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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	)	
	)	
Anna Stowell Sunderland Bingham Memorial School Cornwall, Vermont	)	File No. SLD-190629
	)	
Capitol Region Education Council Hartford, Connecticut	)	NEC.471.01-24-00.5400041 NEC.471.01-24-00.5400042
	)	
Dickinson Public Schools Dickinson, North Dakota	)	NEC.471.01-20-00.5100012 NEC.471.01-20-00.5100013 NEC.471.01-20-00.5100014 NEC.471.01-20-00.5100015 NEC.471.01-20-00.5100016 NEC.471.01-20-00.5100017 NEC.471.01-20-00.5100018
	)	
Ekalaka Public Schools Ekalaka, Montana	)	NEC.471.01-21-00.05200049 NEC.471.01-24-00.05400011
	)	
Hempstead Public Library Hempstead, New York	)	Control No. D008448
	)	
Linden Free Public Library Linden, New Jersey	)	Control No. E006635 Control No. E008772 Control No. E008789 Control No. E008791 Control No. E008801
	)	
Minneapolis Public Schools Minneapolis, Minnesota	)	NEC.471.04-03-00.31200014
	)	
	)	
	)	

Port Huron Area School District Port Huron, Michigan	))))))	NEC.471.01-24-00.5400029 NEC.471.01-24-00.5400030 NEC.471.01-24-00.5400031 NEC.471.01-24-00.5400032 NEC.471.01-24-00.5400033
Silver Creek Central School District Silver Creek, New York	)))	NEC.471.04-03-00.31200022
Stanley Community Schools Stanley, North Dakota	)))	NEC.471.01-24-00.5400186
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 the above-captioned Waiver 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. For the reasons set forth below, we deny the above-captioned Waiver Requests.

[1] *See* Letter from Linda Kautzman, Anna Stowell Sunderland Bingham Memorial School, to Federal Communications Commission, filed June 6, 2000 (Bingham Waiver Request); Letter from George S. Synodi, Capitol Region Education Council, to Federal Communications Commission, filed June 26, 2000 (CREC Waiver Request); Letter from Vince Reep, Dickinson Public Schools, to Federal Communications Commission, filed June 26, 2000 (Dickinson Waiver Request); Letter from Jule Walker, Ekalaka Public Schools, to Federal Communications Commission, filed July 6, 2000 (Ekalaka Waiver Request); Letter from Irene A. Duszkiewicz, Hempstead Public Library, to Federal Communications Commission, filed February 29, 2000 (Hempstead Waiver Request); Letter from Roberta Canavan, Linden Free Public Library, to Federal Communications Commission, filed February 22, 2000 (Linden Waiver Request); Letter from Daniel T. Cincoski, Minneapolis School District, to Federal Communications Commission, filed August 11, 2000 (Minneapolis Waiver Request); Letter from Jeffrey S. Cassin, Port Huron Area School District, to Federal Communications Commission, filed June 29, 2000 (Port Huron Waiver Request); Letter from Dennis J. Corsaro, Silver Creek Central School District, to Federal Communications Commission, filed July 26, 2000 (Silver Creek Waiver Request); Letter from Allen Burgad, Stanley Community Schools, to Federal Communications Commission, filed July 5, 2000 (Stanley 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.[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.[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 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 "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. Filings with the Commission that do not involve the schools and libraries universal service support mechanism are typically considered filed on the date that they are received by the Commission, rather than when postmarked by the applicant.[8] 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.[9] The filing window deadline for Funding Year 1 (January 1, 1998 – June 30, 1999) was April 15, 1998.[10] The deadline for Funding Year 2 (July 1, 1999 – June 30, 2000) was originally established as April 6, 1999.[11] However, upon determining that uncommitted funds remained after processing all in-

[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).

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

[7] *See* 47 C.F.R. § 54.507(c).

[8] *See* 47 C.F.R. § 1.7.

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

[10] *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).

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

window applications, SLD extended the filing window deadline for Funding Year 2 to March 31, 2000.[12] For Funding Year 3 (July 1, 2000 – June 30, 2001), the filing window deadline was January 19, 2000.[13] Tens of thousands of applicants successfully filed their FCC Forms 471 within the filing window.

4. Starting with the application process for Funding Year 4, SLD, in consultation with the Commission, directed that FCC Forms 471 would be considered filed when *postmarked*, not when received.[14] The new policy is designed to ensure that applicants are held harmless in the event of a failure of the postal system or courier to deliver the application within a reasonable period of time. SLD's new policy applies only starting in Funding Year 4, and does not apply retroactively to the first three funding years.

