

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Waiver by)	
)	
Frazier School District)	NEC.471.04-03-00.31200012
Perryopolis, Pennsylvania)	NEC.471.04-03-00.31200013
)	
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 Association, Inc.)	

ORDER

Adopted: January 11, 2002

Released: January 14, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by Frazier School District (Frazier), Perryopolis, Pennsylvania.¹ Frazier seeks a waiver, for Funding Year 2 (July 1, 1999-June 30, 2000) of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we grant Frazier's Waiver Request, and remand to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) in accordance with this Order.

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 SLD a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts. The Administrator must post the FCC Form 470 on its website, and the applicant is required to wait 28 days before making a commitment

¹ See Letter from Tom Shetterly, Frazier School District, to Federal Communications Commission, filed August 17, 2000 (Waiver Request).

² See *id.*

³ 47 C.F.R. §§ 54.502, 54.503.

with a selected service provider.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ The Commission's rules require that the applicant file a completed FCC Form 471 within a filing window established by the Administrator to be considered pursuant to the funding priorities for "in-window" applicants.⁶ All FCC Forms 471 that are filed within the window are considered as if they had arrived on the same day, and have priority over those received after the closing date of the window.⁷

3. Filings with the Commission that do not involve the schools and libraries universal service support mechanism are typically considered filed on the date that they are received by the Commission, rather than when postmarked by the applicant.⁸ Under SLD's procedures in effect for the first three funding years, applications that were not *received* by SLD by the close of the filing window were deemed to have missed the deadline.⁹ The deadline for Funding Year 2 was originally established as April 6, 1999.¹⁰ However, upon determining that uncommitted funds remained after processing all in-window applications, SLD extended the filing window deadline for Funding Year 2 to March 31, 2000.¹¹

4. Starting with the application process for Funding Year 4, SLD, in consultation with the Commission, directed that FCC Forms 471 would be considered filed when *postmarked*, not when received.¹² The new policy is designed to ensure that applicants are held harmless in the event of a failure of the postal system or courier to deliver the application within a reasonable period of time. SLD's new policy applies only starting in Funding Year 4, and does not apply retroactively to the first three funding years.

⁴ 47 C.F.R. §§ 54.504(b)(3) and (4); 54.511.

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. §§ 54.504(c); 54.507(c).

⁷ See 47 C.F.R. § 54.507(c).

⁸ See 47 C.F.R. § 1.7.

⁹ See, e.g., SLD website, What's New March 2000 (March 29, 2000) <<http://www.sl.universalservice.org/whatsnew/032000.asp#32900>>.

¹⁰ See, e.g., SLD website, What's New March 2000 (March 29, 2000) <<http://www.sl.universalservice.org/whatsnew/032000.asp#32900>>.

¹¹ *Id.*

¹² See 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).

5. In *Hardee County*, the Commission recently granted a waiver of its filing window deadline for the schools and libraries support mechanism to a limited number of applicants.¹³ Waiver is appropriate if 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.¹⁴ In *Hardee County*, the Commission directed that applicants with pending Waiver Requests for any of the first three funding years that could demonstrate that they had postmarked their FCC Forms 471 at least three days before the filing window deadline, or that they mailed the forms via guaranteed overnight courier at least one day before the deadline, would be deemed to have filed their FCC Forms 471 within the filing window.¹⁵ The Commission based its determination in large measure upon the fact that, beginning in Funding Year 4, applications are deemed filed when postmarked.¹⁶

6. In granting the waivers for applications in the first three funding years, the Commission provided fair treatment to applicants that exercised reasonable efforts to comply with then-existing procedures, by not penalizing them for long mail delivery delays. One application, for example, was not received until nine days after being mailed, two days past the deadline.¹⁷

7. After reviewing the record, we conclude that SLD should consider Frazier's FCC Forms 471 as filed within the window. Frazier provides a certified mail receipt indicating that it mailed its Funding Year 2 FCC Forms 471 on March 28, 2000, three days before the filing window closed on March 31, 2000.¹⁸ Because Frazier demonstrates that it mailed its forms at least three days before the filing window closed, in accordance with *Hardee County*, we direct SLD to consider its application as filed within the filing window.¹⁹

¹³ See *Request for Review by Hardee County School Board et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2978 (Com. Car. Bur. rel. December 20, 2001) (*Hardee County*).

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ See *Hardee County*.

¹⁶ See *id.*

¹⁷ See *id.* (citing Rosendale Waiver Request).

¹⁸ Facsimile from Tom Shetterly, Frazier School District, to Federal Communications Commission, filed December 19, 2001.

¹⁹ We note that SLD may determine that Frazier is ineligible for discounts for other reasons, such as failure to comply with other program rules, or lack of available funding for internal connections at lower discount levels. See 47 C.F.R. § 54.507.

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 Waiver Request filed by Frazier School District, Perryopolis, Pennsylvania on August 17, 2000 IS GRANTED to the extent provided herein, and Frazier's application IS REMANDED to SLD for further consideration in light of this decision.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau