

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
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Request for Waiver by)
)
Peru Central School)
Peru, New York)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-205229

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: December 3, 2001

Released: December 4, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Waiver Request filed by Peru Central School (Peru Central), Peru, New York.¹ Peru Central 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 Peru Central'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 Bonnie L. Berry, Peru Central School, to Federal Communications Commission, filed June 30, 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 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.⁷ Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.⁸ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Peru Central requests a waiver of the Funding Year 3 application window, which closed on January 19, 2000 at 11:59 p.m. Eastern Standard Time.⁹ 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 3 to have their FCC Forms 470 posted by December 21, 1999, which was 28 days before the filing window closed.¹⁰ Peru Central asserts that it filed its FCC Form 470 electronically on the SLD website on December 8, 1999, but states that "for some reason it was not accepted online."¹¹ SLD has no record of Peru Central attempting to file online in Funding Year 3.¹² Peru Central mailed its FCC Form 470 to SLD, which received it on December 16, 1999.¹³ At the top of the form, Peru Central had typed, "470yr3," indicating a request for funding for Funding Year 3.¹⁴ However, in Block 1, item 2, the funding year indicator, Peru Central stated, "Funding Year July 1, 1999- 30-Jun-00," indicating a request for Funding Year 2.¹⁵

4. In attempting to resolve this discrepancy, SLD tried unsuccessfully to contact Peru Central on December 28, 1999.¹⁶ On January 3, 2000, SLD representatives contacted Peru Central

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

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. § 54.507(c).

⁸ 47 C.F.R. § 54.507(g).

⁹ Waiver Request; SLD web site, What's New (December 6, 1999) <<http://www.sl.universalservice.org/whatsnew/121999.asp>>.

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

¹¹ Waiver Request.

¹² SLD's systems register the date and time that any applicant begins and completes the application process on-line. SLD's records reflect no on-line filing attempts by Peru Central in Funding Year 3.

¹³ FCC Form 470, Peru Central School, filed December 16, 1999.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Waiver Request.

and determined that the district was seeking discounts for Funding Year 3.¹⁷ SLD posted the FCC Form 470 on January 5, 2000.¹⁸ Under the program's competitive bidding rules, Peru Central was not eligible to file its FCC Form 471 until February 2, 2000, which was after the filing window had closed.¹⁹

5. We conclude that Peru Central 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. As stated above, there is no evidence in the record that Peru Central filed its FCC Form 470 online in Funding Year 3. SLD received Peru Central's mailed FCC Form 470 on December 16, 1999, a mere four working days before the December 21 date by which FCC Forms 470 needed to be filed in order to permit a timely FCC Form 471 submission.²¹ Although SLD did not contact Peru Central until December 28, 2000 in an attempt to resolve the discrepancy caused by Peru Central's error on the form, SLD had little time, given the workload demands of the end of the filing period, in which to remedy the problem before December 21. Applicants that wait until near the end of the filing period before submitting their FCC Forms 470 risk filing their applications outside the window if, as was the case here, SLD must take steps to complete their FCC Form 470.²²

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 rules and procedures.²³ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of correct application materials if it wishes to be considered

¹⁷ *Id.*

¹⁸ FCC Form 470, Peru Central School, filed December 16, 1999.

¹⁹ *Id.*

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

²¹ See FCC Form 470, Peru Central School, filed December 16, 1999.

²² See, e.g., *Request for Waiver by Stephen-Argyle Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-228975, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 15,879 (Acc. Pol. Div. 2001); *FCC Overrules Caldwell Television*, 58 RR 2d 1706, 1707 (1985).

²³ 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.").

within the window. Here, Peru Central fails to demonstrate a sufficient basis for waiving the Commission's 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 Peru Central School, Peru, New York, on June 30, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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