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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Alpine County Unified School District Markleeville, California	))	NEC.471.01-24-00.5400004
	)	
Hopatcong Borough Schools Hopatcong, New Jersey	))	NEC.471.01-24-00.5400170
	)	
St. Athanasius School Jesup, Iowa	))	NEC.471.01-20-00.5100053
	)	
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 28, 2002 **Released: January 31, 2002**

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) hereby reconsiders on its own motion the order of January 14, 2002, directing the above-captioned parties to submit documentation in support of their Waiver Requests within 60 days to the Commission.[1] We hereby modify that order to direct that such documentation be provided to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), and to clarify the nature of the documentation that applicants must submit in order to meet the standard for a waiver. For administrative convenience, we reiterate the reasoning of the January 14, 2002 order below and vacate the January 14 order.

[1] *Request for Review by Alpine County Unified School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.01-24-00.5400004, CC Docket Nos. 96-45 and 97-21, Order, DA 02-75 (Acc. Pol. Div. rel. January 14, 2002).

2. The Bureau 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.[2] Specifically, the above-captioned entities request a waiver of the Funding Year 3 (July 1, 2000-June 30, 2001) application window because they did not submit a completed FCC Form 471 by the filing deadline.[3] For the reasons set forth below, we direct the above-captioned applicants to provide, within 60 days of the release date of this Order, proof, to the extent such exists, that they mailed their FCC Form 471 within the period prescribed in this Order.

3. 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.[4] In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to SLD a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts. 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.[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 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.[7] 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.[8]

4. 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

[2] *See* Letter from R. Scott Auble, Alpine County Unified School District, to Federal Communications Commission, filed June 26, 2000 (Alpine Waiver Request); Letter from Timothy J. Frederiks, Hopatcong Borough Schools, to Federal Communications Commission, filed June 2, 2000 (Hopatcong Waiver Request); Letter from Gladys Oppold, St. Athanasius School, to Federal Communications Commission, filed June 29, 2000 (St. Athanasius Waiver Request).

[3] *Id.*

[4] 47 C.F.R. §§ 54.502, 54.503.

[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. §§ 54.504(c); 54.507(c).

[8] *See* 47 C.F.R. § 54.507(c).

are received by the Commission, rather than when postmarked by the applicant.[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 3 closed on January 19, 2000.[11] Tens of thousands of applicants have successfully filed their FCC Forms 471 within the filing window.

5. 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.[12] 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.

6. In *Hardee County,* the Bureau recently granted a waiver of its filing window deadline for the schools and libraries support mechanism to a limited number of applicants.[13] 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.[14] In its recent order, the Bureau 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.[15] The Bureau based its determination in large measure upon the fact that, beginning in Funding Year 4, applications are deemed filed when postmarked. In adopting this decision, the Bureau provided fair treatment to applicants that exercised reasonable efforts to comply with then-existing procedures, by not penalizing them for long mail delivery delays.

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[9] *See* 47 C.F.R. § 1.7.

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

[12] *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).

[13] *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*).

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

[15] *See Hardee County.*

7. After a careful review of the record, we conclude that the above-captioned Waiver Requests may be eligible for relief under our *Hardee County* Order. In each of the above-captioned cases, the record is unclear as to the date and manner of mailing, so we are unable to determine whether these applicants either postmarked their FCC Forms 471 at least three days before the filing window deadline, or mailed the forms via guaranteed overnight courier at least one day before the deadline. We therefore remand to SLD, and direct the above-captioned applicants to provide SLD with any documentation demonstrating the date on which they mailed their FCC Forms 471 that are the subject of their Waiver Requests. These applicants will have 60 days from the release date of this Order in which to provide the evidence that they mailed their FCC Forms 471 at least three days before the filing window deadline, or via guaranteed overnight courier at least one day before the deadline. Such documentation could include, for instance, a post office or courier service receipt demonstrating the date the FCC Form 471 was mailed. Note that any such documentation must be sent to SLD postmarked within 60 days of the release date of this Order to be considered by SLD. Applicants that fail to provide the required proof within the 60-day period will be denied relief for the above-captioned Waiver Requests. Upon timely receipt of acceptable proof, SLD shall consider such application as filed within the filing window.

