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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
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Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Pottsville Area School District Pottsville, Pennsylvania	)	File No. NEC.471.04-04-00.31300005
	)	
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: January 11, 2002 **Released: January 14, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by Pottsville Area School District (Pottsville), Pottsville, Pennsylvania.[1] Pottsville requests 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 Pottsville's Request for Waiver.

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

[1] Letter from Diane Hutchinson, Pottsville Area School District, 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).

with a 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]

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.[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 file their applications prior to the close of the filing window. In Funding Year 2, the filing window initially closed on April 6, 1999. Later, however, after it had been determined that funds were available in excess of what had been requested by applicants, the Commission directed SLD to re-open the filing window to permit additional applications. The re-opened Funding Year 2 filing window closed on March 31, 2000.[9]

4. On December 28, 1999, Pottsville filed a FCC Form 470 seeking discounts for July 1, 1999 through June 30, 2000.[10] Because SLD received the form after the close of the initial filing window for Funding Year 2, SLD contacted Pottsville in order to verify the funding year from which the school district was seeking funds.[11] SLD's Problem Resolution Log states that on January 3, 2000, SLD verified that the FCC Form 470 was for Funding Year 2.[12] In addition to creating an entry in the Problem Resolution Log, a member of SLD's Program Integrity Assurance (PIA) unit initialed and dated the FCC Form 470 to indicate that the funding year had been verified.[13]

5. Subsequently, SLD mailed a Receipt Acknowledgement Letter (RAL) to Pottsville stating that the FCC Form 470 had been processed and posted to SLD's website on February 16, 2001.[14] According to the RAL, the allowable signature date for contracts signed pursuant to the

[5] 47 C.F.R. §§ 54.504(b)(3) and (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] *See* SLD web site, <http://www.sl.universalservice.org/whatsnew/032000.asp> ("SLD will not accept Year 2 applications received after March 31, 2000.").

[10] FCC Form 470, Pottsville Area School District, filed December 28, 1999 (Pottsville Form 470). We note that July 1, 1999 through June 30, 2000 was Funding Year 2 of the schools and libraries program.

[11] Problem Resolution Form Detail Log, Schools and Libraries Division, Universal Service Administrative Company, dated January 3, 2000 (Problem Resolution Log).

[12] *Id.* The Problem Resolution Log also indicates that the PIA unit of SLD also attempted to contact Pottsville by phone on December 29, 1999, but did not reach the contact person.

[13] *Id. See also* Pottsville Form 470.

[14] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Diane Hutchinson, Pottsville Area School District, dated February 21, 2000 (Receipt Acknowledgement Letter).

FCC Form 470 was March 15, 2000.[15] On March 27, 2000, Pottsville contacted SLD, concerned that their Funding Year 2 FCC Form 470 had been mistakenly entered in Funding Year 3.[16] On March 30, 2000, Pottsville filed an appeal with SLD, seeking to apply the FCC Form 470 to Funding Year 2. In their waiver request, Pottsville also stated that they intended to submit its FCC Form 471 for consideration prior to the March 31, 2000, filing window deadline.[17]

6. On April 4, 2000, four days after the close of the filing window, SLD received Pottsville's FCC Form 471.[18] SLD informed Pottsville that its FCC Form 471 had been received after the close of the filing window deadline and would not be processed.[19] Pottsville then filed the instant Waiver Request with the Commission.[20] In its Waiver Request, Pottsville argues that SLD mistakenly entered its FCC Form 470 in the wrong funding year, and as a result, they were unable to submit the application in a timely manner.[21]

7. We conclude that Pottsville 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.[22] 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.

8. As an initial matter, we find that the record does not support Pottsville's assertion that its FCC Form 470 was incorrectly posted. As explained on SLD's website, second window Funding Year 2 FCC Form 470 applications were to be posted in Funding Year 3, because the Year 2 operating system was no longer being used.[23] Pottsville's FCC Form 470 was correctly

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[15] *Id.*

[16] *See* Memorandum from Diane Hutchinson, Pottsville Area School District, to Schools and Libraries Division, Universal Service Administrative Company, filed March 30, 2000 (March 30 Memorandum).

[17] *Id. See also* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Diane Hutchinson, Pottsville Area School District, dated May 2, 2000 (Acknowledgement of Waiver Request Letter).

[18] FCC Form 471, Pottsville Area School District, filed April 4, 2000.

[19] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Diane Hutchinson, Pottsville Area School District, dated July 19, 2000.

[20] Waiver Request.

[21] *Id.*

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

[23] *See* SLD website, <http://www.sl.universalservice.org/whatsnew/032000.asp> ("Please note that ongoing updates to the list of those Forms 470 seeking bids for Year 2 services received by SLD on or after October 25, 1999, will now be located in the Vendor area of the web site. You can see the updated list (including today's) by clicking on the last button labeled "Form 470 Applications for Year 2 Services."...The posted description of services identified in these applications can be found in the Vendor area of the web site under "Search Posted Description of Services Requested and Certification Form." To search the Funding Year 2 Form 470 applications identified on this list, you will need to enter Funding Year 3 from the drop-down box labeled 7/1/2000 - 6/30/2001. Enter the application number to see the request for services which are needed during Funding Year 2 (through June 30, 2000)."). We note that SLD subsequently modified its operating system after the second filing window for Funding Year 2 closed.

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listed as one of the second window FCC Form 470s that was posted on SLD's website in the Funding Year 3 field.[24] Because the FCC Form 470 was correctly posted, we do not believe that Pottsville has demonstrated good cause to waive the Commission's rules on this basis.

9. We acknowledge that the RAL letter issued to Pottsville was for Funding Year 3.[25] We do not believe, however, that this fact alone establishes sufficient causation for missing the filing deadline. The filing deadline was clearly posted on SLD's web site.[26] The record reflects that Pottsville was aware of the March 31, 2000 deadline.[27] 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.[28] 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, Pottsville fails to present sufficient good cause as to why it could not timely file its application. We therefore find no basis for waiving the filing window deadline.

10. 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 Pottsville Area School District, Pottsville, Pennsylvania on August 15, 2000, IS DENIED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

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

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After the operating system was modified, SLD moved the second window Form 470s to the Funding Year 2 drop-down box.

[24] *Id.*

[25] Again, this was because SLD's Year 2 operating system was no longer being used.

[26] *Id.* ("Further, SLD announces that there will be less than $250 million available for additional funding requests for Year 2, and that SLD will continue to accept Forms 471 for Year 2 funding requests for another 30 days, until 11:59 PM ET on March 31, 2000. These Forms 471 must be filed pursuant to a Form 470 filed for Year 2 (i.e., after December 1, 1998) and the requisite 28-day waiting period.").

[27] *See* March 30 Memorandum ("I will be submitting a form 471 prior to 3/31/2000 for consideration and will send copies of previous paperwork as well.").

[28] *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), 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.").