

Before the
Federal Communications Commission
Washington, DC 20554

2001 OCT 15 P 5:12

In the Matter of)
Request for Waiver by)
Bear Lake County Library District)
Montpelier, Idaho)
Federal-State Joint Board on)
Universal Service)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

RECEIVED

File No. NEC.471.01-28-00.0580005

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: October 5, 2001

Released: October 10, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by Bear Lake County Library District (Bear Lake), Montpelier, Idaho. Bear Lake 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 Bear Lake'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 selected service provider.⁴ Once the applicant has complied with the Commission's competitive

¹ Letter from Mary Nate, Bear Lake County Library District, to Federal Communications Commission, filed November 3, 2000 (Waiver Request).

² 47 C.F.R. §§ 54.502, 54.503.

³ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁴ 47 C.F.R. §§ 54.504(b)(3), (4); § 54.511.

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 In Block 6 of the FCC Form 471, applicants are required to make certain certifications, including certification of compliance with state and local procurement laws, and the status of the entity's technology plan.⁶ Applicants that filed their FCC Forms 471 electronically using the Administrator's website are required to separately submit a signed Block 6 certification.⁷

3. 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.⁸ Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.⁹ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications and signed certifications prior to the deadlines. In Funding Year 3, the filing window for the FCC Forms 471 closed January 19, 2000, at 11:59 p.m. Eastern Standard Time.¹⁰ The filing deadline for signed Block 6 certifications for applicants that filed their FCC Forms 471 electronically was January 31, 2000, at 11:59 p.m. Eastern Standard Time.¹¹

4. Bear Lake requests a waiver of the Funding Year 3 application window for FCC Forms 471, which closed on January 19, 2000, at 11:59 p.m. Eastern Standard Time. Bear Lake's FCC Form 470 was not posted until December 28, 1999.¹² Therefore, under the program's competitive bidding rules, Bear Lake was not permitted to sign and file its FCC Form 471 until 28 days later, on January 25, 2000, after the filing window closed on January 19, 2000. Bear Lake submitted its FCC Form 471 on January 28, 2000.¹³ Bear Lake argues that it is entitled to a waiver of the filing window because SLD extended the filing window for FCC Forms 471 to January 31, 2000.¹⁴

⁵ 47 C.F.R. § 54.504(c).

⁶ Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁷ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (FCC Form 471 Instructions), at 24.

⁸ 47 C.F.R. § 54.507(c).

⁹ 47 C.F.R. § 54.507(g).

¹⁰ SLD website, What's New (December 6, 1999) <<http://www.sl.universalservice.org/whatsnew/121999.asp>>.

¹¹ SLD website, What's New (January 2000), <<http://www.sl.universalservice.org/whatsnew/012000.asp>>.

¹² FCC Form 470, Bear Lake County Public Library, Montpelier, Idaho, filed December 28, 1999.

¹³ FCC Form 471, Bear Lake County Public Library, Montpelier, Idaho, filed January 28, 2000.

¹⁴ Waiver Request.

5. First, we find that Bear Lake's assertion that the filing window for FCC Forms 471 was extended to January 31, 2000 lacks merit.¹⁵ In Funding Year 3, SLD extended the deadline for Block 6 certifications from January 26, 2000 to January 31, 2000.¹⁶ The extension applied only to certifications submitted by applicants that had already filed their FCC Forms 471 electronically before the filing window closed on January 19, 2000.¹⁷ Bear Lake submitted its FCC Form 471 manually, using the U.S. mail, on January 28, 2001.¹⁸ Therefore, the certification deadline extension does not apply to Bear Lake's FCC Form 471.

6. We conclude that Bear Lake 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.¹⁹ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting 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. 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.²⁰ 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, Bear Lake 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.

¹⁵ Waiver Request.

¹⁶ SLD website, What's New (January 2000), <<http://www.sl.universalservice.org/whatsnew/012000.asp>>.

¹⁷ *Id.*

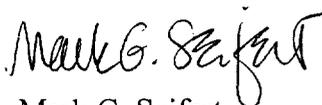
¹⁸ FCC Form 471, Bear Lake County Library District, Montpelier, Idaho, filed January 28, 2000.

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

²⁰ *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 Bear Lake County Library District, Montpelier, Idaho, on November 3, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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