

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



In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Subiaco Academy	)	File No. SLD-121844
Subiaco, Arkansas	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45 ✓
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Associations, Inc.	)	

**ORDER**

**Adopted: February 7, 2002**

**Released: February 8, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by Subiaco Academy (Subiaco), Subiaco, Arkansas, seeking waiver of the Commission's rules governing the schools and libraries universal service support mechanism.<sup>1</sup> Subiaco requests a waiver of the filing deadline for Funding Year 3.<sup>2</sup> For the reasons set forth below, we deny Subiaco'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.<sup>3</sup> 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.<sup>4</sup> Once the applicant has

<sup>1</sup> Letter from Timmie Geels, Subiaco Academy, to Federal Communications Commission, filed January 23, 2001 (Waiver Request). We note that although Subiaco styles its pleading as an appeal, the primary relief sought would require a waiver of the Commission's rules. Thus, we refer to Subiaco's pleading as a Waiver Request.

<sup>2</sup> See Waiver Request. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>3</sup> 47 C.F.R. §§ 54.501-54.503.

<sup>4</sup> 47 C.F.R. §§ 54.504(b).

any reason other than misunderstanding of the rules for why the deadline should be waived in this case. We therefore conclude that Subiaco has not demonstrated special circumstances upon which to grant its Waiver Request.

5. 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 Timmie Geels, Subiaco Academy, Subiaco, Arkansas, on January 23, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

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Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 12936, para. 5 (Com. Car. Bur. 2001) (denying a waiver request to the extent its late filing was "due to misunderstanding of the program rules"); *see, also, Request for Waiver by E-Rate Central, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File Nos. SLD-33699, 84909, 1275, 84495, 13397, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 16451 (Com. Car. Bur. 2001) (denying waiver request based upon "general applicant confusion regarding the rules of the program"); *see, also, Request for Review by North Hills School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-90933, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2128 (Com. Car. Bur. rel. October 14, 1999) (denying appeal on the grounds that delay caused by complexity of the filing process and difficulty in understanding a funding denial were an "insufficient basis" for waiver of a deadline); *see, also, In Re Application of Pictronics*, FCC 71-1109, Memorandum Opinion and Order, 32 FCC.2d 325, para 5 (1971) (denying waiver request for construction permit for television station on the grounds that an "applicant's alleged misunderstanding of the rule can not be considered a circumstance beyond the control of the applicant, and is not sufficient reason for waiver of the rules").

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 an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>5</sup> The Commission's rules require that the applicant file a completed FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.<sup>6</sup> The last day of the filing window for Funding Year 3 was January 19, 2000.<sup>7</sup>

3. Subiaco admits that it was late in submitting its FCC Form 471.<sup>8</sup> Subiaco's paper FCC Form 471 was received January 24, 2000, five days after the deadline for paper forms.<sup>9</sup> The only reason Subiaco offers in support of its Waiver Request is its lack of understanding of the program, which, it states, contributed to the lateness of the filing.<sup>10</sup> Subiaco subsequently filed the instant request for waiver of the filing deadline.<sup>11</sup>

4. Subiaco's request may be granted only if waiving the deadline can be supported by a showing of good cause.<sup>12</sup> A deviation from a general rule is not permitted unless there are special circumstances and the deviation serves the public interest.<sup>13</sup> The waiver standard generally requires a showing of circumstances that could not have been avoided even with careful planning.<sup>14</sup> Rules requiring filing deadlines help guarantee that there are identifiable times when the door can be closed to new applicants, and the public interest mandate can be efficiently and effectively fulfilled.<sup>15</sup> In the past, we have denied waiver requests based upon an applicant's claim of its own error or misunderstanding of the rules.<sup>16</sup> Subiaco has not offered

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<sup>5</sup> 47 C.F.R. § 54.504(c).

<sup>6</sup> 47 C.F.R. §§ 54.504(c), 54.507(g).

<sup>7</sup> SLD web site, SLD Announces Availability of Year 3 Forms (October 29, 1999), <<http://www.sl.universalservice.org/whatsnew/101999.asp#form>>.

<sup>8</sup> Waiver Request.

<sup>9</sup> FCC Form 471, Subiaco Academy, filed January 24, 2000 (SLD received date label). In Funding Year 3, paper copies of the forms had to be received by the last day of the filing window to be considered filed within the window. Subiaco did not submit any evidence to indicate that they had tried to file electronically before the window closed, and therefore we do not address that issue.

<sup>10</sup> Letter from Timmie Geels, Subiaco Academy, to Schools and Libraries Division, Universal Service Administrative Company, filed January 2, 2001.

<sup>11</sup> Waiver Request.

<sup>12</sup> See 47 C.F.R. § 1.3.

<sup>13</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>14</sup> *FCC Overrules Caldwell Televisions Associates*, Public Notice, 58 RR 2d 1706, 1707 (1984).

<sup>15</sup> See *id.*; see, also, *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 Red 25610, para. 8 (Com. Car. Bur. 2000) (noting SLD reviews and processes thousands of applications each year, and therefore it is administratively necessary to place on the applicant responsibility for complying with rules and procedures).

<sup>16</sup> *Request for Review by St. Mary's Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. NEC.471.12-07-99.02000002, CC

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