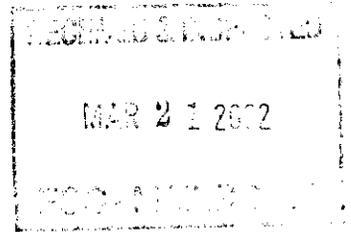


Before the  
Federal Communications Commission  
Washington, D.C. 20554



|  |   |                                     |
|--|---|-------------------------------------|
| In the Matter of                             | ) |                                     |
|  | ) |                                     |
| Request for Waiver by                        | ) |                                     |
|  | ) |                                     |
| Dermott Special School District              | ) | File No. SLD-252777                 |
| Dermott, Arkansas                            | ) |                                     |
|  | ) |                                     |
| Hoven School District No. 53-2               | ) | File No. SLD-261808                 |
| Hoven, South Dakota                          | ) |                                     |
|  | ) |                                     |
| Mastics-Moriches-Shirley Community Library   | ) | File No. SLD-277850                 |
| Shirley, New York                            | ) |                                     |
|  | ) |                                     |
| Mounds Public Schools                        | ) | File No. SLD-265880                 |
| Mounds, Oklahoma                             | ) |                                     |
|  | ) |                                     |
| Reading-Muhlenberg Area                      | ) | File No. SLD-257325                 |
| Vocational-Technical School                  | ) |                                     |
| Reading, Pennsylvania                        | ) |                                     |
|  | ) |                                     |
| Versailles Exempted Village Schools          | ) | File No. SLD-270374                 |
| Versailles, Ohio                             | ) |                                     |
|  | ) |                                     |
| Westbrook School Department                  | ) | File No. SLD-220712                 |
| Westbrook, Massachusetts                     | ) |                                     |
|  | ) |                                     |
| Wilcox County Schools                        | ) | File Nos. SLD-252443, SLD-256802,   |
| Camden, Alabama                              | ) | SLD-257092, SLD-257221, SLD-257582, |
|  | ) | SLD-257352, SLD-257702, SLD-259623  |
|  | ) |                                     |
|  | ) |                                     |
| 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: March 18, 2002**

**Released: March 19, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration the above-captioned Waiver Requests, seeking a waiver of the Commission's rules governing the schools and libraries universal service support mechanism.<sup>1</sup> Specifically, the above-captioned entities request a waiver of the filing deadline for Funding Year 4 because of delays related to the actions or omissions of either employees or contractors.<sup>2</sup> For the reasons set forth below, we deny the above-captioned Waiver Requests.

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 Administrator a completed FCC Form 470.<sup>4</sup> Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must submit a completed FCC Form 471 application to the Administrator.<sup>5</sup> The Commission's rules require that the applicant file the 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 4 was January 18, 2001 and all paper components of applications had to be postmarked by that date.<sup>7</sup>

3. The requests from the above-captioned applicants can be granted only if waiving the deadline is supported by a showing of good cause.<sup>8</sup> A deviation from a general rule is not

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<sup>1</sup> Letter from Penny Lay and Dennis Meins, Dermott Special School District, to Federal Communications Commission, filed August 17, 2001; Letter from Ron Jacobson, Hoven School District No. 53-2, to Federal Communications Commission, filed August 24, 2001; Letter from Dennis Fabiszak, Mastics-Moriches-Shirley Community Library, to Federal Communications Commission, filed August 16, 2001; Letter from Dennis Campbell, Mounds Public Schools, to Federal Communications Commission, filed August 20, 2001; Letter from Thomas P. Mohn, Reading-Muhlenberg Area Vocational-Technical School, to Federal Communications Commission, filed July 30, 2001; Letter from Gregory P. Taylor, Versailles Exempted Village Schools, to Federal Communications Commission, filed August 6, 2001; Letter from Tyler Dunphy, Westbrook School Department, to Federal Communications Commission, filed September 7, 2001; Letter from Malcolm Cain, Wilcox County Schools, to Federal Communications Commission, filed August 13, 2001 (Waiver Requests).

<sup>2</sup> See Waiver Requests. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (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).

<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 website, FCC Form 471 Window Opens for Year 4 Applicants; New Filing Requirements Firmly Established (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>> (Window Notice).

<sup>8</sup> See 47 C.F.R. § 1.3.

permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict adherence to the general rule.<sup>9</sup> 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>10</sup> Timely submissions are needed because, under the funding mechanism, all requests for funding received within the initial filing deadline must be analyzed together in order to properly allocate funds.<sup>11</sup>

4. We have traditionally held applicants to a high standard for waivers, noting that ultimately it is the applicant who has responsibility for the timely submission of its application. We have held that neither employee illness nor misunderstanding relieves applicants of their responsibility to understand and comply with the program.<sup>12</sup> This remains true in cases where an entity employs a consultant to file the application.<sup>13</sup> We note that the instructions for the Year 4 FCC Form 471 explain that certain items must be mailed to the SLD in addition to any electronic filing, and that the Item 21 attachments and Block 6 certification also be postmarked no later than January 18, 2001.<sup>14</sup> We therefore conclude that above-captioned entities have not

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<sup>9</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (appeals court vacating a Commission decision to grant a waiver in a licensing issue, because it was arbitrary and capricious).

<sup>10</sup> 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, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000).

<sup>11</sup> See 47 C.F.R. § 54.507(g).

<sup>12</sup> See, e.g., *Request for Review by East Brunswick 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-276585, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2520 (Com. Car. Bur. rel. Oct. 31, 2001) (*East Brunswick*) (denying waiver request in case when employee handling forms resigned due to illness and new person did not know requirements). See also *Request for Review by New Orleans Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-201456, SLD-201463, SLD-201409, SLD-201449, SLD-201493, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd. 16653, para. 18 (Com. Car. Bur. 2001) (*New Orleans*) (denying waiver request in case where there were personnel disruptions and replacement of a sick employee skilled in the application process); *Request for Review by Danbury Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.04-13-00.31900001, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 10910 (Com. Car. Bur. 2001) (*Danbury*) (denying waiver request in case when employee responsible for filing failed to do so); *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, Inc.*, File No. NEC.471.12-07-99.02000002, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 12936, para. 5 (Com. Car. Bur. 2001) (*St. Mary's*) (denying a waiver request to the extent it is requested "due to misunderstanding of the program rules")

<sup>13</sup> *Request for Review by Homer Community Consolidated S.D. 33C, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.70C.03-10-00.09700014, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 9353 (Com. Car. Bur. 2001) (*Homer*) (denying waiver request when school learned after deadline that the consultant it had relied upon failed to file).

<sup>14</sup> See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000). See also SLD website, Form 471 Minimum Processing Standards and Filing Requirements for FY 4 <<http://www.sl.universalservice.org/reference/471mps.asp>>. Although the Funding Year 4 standards were displayed on the internet address listed above at the time of the application, the site has been updated since then to show Funding Year 5 standards. See *id.* A copy of the Funding Year 4 standards is included in the record before us.

demonstrated special circumstances upon which to grant their Waiver Requests. We address each of the Waiver Requests below.

### **Analysis of Individual Waiver Requests**

5. Dermott Special School District. Dermott Special School District (Dermott) states that it was late in submitting its Block 6 certification because the former superintendent delayed signing it.<sup>15</sup> Dermott states it filed the bulk of its FCC Form 471 electronically on January 17, 2001.<sup>16</sup> The applicant states that, after a delay in obtaining a signature for the certification, the completed material was given to an employee to mail January 18, 2001.<sup>17</sup> However, the record demonstrates that the material was postmarked January 19, 2001.<sup>18</sup> Dermott offers no explanation as to why the form was not postmarked on January 18, 2001 when it was ready. The applicant ultimately bears the responsibility of completing the relevant forms and submitting them within the established deadline if the applicant wishes to be considered with other in-window applicants.<sup>19</sup> How the applicant delegates responsibility for the applications is not relevant to our analysis. We conclude that Dermott has not demonstrated the existence of any special circumstances warranting a deviation from our rules, and therefore, we deny its Waiver Request.

6. Hoven School District No. 53-2. Hoven School District No. 53-2 (Hoven) states that it was late in submitting its forms because of an employee's error.<sup>20</sup> Hoven did not file its FCC Form 470 until January 5, 2001.<sup>21</sup> In order to have complied with the 28-day competitive bidding requirements, therefore, Hoven was not permitted to contract for the services or file its FCC Form 471 until February 2, 2001, which was outside the filing window.<sup>22</sup> Hoven submitted its FCC Form 471 on February 10, 2001, well outside the January filing window.<sup>23</sup> Hoven attributes the delay in initially filing to an employee who "did not complete his job," and argues that it should "not be penalized" for "the neglect of duty by its employee."<sup>24</sup> The applicant ultimately bears the responsibility of completing the relevant forms and submitting them within the established deadline if the applicant wishes to be considered with other in-window

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<sup>15</sup> Letter from Penny Lay and Dennis Meins, Dermott Special School District, to Federal Communications Commission, filed August 17, 2001 (Dermott Waiver Request).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> FCC Form 471, Dermott Special School District, filed January 19, 2001 (envelope with postmark date of January 19, 2001).

<sup>19</sup> *See Danbury, supra* note 13.

<sup>20</sup> Letter from Ron Jacobson, Hoven School District No. 53-2, to Federal Communications Commission, filed August 24, 2001 (Hoven Waiver Request).

<sup>21</sup> FCC Form 470, Hoven School District, posted January 5, 2001.

<sup>22</sup> *Id.*; SLD website, Form 471 Filing Window for Year 4 (September 18, 2000) <<http://www.sl.universalservice.org/whatsnew/092000.asp#091800>>.

<sup>23</sup> FCC Form 471, Hoven School District, filed February 10, 2001 (envelope with postmark date of February 10, 2001). *See also* Hoven Waiver Request.

<sup>24</sup> *Id.*

applicants.<sup>25</sup> How the applicant delegates responsibility for the applications is not relevant to our analysis. We conclude that Hoven has not demonstrated the existence of any special circumstances warranting a deviation from our rules, and therefore, we deny its Waiver Request.

7. Mastics-Moriches-Shirley Community Library. Mastics-Moriches-Shirley Community Library (MMS) states that it missed the in-window deadline for both of its FCC Forms 470 and 471 because of staffing problems.<sup>26</sup> MMS submitted its FCC Form 470 on February 15, 2001 and mailed its FCC Form 471 on April 24, 2001.<sup>27</sup> MMS states the delays in filing were due to "a change in staffing and clerical error."<sup>28</sup> In further support of its Waiver Request, MMS offers that it complied with the deadlines for Funding Years 1, 2, and 3; it is located in a very low income area; and that its funding application is only for local and long distance tariff telephone services.<sup>29</sup> Because all applicants are required to submit an FCC Form 471 annually, the type of service that MMS has is not relevant here.<sup>30</sup> The applicant ultimately bears the responsibility of completing the relevant forms and submitting them within the established deadline if the applicant wishes to be considered with other in-window applicants.<sup>31</sup> How the applicant delegates responsibility for the applications is not relevant to our analysis. We conclude that MMS has not demonstrated the existence of any special circumstances warranting a deviation from our rules, and therefore, we deny its Waiver Request.

8. Mounds Public Schools. Mounds Public Schools (Mounds) states that it missed the in-window deadline for the FCC Form 471 because the third-party contractor it relied upon was late in filing.<sup>32</sup> Mounds states that it has used a third-party computer vendor to assist it with its applications for discounts for the last three years.<sup>33</sup> Although the FCC Form 470 for Mounds was posted as early as October 25, 2000, its FCC Form 471 was only filed on February 15, 2001, more than a month after the filing window closed.<sup>34</sup> Mounds explains that the third party failed to meet the deadline despite reminders from Mounds.<sup>35</sup> Mounds also notes that the school district has limited funding and depends greatly upon the SLD program.<sup>36</sup> While an applicant may employ consultants to assist it, the applicant ultimately bears the responsibility of

<sup>25</sup> See *Danbury and St. Mary's*, *supra* note 13.

<sup>26</sup> Letter from Dennis Fabiszak, Mastics-Moriches-Shirley Community Library, to Federal Communications Commission, filed August 16, 2001 (MMS Waiver Request).

<sup>27</sup> See FCC Form 470, Mastics-Moriches-Shirley Community Library, posted February 15, 2001; FCC Form 471, Mastics-Moriches-Shirley Community Library, filed April 24, 2001.

