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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Alton Elementary School – Maine School Union No. 90 Old Town, Maine	)	File No. SLD-183978
	)	
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 Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Waiver filed by Alton Elementary School – Maine School Union No. 90 (Alton), Milford, Maine.[1] Alton seeks a waiver of the filing window deadline for Funding Year 3 of the schools and libraries universal service support mechanism.[2] For the reasons set forth below, we grant the Request for Waiver and remand for further processing.

2. Under the universal service support mechanism for schools and libraries, 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 web site, and the applicant is required to wait 28 days before making a

[1] Letter from Pamela Kimball and A. Keith Ober, Alton Elementary School – Maine School Union #90, to Federal Communications Commission, filed October 4, 2000 (Request for Waiver).

[2] *Id.*

[3] 47 C.F.R. §§ 54.502, 54.503.

[4] 47 C.F.R. §§ 54.504(b)(1), (b)(3).

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.[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 Administration receives their applications prior to the close of the filing window. In Funding Year 3, the filing window closed on January 19, 2000.[9]

3. In its Request for Waiver, Alton indicates that it submitted its FCC Form 470 on December 15, 2000.[10] Alton further indicates that on December 20, 1999, it was contacted by SLD data entry personnel to resolve problems with the information on its FCC Form 470, that Alton "provided appropriate information," and that, again on December 20, 1999, an SLD supervisor indicated that the FCC Form 470 was acceptable "as corrected" and instructed that it be processed and posted.[11] The FCC Form 470 was posted on December 29, 1999.[12] As a result, the Allowable Contract Date, the earliest date on which Alton could enter into contracts for service and submit an FCC Form 471 seeking discounts for those services, was January 26, 2000, after the filing window had closed. Alton filed its FCC Form 471 on January 26, 2000, and now seeks a waiver of the filing deadline.[13]

4. In its Request for Waiver, Alton requests that we waive the filing window deadline to allow SLD to process Alton's application, thereby according it the same priority as applicants that filed during the window.[14] Alton argues that its failure to file an application

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

[10] Request for Waiver, at 1; *see also* FCC Form 470, Alton Elementary School, posted December 29, 1999 (Alton Form 470) (indicating a certification received date of December 15, 1999).

[11] Request for Waiver, at 1.

[12] Alton Form 470.

[13] FCC Form 471, Alton Elementary School, filed January 26, 2000.

[14] Request for Waiver, at 1.

within the window was the fault of SLD.[15] It notes that, if SLD had posted the FCC Form 470 on December 20, 1999, the day the correction were made, the Allowable Contract Date would have been January 19, 2000, the last day before the closing of the filing window, and that Alton could thus have timely filed its application.[16] Alton thus argues that SLD's delay in the posting of the FCC Form 470 from December 20, 1999 to December 29, 1999 justifies a waiver of the filing window in this case.[17]

5. We conclude that Alton has 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.[18] In prior decisions, we have granted waivers of the filing window to applicants where, after receiving a valid FCC Form 470, SLD excessively delayed its posting, and where, because of this excessive delay, the applicant was forced to file its FCC Form 471 after the close of the filing window.[19]

6. Here, Alton argues that the nine days it took SLD to post the FCC Form 470 after receiving Alton's corrections is grounds for a waiver.[20] We find that under the facts of this case, a waiver is appropriate. While we caution applicants that they assume a risk of not filing within the window if they file their FCC Form 470s close to the filing window and those forms require modifications or corrections before posting, at the same time, we do not want to penalize applicants in situations where the FCC Form 470 could have been posted more than 28 days before the filing window closes.

7. Thus, in this case, because SLD had a complete, corrected version of the FCC Form 470 on December 20, 1999, the FCC Form 470 could have been posted by December 22, 1999. Had SLD posted the FCC Form 470 by December 22, 1999, Alton's 28 day waiting period would have ended on January 18, 2000, and Alton would have been able to sign contracts and file its FCC Form 471 before the close of the filing window on January 19, 2000. We therefore find that Alton should be granted a waiver of the filing window.

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[15] *Id.*

[16] *Id.*

[17] *Id.*

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

[19] See *Request for Waiver by Council Bluffs Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-E007282, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 18836 (Com. Car. Bur. 2000); *Request for Review by Runnemede Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-154153, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2957 (Com. Car. Bur. rel. December 21, 1999).

[20] Request for Review, at 1.

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 Request for Waiver filed by Alton Elementary School – Maine School Union No. 90 (Alton), Milford, Maine, on October 4, 2000 IS GRANTED, and this application is remanded to SLD for further processing consistent with this opinion.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Deputy Chief, Common Carrier Bureau