5. Each of the above-captioned applicants filed its FCC Form 471 outside of the filing window in one of the first three funding years, and now seeks a waiver of our rules governing the filing window. 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.[15]

6. We find that the above-captioned applicants have demonstrated no such special circumstances. The Commission has strictly and consistently enforced filing deadlines, allowing waivers of deadlines only in very limited and compelling situations.[16] In light of the large number 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, including filing deadlines.[17] In all of the instant Waiver Requests, the applicants mailed their FCC Forms 471 less than three days before the last day of the filing window, and therefore had little likelihood that SLD would receive their application by the close of the window.[18] Indeed, one of the above-captioned applicants mailed its FCC Form 471 on the last

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[12] *Id.*

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

[14] *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).

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

[16] *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 15879 (Acc. Pol. Div. 2001) (Stephen-Argyle); *FCC Overrules Caldwell Television*, 58 RR 2d 1706, 1707 (1985) (permitting waivers only for particularly unusual and compelling circumstances).

[17] *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-133664, 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.").

[18] *See infra* paras. 10, 12-20.

day of the filing window, with no reasonable expectation of timely filing.[19] Given the limited discounts available under the mechanism, providing discounts to applicants that fail to follow program rules results in other applicants, which did follow program rules, receiving reduced support, or none at all.[20] In order for the program to work efficiently and fairly, the applicant must assume responsibility for timely submission of its application materials if it wishes to be considered within the window.

7. In *Hardee County*, the Commission recently granted a waiver of its filing window deadline for the schools and libraries support mechanism to a limited number of applicants.[21] It directed that applicants with pending Waiver Requests for any of the first three funding years that could demonstrate 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, would be deemed to have filed their FCC Forms 471 within the filing window.[22] The Commission based its determination in large measure upon the fact that, beginning in Funding Year 4, applications are deemed filed when postmarked.[23]

8. In granting the waivers for applications in the first three funding years, the Commission provided fair treatment to applicants that exercised reasonable efforts to comply with then-existing procedures, by not penalizing them for long mail delivery delays. One application, for example, was not received until nine days after being mailed, two days past the deadline.[24]

9. However, none of the above-captioned applicants with Waiver Requests meet the criteria set forth in *Hardee County*. Because these applicants failed to allow sufficient time to file their FCC Forms 471, we deny their Waiver Requests, as explained below.

10. Anna Stowell Sunderland Bingham Memorial School. After experiencing difficulty filing electronically in the week before the Year 3 filing window deadline of January 19, 2000, Anna Stowell Sunderland Bingham Memorial School (Bingham) mailed its FCC Form 471 on January 18, 2000.[25] SLD received it on January 20, 2000.[26] Bingham contends that SLD representatives advised it incorrectly on January 18, 2000, after it mailed its application, not to

[19] *See infra* para. 11.

[20] *See* 47 C.F.R. §§ 54.505-54.507.

[21] *See Request for Review by Hardee County School Board et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2978 (Com. Car. Bur. rel. December 21, 2001) (*Hardee County*).

[22] *See id.*

[23] *See id.*

[24] *See id.* (citing Rosendale Waiver Request).

[25] Bingham Waiver Request.

[26] FCC Form 471, Anna Stowell Sunderland Bingham Memorial School, filed January 20, 2000.

file electronically, and wrongly assured it that its mailed application would be timely.[27] We decline to grant relief on the basis of incorrect advice from SLD. Commission precedent establishes that where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule.[28] Bingham offers no other extenuating circumstances in support of its Waiver Request. We conclude that Bingham fails to demonstrate special circumstances warranting a deviation from our rules, and therefore deny its Waiver Request.[29]

11. Capitol Region Educational Council. Capitol Region Educational Council (CREC) mailed its FCC Forms 471 by certified mail (return receipt requested) on January 19, 2000, the last day of the Year 3 filing window.[30] They were filed on January 24, 2000.[31] CREC explains that it mistakenly thought that applications needed to be mailed, not received, by January 19, 2000.[32] It contends that the requirement that applications be received by the close of the filing window did not appear in any written instructions.[33] CREC further states that it assumed that SLD filing procedures parallel those of the Internal Revenue Service (IRS).[34] However, IRS procedures have no bearing on Commission or SLD policies. Moreover, CREC was on notice that its application would be deemed filed when received. The FCC Form 471 written instructions refer applicants to the SLD website for annual filing deadline dates, which vary from year to year.[35] The website, in turn, explicitly informs applicants that FCC Forms 471 are deemed filed when received.[36] We emphasize again that the vast majority of applicants submitted timely FCC Forms 471. CREC offers no other extenuating circumstances in support

[27] Bingham Waiver Request.

