

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

In the Matter of)	
)	
Requests for Waiver by)	
)	
Freehold Regional High School District)	File No. SLD-335475
Englishtown, New Jersey)	
)	
Giltner Public Schools)	File No. SLD-308178
Giltner, Nebraska)	
)	
Gold Oak Union Elementary School District)	File No. SLD-272578
Placerville, California)	
)	
Pine Castle Christian Academy)	File No. SLD-285369
Orlando, Florida)	
)	
South Ripley Community School Corporation)	File No. SLD-325281
Versailles, Indiana)	
)	
Tallulah Falls School)	File No. SLD-272659
Tallulah Falls, Georgia)	
)	
Unified Niobrara-Lynch Schools)	File No. SLD-332580
Niobrara, Nebraska)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: February 24, 2004

Released: February 25, 2004

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division are requests to waive FCC Form 471 filing deadlines established by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) for discount applications under the schools and libraries universal service mechanism (E-rate).¹ The requests were filed by: Freehold Regional High School District (Freehold), Englishtown, New Jersey, Giltner Public Schools (Giltner), Giltner, Nebraska, Gold Oak Union Elementary School District (Gold Oak), Placerville, California, Pine Castle Christian Academy (Pine Castle), Orlando, Florida, South Ripley Community School

¹ 47 C.F.R. §§ 54.502, 54.503.

Corporation (Ripley), Versailles, Indiana, Tallulah Falls School (Tallulah), Tallulah Falls, Georgia, and Unified Niobrara-Lynch Schools (Niobrara-Lynch), Niobrara, Nebraska.² For the reasons set forth below, we deny the requests.

2. Each applicant concedes it missed the deadline for filing the E-rate application, FCC Form 471, and each requests a waiver of this deadline.³ The Commission may waive application of its rules, but only where special circumstances warrant a deviation from the general rule, and where strict compliance with the rule would be inconsistent with the public interest.⁴ We consistently have held applicants to a high standard before granting a waiver. Applicants are required to know the relevant rules of the E-rate program, and are ultimately responsible for the timely submission of their applications.⁵ Hence, neither employee illness, staff failure to perform a job properly, nor misunderstanding of the rules relieves applicants of their responsibility to comply with the Commission's rules and procedures.⁶ Even mistaken information from a SLD employee does not absolve an applicant from following the program rules.⁷ In keeping with our prior decisions, we

² Letter from John Martucci, Freehold Regional High School District, Englishtown, New Jersey, to the Federal Communications Commission, filed September 12, 2002 (Freehold Request for Review); Letter from Charlotte McEwen, Giltner Public Schools, Giltner, Nebraska, to the Federal Communications Commission, filed July 10, 2002 (Giltner Request for Review); Letter from Eddie Payne, Payne Services, representing Gold Oak Union Elementary School District, Placerville, California, filed March 11, 2002 (Gold Oak Request for Review); Letter from Connie Greene, Pine Castle Christian Academy, Orlando, Florida, to the Federal Communications Commission, filed August 9, 2002 (Pine Castle Request for Review); Letter from Mark Downard, South Ripley Community School Corporation, to the Federal Communications Commission, filed July 15, 2002 (South Ripley Request for Review); Letter from George Roller, Tallulah Falls School, Tallulah Falls, Georgia, to the Federal Communications Commission, filed February 28, 2002 (Tallulah Falls Request for Review); Letter from David Hamm, United Niobrara-Lynch Schools, to the Federal Communications Commission, filed June 13, 2002 (United Niobrara-Lynch Request for Review). See 47 C.F.R. § 54.719(c).

³ For Tallulah Falls and Gold Oak, the deadline for their Funding Year 2001 application was January 18, 2001. The deadline for the remaining applicants was January 17, 2002, for their Funding Year 2002 applications. See SLD website, What's New, December 2, 2000 and December 5, 2001, <<http://www.sl.universalservice.org/whatsnew.asp>>.

⁴ 47 C.F.R. § 1.3. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵ *Request for Waiver by Springdale 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-195867, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 3543, 3545 (Com. Car. Bur. 2002) (*Springdale Order*); *Request for Waiver by Dermott Special School District, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-252777, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 5091, 5093 (Com. Car. Bur. 2002) (*Dermott Order*).

