

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

In the Matter of)	
)	
Request for Review by)	
)	
Wilmington Public Schools)	File No. SLD-254818
Wilmington, Massachusetts)	
)	
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 Wilmington Public Schools (Wilmington), Wilmington, Massachusetts, seeking review of a decision by the Schools and Libraries Division of the Universal Service Administrative Company (Administrator).¹ Specifically, Wilmington requests review of a determination that Wilmington filed its application outside the filing window for Funding Year 4 of the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the Request for Review and affirm the Administrator's decision. To the extent that Wilmington requests a waiver of our filing deadline, 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 Louise Leland, Wilmington Public Schools, to the Federal Communications Commission, filed February 27, 2002 (Request for Review).

² See Request for Review. See also Letter from Schools and Libraries Division, Universal Service Administrative Company, to Louise Leland, Wilmington Public Schools, dated January 21, 2002 (Administrator's Decision Letter on Appeal). 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 have also 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. Wilmington filed the electronic portion of its FCC Form 471 on January 18, 2001.¹⁷ Wilmington concedes that it mailed the Block 6 certification page and Item 21 attachments on January 19, 2001.¹⁸ On January 21, 2002, SLD sent a letter rejecting Wilmington's appeal on the grounds that the Block 6 certification page and attachments were postmarked after the 2001-2002 filing window closed on January 18, 2001.¹⁹

6. On appeal to the Commission, Wilmington states that it filed within the window because the electronic portion of its FCC Form 471 was submitted before the deadline expired.²⁰ Wilmington also claims that it followed oral directions from SLD. Specifically, Wilmington claims that SLD representatives indicated that as long as the online deadline was met, the paper components of the FCC Form 471 application could be filed later. Wilmington also argues that the timeliness of its FCC Form 471 application notwithstanding, its need for resources from the schools and libraries universal service mechanism should be the determining factor. We treat the latter argument as support for Wilmington's implicit request for waiver of the filing deadline.

7. Based on our review of the record, we find that Wilmington filed its Block 6 certification page and Item 21 attachments outside the filing window, causing its entire application to be filed outside the window. The standard for whether an applicant met the priority funding deadline for Funding Year 4 is whether the entire application, complete with certification and attachments, was posted by the last day of the window. As noted above, SLD determined that the Block 6 certification page and Item 21 attachments were postmarked after the filing window closed, and was therefore ineligible to be considered within the filing window.

8. We emphasize that the deadline for the Block 6 certification pages and Item 21 attachments were clearly established and SLD notified applicants in several ways. SLD explicitly 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; (2) through a press release distributed on November 2, 2000, to approximately 100 news outlets;²¹ and (3) by

¹⁶ *Id.*

¹⁷ FCC Form 471, Wilmington Public Schools, filed January 18, 2001 (Wilmington Form 471) (electronic copy).

¹⁸ Request for Review. There is no legible postmark on the record before us to confirm when Wilmington mailed its Block 6 certification page and Item 21 attachments to SLD.¹⁸ However, the record shows that SLD received the material on February 1, 2001.¹⁸ We understand from SLD that the barcode date shows that the subject item was received by SLD three days prior to that date for mail sent within the continental United States, indicating that Wilmington did not mail the paper components of its Form 471 application until January 29, 2001. Therefore, in light of Wilmington's concession and the record before us, it is clear that the certification page and attachments were mailed after the filing window closed.

¹⁹ See Administrator's Decision Letter on Appeal.

²⁰ Request for Review.

²¹ "Window Opens For Year Four E-rate Applications," Schools and Libraries Division, Universal Service Administrative Company, Press Release, November 2, 2000.

posting several notices in different areas on the SLD website.²²

9. Wilmington claims that it received incorrect information concerning the deadlines from SLD's helpline.²³ We have consistently held that an applicant's claim of receiving incorrect oral advice from SLD is insufficient to merit a waiver of the Commission's rules.²⁴ Therefore, we reject Wilmington's argument that incorrect oral advice would relieve it of the requirements clearly established in the above instructions and notices, and deny the instant Request for Review.

10. Finally, to the extent that Wilmington requests a waiver of the Commission's rules, we conclude that Wilmington has not demonstrated a sufficient basis for waiving the Commission's rules. 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.²⁵ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.²⁶

11. Wilmington argues that it depends heavily on discounts from the schools and libraries universal support mechanism.²⁷ As we have held in the past, the 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.²⁸ Therefore, we find that Wilmington has not demonstrated special circumstances warranting a waiver of the Commission's rules.

²² 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. See also 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").

²³ Request for Review.

²⁴ *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).

²⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁶ *Id.* (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

²⁷ See Request for Review.

²⁸ 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.").

12. 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 Wilmington Public Schools, Wilmington, Massachusetts, on February 27, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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