

FEDERAL ROOM 101

Before the
Federal Communications Commission
Washington, DC 20554

2001 JUN 29 P 5:27

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
St. Marys Public Library)
St. Marys, Pennsylvania)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. NEC.471.12-07-99.02000002

CC Docket No. 96-45

CC Docket No. 97-21✓

ORDER

Adopted: June 26, 2001

Released: June 27, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by St. Marys Public Library (St. Marys), St. Marys, Pennsylvania, seeking a waiver of the Commission's rules governing the discounts under the schools and libraries universal service support mechanism.¹ For the reasons set forth below, we deny St. Marys' 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.² The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium that includes eligible schools or libraries must seek competitive bids for all services eligible for support.³ In accordance with the Commission's rules, an applicant must file with SLD, for posting to its website, an FCC Form 470 requesting

¹ Letter from Joseph Petrick, St. Marys Public Library, St. Marys, Pennsylvania, to Federal Communications Commission, filed July 6, 2000 (Waiver Request).

² 47 C.F.R. §§ 54.502, 54.503.

³ 47 C.F.R. §§ 54.504, 54.511(c).

services.⁴ The applicant must wait 28 days before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.⁵ Further, the instructions for the FCC Form 471 state that the date of signature for the FCC Form 471 "CANNOT be earlier than the 29th day following the posting of the associated FCC Form 470 to the [SLD] Web Site."⁶ 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 an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁷

3. The Commission's rules allow the Administrator to implement an initial 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.⁸ Section 54.507(c) of the Commission's rules states that fund discounts will be available on a first-come-first-served basis.⁹ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.¹⁰ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

4. By letter dated February 17, 2000, SLD informed St. Marys that its FCC Form 471 did not meet Minimum Processing Standards and therefore could not be processed.¹¹ SLD further explained that in Block 5, Item 12 of the FCC Form 471, the FCC Form 470 Application Number was missing or the number listed was not associated with a completed FCC Form 470.¹² On February 24, 2000, St. Marys filed a request for waiver with SLD.¹³ In response, SLD informed St. Marys that SLD was not permitted to consider the waiver request and directed St.

⁴ See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

⁵ 47 C.F.R. § 54.504(c); see Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

⁶ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (December 1998) at 24 (FCC Form 471 Instructions).

⁷ 47 C.F.R. § 54.504(c).

⁸ 47 C.F.R. § 54.507(c).

⁹ *Id.*

¹⁰ 47 C.F.R. § 54.507(g).

¹¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Joseph Petrick, St. Marys Public Library, dated February 17, 2000.

¹² *Id.*

¹³ Letter from Joseph Petrick, St. Marys Public Library, to Schools and Libraries Division, Universal Service Administrative Company, filed February 24, 2000 (SLD Waiver Request).

Marys to request a waiver from the Commission.¹⁴ In response, St. Marys filed the instant Waiver Request with the Commission.¹⁵ In its Waiver Request, St. Marys states that it believed that it could file its FCC Forms 470 and 471 concurrently beginning in Funding Year 3.¹⁶ St. Marys states that it now has the appropriate FCC Form 470 Application Number and seeks to resubmit its FCC Form 471.¹⁷ St. Marys also seeks a waiver of the Funding Year 3 filing window deadline for FCC Form 471 applications.¹⁸

5. We have reviewed the record before us and conclude that St. Marys has not demonstrated a reasonable 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.¹⁹ By filing its FCC Forms 470 and 471 concurrently, St. Marys violated the Commission's competitive bidding requirements.²⁰ The Common Carrier Bureau previously has denied requests for waiver when the applicant asserted a need for waiver based on its own error or misunderstanding of the schools and libraries program's rules.²¹ Therefore, to the extent that St. Marys requests a waiver due to its misunderstanding of the program rules, we find it has not shown good cause for waiver.

6. When requesting funds from the schools and libraries universal service support mechanism, the applicant bears the responsibility of completing the relevant forms and submitting them to SLD within the established deadlines. 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 understanding all relevant program rules and procedures.²² Because we find no basis for waiver of the filing window deadline, we deny St. Marys' Waiver Request.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under 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),

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Joseph Petrick, St. Marys Public Library, dated June 20, 2000 (Administrator's Decision on Appeal).

¹⁵ Waiver Request.

¹⁶ *Id.* See also FCC Form 470, St. Marys Public Library, filed December 7, 1999 and FCC Form 471, St. Marys Public Library, filed December 7, 1999.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁰ See paragraph 2. *supra*.

²¹ See, e.g., *Request for Review by Scranton School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association*, File No. SLD-112318, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 181, para. 8 (Com. Car. Bur. 2000).

²² *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association*, File No. SLD-133664, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000).

that the Waiver Request filed by St. Marys Public Library, St. Marys, Pennsylvania, on July 6, 2000, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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