⁶ *Request for Waiver by Duncan Public Library, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-325536, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 22430, 22431 (Wireline Comp. Bur. 2003) (*Duncan Order*); *Dermott Order*, 17 FCC Rcd 5091, 5093. See also *Request for Waiver by Art In Context, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-262426, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 5087, 5089 (Com. Car. Bur. 2002).

⁷ *Request for Waiver by Utica City School District, Schools and Libraries Universal Support Mechanism*, File No. SLD-328177, CC Docket No. 02-6, Order, DA 03-3476, para. 3 (Wireline Comp. Bur., rel. Nov. 3, 2003) ("[P]recedent is clear that even where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule.") (*Utica Order*). See also *Request for Waiver by Crispus Attucks Youthbuild Charter School, Schools and Libraries Universal Support Mechanism*, File No. SLD-312243, CC Docket No. 02-6, Order, DA 03-3523, para. 5 (Wireline Comp. Bur. rel. November 5, 2003) (*Crispus Attucks Order*).

determine that the applicants here have not demonstrated the special circumstances necessary for a waiver of our rules.

3. Freehold Regional High School District Freehold states that it submitted its Form 471 electronically, but did not realize until months later that SLD never received it.⁸ Applicants are responsible for the filing of their applications and the performance of their staff.⁹ SLD's Form 471 instructions clearly state that when applicants electronically certify their applications, they will receive a confirmation to ensure that the application has met any filing deadlines.¹⁰ Freehold also cites financial need as a special circumstance of its appeal, but financial need does not meet the requirement of special circumstances that warrant a rule waiver.¹¹ We therefore deny Freehold's Request for Review.

4. Giltner Public Schools Giltner states that it missed the Form 471 filing date because it had not filed its Form 470 in time to allow the required 28-day period for competitive bidding. Giltner indicates that it missed the Form 470 deadline because it requested a PIN to be sent to it by mail, so that it could file the Form 470 electronically, but Giltner did not request the PIN until the day before the Form 470 was due. Giltner says it found the instructions for getting a PIN from SLD confusing.¹² Applicants who wait until near the end of the filing process to file must accept the risk of "unexpected but reasonably foreseeable delays."¹³ Confusion by an applicant's staff does not constitute special circumstances for a waiver, and we therefore deny Giltner's Request for Review.¹⁴

5. Gold Oak Union Elementary School District Gold Oak states that it missed its Form 471 filing deadline because of confusion on the part of its filing representative, Payne Services, on the due date. Gold Oak also states that the post card notice of late-filing should have been sent to Payne Services, who was designated as its contact representative on its application, which was instead sent directly to Gold Oak. Gold Oak states that the postcard said that SLD was still

⁸ Freehold Request for Review, at 1-2.

⁹ *Requests for Waiver by Nederland Independent School District, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-274014, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 19544, 19545 (Wireline Comp. Bur. 2002) ("[W]e have consistently held that personnel disruptions, employee medical conditions or employee confusion or misunderstanding about SLD rules and deadlines do not rise to the level of special circumstances required for a waiver.") (*Nederland Order*).

¹⁰ *Crispus Attucks Order*, para. 4.

¹¹ Freehold Request for Review, at 2. *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, 7000 (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.") (*Lansingburgh Order*).

¹² Giltner Request for Review, at 1-2.

¹³ *Request for Waiver by Scottsdale Horizons School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-198744, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 654, para. 6 (Com. Car. Bur. 2002) (*Scottsdale Order*).

¹⁴ *Dermott Order*, 17 FCC Rcd at 5093.

considering funding late-filed applications.¹⁵ The fact that Gold Oak missed its filing due to a mistake by its consultant is not grounds for a waiver.¹⁶ The notice of late-filing to Gold Oak sent to the wrong address has no causal bearing on Gold Oak's prior failure to timely file its application.¹⁷ Nor is Gold Oak absolved of its status as an untimely filer because the postcard stated that post-filing-date applications might still be considered for funding. SLD subsequently determined funding was not available for late-filed applications.¹⁸ As a result, we deny Gold Oak's Request for review.

6. Pine Castle Christian Academy Pine Castle states that it missed the deadline because of a change of personnel in its staff.¹⁹ Pine Castle is responsible for the performance of its staff, and we do not assess how an applicant delegates responsibility to its employees.²⁰ As a result, we decline to grant a waiver of our rules in this case.

7. South Ripley Community School Corporation South Ripley failed to successfully file its FCC Form 470s in time to allow for the 28-day competitive bidding period before filing its FCC Form 471s. It indicates that it missed the Form 470 filing deadline because its original Form 470 filing was defective in that the wrong year was placed on the form.²¹ This is not grounds for missing the Form 471 deadline.²² South Ripley also cites financial need as a special circumstance of their appeals, but financial need does not warrant a waiver of our rules.²³ We therefore deny South Ripley's Request for Review.

8. Tallulah Falls Tallulah Falls also states that its internet service provider experienced a significant delay in obtaining a Service Provider Identification Number, which delayed its application. It is incumbent upon applicants to anticipate unexpected, yet reasonably foreseeable circumstances.²⁴ To the extent that applicants must rely on information from outside sources,

¹⁵ Gold Oak Request for Review. *See also* Letter of Appeal from Payne Services, representing Gold Oak Union Elementary School District, to the Schools and Libraries Division, USAC, dated August 25, 2001.

¹⁶ *Request for Review by Homer Community Consolidated S.D. 33C, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.70C.03-10-00.09700014, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 9353, 9354 (Com. Car. Bur. 2001).

¹⁷ *See Request for Waiver by Hasbrouck Heights 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-211183, CC Dockets No. 96-45 and 97-21, 18 FCC Rcd 4504, 4505 (Wireline Comp. Bur. 2003) ("Merely stating that a letter was not received at the address provided to SLD and to which prior correspondence had been successfully mailed is insufficient grounds for waiver.").

¹⁸ *See* 47 C.F.R. § 54.507(g)(1). *See also* the July 17, 2001 SLD announcement that it was funding only applications that were filed by the deadline, SLD website, <http://www.sl.universalservice.org/whatsnew/072001.asp>

¹⁹ Pine Castle Request for Review.

²⁰ *Nederland Order*, 15 FCC Rcd at 19545; *Duncan Order*, 17 FCC Rcd. at 22431.

²¹ South Ripley Request for Review.

²² *Utica Order*, para. 3.

²³ South Ripley Request for Review. *Lansingburgh Order*, 15 FCC Rcd at 7000.

²⁴ *See 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.

applicants are responsible for planning their application process accordingly, in order to ensure that their application is timely.²⁵ Tallulah Falls also states that upon the advice by telephone of SLD staff, it tried to file its application after the deadline, but was unsuccessful.²⁶ This does not justify a waiver of our rules. We therefore deny Tallulah Falls' waiver request.

9. Unified Niobrara-Lynch Schools Niobrara-Lynch stated that it missed the deadline because of staffing problems.²⁷ Staffing problems do not relieve applicants of their responsibility to comply with our rules and procedures.²⁸ Accordingly, Niobrara-Lynch's waiver request is denied.

10. 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 Requests for Waiver filed by Freehold Regional High School District, Englishtown, New Jersey, on September 12, 2002; Giltner Public Schools, Giltner, Nebraska, on July 10, 2002; Gold Oak Union Elementary School, Placerville, California, on March 11, 2002; Pine Castle Christian Academy, Orlando, Florida, on August 9, 2002; South Ripley Community School Corporation, Versailles, Indiana, July 15, 2002; Tallulah Falls School, Tallulah Falls, Georgia, on February 28, 2002; and Unified Niobrara-Lynch, Niobrara, Nebraska, on June 12, 2002, respectively, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, FCC 03-240, para. 13 (Wireline Comp. Bur. rel. Oct. 21, 2003).

²⁵ *Id.*

²⁶ Tallulah Falls Request for Review.

²⁷ United Niobrara-Lynch Request for Review.

²⁸ *Nederland Order*, 15 FCC Rcd at 19545. *Duncan Order*, 17 FCC Rcd at 22431.