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Before the
Federal Communications Commission
Washington, DC 20554

JAN 25 2002

In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Scottsdale Horizons School Scottsdale, Arizona	))	File No. SLD-198744
	)	
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 Scottsdale Horizons School (Scottsdale Horizons), Scottsdale, Arizona.[1] Scottsdale Horizons 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 Scottsdale Horizons'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 Harry Stelling, Jr., Scottsdale Horizons School, to Federal Communications Commission, filed July 12, 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 file their applications prior to the close of the filing window.

3. Scottsdale Horizons requests a waiver of the Funding Year 3 (2000-2001) application window, which closed on January 19, 2000 at 11:59 p.m. Eastern Standard Time.[9] Scottsdale Horizons asserts that it experienced repeated technical problems with the SLD website when it attempted to file its FCC Form 470 online in early December, 1999.[10] It contends that an SLD client services representative gave it misleading information by directing it to send email questions to an improper SLD email address.[11] Receiving no response, Scottsdale Horizons mailed a completed FCC Form 470 on December 8, 1999, which was filed with SLD on December 13, 1999.[12] SLD contacted Scottsdale Horizons about aspects of the FCC Form 470 on December 16, 1999.[13] SLD then unsuccessfully attempted to contact Scottsdale Horizons on December 22 and December 27, 1999.[14] On January 4, 2000, an SLD representative informed Scottsdale Horizons that its FCC Form 470 was undergoing review as part of the problem resolution process because of problems with the form.[15] On January 6, Scottsdale Horizons contends, a client services representative informed it incorrectly that even though its FCC Form 470 had not yet been posted, its FCC Form 471 would nonetheless be considered within the filing window.[16] After further conversations between SLD and Scottsdale Horizons, SLD posted Scottsdale Horizons's FCC Form

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

[10] Waiver Request.

[11] Letter form Harry Stelling, Jr., Scottsdale Horizons School, to Universal Service Administrative Company, filed January 20, 2000 (Appeal Letter).

[12] FCC Form 470, Scottsdale Horizons School, filed December 13, 1999.

[13] Appeal Letter at 2.

[14] *Id.*

[15] *Id.*

[16] *Id.*

470 on January 12, 2000.[17] Because the Commission's competitive bidding rules prohibit Scottsdale Horizons from filing its FCC Form 471 until 28 days after the January 12 posting date, Scottsdale Horizons could not file its FCC Form 471 until February 9, 2000, well after the filing window closed on January 19, 2000.

4. We conclude that Scottsdale Horizons 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.[18] 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.

5. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. As an initial matter, there is no evidence of widespread failure of the SLD website in early December, 1999, as thousands of applicants were able to successfully file their FCC Forms 470 during that period. We therefore decline to grant a waiver of our rules on those grounds.[19]

6. Scottsdale Horizons also asserts that SLD unreasonably delayed posting its FCC Form 470.[20] In its program oversight capacity, SLD must ensure the eligibility of applicants and their requested services, which may take a certain period of time if problems arise requiring conflict resolution. Applicants that wait until near the end of the application process risk such "unexpected but reasonably foreseeable" delays, and applicants are therefore encouraged to file their forms as early as possible.[21] Although the Commission has waived the filing deadline for FCC Forms 471 in cases where SLD either failed to post a properly submitted FCC Form 470 that did not necessitate conflict resolution, or excessively delayed before notifying an applicant of problems with an FCC Form 470, such circumstances are not present here.[22]

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[17] FCC Form 470, Scottsdale Horizons School, filed December 13, 1999.

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

[19] As evidence of an alleged failure of the SLD web site, Scottsdale Horizons provides evidence that on January 18, 2000, the SLD web site stated, "All Technical Issues have been corrected." Appeal Letter. However, that notice referred to SLD server problems experienced by applicants attempting to file their FCC Forms 471 between January 15 and January 18, 2000.

[20] Waiver Request; Appeal Letter.

[21] *Request for Review by Lettie W. Jensen Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-267950, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2401 (Acc. Pol. Div. rel. October 16, 2001) (*Request for Review by Lettie W. Jensen Library*); *FCC Overrules Caldwell Television*, 58 RR 2d 1706, 1707 (1985).

[22] *See, e.g., Request for Review 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. E007282, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 18,836 (Com. Car. Bur. 1999) (SLD failed to post applicant's FCC Form 470); *Request for Review by Lettie W. Jensen Library*) (delay of nearly two months deemed excessive).

7. Scottsdale Horizons further contends that it was given incorrect information by SLD representatives, suggesting that it should be granted a waiver as a result. The applicant asserts that an SLD client services representative directed it to send its questions regarding its online filing to an improper email address, causing undue delay, and that another SLD representative incorrectly informed it that its FCC Form 470 would be considered posted when received by SLD.[23] We decline to grant relief on the grounds that Scottsdale Horizons received incorrect information from SLD. 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.[24]

8. 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, including filing deadlines.[25] Here, Scottsdale Horizons fails to present good cause as to why it could not timely file its application. We therefore find no basis for waiving the filing window deadline.

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 Waiver Request filed by Scottsdale Horizons School, Scottsdale, Arizona, on July 12, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

[23] Waiver Request; Appeal Letter.

[24] *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)).

[25] *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.").