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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Ballard Community School District Huxley, Iowa	))	File No. SLD-268911, SLD-268909, SLD-266579
	)	
Federal-State Joint Board on Universal Service	))	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	))	CC Docket No. 97-21

ORDER

Adopted: August 28, 2001 **Released: August 29, 2001**

By the Common Carrier Bureau, Accounting Policy Division:

1. The Common Carrier Bureau has under consideration a Waiver Request filed by Ballard Community School District (Ballard), Huxley, Iowa. Ballard seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.[1] For the reasons set forth below, we deny Ballard'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.[2] 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.[3] The Administrator must post the FCC Form 470 on its website, and the applicant is required to wait 28 days before making a commitment with a

[1] Letter from Connie Marker, Ballard Community School District, to Federal Communications Commission, filed February 20, 2001 (Waiver Request).

[2] 47 C.F.R. §§ 54.502, 54.503.

[3] 47 C.F.R. §§ 54.504(b)(1), (b)(3).

selected service provider.[4] 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.[5] 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.[6] Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.[7] It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Ballard requests a waiver of the Funding Year 4 application window, which closed on January 18, 2001 at 11:59 p.m. Eastern Standard Time.[8] Because the window closed on that date, in order to be in compliance with the program's competitive bidding requirements and also file an application within the filing window, it was incumbent upon applicants in Funding Year 4 to have their FCC Forms 470 posted no later than December 21, 2000, 28 days before the close of the filing window.[9] Ballard asserts, however, that on December 11, 2000, an SLD Client Services representative concurred with Ballard's determination that if Ballard's FCC Form 470 were posted by December 22, 2000, Ballard would be able to file its FCC Form 471 on January 18, 2001, the last day of the filing window.[10] When Ballard submitted its FCC Form 470 on December 22, 2000, however, it realized that it had incorrectly calculated the 28-day competitive bidding period, and that the competitive bidding requirements prevented it from filing its FCC Form 471 until January 19, 2001, one day past the close of the filing window.[11]

4. On January 4, 2001, Ballard filed a Request for Waiver with SLD, requesting that its three FCC Forms 470 be considered filed within the window.[12] SLD denied this request on February 2, 2001.[13] Ballard subsequently filed its three FCC Forms 471 on February 15, 2001.[14]

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[4] 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

[5] 47 C.F.R. § 54.504(c).

[6] 47 C.F.R. § 54.507(c).

[7] 47 C.F.R. § 54.507(g).

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

[9] 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

[10] Waiver Request.

[11] *See id.*

[12] *See* Letter from Connie Marker, Ballard Community School District, to Schools and Libraries Division, Universal Service Administrative Company, filed January 4, 2001.

[13] *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Connie Marker, dated February 2, 2001.

5. First, we note that Ballard's FCC Forms 470 were, in fact, filed within the window on December 22, 2000.[15] The relief that Ballard seeks, namely a complete "in-window" application, would require us to grant a waiver so that Ballard's FCC Forms 471 are considered as filed within the window. Accordingly, in this Order we analyze whether the facts presented by Ballard merit a waiver of the filing window for its three FCC Forms 471 filed on February 15, 2001.

6. We conclude that Ballard 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.[16] 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.

7. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Although Ballard contends that it should receive a waiver because an SLD representative agreed with its incorrect calculation of the 28-day competitive bidding period, precedent 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.[17] 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.[18] 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, Ballard 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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[14] *See* FCC Forms 471, Ballard Community School District, filed February 15, 2001.

[15] *See* FCC Forms 470, Ballard Community School District, filed December 22, 2000.

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

[17] *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)).

[18] *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 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 the Ballard Community School District, Huxley, Iowa, on February 20, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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