

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Waiver by)	
)	
South Dakota Department of Education)	File No. SLD-204869
and Cultural Affairs)	
Pierre, South Dakota)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: February 5, 2004

Released: February 6, 2004

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Waiver filed by South Dakota Department of Education and Cultural Affairs, Pierre, South Dakota (South Dakota).¹ South Dakota requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).² For the reasons set forth below, we deny the Waiver Request.

2. In its decision, SLD determined that South Dakota’s application had been filed after the close of the January 17, 2002 FCC Form 471 filing window.³ South Dakota admits that the Block 6 certification page for the FRNs noted above was not dated and postmarked until January 18, 2002, one day after the filing window closed. South Dakota, however, requests a waiver of the Commission's rules because all of the data for these FRNs was filed electronically

¹ Letter from Tammy Bauck, South Dakota Department of Education and Cultural Affairs, to Federal Communications Commission, filed January 21, 2003 (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 Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. 54.719(c). The Waiver Request applies to the following Funding Request Numbers: 862390, 862159, 857858, 857960, 858210, 858302, 858389, 861594, 859666, and 869994.

² *Id.*

³ Postcard from Schools and Libraries Division, Universal Service Administrative Company, to Tammy Bauck, 700 Governor’s Drive, dated November 22, 2002. The record shows that South Dakota’s Block 6 Certification Page was postmarked on January 18, 2002.

before the filing window closed.⁴ South Dakota states that it is the only state that has taken on the tremendous responsibility of requesting support for all public schools in the entire state.⁵ South Dakota argues that this denial has put the entire state and all of its public school students at a significant disadvantage from the rest of the country.⁶

3. We find that a waiver is not appropriate. A waiver from the Commission 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.⁷ South Dakota indicates that it submitted its electronic application in a timely manner, but that only the Block 6 certification page was one day late. We do not believe that South Dakota has established good cause for waiver of the filing deadline.⁸ We have consistently held that it is the applicant who has responsibility ultimately for the timely submission of the application.⁹ SLD's website explicitly informed applicants that all materials associated with the Form 471, including the signed Block 6 certification, must be postmarked no later than January 17, 2002.¹⁰ Due to the lengthy nature of the application, South Dakota should have reasonably anticipated that it was imperative to begin the application process early, in order to allow adequate time to complete the application process before the deadline.¹¹

4. Further, we believe that the size and complexity of the application that an applicant chooses to submit to the Administrator does not establish good cause to waive the

⁴ See Waiver Request.

⁵ *Id.*

⁶ *Id.*

⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis), *cert. denied*, 409 U.S. 1027 (1972).

⁸ See, e.g., *Pacific Broadcasting Corp.*, Memorandum Opinion and Order, 68 FCC Rcd 845 (1978) ("Parties waiting until the last day to effect delivery of pleadings from out-of-town by common carrier run a considerable risk that unforeseen delay will render their pleadings untimely."); *Upshire County Broadcasting Co.*, 19 RR 21, 24 (1959) ("While an applicant is free to choose when it will file its application, if it withholds the filing of an application until a late date, it must be held to do so at its own peril.").

⁹ See, e.g., *Request for Waiver by Center City Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-325719, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 22424 (Wireline Comp. Bur. 2003).

¹⁰ See SLD website, Minimum Processing Standards and Filing Requirements for FY 5, <<http://www.sl.universalservice.org/reference/471mps.asp>>

¹¹ See, e.g., *Application for Review by Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 21521 (Wireline Comp. Bur. 2003) (*North Dakota Order*).

Commission's rules.¹² The schools and libraries universal service support mechanism was designed so that applicants, ranging in size and needs, could uniquely design applications that suit their community's needs for the technological development of their individual schools and libraries. We understand that larger requests for funding may result in more time consuming and complex applications. It remains the responsibility of the applicant, however, to assess the overall complexity of an application and weigh this approach against the overarching need to file an application that meets the requirements of our rules. Applicants, in general, and South Dakota, in particular, may choose to structure their applications in a manner that request more substantial amounts of support from the program. We do not believe that it is appropriate to waive the filing deadline on the basis of the size of an application, especially in light of the fact that the funding requests could have been filed in numerous other configurations, depending on the independent judgment of South Dakota.

5. Finally, South Dakota asserts that denial of its application may have a detrimental impact on the state and its public school students.¹³ We recognize that this application is important to the schools in South Dakota. It is incumbent on us, however, to take into consideration the impact that waiver of the filing deadline would have on the overall operation of the schools and libraries program, with both large and small applications. Most, if not all, applicants to the schools and libraries program, with both large and small applications, depend heavily on discounts from the schools and libraries mechanism. If that alone were grounds for granting a waiver, it is hard to imagine a circumstance where waiver would not be warranted, which would eviscerate the benefits of having a filing window at all. In light of this, we do not believe that the denial of South Dakota's application creates the special circumstances or particular facts that warrant a waiver of the Commission's rules.¹⁴ Therefore, we deny the Waiver Request.

¹² Similarly, the Commission has previously held that delay by an entity because of matters within its independent business judgment, and not to unforeseeable circumstances beyond the entity's control, must be considered within the entity's control. *See In Re Revocation of the Licenses of Password, Inc.*, 76 FCC 2d 465 (1980).

¹³ *See* Waiver Request.

¹⁴ *See, e.g., North Dakota Order*, 18 FCC Rcd 21521 (Wireline Comp. Bur. 2003) (finding that detrimental impact alone does not create special circumstances that warrant a waiver.); *Request for Review of the Decision of the Universal Service Administrator by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4035 ('While enforcement of these requirements has a harsh consequence for these particular applicants, the underlying policy... is critical to the integrity of the program.')

6. 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 South Dakota Department of Education and Cultural Affairs on January 21, 2003 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Narda M. Jones
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau