmarked no later than the close of the filing window.³⁷

13. 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.³⁸ 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. We therefore find no basis for waiving the filing

³² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³³ *Id.* (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

³⁴ 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, 196417, 196438, 196460, 196469, 196478, 196481, 196491, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 20966 (Com. Car. Bur. 2001), para. 8.

³⁵ 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.").

³⁶ See *supra* paras. 3, 4.

³⁷ See *supra* paras. 7, 8.

³⁸ 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, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), para. 8.

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 Randolph School District, Randolph, Vermont, on September 10, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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