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

In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Tuscarora Intermediate Unit 11 McVeytown, Pennsylvania	))	File No. SLD-225274
	)	
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 22, 2002 **Released: May 23, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request by Tuscarora Intermediate Unit 11 (Tuscarora), McVeytown, Pennsylvania, seeking waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.[1] Specifically, Tuscarora requests review of a determination by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) that Tuscarora's funding application was filed outside the filing window for Funding Year 4.[2] For the reasons set forth below, we deny Tuscarora'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 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 requirements and entered into agreements for eligible services, the applicant must submit a completed FCC Form 471 application to the

[1] Letter from Tony Payne, Tuscarora Intermediate Unit 11, to the Federal Communications Commission, filed on September 14, 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 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)(1), (b)(3).

Administrator.[5] In the FCC Form 471 instructions, SLD has clearly set forth its standards for processing a FCC Form 471 application.[6] Specifically, the FCC Form 471 instructions state that if a school or library does not provide the information requested, "the processing of your application may be delayed or your application may be returned to you without action."[7]

3. The Commission's rules allow the Administrator to implement an initial filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.[8] Section 54.507(c) of the Commission's rules states that fund discounts will be available on a first-come, first-served basis.[9] Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.[10] It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. In Funding Year 4, the window closed on January 18, 2001.[11]

4. Applicants may file their FCC Form 471 electronically.[12] In order to have successfully completed the submission of the FCC Form 471 application in Funding Year 4, applicants who filed electronically must also have completed and mailed to SLD the Item 21 description of services, and a paper copy of the Block 6 certification, the latter of which applicants must also have signed.[13] A commitment of support is contingent upon the timely filing of the applicant's completed FCC Form 471.[14] Prior to Funding Year 4, the deadline by which these items had to be received by SLD to be considered within the window was later than the deadline for the filing of the FCC Form 471, so that applicants could file electronically on the last day of the filing window, and mail their certifications and attachments thereafter. However, because in previous years the delivery of a number of applications was significantly delayed by the postal service, SLD, starting in Funding Year 4, directed that all FCC Forms 471 would be deemed filed when postmarked, rather than when received by SLD.[15] This procedural change protects applicants from excessive mail delays.

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[5] 47 C.F.R. § 54.504(c).

[6] Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions). *See also* 47 C.F.R. § 54.504(c).

[7] Form 471 Instructions at 2.

[8] 47 C.F.R. § 54.507(c).

[9] *Id.*

[10] 47 C.F.R. § 54.507(g).

[11] SLD processed applications as "in-window" if they were postmarked by January 18, 2001. *See* SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for Funding Year 4, <http://www.sl.universalservice.org/reference/471mps.asp> (Funding Year 4 Minimum Processing Standards); *infra* para. 4 and n.19.

[12] Form 471 Instructions at 4-5.

[13] Block 6 is the section of the FCC Form 471 where applicants must sign the form and make certifications required under program rules. *See* FCC Form 471, Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000).

[14] Form 471 Instructions at 3-6.

[15] *See* SLD website, What's New (November 2, 2000) <http://www.sl/universalservice.org/whatsnew/110200.asp#110200> (SLD Year 4 Change Notice).

5. Consequently, SLD notified all potential applicants that all Block 6 certifications and Item 21 attachments must also be postmarked no later than the close of the filing deadline. The FCC Form 471 instructions refer applicants to the SLD Client Service Bureau or its website for annual filing deadline dates.[16] SLD notified applicants about the postmark deadline: (1) through a November 6, 2000 letter mailed to 61,000 applicants, including previous applicants;[17] (2) through a press release distributed on November 2, 2000, to approximately 100 news outlets;[18] and (3) by posting several notifications in different areas on the SLD website.[19]

6. Tuscarora electronically filed its FCC Form 471 on January 16, 2001, two days before the filing window closed.[20] However, its Block 6 certification page and Item 21 attachments were postmarked February 2, 2001.[21] SLD determined that the entire application was outside the filing window, and Tuscarora requests that the Commission consider its application as timely filed.[22]

7. Tuscarora states that it is still investigating the reason for the delay. It notes there have been staff changes and transitions. It also notes that it would be a hardship for the school to go without the support of the schools and libraries universal services mechanism, as it has nine small, poor, rural schools.