[28] *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990)).

[29] *See Hardee County.*

[30] CREC Waiver Request.

[31] FCC Forms 471, Capitol Region Education Council, filed January 24, 2000. We observe that CREC in its request refers to its FCC Form 470 number, NEC.70C.01-24-00.06500161, consistent with the Administrator's Waiver Request sent by SLD on June 7, 2000. *See* Letter from Schools and Libraries Division, Universal Service Administrative Company to George S. Synodi, Capitol Region Education Council, dated June 7, 2000; *see also* CREC Waiver Request. In keeping with our practice of referencing Waiver Requests by FCC Form 471 number, where possible, we cite herein to the relevant FCC Form 471 numbers.

[32] CREC Waiver Request.

[33] *Id.*

[34] *Id.*

[35] Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (December 1998), OMB 3060-0806 (September 1999) (Form 471 Instructions).

[36] *See* SLD website, What's New (November 10, 1999) <http://www.sl.universalservice.org/whatsnew/111999.asp> (emphasizing the receipt of applications for filing purposes).

of its Waiver Request. We conclude that CREC fails to demonstrate special circumstances warranting a deviation from our rules, and therefore deny its Waiver Request.[37]

12. Dickinson Public Schools. Dickinson Public Schools (Dickinson) mailed its FCC Forms 471 on January 17, 2000, two days before the filing window closed for Funding Year 3.[38] It states that by mailing its applications two days prior to the deadline, it "had every intention of meeting that deadline."[39] Dickinson offers no other extenuating circumstances in support of its Waiver Request. We conclude that Dickinson fails to demonstrate special circumstances warranting a deviation from our rules, and therefore deny its Waiver Request.[40]

13. Ekalaka Public Schools. Ekalaka Public Schools (Ekalaka) contends that it was unable to successfully file electronically, and thus mailed its FCC Forms 471 on January 18, 2000, the day before the Year 3 filing window closed.[41] It further states that there is no guaranteed overnight mail delivery in that area, and therefore it could not file it by the close of the window.[42] Ekalaka offers no other extenuating circumstances in support of its Waiver Request. We conclude that Ekalaka fails to demonstrate special circumstances warranting a deviation from our rules, and therefore deny its Waiver Request.[43]

14. Hempstead Public Library. Hempstead Public Library (Hempstead) filed its FCC Form 471 on April 17, 1998, two days after the filing window closed for Funding Year 1.[44] Hempstead provides no evidence in its Waiver Request of when it mailed the application.[45] However, it signed its typewritten FCC Form 471 on April 13, 1998.[46] Because the application could not have been mailed before the signature date of April 13, and the signature date was less than three days before the filing window closed, Hempstead could not have mailed its application at least three days before the deadline. Hempstead offers no other extenuating circumstances in support of its Waiver Request. We conclude that Hempstead fails to

[37] *See Hardee County.* We observe that in its Waiver Request, CREC emphasizes that it does not request a waiver of our rules, because it views its FCC Form 471 filing as timely, based on its view that the SLD should have permitted applications to be postmarked by the filing date. CREC Waiver Request. Because we determine that CREC failed to comply with the program's clear rules and filed outside the window, we treat its request as a Waiver Request, and deny it.

[38] Dickinson Waiver Request; FCC Forms 471, Dickinson Public Schools, filed January 20, 2000.

[39] Dickinson Waiver Request.

[40] *See Hardee County.*

[41] Ekalaka Waiver Request.

[42] *Id.*

[43] *See Hardee County.*

[44] FCC Form 471, Hempstead Public Library, filed April 17, 1998.

[45] Hempstead Waiver Request.

[46] FCC Form 471, Hempstead Public Library, filed April 17, 1998.

demonstrate special circumstances warranting a deviation from our rules; and therefore deny its Waiver Request.[47]

15. Linden Free Public Library. Linden Free Public Library (Linden) filed its FCC Forms 471 on April 20, 1998, five days after the filing window closed for Funding Year 1.[48] It states that it mailed the forms on April 13, 1998, two days before the deadline closed, and provides no justification for its late filing.[49] Linden offers no other extenuating circumstances in support of its Waiver Request. We conclude that Linden fails to demonstrate special circumstances warranting a deviation from our rules, and therefore deny its Waiver Request.[50]

16. Minneapolis Public Schools. Minneapolis Public Schools (Minneapolis) filed its FCC Form 471 on April 3, 2000, after the Year 2 filing window closed on March 31, 2000.[51] Minneapolis mailed its application by certified mail on March 30, 2000, and provides no justification for its late filing.[52] Minneapolis offers no other extenuating circumstances in support of its Waiver Request. We conclude that Minneapolis fails to demonstrate special circumstances warranting a deviation from our rules, and therefore deny its Waiver Request.[53]