Analysis of Individual Waiver Requests

8. Alpine County Unified School District. Alpine County Unified School District (Alpine) filed its Year 3 FCC Form 471 on January 24, 2000, after the filing window closed on January 19, 2000.[16] Alpine argues that it deserves relief because, after attempting unsuccessfully to file electronically, it mailed its FCC Form 471 after receiving assurances from an SLD representative that its form would be accepted as timely.[17] There is no evidence in the record before us of the alleged date that Alpine mailed its application. In keeping with this Order, Alpine may provide evidence to SLD that demonstrates that Alpine mailed its application at least three days before the filing window deadline, or via guaranteed overnight courier at least one day before the deadline.

9. Hopatcong Borough Schools. Hopatcong Borough Schools (Hopatcong) filed its Funding Year 3 FCC Form 471 on January 24, 2000, after the filing window closed on January 19, 2000.[18] Hopatcong asserts that its records indicate that its "form

[16] FCC Form 471, Alpine County Unified School District, filed January 24, 2000. Although Alpine contends in its Waiver Request that it filed its FCC Form 470 on January 20, 2000, the record reflects that it filed the form on January 24, 2000. *Id.*

[17] *See* Letter from R. Scott Auble, Alpine County Unified School District, to Schools and Libraries Division, Universal Service Administrative Company, filed June 13, 2000.

[18] FCC Form 471, Hopatcong Borough Schools, filed January 24, 2000.

was sent to [SLD] by priority mail to be received by January 19, 2000."[19] Because Hopatcong sent in its typewritten application with a Block 6 certification signed on January 18, 2000, it could not have mailed its FCC Form 471 earlier than January 18, 2000.[20] Thus, Hopatcong is ineligible for relief under the *Hardee County* Order unless it can demonstrate that it sent its application via guaranteed overnight courier on January 18, 2000. Hopatcong states that it mailed its application by "priority mail to be received by January 19, 2000," which may suggest that it sent the application via overnight courier on January 18, 2000, but "priority mail" as a U.S. postal service means of delivery is not a guaranteed overnight service.[21] Therefore, unless Hopatcong can provide evidence that it sent its application via guaranteed overnight courier on January 18, 2000, it fails to meet the criteria laid out in *Hardee County*. Accordingly, in keeping with this Order, Hopatcong may provide evidence to SLD demonstrating that, on January 18, 2000, Hopatcong sent its application via an overnight courier.

10. St. Athanasius School. St. Athanasius School (St. Athanasius) filed its Year 3 FCC Form 471 on January 20, 2000, one day after the filing window closed.[22] St. Athanasius claims that it signed and mailed its FCC Form 471 on January 14, five days before the filing window closed.[23] Although the record reflects that St. Athanasius signed its form on January 14, 2000, St. Athanasius provides no evidence of when it mailed its application. In keeping with this Order, St. Athanasius may provide evidence to SLD to substantiate its claim that it mailed its application on January 14, 2000.

11. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, that the Bureau reconsiders on its own motion the *Request for Review by Alpine County Unified School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.01-24-00.5400004, CC Docket Nos. 96-45 and 97-21, Order, DA 02-75 (Acc. Pol. Div. rel. January 14, 2002) and vacates that order.

12. IT IS FURTHER ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the following applicants SHALL SUBMIT to SLD, postmarked within 60 days of the date of the release of this Order, any such evidence as required by the terms of this Order concerning the date of the filing of their applications: Alpine County Unified School District, Markleeville, California, filed June 26, 2000; Hopatcong Borough

[19] Hopatcong Waiver Request.

[20] *Id.* In Block 6 of the FCC Form 471, applicants are required to make certain certifications, including certification of compliance with state and local procurement laws, and the status of the entity's technology plan. *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 471).

[21] Hopatcong Waiver Request.

[22] FCC Form 471, St. Athanasius School, filed January 20, 2000.

[23] St. Athanasius Waiver Request.

Schools, Hopatcong, New Jersey, filed June 2, 2000; St. Athanasius School, Jesup, Iowa, filed June 29, 2000.

13. IT IS FURTHER ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the following Waiver Requests ARE REMANDED to SLD for further review consistent with this opinion.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Deputy Chief, Common Carrier Bureau