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

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In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Bennett County School District 3-1 Martin, South Dakota	))	File No. SLD-196833
	)	
Federal-State Joint Board on Universal Service	))	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.	))	CC Docket No. 97-21

ORDER

Adopted: May 10, 2002 **Released: May 13, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request filed by Bennett County School District 3-1 (Bennett), Martin, South Dakota, seeking review of a the Commission's rules governing the schools and libraries universal service support mechanism.[1] Specifically, Bennett requests a waiver of the priority filing window deadline for Funding Year 3.[2] For the reasons set forth below, we grant Bennett'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.[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 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.[4] Once the applicant has

[1] Letter from Ken Luckert, Bennett County School District 3-1 to Federal Communications Commission, filed May 30, 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).

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.[5] The Commission's rules require that the applicant file its 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 3 was January 19, 2000.[7]

3. Due to problems with SLD's computer system during the last day of the filing window of Funding Year 3, the Commission directed the Administrator to ensure that certain applications filed electronically after the filing window closed were considered as filed in a timely manner.[8] Specifically, in the *Year 3 Server Failure Order,* the Commission stated that applications would be granted a limited waiver to be considered as timely filed within the priority filing window if they met two criteria.[9] First, the applicants had to have started the electronic application process on or before January 19, 2000 and tried to complete their application on January 19, 2000.[10] Then, the applicant had to have either completed the application on January 20, 2000, or taken "steps to inform SLD ... of their inability to access SLD's Internet site to complete their applications" by the end of the day January 20, 2000.[11] In the latter case, applicants were given until July 21, 2000 to complete the applications.[12]

4. Bennett challenges a determination by SLD that Bennett did not meet the criteria of the *Year 3 Server Failure Order.*[13] Bennett states that it had started the FCC Form 471 electronic filing process before the server crashed on January 19, 2000.[14] In support of this assertion, Bennett provided evidence that it was involved in the online filing process on January 19, 2000.[15] That evidence includes a screen printout of the SLD's online application system stating that the host could not be contacted.[16] A banner at the bottom of the printout page has a

[5] 47 C.F.R. § 54.504(c).

[6] 47 C.F.R. §§ 54.504(c), 54.507(g).

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

[8] *In the Matter of Federal-State Joint Board on Universal Service, Year 3 Filing Window*, CC Docket No. 96-45, Order, 15 FCC Rcd 13932 (2000) (*Year 3 Server Failure Order*).

[9] *Year 3 Server Failure Order*, 15 FCC Rcd at 13935-13936, paras. 8, 9.

[10] *Id.*

[11] *Year 3 Server Failure Order*, 15 FCC Rcd at 13934-13935, paras. 8, 5.

[12] *See Year 3 Server Failure Order*, 15 FCC Rcd at 13935, para. 9 (allows applicants to submit applications within thirty days of the release date of the Order) (released June 8, 2000).

[13] Waiver Request.

[14] Waiver Request.

[15] *Compare Request for Waiver by Forest Municipal School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-197116, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2527 (Com. Car. Bur. 2001), para. 6 (noting there was no evidence that the applicant began its online application before the end of January 19, 2000).

[16] Waiver Request.

computer-generated date of 9:37 p.m. on January 19, 2000.[17] The Common Carrier Bureau has held that such electronic date stamps constitute evidence of when a printout was generated.[18] The record supports a finding that Bennett attempted to complete its application on January 19, 2000.

5. SLD had found that Bennett's application did not meet the criteria of the *Year 3 Server Failure Order* because Bennett had not completed Block 1 of the FCC Form 471 before January 19, 2000.[19] SLD interpreted the *Year 3 Server Failure Order* to require that an applicant complete Block 1 before the server crash as proof that the application process had commenced.[20] However, the *Year 3 Server Failure Order* does not require completion of Block 1 to show that an applicant had started the application process. The *Year 3 Server Failure Order* refers to Block 1 as an aid that SLD "may" use to "easily identify applicants who initiated the online filing process to the server failure, if those applicants completed Block 1" prior to the server crash.[21] In this case, Bennett did not complete Block 1, but provided other evidence that it had initiated the online process before the server failure. Thus we find that Bennett meets this part of the test established by the *Year 3 Server Failure Order*.

6. However, in order to meet the criteria set out in the *Year 3 Server Failure Order*, an applicant must also have completed the filing by the end of the day January 20, 2000, or, alternatively, taken steps to inform SLD about its electronic filing problems by the end of the day January 20, 2000.[22] Bennett states that it contacted SLD on January 20, 2000.[23] SLD records confirm that Bennett contacted it on January 20, 2000 to alert it to the problem.[24] Furthermore, the record shows that Bennett completed its application on February 11, 2000, well before the July deadline for filing that was given to applicants that met the *Year 3 Server Failure Order* criteria.[25] Therefore, Bennett has demonstrated that it satisfied the criteria of the *Year 3 Server Failure Order* and its FCC Form 471 should be considered as timely filed within the filing window.

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[17] We note that the applicant is in South Dakota, which has both Central Time and Mountain Time zones, but that 9:37 p.m. in either time period would be before midnight Eastern Standard Time.

[18] *See Request for Review by Nashua Public Library, Hudson Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-187440, SLD-185751, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2806 (Com. Car. Bur. rel. December 4, 2001).

[19] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kevin Luckert, Bennett County School District 3-1, dated August 25, 2000 (SLD Correction Letter). That letter reverses an earlier determination by SLD that Bennett met the criteria (Letter from Schools and Libraries Division, Universal Services Administrative Company, to Kevin Luckert, Bennett County School District 3-1, dated June 30, 2000).

[20] Appeal Register, Bennett County School District 3-1, September 11, 2000.

[21] *Year 3 Server Failure Order*, 15 FCC Rcd at 13935, n.21.

[22] *See supra* note 11.

[23] Waiver Request.

[24] *See* SLD Correction Letter.

[25] FCC Form 471, Bennett County School District 3-1, filed February 11, 2000.

7. 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 Bennett County School District 3-1, Martin, South Dakota on May 30, 2001, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau