

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

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| In the Matter of |) | |
| |) | |
| Request for Review by |) | |
| |) | |
| School Administration District 53 |) | File No. SLD-247037 |
| Pittsfield, Maine |) | |
| |) | |
| 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 School Administration District 53 (Pittsfield), Pittsfield, Maine.¹ Pittsfield seeks review of a determination by the Schools and Libraries Division of the Universal Service Administrative Company (Administrator) that Pittsfield's funding application was filed outside the filing window for Funding Year 4.² For the reasons set forth below, we deny the Request for Review. To the extent that Pittsfield requests a waiver of the 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 Richard K. Woodbury, School Administration District 53 (Pittsfield), to Federal Communications Commission, filed August 15, 2001 (Request for Review).

² See Request for Review. See also Letter from Schools and Libraries Division, Universal Service Administrative Company, to Richard K. Woodbury, School Administration District 53, dated August 3, 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 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 successfully complete the submission of the FCC Form 471 application, applicants who file electronically must also complete and mail 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 protects applicants from excessive mail

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).

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. We note that there were several ways in which SLD notified applications about the change in deadline. The FCC Form 471 instructions refer applicants to the SLD Client Service Bureau or its website for annual filing deadline dates.¹⁷ 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.¹⁸

6. 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;¹⁹ (2) through a press release distributed on November 2, 2000, to approximately 100 news outlets;²⁰ and (3) by posting several other notifications in different areas on the SLD website.²¹

7. Pittsfield filed the electronic portion of its FCC Form 471 on January 18, 2001.²² Pittsfield states that it understood that filing the main form online within the window would place the entire filing within the window.²³ Pittsfield's Block 6 certification page and Item 21 attachments were postmarked on January 19, 2001.²⁴ Pittsfield acknowledges mailing the paper components of its FCC Form 471 application on January 20, 2001.²⁵ Nonetheless, Pittsfield states that because the electronically filed portion of its FCC Form 471 was sent within the required time frame, its application should be approved for funding.²⁶ SLD sent a postcard to

¹⁶ *Id.*

¹⁷ Form 471 Instructions.

¹⁸ *See* SLD Year 4 Change Notice.

¹⁹ 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 Mike Gallagher at School Administrative District 53.

²⁰ "Window Opens For Year Four E-rate Applications," Schools and Libraries Division, Universal Service Administrative Company, Press Release, November 2, 2000.

²¹ *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.

²² FCC Form 471, School Administration District 53, filed January 18, 2001 (Pittsfield Form 471) (electronic copy).

²³ Request for Review.

²⁴ Pittsfield Form 471 (postmarked envelope).

²⁵ *See* Request for Review.

²⁶ *Id.*

Pittsfield indicating that its application was filed outside the 2001-2002 filing window.²⁷

8. On appeal to the Commission, Pittsfield concedes that its Block 6 certification page and Item 21 attachments were filed after the close of the filing window.²⁸ However, Pittsfield does not concede that this caused the entire application to be filed outside the window. Instead, Pittsfield asserts that it met the January 18, 2001 deadline by filing the electronic portion of its FCC Form 471 on January 18, 2001.

9. Based on our review of the record, we find that Pittsfield 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 certification page and attachments was postmarked on January 19, 2001, and were therefore ineligible to be considered within the filing window. Therefore, we deny the instant Request for Review.

10. To the extent that Pittsfield requests a waiver of the Commission's rules, we conclude that Pittsfield has not demonstrated a sufficient basis for such waiver. Pittsfield claims that it was under the impression that the deadline was met if the electronically filed FCC Form 471 was submitted before the deadline passed.

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.²⁹ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.³⁰ We have held that misunderstanding does not relieve applicants of their responsibility to comply with the program.³¹

12. 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.³² As we explained above, applicants were on notice well before the close of the filing window in Funding Year 4 that certification pages and Item 21 attachments for FCC Forms 471 must be postmarked no later

²⁷ See Letter from Richard K. Woodbury, School Administration District 53, to Schools and Libraries Division, Universal Service Administrative Company, filed July 25, 2001 (acknowledging receipt of SLD postcard).

²⁸ See Request for Review.

²⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³⁰ *Id.* (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

³¹ See, e.g., *Request for Review by East Brunswick 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-276585, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2520 (Com. Car. Bur. rel. Oct. 31, 2001) (*East Brunswick*) (denying waiver request in case when employee handling forms resigned due to illness and new person did not know requirements). See also *Request for Review by St. Mary's Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-07-99.02000002, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 12936, para. 5 (Com. Car. Bur. 2001) (denying a waiver request to the extent it is requested due to misunderstanding of program rules).

³² 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.

than the close of the filing window.³³ The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. We therefore find no basis for waiving the filing window deadline

13. 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 School Administration District 53, Pittsfield, Maine, on August 15, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

³³ See *supra* paras. 4, 5.