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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Hardee County School Board	)	NEC.471.04-03-00.3120005
Wauchula, Florida	)	
	)	
Goldennet Educational Technology Alliance	)	File No. SLD-173335
Bakersfield, California	)	
	)	
St. Michael Elementary School	)	NEC.471.01.20.00.05100047
Hastings, Nebraska	)	
	)	
Concordia Parish Library	)	NEC.471.01-20-00.5100019
Ferriday, LA	)	NEC.471.01-20-00.5100020
	)	NEC.471.01-20-00.5100021
	)	NEC.471.01-20-00.5100022
	)	NEC.471.01-20-00.5100023
	)	
	)	
Toppenish School District No. 202	)	NEC.471.01.21.00.05200073
Toppenish, Washington	)	NEC.471.01.21.00.05200074
	)	
Shorecrest Preparatory School	)	NEC.471.01.20.00.051.00078
Saint Petersburg, Florida	)	
	)	
Dietrich School District No. 314	)	Control No. D008637
Dietrich, Idaho	)	
	)	
Laredo Independent School District	)	NEC.471.04.06.98.100041
Laredo, Texas	)	
	)	
Rosendale Library	)	Control No. D008453
Rosendale, New York	)	
	)	
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 20, 2001 **Released: December 21, 2001**

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration the above-captioned Requests seeking a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.[1] Specifically, the above-captioned entities request a waiver of the application window, because they did not submit a completed FCC Form 471 by the filing deadline. Consistent with our reasoning below, we remand these requests to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company. We direct SLD to consider as filed within the filing window, these applications for which the applicants can demonstrate, based on a currently-pending Request for Review, that they postmarked their FCC Form 471 at least three days before the filing window deadline, or that they mailed it via guaranteed overnight courier at least one day before the deadline.

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 on 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. 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 require that the applicant file a completed FCC Form 471 within a filing window established by the Administrator to be considered pursuant to the funding priorities for

[1] *See* Letter from C.W. Calligan, Hardee County School Board, filed August 28, 2000; Letter from Angel A. Sanchez, Goldennet Educational Technology Alliance, June 2, 2000; Letter from Father Jim Meysenburg, St. Michael Elementary School, filed July 18, 2000; Letter from Amanda Taylor, Concordia Parish Library, filed June 19, 2000 (Concordia Waiver Request); Letter from Eileen Beiersdorf, Toppenish School District No. 202, filed July 24, 2000; Letter from Jeff Pratt, Shorecrest Preparatory School, filed June 30, 2000; Letter from Peter M. Bolz, Sr., Dietrich School District No. 314, filed March 1, 2000; Letter from Roy M. Lanier, Laredo Independent School District, filed March 3, 2000; Letter from Wendy Alexander, Rosendale Library, filed February 28, 2000.

[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) and (4); § 54.511.

[5] 47 C.F.R. § 54.504(c).

"in-window" applicants.[6] All FCC Forms 471 that are filed within the window are considered as if they had arrived on the same day, and have priority over those received after the closing date of the window.[7]

3. The Commission's rules specify that the filing window "shall conclude on a date to be determined by the Administrator," but do not specify what constitutes "filing" for purposes of this rule.[8] The Commission has also directed SLD to establish procedures to manage and direct the operation of the filing window.[9] Under SLD's procedures in effect for the first three funding years, applications that were not *received* by SLD by the close of the filing window were deemed to have missed the deadline.[10] The filing window deadline for Funding Year 1 (January 1, 1998 – June 30, 1999) was April 15, 1998.[11] The deadline for Funding Year 2 (July 1, 1999 – June 30, 2000) was originally established as April 6, 1999.[12] However, upon determining that uncommitted funds remained after processing all in-window applications, SLD extended the filing window deadline for Funding Year 2 to March 31, 2000.[13] For Funding Year 3, the filing window deadline was January 19, 2000.[14]

4. A number of applications in the first three funding years were postmarked well in advance of the filing window deadline, but arrived at SLD after the close of the filing window, and therefore were not considered pursuant to the funding priorities for in-window applicants. One application, for example, was not received until nine days after being mailed, two days past

[6] 47 C.F.R. §§ 54.504(c); 54.507(c).

[7] *See* 47 C.F.R. § 54.507(c).

[8] *Id.*

[9] 47 C.F.R. § 54.705(a)(1). *See also Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal State Joint Board on Universal Service, Third Report and Order and Fourth Order on Reconsideration* in CC Docket No. 97-21 and *Eighth Order on Reconsideration* in CC Docket No. 96- 45, 13 FCC Rcd 25058, 25075-76, paras. 30-31 and 34 (1998) (*Eighth Reconsideration Order*) (describing the functions of the Schools and Libraries Committee). Under the rules adopted in the Commission's *Eighth Reconsideration Order*, the Schools and Libraries Committee's functions include "development of applications and associated instructions," "review of bills for services that are submitted by schools and libraries," and "administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations." Thus, under the *Eighth Reconsideration Order*, the Commission vested in the Schools and Libraries Committee and SLD the responsibility for administering the application process for the universal service support mechanism for eligible schools and libraries.

[10] *See, e.g.*, SLD website, What's New March 2000 (March 29, 2000) <http://www.sl.universalservice.org/whatsnew/032000.asp#32900>.

[11] *See* Federal-State Joint Board on Universal Service, CC Docket No. 96- 45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14925, para. 16 n. 39 (1998).

[12] *See, e.g.*, SLD website, What's New March 2000 (March 29, 2000) <http://www.sl.universalservice.org/whatsnew/032000.asp#32900>.

[13] *Id.*

[14] *See* SLD website, SLD Announces Availability of New Forms (October 19, 1999) <http:// www.sl.universalservice.org/whatsnew/101999.asp>.

the deadline.[15] Applications were also deemed outside the window as a result of failures by guaranteed overnight couriers to provide timely delivery service.[16]

5. For Funding Year 4, SLD modified its procedures for determining when an application would be deemed filed within the window. To avoid the problems that had occurred in previous years, SLD notified applicants that starting with the application process for Funding Year 4 (July 1, 2001 – June 30, 2002), FCC Form 471s must only be *postmarked*, not received, no later than the filing window deadline in order to be considered within the window.[17] This holds applicants harmless in the event of a failure of the postal system or courier to deliver the application within a reasonable period of time. SLD determined, in consultation with the Commission, that this revised procedure would result in a more efficient and equitable administrative outcome.

6. We now have before us multiple requests for waiver of the filing window, all filed before SLD modified its procedure for determining when an application would be deemed filed within the window. We believe the public interest would be served by permitting SLD to accept, as filed within the window, these applications where the applicant exercised due diligence to comply with SLD's then existing procedure. In particular, in each of the cases before us, the applicant mailed the application at least three days in advance of the deadline by regular mail, or, at least one day in advance of the deadline by guaranteed overnight courier. Such applicants had a more reasonable expectation of timely delivery and should not be penalized for the failures of the postal system or courier service.[18] We determine that strict compliance with the Administrator's procedure for determining when an application is filed would, in this limited instance, be inconsistent with the public interest and the unique purposes of the schools and libraries support mechanism.[19]

7. We emphasize the limited nature of our waiver of the filing deadline in these particular circumstances. Our decision is based in part on the special nature of the schools and libraries universal service support mechanism. Allowing these not-for-profit entities to receive

[15] *See* Letter from Wendy Alexander, Rosendale Library, to Federal Communications Commission, filed February 28, 2000.

[16] *See, e.g.,* Letter from Roy M. Lanier, Laredo Independent School District, filed March 3, 2000.

[17] *See* Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions).

[18] In contrast, mailing an application a day in advance of the deadline by regular mail would not ordinarily be viewed as exercising reasonable diligence, and such applications would not warrant grant of a waiver.

[19] The schools and libraries support mechanism provides discounts for services to many of the nation's poorest and neediest schools and libraries. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9038, para. 497 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S.Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S.Ct. 423 (November 2, 2000) (establishing greater discounts for economically disadvantaged schools and libraries.").

the full benefit of the support mechanism is consistent both with the statutory purposes of the program, and with the public interest.[20] Moreover, we grant these Waiver Requests only in light of the recent change in program procedure starting in Funding Year 4, whereby FCC Forms 471 are deemed filed when postmarked by the applicant. Our decision provides fair treatment to these applicants from the first three funding years that exercised reasonable efforts to comply with then-existent procedures by not penalizing them for long and unusual mail delivery delays. Because this problem has been solved prospectively by considering all FCC Forms 471 as filed when postmarked, we do not anticipate that waivers of our filing deadline based on unexplained delivery delays will arise in the future.[21]

8. We direct that applicants in any of the first three funding years that can demonstrate, based on their currently pending Waiver Requests, that they had postmarked their FCC Forms 471 at least three days before the filing window deadline, or that they mailed the forms via guaranteed overnight courier at least one day before the deadline, will be deemed to have filed their FCC Forms 471 within the filing window.

9. 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 following Waiver Requests ARE REMANDED TO SLD for further review consistent with this opinion: Hardee County School Board, Wauchula, Florida, filed August 28, 2000; Goldennet Educational Technology Alliance, Bakersfield, California, filed June 2, 2000; St. Michael Elementary School, Hastings, Nebraska, filed July 18, 2000; Concordia Parish Library, Ferriday, Louisiana, filed June 19, 2000[22]; Toppenish School District No. 202, Toppenish, Washington, filed July 24, 2000; Shorecrest Preparatory School, Saint Petersburg, Florida, filed June 30, 2000; Dietrich School District No. 314, Dietrich, Idaho, filed March 1, 2000; Laredo Independent School District, Laredo, Texas, filed March 3, 2000; Rosendale Library, Rosendale, New York, filed February 28, 2000.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Deputy Chief, Common Carrier Bureau

[20] *See id.* at 9002, para. 424 (describing intention of Congress to "ensure that eligible schools and libraries have affordable access to modern telecommunications and information services that will enable them to provide educational services to all parts of the nation.").

[21] Our decision regarding mailings of FCC Form 471 in the first three funding years is limited to the specific facts before us. Our decision is not intended to affect the requirements of any other filings within the schools and libraries program, or any other proceedings before the Common Carrier Bureau or the Commission.

[22] Concordia Parish also requested a waiver of the filing window for four FCC Forms 470 related to its untimely FCC Forms 471. *See* Concordia Waiver Request. However, because its FCC Forms 470 were not untimely, we address only the timeliness of Concordia's FCC Forms 471.