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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of	)	
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Request for Waiver by	)	
	)	
Midland School District Pleasant Plains, Arkansas	))	File No. SLD-269321
	)	
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: 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 Midland School District (Midland), Pleasant Plains, Arkansas. Midland seeks a waiver of the Commission's rules governing discounts for services under the universal service support mechanism for schools and libraries.[1] For the reasons set forth below, we deny Midland's Waiver Request.

2. Under the universal service support mechanism for schools and libraries, 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 web site, and the applicant is required to wait 28 days before making a commitment with

[1] Letter from Jim LaRue, Midland School District, to Federal Communications Commission, filed February 15, 2001 (Waiver Request).

[2] 47 C.F.R. §§ 54.502, 54.503.

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

a 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. The filing window for Funding Year 4 closed on January 18, 2001.[8]

3. On January 16, 2001, Midland sought a waiver of the Funding Year 4 filing window from SLD.[9] Although Midland claims it submitted its FCC Form 470 on January 15, 2001,[10] the record demonstrates that Midland submitted its FCC Form 470 on January 17, 2001.[11] Notwithstanding this dispute, Midland's SLD Waiver Request acknowledges that it had filed its FCC Form 470 well beyond December 14, 2000, precluding the filing of a subsequent in-window FCC Form 471 in compliance with the Commission's competitive bidding requirements.[12] On February 2, 2001, SLD issued an Administrator's Decision on Waiver Request denying Midland's request on the basis that the Commission's "rules do not permit the Schools and Libraries Division (SLD) to consider your request."[13] The Administrator's Decision on Waiver Request further instructed Midland that it could seek relief from the Commission.[14] Midland filed the instant

[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] SLD web site, What's New (December 14, 2000) <http://www.sl.universalservice.org/whatsnew/122000.asp#121400a>.

[9] Letter from Jim LaRue, Midland School District, to Schools and Libraries Division, Universal Service Administrative Company, filed February 15, 2001 (SLD Waiver Request).

[10] Waiver Request; SLD Waiver Request, at 1.

[11] FCC Form 470, Midland School District, filed January 17, 2001.

[12] *See* Waiver Request.

[13] Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Jim LaRue, Midland School District, dated February 2, 2001 (Administrator's Decision on Waiver Request).

[14] *Id.*

Waiver Request with the Commission on February 8, 2001.[15] Midland later filed its FCC Form 471 with SLD on February 16, 2001.[16]

4. Midland requests a waiver of the Funding Year 4 application filing window, which closed on January 18, 2001 at 11:59 Eastern Standard Time.[17] Midland asserts that because of a series of ice storms that immobilized parts of Arkansas beginning on December 12, 2000, it was unable to submit its FCC Form 470 to SLD by December 14, 2000, 28 days before the close of the filing window on January 18, 2001, and therefore its FCC Form 471 could not be submitted within the filing window.[18] In support of its assertion, Midland provides documentation showing that many counties in Arkansas were initially declared a federal disaster area, but that Independence County, the county in which Midland is located, was not added to the list of Arkansas counties eligible for federal disaster assistance until January 11, 2001, and then for individual assistance only.[19]

5. We conclude that Midland 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.[20] In requesting funds from the universal service support mechanism for schools and libraries, 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.

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Although circumstances such as inclement weather may be unexpected, they are generally reasonably foreseeable, and applicants therefore "should build into their schedules a reasonable margin of error in anticipation of circumstances which may cause delay."[21] 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.[22] In order for the program to work efficiently, the applicant must assume

[15] Waiver Request.

[16] FCC Form 471, Midland School District, filed February 16, 2001.

[17] Waiver Request; SLD web site, What's New (December 14, 2000) <http://www.sl.universalservice.org/whatsnew/122000.asp#121400a>.

[18] Waiver Request.

[19] Federal Emergency Management Agency web site, Information on Federally Declared Disasters, More Counties to Receive Federal Disaster Assistance (January 15, 2001) <http://www.fema.gov/diz00/d1354n19.htm>.

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

[21] *FCC Overrules Caldwell Television,* 58 RR 2d 1706, 1707 (1985) (denying waiver request where unexpected fog closed airport, resulting in late filing of a broadcast application).

[22] *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

responsibility for timely submission of its application materials if it wishes to be considered within the window. Here, Midland 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.

7. 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 Midland School District, Pleasant Plains, Arkansas, on February 15, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert

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

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.").