8. Tuscarora's Waiver Request can be granted only if waiving the deadline is supported by a showing of good cause.[23] A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than

[16] Form 471 Instructions.

[17] Letter from Schools and Libraries Division, Universal Service Administrative Company, to applicants, dated November 6, 2000. SLD records indicate that a copy of the letter was mailed to Tom Payne at Tuscarora Intermediate Unit 11.

[18] "Window Opens For Year Four E-rate Applications," Schools and Libraries Division, Universal Service Administrative Company, Press Release, November 2, 2000.

[19] *See* SLD Year 4 Change Notice ("Year 4 features NEW and FIRM filing requirements: The January 18 deadline is a POSTMARKING deadline. In order to make sure your application is in the window, all manually submitted materials must be postmarked no later than January 18. Unlike Year 3, all materials associated with the Form 471 have a January 18 deadline: the 471 Form itself (whether electronic or paper); the Block 6 certification for the Form 471 with an original signature by the authorized person; all attachments for Item 21; [and] the Block 5 certification of Form 470 filed for Year 4 (and which is cited in a Year 4 Form 471) with an original signature by the authorized person"); *See also,* SLD website, Program Description for the 2001-2002 Funding Year (November 2000) at 1, 4-5, 14-15 <http://www.sl.universalservice.org/data/doc/ProgramDescriptionY4.doc>; Funding Year 4 Minimum Processing Standards at 3.

[20] FCC Form 471, Tuscarora Intermediate Unit 11, filed February 2, 2001 (Tuscarora Form 471) (electronic portion submitted January 16, 2001).

[21] *Id.* (original Block 6 certification page and Item 21 attachments, with copy of envelope bearing postmark of February 2, 2001).

[22] *See* Waiver Request. *See also* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Tony Payne, Tuscarora Intermediate Unit 11, dated August 20, 2001 (Administrator's Decision on Waiver Request) (directing Tuscarora to make its waiver request to the Commission as SLD cannot waive the Commission's rules).

[23] *See* 47 C.F.R. § 1.3.

strict adherence to the general rule.[24] SLD reviews and processes thousands of applications each year, and therefore it is administratively necessary to place on the applicant responsibility for complying with our rules and procedures.[25] 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 be considered pursuant to the funding priorities for in-window applicants.[26]

9. 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 if the applicant wishes to be considered with other in-window applicants.[27] How the applicant delegates responsibility for the applications is not relevant to our analysis. We have held that neither employee error nor staffing changes relieves applicants of their responsibility to understand and comply with the program.[28] The circumstances described by Tuscarora do not constitute special circumstances for purposes of our waiver standard. Therefore, we conclude that Tuscarora has not demonstrated the existence of any special circumstances warranting a deviation from our rules, and we deny its Waiver Request.

[24] *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).

[25] *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).

[26] *See* 47 C.F.R. § § 54.504(c), 54.507(c).

[27] *See Request for Review by Dermott Special School District, Hoven School District No. 53-2, Mastics-Moriches-Shirley Community Library, Mounds Public Schools, Reading-Muhlenberg Area Vocational-Technical School, Versailles Exempted Village Schools, Westbrook School Department, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-252777, SLD-261808, SLD-277850, SLD-265880, SLD-257325, SLD-270374, SLD-220712, CC Docket Nos. 96-45 and 97-21, Order, DA 02-643 (Com. Car. Bur. rel. March 19, 2001).

[28] *Id.*

10. 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 Request for Review filed by Tuscarora Intermediate Unit 11, McVeytown, Pennsylvania, on September 14, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert

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