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

In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Central City Public Library Central City, Nebraska	)))	File No. SLD-261508
	)	
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 from Central City Public Library (Central City), Central City, Nebraska.[1] Central City seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.[2] Specifically, Central City requests a waiver of the filing deadline for Funding Year 4.[3] For the reasons set forth below, we deny Central City'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.[4] 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.[5] Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, the applicant must submit a

[1] Letter from Lynn Manhart, Central City Public Library, to Federal Communications Commission, filed December 28, 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] *See* Waiver Request.

[4] 47 C.F.R. §§ 54.501–54.503.

[5] 47 C.F.R. § 54.504(b)(1), (b)(3).

completed FCC Form 471 application to the Administrator.[6]

3. The Commission's rules require the Administrator to implement an initial filing period ("filing window") for FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.[7] Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.[8] 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.[9]

4. Central City admits that it was late in submitting its FCC Form 471, but attributes the delay to technological problems and staff error.[10] Central City electronically filed its FCC Form 470 on December 14, 2000, well before the filing window closed.[11] However, Central City electronically submitted its FCC Form 471, and mailed the associated Block 6 certification and Item 21 attachments five days after the filing window closed, on January 23, 2001.[12] Central City requests a waiver of the deadline from the Commission, as SLD can not give a waiver of the Commission's rules.[13]

5. Central City'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 complying with our 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 be considered pursuant to the funding priorities for in-window

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[6] 47 C.F.R. § 54.504(c).

[7] 47 C.F.R. § 54.507(c).

[8] 47 C.F.R. § 54.507(g).

[9] In Funding Year 4, 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).

[10] Waiver Request.

[11] FCC Form 470, Central City Public Library, posted December 14, 2000.

[12] FCC Form 471, Central City Public Library, filed January 23, 2001 (envelope containing Block 6 certification and Item 21 attachments with postmark date).

[13] Waiver Request; *see also* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lynn Manhard, Central Public Library, dated November 9, 2001 (Administrator's Decision on Waiver Request).

[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).

[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).

applicants.[17]

6. In support of its Waiver Request, Central City offers several reasons for the delay, and notes the need for universal service discounts. Central City asserts that due to the unexpected failure of its broadband access, its Internet access was cut off for a period of time in January and therefore the library could not download the FCC Form 471. The delay was attributed to storm damage and the service provider's failure to make repairs.[18] In further support of its Waiver Request, Central City also notes that its director was new and busy with other work, and the library is small and well-used.[19]

7. 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. 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.[20] We have consistently held that misunderstanding does not relieve applicants of their responsibility to understand and comply with the program's rules and procedures.[21] We note that information about applications could be obtained through SLD's toll free number and e-mail, as noted in the instructions for the FCC Form 471 for Funding Years 1, 2 and 3.[22] Applicants are expected to anticipate the possibility of delays, including those attributable to bad weather.[23] Therefore, we do not find that special circumstances exist for purposes of the waiver based on Central City's claim that it lost broadband access for a period of time. Nor can we waive the rules based on the claim that the person tasked with filing the FCC

[17] 47 C.F.R. §§ 54.504(c), 54.507(c).

[18] Waiver Request, Attachment (Letter from John Helin, City of Central City, on behalf of Central City Library, to Schools and Libraries Division, Universal Service Administrative Company, dated October 23, 2001).

[19] Waiver Request.

[20] *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).

[21] *See, e.g., 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").

[22] *See* Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 1997), at 4-5; Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 1998), at 4-5; Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999), at 5-6.

[23] *See, e.g., Request for Waiver by Midland 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-269321, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2330 (Com. Car. Bur. rel. October 10, 2001) (although circumstances such as inclement weather may be unexpected, they are generally reasonably foreseeable, and applicants therefore "should build into their schedules a reasonable margin of error in anticipation of circumstances which may cause delay."); *see also FCC Overrules Caldwell Television*, 58 RR 2d 1706, 1707 (1985) (denying waiver request where unexpected fog closed airport, resulting in late filing of a broadcast application).

Form 471 was recently hired and over-burdened with work. Furthermore, we have held that the assertion that a denial of an application may have a detrimental impact on schools and libraries does not create the special circumstances that warrant waiver of the Commission's rules.[24] Therefore, we cannot give a waiver based on the premise that the library is small and well-used. We conclude that Central City has not demonstrated special circumstances upon which its Waiver Request can be granted.

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 Central City Public Library, Central City, Nebraska, on December 28, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert

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

[24] *See Request for Review by Northern Waters Library Service, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-183124, CC Docket Nos. 96-45 and 97-21, Order, DA 02-227 (Com. Car. Bur. rel. Jan. 30, 2002) (denying a request for waiver of the Commission's rules based on the assertion that denial would cause the applicant hardship); *Request for Review by Lansingburgh Central 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-109845, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 6999 (Com. Car. Bur. 1999) ("To simply advert...to its limited resources and the needs of its students, does not distinguish its situation from other applications the SLD must process each funding year in accordance with its filing deadlines.").