

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



In the Matter of)
)
Request for Waiver by)
)
Albany County School District 1)
Laramie, Wyoming)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Associations, Inc.)

File No. SLD-260055

CC Docket No. 96-45 ✓

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 filed by Albany County School District 1 (Albany County), Albany, Wyoming, seeking a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.¹ Specifically, Albany County requests that its application be considered as filed within the filing deadline for Funding Year 4.² For the reasons set forth below, we deny Albany County'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 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 The Administrator must post the FCC Form 470 on its website, and the applicant is

¹ Letter from Rocky Tyler, Albany County School District 1, to Federal Communications Commission, filed August 23, 2001 (with addendum filed September 4, 2001) (together referred to as 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).

required to wait 28 days before making a commitment with a selected service provider.⁵ Once the applicant has 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.⁶ 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.⁷ The filing window for Funding Year 4 closed on January 18, 2001 at 11:59 p.m. Eastern Standard Time.⁸ In order to comply with the competitive bidding requirement, applicants must have submitted FCC Form 470s by December 21, 2000 at 11:59 Eastern Standard Time.⁹

3. Albany County attempted to electronically file its FCC Form 470 on December 21, 2000.¹⁰ Albany County states that it entered its information on the evening of December 21, 2000 and tried to submit the material at 10:00 or 10:01 p.m. Mountain Time. However, it was not successful because the SLD online filing system closes at midnight Eastern Standard Time for maintenance.¹¹ Albany County filed the form the next day.¹² Because of the competitive bidding requirements, Albany County's allowable contract date was January 19, 2001, one day after the FCC Form 471 filing window closed.¹³ Albany County requests that the allowable contract date be moved back by one day or the filing window extended.¹⁴ Albany County requests a waiver from the Commission, as SLD can not give a waiver of the Commission's rules.¹⁵

4. Albany County's Request for Waiver can be granted only if waiving the deadline

⁵ 47 C.F.R. §§ 54.504(b), 54.511

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. §§ 54.504(c), 54.507(c).

⁸ See SLD website, FCC Form 471 Window Opens for Year 4 Applicants (November 2, 2000), <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>; SLD website, Urgent Reminder of Filing Requirements for Year 4 (January 12, 2001) <<http://www.sl.universalservice.org/whatsnew/012001.asp#011201>>; see also Waiver Request at 2.

⁹ See, e.g., *Request for Waiver by Ballard Community School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-268911, SLD-268909, SLD-266579, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2024 (Com. Car. Bur. rel. August 29, 2001) (*Ballard*), para. 3 (discussing calculation of date, although not time).

¹⁰ Waiver Request.

¹¹ *Id.* (attachments include e-mail correspondence with SLD about the servers being shut down from that time until 6 a.m. Eastern Standard Time).

¹² See FCC Form 470, Albany County School District 1, posted December 22, 2000.

¹³ *Id.* (allowable contract date of January 19, 2001).

¹⁴ Waiver Request (see attached e-mail from Rocky Tyler to Schools and Libraries Division, Universal Service Administrative Company, December 22, 2000, at 5).

¹⁵ *Id.*; see also Letter from Schools and Libraries Division, Universal Service Administrative Company, to Rocky Tyler, Albany County School District, dated August 6, 2001 (Administrator's Decision on Waiver Request).

is supported by a showing of good cause.¹⁶ 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.¹⁷ 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.¹⁸ 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.¹⁹ In the past, we have denied waiver requests based upon an applicant's claim that it simply misunderstood the rules.²⁰ Specifically, we have denied a waiver to an applicant claiming to have missed the Funding Year 4 filing window because of a miscalculation of when it needed to file its FCC Form 470.²¹ We have also denied a waiver to an applicant filing outside of the Eastern Standard Time zone that tried to submit its FCC Form 471 on January 19, 2001, after the SLD website had closed for routine maintenance.²²

5. Albany County argues that SLD did not notify online filers that the deadline for the FCC Form 470 was Eastern Standard Time, nor did it notify them that the filing system shut down at midnight Eastern Standard Time.²³ Albany County notes that this information was not explained in the Year 4 Program Description. Albany County argues that another website notice, which it alleges was clearer, was not easily accessible. Albany County argues that it was reasonable to assume that Central Time was the appropriate time zone because, as noted in the Year 4 Program Description, applicants must send manual filings to a location in that time zone. However, as noted above, references to FCC Form 471 deadline being in Eastern Standard Time were made in material from SLD, therefore, the calculation of the latest minute 28 days before that time must be according to Eastern Standard Time.²⁴ The state of the server after midnight Eastern Standard Time on December 22, 2000 is not relevant because the deadline had already passed.²⁵ Albany County offers no additional reason why it did not meet the deadline. We find

¹⁶ See 47 C.F.R. § 1.3.

¹⁷ *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).

¹⁸ 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).

¹⁹ See 47 C.F.R. §54.507(g).

²⁰ *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's rules).

²¹ *Ballard* (applicant filed the FCC Form 470 on December 22, 2000 and claimed an SLD representative concurred with its own determination that filing the FCC Form 470 on that date would allow for the filing of an FCC Form 471 within the Funding Year 4 window).

²² *Request for Review by Renaissance Charter School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-260959, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 15902 (Com. Car. Bur. 2001).

²³ *Waiver Request* (see addendum).

²⁴ See *supra* note 8 (website notices cited for Eastern Standard Time references).

²⁵ *Waiver Request*.

that Albany County has not demonstrated the existence of any special circumstances warranting a deviation from the general rule, and, therefore, we deny its Waiver Request.

6. 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 Albany County Public Schools, Albany County, Minnesota on August 7, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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