

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

MAR 21 2002

In the Matter of)	
)	
Request for Waiver by)	
)	
Loutit District Library)	File No. SLD-279432
Grand Haven, Michigan)	
)	
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 a Waiver Request filed by Loutit District Library (Loutit), Grand Haven, Michigan, seeking waiver of the Commission's rules governing the schools and libraries universal service support mechanism.¹ Loutit requests waiver of the filing deadline for Funding Year 4.² For the reasons set forth below, we deny Loutit's 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.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 Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding

¹ Letter from Gail Skruch, Loutit District Library, to Federal Communications Commission, filed August 29, 2001 (Waiver Request).

² 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 Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.501-54.503.

⁴ 47 C.F.R. §§ 54.504(b).

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.⁵ 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.⁶ The last day of the filing window for Funding Year 4 was January 18, 2001.⁷

3. The record reveals that Loutit filed FCC Forms 470 and 471 outside the filing window. Loutit's FCC Form 470 was posted on February 26, 2001, five weeks after the filing window closed for the FCC Form 471.⁸ Loutit filed its FCC Form 471 in June 2001, five months after the filing window had closed.⁹

4. Loutit admits that it was late in submitting its FCC forms, but states it was misled by information from SLD.¹⁰ Loutit states that it called SLD and was told by an SLD representative that the FCC Form 470 could be filed at anytime, leading it to believe that there was no deadline for both the FCC Forms 470 and 471.¹¹ Loutit also notes that after it received the notice that its funding request was denied, it looked on the SLD website and found what it calls "ambiguous instructions."¹² Loutit references the instructions that state that the FCC Form 470 could be filed at "anytime," but early enough to achieve competitive bidding and filing window deadlines for the FCC Form 471.¹³

5. Loutit's Waiver Request can be granted only if waiving the deadline is supported by a showing of good cause.¹⁴ A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict adherence to the general rule.¹⁵ SLD reviews and processes thousands of applications each year, and therefore it is administratively necessary to place on the applicant responsibility for

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. §§ 54.504(c), 54.507(g).

⁷ SLD website, What's New Archives (September 2000)
<<http://www.sl.universalservice.org/whatsnew/092000.asp#091800>>.

⁸ FCC Form 470, Loutit District Library, posted February 26, 2001.

⁹ FCC Form 471, Loutit District Library, filed June 7, 2001 (envelope containing Block 6 certification page with postmark date of June 7, 2001).

¹⁰ Waiver Request.

¹¹ *Id.*

¹² *Id.* at 2.

¹³ *Id.* at 1.

¹⁴ See 47 C.F.R. § 1.3.

¹⁵ *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).

complying with rules and procedures.¹⁶ 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.¹⁷

6. As we have consistently held in the past, it is the applicant who has responsibility ultimately for the timely submission of its application.¹⁸ We have denied waiver requests based upon an applicant's claim that it simply misunderstood the rules.¹⁹ We have also held that the failure of SLD representatives to respond accurately to inquiries does not relieve applicants of this responsibility.²⁰

7. Under these precedents, we find that Loutit's reliance upon the SLD representative's advice and its claim of ambiguous instructions do not constitute special circumstances warranting deviation from the general rule. Information provided by SLD indicating that the FCC Form 470 could be filed at anytime in the context of other filing requirements is not erroneous. In addition, other information on the web site clearly indicated that FCC Form 471 must be filed within a certain filing window.²¹ Also, the website for Funding Year 4 noted in its tips for filing the FCC Form 470 that it must be filed with enough time to achieve the 28-day period before filing of the FCC Form 471, "which must be postmarked no later than January 18..."²² We conclude that Loutit has failed to demonstrate special circumstances upon which its Waiver Request can be granted.

¹⁶ 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).

¹⁷ See 47 C.F.R. § 54.507(g).

¹⁸ See *FCC Overrules Caldwell Televisions Associates, Ltd.*, Public Notice, 58 RR 2d 1706, 1707 (1985) (*Caldwell*).

¹⁹ *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) (denying a waiver request to the extent it is requested "due to misunderstanding of the program rules").

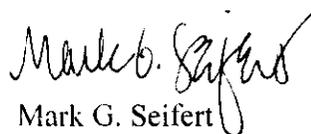
²⁰ *Request for Review by Smackover Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-205330, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2963, para. 8 (Com. Car. Bur. rel. December 19, 2001).

²¹ SLD website, Urgent Reminder of Filing Requirements for Year 4 (January 12, 2001) <<http://www.sl.universalservice.org/whatsnew/012001.asp#011201>>; 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>>

²² SLD website, Tip 2: File Your Form 470 Anytime During the Program Year, <http://www.sl.universalservice.org/reference/470T_ps_Yr4.asp#1>.

8. 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 Loutit District Library, Grand Haven, Michigan on August 29, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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