

Federal Communications Commission

MAIL ROOM

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Pioneerland Library System)	File No. SLD-32103
Willmar, Minnesota)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER ON RECONSIDERATION

Adopted: February 13, 2001

Released: February 14, 2001

By the Common Carrier Bureau:

1. In this Order, the Common Carrier Bureau (Bureau) reconsiders, on its own motion, a Request for Review filed on June 25, 1999, by Pioneerland Library System (Pioneerland), of Willmar, Minnesota, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ In an order adopted on November 22, 1999, the Bureau denied Pioneerland's Request for Review as untimely.² We now conclude that we erroneously found Pioneerland's Request for Review to be untimely. For the reasons discussed below, we waive our rule requiring that any *sua sponte* reconsideration of an action taken under delegated authority must occur within 30 days of that action. In addition, we reconsider and grant Pioneerland's Request for Review on its merits, and remand Pioneerland's application to SLD for further processing.

¹ See Letter of Beth Lunn, Pioneerland Library System, to Federal Communications Commission, filed June 25, 1999.

² Request for Review of the Decision of the Universal Service Administrator by Pioneerland Library System, SLD-32103, CC Docket No. 96-45, Order, DA 99-2615 (rel. November 22, 1999).

I. BACKGROUND

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 During the first funding year (January 1, 1998 - June 30, 1999) of the support mechanism, SLD granted all approved requests for discounts for telecommunications services and Internet access and granted all approved requests for internal connections down to the 70 percent discount level.

3. By letter dated February 9, 1999, SLD denied Pioneerland's application for discount funding, on the ground that requests for internal connections were not funded at Pioneerland's discount level.⁴ Pioneerland appealed SLD's decision, stating that its application sought discounts for Internet access, rather than internal connections.⁵ In its Administrator's Decision on Appeal, SLD again denied Pioneerland's application for discounts.⁶ SLD explained that Pioneerland's request included the installation and maintenance of equipment that SLD considered internal connections. SLD reclassified Pioneerland's entire request as internal connections so as to avoid the possibility of treating priority two services (internal connections) as priority one services (telecommunications services and Internet access).⁷ As a result, SLD denied Pioneerland's funding request for the reclassified internal connections because it did not qualify for the threshold 70 percent discount.

4. On June 25, 1999, Pioneerland filed an Request for Review with the Commission. Because the file copy of the Administrator's Decision on Appeal indicated that it had been issued

³ 47 C.F.R. §§ 54.502, 54.503. Under the schools and libraries universal service mechanism, schools and libraries determine the discount for which they are eligible by consulting the "discount matrix" adopted by the Commission. 47 C.F.R. § 54.505(c). The discount matrix assigns the discount to an eligible entity based on the income level of students (using eligibility for participation in the National School Lunch Program as a proxy) and whether the entity is in a rural or urban area. 54 C.F.R. § 54.505(c). School districts, library systems, and consortia with multiple eligible entities determine the discount for which they are eligible by calculating a weighted average of the discounts available to their member entities. 54 C.F.R. § 54.505(b)(4).

⁴ See Letter of the Schools and Libraries Division, Universal Administrative Company, to Beth Lunn, Pioneerland Library System, dated February 9, 1999.

⁵ See Letter of Beth Lunn, Pioneerland Library System, to Schools and Libraries Division, Universal Service Administrative Company, dated February 16, 1999.

⁶ See Letter of the Schools and Libraries Division, Universal Administrative Company, to Beth Lunn, Pioneerland Library System, dated May 14, 1999 (Administrator's Decision on Appeal).

⁷ Under the Commission's rules, the application period for each funding year begins with a filing window. 47 C.F.R. § 54.507(c). All applications filed during this window are deemed simultaneously filed for funding priority purposes. 47 C.F.R. § 54.507(c). The Commission's funding priority rules for applications submitted during the filing window provide that, for all discount categories, requests for telecommunications services and for Internet access shall receive first priority for the available funding while requests for installation of internal connections and other nonrecurring costs receive lower priority. 47 C.F.R. § 54.507(g). To the extent that funds are not available to fund all internal connections, the Commission's rules prioritize support for schools and libraries receiving the highest discount and proceeding downward; in other words, the most disadvantaged entities receive the highest priority. 47 C.F.R. § 54.507(g).

on May 14, 1999, more than thirty days prior to Pioneerland's filing of its Request for Review with the Commission, the Bureau dismissed Pioneerland's Request for Review as untimely on November 22, 1999. Soon thereafter, Pioneerland contacted the Bureau and provided it with documentation that the Administrator's Decision on Appeal had, in fact, been issued on May 26, 1999.

II. DISCUSSION

5. As discussed below, we find that the circumstances here warrant waiver of section 1.113 of the Commission's rules, which permits the Bureau, under delegated authority, to reconsider on its own motion its own decision within 30 days of public notice of the action. Waiver of the 30-day limit allows us to consider Pioneerland's Request for Review on the merits.⁸ In so considering Pioneerland's Request for Review, we conclude that its application should be remanded to SLD for further processing, and that SLD should (1) segregate any requests for support for telecommunications services and Internet access from support for internal connections, and (2) re-examine whether any part of Pioneerland's application constituted a request for support for internal connections, in light of the Commission's decision in the *Tennessee Order*.⁹

A. Waiver of Section 1.113 of the Commission's Rules

6. Section 1.113 of the Commission's rules permits actions taken on delegated authority—such as the Bureau's dismissal of a request for review of an Administrator's decision—to be reconsidered within thirty days of the public notice of the action. Because the Bureau's order dismissing Pioneerland's Request for Review was released on November 22, 1999, any order reconsidering that decision was required, absent waiver, by December 22, 1999, pursuant to the Commission's rules.

