

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Waiver by)	
)	
Edgerton Public School)	NEC.471.07-17-00.34300002
Edgerton, Minnesota)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45 ✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: December 3, 2001

Released: December 4, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by Edgerton Public School (Edgerton), Edgerton, Minnesota.¹ Edgerton seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Edgerton'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.³ 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 LeRoy Domagala, Edgerton Public School, to Federal Communications Commission, filed August 15, 2000 (Waiver Request).

² *Id.*

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

selected service provider.⁵ 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.⁶ 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.⁷ Applicants that file their FCC Forms 471 electronically, using the Administrator's website, are required to separately submit a signed Block 6 certification.⁸

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.⁹ Applications that are received outside 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. In Funding Year 2, the filing window for the FCC Forms 471 closed on March 31, 2000.¹¹ The deadline for SLD to receive certifications from applicants was July 15, 2000.¹²

4. Edgerton requests a waiver of the Funding Year 2 application window. Edgerton filed its FCC Form 471 within the filing window on March 25, 1999.¹³ However, according to SLD's records, Edgerton did not submit its Block 6 certification at that time.¹⁴ On June 30, 2000, SLD sent a letter to Edgerton informing it that SLD had not received its Block 6 certification, and that the

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

⁶ 47 C.F.R. § 54.504(c).

⁷ Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

⁸ 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.

⁹ 47 C.F.R. § 54.507(c).

¹⁰ 47 C.F.R. § 54.507(g).

¹¹ The funding window for Funding Year 2 initially closed on April 6, 1999. When it was determined that funds were available in excess of what had been requested by applicants who filed within the original window, the Commission directed SLD to re-open the filing window to permit additional applications. The re-opened window closed on March 31, 2000. See SLD web site, What's New (March 2000)

<<http://www.sl.universalservice.org/whatsnew/032000.asp#consideryr2>>; see Waiver Request, at 1.

¹² Letter from Schools and Libraries Division, Universal Service Administrative Company, to LeRoy Domagala, Edgerton Public School, dated June 30, 2000 (Funding Year 2 Form 471 Certification Letter).

¹³ Funding Year 2 Form 471 Certification Letter.

¹⁴ Funding Year 2 Form 471 Certification Letter.

deadline for receiving it was July 15, 2000.¹⁵ Edgerton contends that it received SLD's letter on June 30, 2000.¹⁶ Edgerton re-signed a copy of the Block 6 certification on July 12, 2000, and mailed it to SLD.¹⁷ SLD received it after the July 15 deadline, on July 17, 2000.¹⁸ Consequently, by letter dated July 21, 2000, SLD informed Edgerton that its application was filed outside the filing window.¹⁹

5. We conclude that Edgerton 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 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.

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 the Block 6 certification that Edgerton re-signed and submitted on July 17, 2000 is originally dated March 30, 1999, there is no evidence in the record that SLD received it prior to mailing the June 30, 2000 notification to SLD. Even after Edgerton was made aware by the June 30, 2000 notice that the deadline for filing the certification was July 15, 2000, it signed and apparently mailed the certification by non-express mail on July 12, 2000, allowing limited time for delivery.²¹ It is incumbent upon applicants to anticipate and allow for unexpected yet reasonably foreseeable circumstances, such as postal delay, in submitting program applications.²² Under the totality of the circumstances, we decline to grant Edgerton's waiver request.

7. 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

¹⁵ *Id.*

¹⁶ Waiver Request. Assuming that the letter was not both mailed and received on June 30, 2000, it is unclear whether SLD mailed the letter prior to June 30, 2000, and Edgerton received it on that day, or whether Edgerton is mistaken in its assertion that it received the letter on that day.

¹⁷ FCC Form 471, Edgerton Public School, filed July 17, 2000 (Edgerton FCC Form 471).

¹⁸ *Id.*

¹⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to LeRoy Domagala, dated July 21, 2000. SLD's July 21 notice indicated somewhat confusingly that Edgerton had missed the March 31, 2000 filing window for its FCC Form 471. *Id.* It was the late filing of the Block 6 certification, past the July 15, 2000 deadline, that rendered the entire FCC Form 471 outside the filing window for Funding Year 2.

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

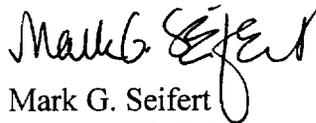
²¹ Edgerton FCC Form 471.

²² See *FCC Overrules Caldwell Television*, 58 RR 2d 1706, 1707 (1985) (emphasizing the importance of anticipating delays).

rules and procedures.²³ 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, Edgerton 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.

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 Edgerton Public School, Edgerton, Minnesota, on August 15, 2000, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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

²³ *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.”).