<sup>28</sup> MMS Waiver Request.

<sup>29</sup> *Id.*

<sup>30</sup> See 47 C.F.R. §§ 54.507(d),(e).

<sup>31</sup> See *Danbury and St. Mary's*, *supra* note 13.

<sup>32</sup> Letter from Dennis Campbell, Mounds Public Schools, to Federal Communications Commission, filed August 20, 2001 (Mounds Waiver Request).

<sup>33</sup> Mounds Waiver Request.

<sup>34</sup> FCC Form 470, Mounds Public School, posted October 25, 2000; FCC Form 471, Mounds Public School, Mounds, Oklahoma, filed February 15, 2001.

<sup>35</sup> Mounds Waiver Request.

<sup>36</sup> *Id.*

completing the relevant forms and submitting them within the established deadline if the applicant wishes to be considered with other in-window applicants.<sup>37</sup> We conclude that MMS has not demonstrated the existence of any special circumstances warranting a deviation from our rules, and therefore, we deny its Waiver Request.

9. Reading-Muhlenberg Area Vocational-Technical School. Reading-Muhlenberg Area Vocational-Technical School (RMAVTS) states that it missed the filing deadline due to staffing changes.<sup>38</sup> RMAVTS states that the employee usually responsible for applications under the universal service support mechanism left RMAVTS in October 2000.<sup>39</sup> RMAVTS explains that until a new person was hired, an employee who had no experience with the schools and libraries program assumed the school's responsibilities and was unaware that there were attachments needed for its FCC Form 471.<sup>40</sup> RMAVTS electronically filed the main portion of its FCC Form 471, without attachments, on January 18, 2001.<sup>41</sup> RMAVTS states that it was informed of its omission when it called to check the status of the application, and forwarded the necessary material to SLID on March 16, 2001.<sup>42</sup> The applicant ultimately bears the responsibility of completing the relevant forms and submitting them within the established deadline if the applicant wishes to be considered with other in-window applicants.<sup>43</sup> How the applicant delegates responsibility for the applications is not relevant to our analysis. We conclude that RMAVTS has not demonstrated the existence of any special circumstances warranting a deviation from our rules, and therefore, we deny its Waiver Request.

10. Versailles Exempted Village Schools. Versailles Exempted Village Schools (Versailles) states that it was late in filing both of its FCC Forms 470 and 471 because of circumstances affecting the availability of an employee.<sup>44</sup> Versailles states that the school district is small and the superintendent was the only person directly involved in the universal service support discount program.<sup>45</sup> Versailles states that six days before its FCC Form 470 needed to be filed, the superintendent was called out of town due to the illness and death of a family member.<sup>46</sup> Versailles submitted its FCC Form 470 on January 12, 2001 and its FCC

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<sup>37</sup> *Homer, supra* note 14, para. 4.

<sup>38</sup> Letter from Thomas P. Mohn, Reading-Muhlenberg Area Vocational-Technical School, to Federal Communications Commission, filed July 30, 2001 (RMAVTS Waiver Request).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> FCC Form 471, Reading-Muhlenberg Area Vocational-Technical School, filed March 16, 2001 (postmarked envelope).

<sup>42</sup> RMAVTS Waiver Request.

<sup>43</sup> *See New Orleans and St. Mary's, supra* note 13.

<sup>44</sup> Letter from Gregory P. Taylor, Versailles Exempted Village Schools, to Federal Communications Commission, filed August 6, 2001 (Versailles Waiver Request).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

Form 471 on February 19, 2001.<sup>47</sup> Versailles requests a waiver of the in-window deadline.<sup>48</sup> Although the circumstances described by Versailles are unfortunate, the fact that only one Versailles employee was trained to complete FCC Form 470 does not constitute special circumstances for purposes of our waiver standard. The applicant ultimately bears the responsibility of completing the relevant forms and submitting them within the established deadline if the applicant wishes to be considered with other in-window applicants.<sup>49</sup> Versailles, therefore, has not demonstrated the existence of any special circumstances warranting a deviation from our rules, and we must deny its Waiver Request.

11. Westbrook School Department. Westbrook School Department (Westbrook) states that it was late in filing its application because its staff misunderstood the process.<sup>50</sup> Westbrook submitted its FCC Form 471 on May 30, 2001, more than four months after the filing window had closed.<sup>51</sup> Westbrook attributes the delay to unexplained and unexpected circumstances, and the lack of staff who understood the process and urgency of filing.<sup>52</sup> Westbrook also states in its letter to SLD that it misunderstood the instructions and only sent material to a state agency.<sup>53</sup> The applicant ultimately bears the responsibility of completing the relevant forms and submitting them within the established deadline if the applicant wishes to be considered with other in-window applicants.<sup>54</sup> Whether the staff misunderstood the process is irrelevant to our analysis. We conclude that Westbrook has not demonstrated the existence of any special circumstances warranting a deviation from our rules, and, therefore, we deny its Waiver Request.

12. Wilcox County Schools. Wilcox County Schools (Wilcox) states that it was late in submitting completed forms for eight applications because of an employee's error.<sup>55</sup> Wilcox completed electronic filing of the main portion of its FCC Form 471 online by January 18, 2001.<sup>56</sup> However, the Item 21 attachments and Block 6 certification page were postmarked on January 19, 2001.<sup>57</sup> Wilcox explains that the employee in charge of filing the applications

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<sup>47</sup> FCC Form 470, Versailles Exempted Village Schools, Versailles, Ohio, filed January 12, 2001 (postmarked envelope); FCC Form 471, Versailles Exempted Village Schools, Versailles, Ohio, filed February 20, 2001 (postmarked envelope with certification).

<sup>48</sup> Versailles Waiver Request.

<sup>49</sup> See *East Brunswick* and *New Orleans*, *supra* note 13.

<sup>50</sup> Letter from Tyler Dunphy, Westbrook School Department, to Federal Communications Commission, filed September 7, 2001 (Westbrook Waiver Request).

<sup>51</sup> FCC Form 471, Westbrook School Department, filed May 30, 2001.

<sup>52</sup> Westbrook Waiver Request.

<sup>53</sup> Letter from Tyler Dunphy, Westbrook School Department, to Schools and Libraries Division, Universal Service Administrative Company, filed August 2, 2001.

<sup>54</sup> See *St. Mary's*, *supra* note 13.

<sup>55</sup> Letter from Malcolm Cain, Wilcox County Schools, to Federal Communications Commission, filed August 13, 2001 (Wilcox Waiver Request).

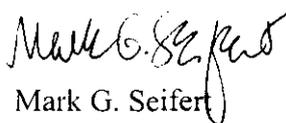
<sup>56</sup> FCC Form 471, Wilcox County Schools, filed January 19 (application SLD-252443 was electronically submitted on January 17, 2001; the others at issue in this appeal were electronically submitted on January 18, 2001).

<sup>57</sup> *Id.* (United States Post Office Express Mail label dated January 19, 2001).

reassured others that the task was being completed on time.<sup>58</sup> Wilcox also notes that the employee was later dismissed.<sup>59</sup> Wilcox asks that the system not be penalized, stating that it will not be able to fund the requested services on its own.<sup>60</sup> The applicant ultimately bears the responsibility of completing the relevant forms and submitting them within the established deadline if the applicant wishes to be considered with other in-window applicants.<sup>61</sup> How the applicant delegates responsibility for the applications is not relevant to our analysis. We conclude that Wilcox has not demonstrated the existence of any special circumstances warranting a deviation from our rules, and therefore, we deny its Waiver Request.

13. 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 Dermott Special School District, Dermott, Arkansas, on August 17, 2001; Hoven School District No. 53-2, Hoven, South Dakota, on August 24, 2001; Mastics-Moriches-Shirley Community Library, Shirley, New York, on August 16, 2001; Mounds Public Schools, Mounds, Oklahoma, on August 20, 2001; Reading-Muhlenberg Area Vocational-Technical School, Reading, Pennsylvania, on July 30, 2001; Versailles Exempted Village Schools, Versailles, Ohio, on August 6, 2001; Westbrook School Department, Westbrook, Massachusetts on September 7, 2001; Wilcox County Schools, Camden, Alabama, on August 13, 2001 ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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

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<sup>58</sup> Wilcox Waiver Request.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 2.

<sup>61</sup> See *Danbury* and *St. Mary's*, *supra* note 13.