7. We believe that the circumstances here warrant a waiver of the 30-day limit in section 1.113 of the Commission's rules, thereby permitting us to reconsider Pioneerland's Request for Review on its merits. Generally, Commission rules may be waived for good cause shown.¹⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall

⁸ 47 C.F.R. § 1.113(a).

⁹ *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734 (1999) (*Tennessee Order*).

¹⁰ 47 C.F.R. § 1.3.

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

policy on an individual basis.¹² Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. For the reasons set forth below, we conclude that a waiver of section 1.113 of the Commission's rules is warranted in this case.

8. In the case at hand, strict compliance with our rules is inconsistent with the public interest. The Bureau's dismissal of Pioneerland's Request for Review resulted from the Administrator's ministerial error of placing an incorrectly dated letter into Pioneerland's file, upon which the Bureau relied to make its initial ruling. Pioneerland promptly notified the Bureau of this error. Based on this new information, we conclude that Pioneerland, in fact, filed a timely Request for Review. We conclude that it would be unfair for Pioneerland to bear the weight of the compounded errors of the Administrator and the Bureau, particularly when these errors may have resulted in Pioneerland being denied substantial support it otherwise would have received. The public interest is served by the efficient operation of the schools and libraries universal service support mechanism which requires strict adherence to deadlines. We also find, however, that the public interest is served by correcting these inadvertent errors so that Pioneerland's application may be considered on the merits. We find that, in these particular circumstances, the public interest weighs in favor of correcting errors committed by the Administrator and the Bureau. We, therefore, conclude that a waiver of the 30-day limit in section 1.113 of the Commission's rules is appropriate here, and we now consider Pioneerland's Request for Review on its merits.

B. Pioneerland's Request for Review

9. Pioneerland argues that SLD incorrectly identified its service provider's charge for "CPE [Customer Premises Equipment] Management" as internal connections equipment. Pioneerland further argues that even if the CPE Management charge were correctly classified as an internal connections cost, SLD erroneously denied Pioneerland the remainder of its application for support.

10. Pioneerland's argument that SLD incorrectly identified the CPE Management charge as internal connections may have merit. Subsequent to the Administrator's Decision on Appeal, the Commission issued its *Tennessee Order*, in which it considered whether certain facilities on school premises could be properly considered Internet access, rather than internal connections.¹³ In processing Pioneerland's request on remand, we direct SLD to apply the test described in the *Tennessee Order* to determine whether the CPE Management charge is a request for internal connections support or for Internet access support.¹⁴

¹² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹³ *Tennessee Order*, 14 FCC Rcd at 13746-55, paras. 25-42.

¹⁴ In the *Tennessee Order*, the Commission concluded that a facility located on an applicant's premises is presumed to be a component of internal connections, but that presumption may be rebutted if the facility at issue functions exclusively as a point of presence for an Internet service provider and there are no other indications that the facility is mischaracterized as a component of an Internet access service. *Tennessee Order*, 14 FCC Rcd at 13753-54, paras.

11. We also find meritorious Pioneerland's argument that it should have been granted support for the remainder of its application even if the service provider's charge for CPE Management had been correctly reclassified as internal connections by SLD. SLD denied funding for all of the priority one services in the disputed request pursuant to the rules of priority set out in the *Fifth Reconsideration Order*.¹⁵ The record reflects, however, that Pioneerland filed its FCC Form 471 on April 13, 1998. The Commission did not release the *Fifth Reconsideration Order* setting out the applicable schools and libraries rules of priority until June 22, 1998. In *Williamsburg-James City*,¹⁶ the Commission determined that, in cases where, as here, an FCC Form 471 was submitted before the establishment of the Commission's rules of priority, applicants could not have been aware of the need to segregate carefully their service requests. Consequently, the Commission held that, in Requests for Review addressing such circumstances, applications should be remanded to SLD for reprocessing, with priority one and priority two services being considered separately on their own merits. We, therefore, remand Pioneerland's application to SLD, and direct SLD to reconsider Pioneerland's FCC Form 471 and, if warranted, to issue a new funding commitment decision letter providing discounts for all appropriate priority one services requested by Pioneerland.¹⁷

12. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), section 1.113 of the Commission's rules, 47 C.F.R. § 1.113, IS WAIVED to the extent described herein.

37-38. Relevant indicia include ownership of the facility used to provide service, any lease-purchase arrangements regarding such facility, exclusivity arrangements regarding such facility, maintenance agreements regarding such facility, and upfront capital costs. *Tennessee Order*, 14 FCC Rcd at 13574-55, paras. 39-40.

¹⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915 (1998) (*Fifth Reconsideration Order*).

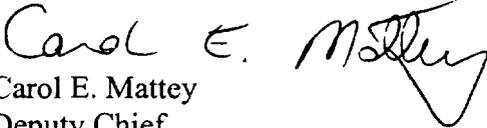
¹⁶ *Request for Review of the Decision of the Universal Service Administrator by Williamsburg-James City Public Schools*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 20152 (1999) (*Williamsburg-James City*).

¹⁷ Whether Pioneerland will be entitled to funding for its priority one services will depend upon the extent to which ineligible products and services were included within its request. See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Redwood City School District*, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2616, at para. 5 (Com. Car. Bur. rel. Nov. 22, 1999).

13. IT IS FURTHER ORDERED that, pursuant to section 54.722 of the Commission's rules, 47 C.F.R. § 54.722(a), the Request for Review filed by Pioneerland Library System, Willmar, Minnesota, on June 25, 1999, IS GRANTED to the extent described herein.

14. IT IS FURTHERED ORDERED that the Administrator IS DIRECTED to implement the decision herein.

FEDERAL COMMUNICATIONS COMMISSION


Carol E. Matthey
Deputy Chief
Common Carrier Bureau