

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

In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Tuxedo Park School	)	Billed Entity No. 11350
Tuxedo Park, New York	)	
	)	
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 Tuxedo Park School (Tuxedo), Tuxedo, New York.<sup>1</sup> Tuxedo seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we deny Tuxedo's Waiver Request.

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.<sup>3</sup> In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.<sup>3</sup> The Administrator must post the FCC Form 470 on its website, and the applicant is required to wait 28 days before making a

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<sup>1</sup> Letter from James T. Burger, Tuxedo Park School, to Federal Communications Commission, filed January 30, 2001 (Waiver Request).

<sup>2</sup> *Id.*

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> 47 C.F.R. § 54.504(b)(1), (b)(3).

commitment with a selected service provider.<sup>5</sup> 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.<sup>6</sup> The Commission's rules allow the Administrator to implement an internal 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.<sup>7</sup> Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.<sup>8</sup> It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Tuxedo requests a waiver of the Funding Year 3 application window, which closed on January 19, 2000 at 11:59 p.m. Eastern Standard Time.<sup>9</sup> Tuxedo first submitted its application to SLD on December 4, 2000. Tuxedo states that the lateness of the submission was due in part to an "administrative transition," and that the application was further delayed a few weeks because Tuxedo was unable to obtain the Service Provider Information Number (SPIN) for two of its service providers.<sup>10</sup>

4. We conclude that Tuxedo has not demonstrated a sufficient basis for waiving the Commission's rules. 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.<sup>11</sup>

5. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Tuxedo contends that it filed its application more than 10 months after the close of the filing window because of an "administrative transition." However, 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.<sup>12</sup> Tuxedo's internal

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<sup>5</sup> 47 C.F.R. § 54.504(b)(3), (4); § 54.511.

<sup>6</sup> 47 C.F.R. § 54.504(c).

<sup>7</sup> 47 C.F.R. § 54.507(c).

<sup>8</sup> 47 C.F.R. § 54.507(g).

<sup>9</sup> Waiver Request; SLD web site, What's New (December 6, 1999) <<http://www.sl.universalservice.org/whatsnew/121999.asp>>.

<sup>10</sup> Waiver Request, at 1.

<sup>11</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>12</sup> 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*, File No. SLD-13364, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), at para. 8 ("In light of the thousands of

administrative problems and its difficulty obtaining SPIN numbers thus offer no basis for a waiver.

6. Tuxedo also contends that it should receive a waiver because, “several months ago,” an SLD representative allegedly informed Tuxedo that its Funding Year 3 application had been granted, an error resulting from a confusion between Tuxedo and another applicant, Tuxedo Union Free School.<sup>13</sup> Tuxedo claims that this error was another reason it did not submit its application on time.<sup>14</sup> We decline to grant Tuxedo’s Waiver Request on those grounds. We find that Tuxedo could not have reasonably believed that an application it had not yet filed had already been granted. Further, it is established that, where a party has received erroneous information, the government is not estopped from enforcing its rules in a manner that is inconsistent with the information provided by the employee, particularly when relief is contrary to a rule.<sup>15</sup>

7. 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.<sup>16</sup> 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. Here, Tuxedo fails to present good cause as to why it could not timely file its application. We therefore find no basis for waiving the filing window deadline.

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applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.”).

<sup>13</sup> Waiver Request, at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990)).

<sup>16</sup> *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*, File No. SLD-13364, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Bur. 2000), at para. 8 (“In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.”).

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 Tuxedo Park School, Tuxedo Park, New York, on January 30, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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