17. Port Huron Area School District. Port Huron Area School District (Port Huron) filed its Year 3 FCC Forms 471 on January 24, 2000, after the filing window closed on January 19, 2000.[54] Port Huron mailed its application on January 18, 2000, and explains that it believed that applications were considered filed when postmarked.[55] Port Huron offers no other extenuating circumstances in support of its Waiver Request. We conclude that Port Huron fails to demonstrate special circumstances warranting a deviation from our rules, and therefore deny its Waiver Request.[56]

18. Silver Creek Central School District. Silver Creek Central School District (Silver Creek) filed its FCC Form 471 on April 3, 2000, after the Year 2 filing window closed on March

[47] *See Hardee County.*

[48] FCC Form 471, Linden Free Public Library, filed April 20, 1998.

[49] Linden Waiver Request.

[50] *See Hardee County.*

[51] FCC Form 471, Minneapolis Public Schools, filed April 3, 2000.

[52] Minneapolis Waiver Request.

[53] *See Hardee County.*

[54] FCC Forms 471, Port Huron Area School District, filed January 24, 2000.

[55] Port Huron Waiver Request. We note that Port Huron previously filed a letter with the Commission on May 9, 2000, also asking that the same FCC Forms 471 be considered as timely filed. Letter from Jeffrey S. Cassin, Port Huron Area School District, to Federal Communications Commission, filed May 9, 2000. We incorporated those letters into the record upon which we based our decision.

[56] *See Hardee County.*

31, 2000.[57] Silver Creek argues that its application was timely.[58] In support of its contention, it provides a certified mail receipt that it had marked "BEAR FORM," indicating that SLD received the item on March 27, 2000.[59] This evidence reflects only that Silver Creek submitted the so-called BEAR (Billed Entity Applicant Reimbursement) form to SLD on March 27, 2000, not that it filed its FCC Form 471 on that day.[60] SLD records confirm that SLD did receive Silver Creek's BEAR form on that day, but show that SLD received Silver Creek's Year 2 FCC Form 471 on April 3, 2000, outside the filing window.[61] Silver Creek provides no evidence disputing SLD's records regarding the late submission of its FCC Form 471, nor does it offer other extenuating circumstances in support of its Waiver Request. We conclude that Silver Creek fails to demonstrate special circumstances warranting a deviation from our rules, and therefore deny its Waiver Request.[62]

19. Stanley Community Schools. Stanley Community Schools (Stanley) states that it filed its FCC Form 471 late in Funding Year 3 because it mistakenly believed that applications were considered filed when postmarked.[63] Stanley mailed its FCC Form 471 on January 18, 2000, one day before the filing window closed, and it was received by SLD on January 24, 2000.[64] Stanley offers no other extenuating circumstances in support of its Waiver Request. We conclude that Stanley fails to demonstrate special circumstances warranting a deviation from our rules, and therefore deny its Waiver Request.[65]

[57] Silver Creek Waiver Request.

[58] *Id.*

[59] *Id.*, Attachment.

[60] FCC Form 472, the Billed Entity Applicant Reimbursement (BEAR) form, is filed for reimbursement of discounts on approved services already paid for by the Billed Entity Applicant. *See* Schools and Libraries Universal Service, Billed Entity Applicant Reimbursement Form, OMB 3060-0856 (October 1998) (Form 472).

[61] *See* FCC Form 472, Silver Creek Central School District, filed March 27, 2000.

[62] *See Hardee County.*

[63] Stanley Waiver Request.

[64] FCC Form 471, Stanley Community Schools, filed January 24, 2000.

[65] *See Hardee County.*

20. 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 DENIED: Anna Stowell Sunderland Bingham Memorial School, Cornwall, Vermont, filed June 6, 2000; Capitol Region Education Council, Hartford, Connecticut, filed June 26, 2000; Dickinson Public Schools, Dickinson, North Dakota, filed June 26, 2000; Ekalaka Public Schools, Ekalaka, Montana, filed July 6, 2000; Hempstead Public Library, Hempstead, New York, filed February 29, 2000; Linden Free Public Library, Linden, New Jersey, filed February 22, 2000; Minneapolis Public Schools, Minneapolis, Minnesota, filed August 11, 2000; Port Huron Area School District, Port Huron, Michigan, filed June 29, 2000; Silver Creek Central School District, Silver Creek, New York, filed July 26, 2000; Stanley Community Schools, Stanley, North Dakota, filed July 5, 2000.

FEDERAL COMMUNICATIONS COMMISSION

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