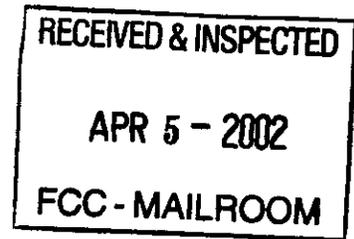


April 3, 2002



Federal Communications Commission
Office of the Secretary
445 - 12th Street, S.W.
Washington, D.C. 20554

Re: Request for Waiver
CC Docket Nos. ~~96-45~~ and 97-21
Application Number: 244801

Dear Sir or Madam:

By this appeal, the Irvington Board of Education requests that the Federal Communications Commission (FCC) review the decision of the Schools and Libraries Division (SLD) not to consider our application for Program Year 4 2001-2002 outside the filing window and grant a waiver of the deadline. We filed a request for Waiver of Application Window with SLD and received an Administrator's Decision on Waiver Request dated February 5, 2002 which informed us that the FCC rules do not permit SLD to consider our request. Hence, our appeal to the FCC.

According to our understanding of the SLD appeal process, SLD will grant an appeal in the following four circumstances:

- (1) If the appeal makes it clear that SLD erred when it performed its initial review of the application;
- (2) If the appeal makes it clear that applicant made an error in information provided in or with the application, and SLD could have identified the error by the information on hand during initial review;
- (3) If the appeal provides clarifying information that corrects an assumption SLD made during the initial review because there was insufficient information; and
- (4) When SLD obtains policy clarification or new policy between the time of the initial application commitment decision and the appeal decision.

It is our judgment that both circumstance 3 and 4 provide appropriate contexts for considering the Irvington Board of Education's appeal. It is our further judgment that SLD, therefore, incorrectly denied our Request for Waiver.

In accordance with rules governing the filing of the Form 471 Certification, we were permitted to offer an electronic filing online. The deadline for filing was January 18, 2001. We complied fully with this provision except that there was no provision in the electronic filing process for filing the signature page (which now exists for subsequent filings). Our electronic filing was submitted on January 17, 2001, the day before the January 18, 2001 deadline and, in our view was, therefore timely and within the filing window. The only information lacking was the signature page. This was an "error in information provided in or with the application" as described in #2 of the four circumstances in which SLD will grant an appeal.

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Denial for absence of a signature page accompanying an electronic filing is a hyper-technical application of the rules in absence of a process that allows for electronically filing a signature. The concept of an electronic filing ought to accommodate a process which is complete and satisfactory to SLD. The fact that our filing was complete and accurate in every respect other than signature clearly portrays our diligence and intent. It is reasonable for SLD to have identified our "error" (as it apparently did) by the information at hand (our electronic submission) during the initial review. The response to our "error" was excessive in light of our successful submission history and the flawed electronic filing process—which has since been amended to include a capability for handling electronic signatures. Had this capability been in place at the time of our filing, this appeal would be unnecessary because having met every other requirement we would have been adjudged inside the filing window.

Circumstance 3 also applies as a circumstance under which an appeal should be given weight and merit.

It is not reasonable that SLD assumed that lack of a signature page signaled the willful negation of our electronic filing intent. Neither would it have been reasonable to assume that the signature page did not accompany the electronic filing by deliberate design. Full familiarity with the electronic filing process would have informed reviewers that no electronic signature page existed and that it would necessarily arrive under separate cover.

The issue then seems to be whether we should have been aware that having filed electronically prior to the January 18, 2001 deadline it was additionally incumbent upon us to file hard copy within the same deadline time frame. We contend that at the very least the expression of the rules rendered this issue sufficiently confusing so as to have enhanced the possibility of "error."

During the period pre-January 18, 2001, instructions relating to filing Form 471 appeared at the Schools and Libraries site on internet; specifically at:

<http://www.sl.universalservice.org/whatsnew012001.asp>

There are two cites worth note, one being "Urgent Reminder of Filing Requirements for Year 4 (01/12/2001)" (see Attachment A). The other being "SPIN Support for Electronic Filers (01/14/2001)" (see Attachment A).

The 01/12/2001 cite sets forth a list of conditions and requirements for filing. They clearly related to hard copy. The 01/14/2001 cite just as clearly related to electronic filing. Because these issues are not integrated in these online publications, came so close in the timing of their publication, and appear to offer completely alternative methods of filing, it is reasonable that we did not read the publications in conjunction.

In particular, since the latter of the two online cites specifically and solely referenced electronic filers it was reasonable for us to view it as completely separate and apart from the cite of two days prior. And furthermore it was reasonable for us to assume that the cite of 01/12/2001 sought to instruct only those were not filing electronically.

Whether the emergence of far clearer instructions that accommodate electronic signature for the current and future filings is a response to a flawed process or in pursuit of increased efficiency, it is a welcomed decision that eliminates confusion (see Attachment B).

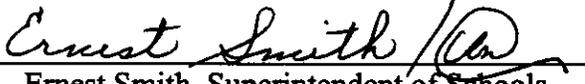
The Irvington Board of Education has a record of successful filings of Forms 471. Over time we have executed the instructions associated with these filings with consistent efficiency. It is only owing to the unique circumstances of what we can only described as a hybrid process (part electronic, part manual) that we find ourselves at this juncture.

Inasmuch as the remedy of this situation only requires acceptance of the signature page that was subsequently submitted and inasmuch as granting our request for waiver would serve a substantial public interest, we encourage a deviation from the rules.

Irvington is an ultra urban municipality with staggering needs across a wide economic, cultural and intellectual spectrum. Our inability to provide services to our students because we are absent SDL funding will have rippling negative impact encompassing individuals, families and community alike. Allowing Irvington the resources to continue building communications and technology programs and strategies is a superior public interest concern. Your finding in favor of our appeal is very simply in the best interest of a needy and deserving public.

Very truly yours,

IRVINGTON BOARD OF EDUCATION

By Ernest Smith / 
Ernest Smith, Superintendent of Schools