

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



In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Molalla River School District	)	
Molalla, Oregon	)	File No. NEC.471.10-30-00.20600002
	)	
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 filed by Molalla River School District (Molalla), Molalla, Oregon, seeking a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.<sup>1</sup> Molalla requests a waiver of the filing window deadline for Funding Year 3.<sup>2</sup> For the reasons set forth below, we deny Molalla'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.<sup>3</sup> 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.<sup>4</sup> The Administrator must post the FCC Form 470 on its web site, and the applicant is

<sup>1</sup> Letter from Michael Nickless, Molalla River School District, to Federal Communications Commission, filed July 2, 2001 (Waiver Request).

<sup>2</sup> See Waiver Request. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>3</sup> 47 C.F.R. §§ 54.501-54.503.

<sup>4</sup> 47 C.F.R. § 54.504(b).

required to wait 28 days before making a commitment with a selected service provider.<sup>5</sup> 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.<sup>6</sup>

3. The Commission's rules allow the Administrator to implement an internal 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.<sup>7</sup> Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.<sup>8</sup> It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

4. The filing window deadlines for Funding Years 2 and 3 overlapped due to unusual circumstances. The last day of the filing window for Funding Year 2 was originally April 6, 1999.<sup>9</sup> However, because there were uncommitted funds remaining after it had processed all applications that had come within that filing window, SLD re-opened the filing window to permit additional applications.<sup>10</sup> The re-opened Funding Year 2 filing window closed on March 31, 2000.<sup>11</sup> Meanwhile, applications for Funding Year 3 had a filing window that closed on January 19, 2000.<sup>12</sup>

5. Molalla's filing ultimately did not fall within either of these deadlines. Molalla filed a FCC Form 470 for Funding Year 3 and it was posted by SLD on March 29, 2000.<sup>13</sup> Molalla mailed its FCC Form 471 to SLD on October 30, 2000, as indicated by a copy in SLD's files.<sup>14</sup> In May of 2001, Molalla wrote to SLD to determine the status of its filing.<sup>15</sup> In response, an SLD representative called Molalla and explained that its application was not in the system, and that while SLD could not advise him *not* to resubmit the material, SLD was already taking

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<sup>5</sup> 47 C.F.R. §§ 54.504(b), 54.511.

<sup>6</sup> 47 C.F.R. § 54.504(c).

<sup>7</sup> 47 C.F.R. § 54.507(c).

<sup>8</sup> 47 C.F.R. § 54.507(g).

<sup>9</sup> See SLD website, More Than 32,000 Applications For E-Rate Discounts In Year Two (April 1999) <<http://www.sl.universalservice.org/whatsnew/041999.asp#applications>>.

<sup>10</sup> See SLD website, Consideration of Additional Post-Window Year 2 Applications (March 1, 2000) <<http://www.sl.universalservice.org/whatsnew/032000.asp#32900>>.

<sup>11</sup> See *id.*

<sup>12</sup> SLD website, Form 471 Window Closes January 19, 2000 at 11:59 PM ET (December 6, 1999), <<http://www.sl.universalservice.org/whatsnew/121999.asp>> (this announcement did not state to which funding year it referred).

<sup>13</sup> FCC Form 470, Molalla River School District, posted March 29, 2000.

<sup>14</sup> FCC Form 471, Molalla River School District, filed October 30, 2000.

<sup>15</sup> Letter from Michael Nickless, Molalla River School District, to Schools and Libraries Division, Universal Service Administrative Company, filed May 15, 2001.

applications for Funding Year 4.<sup>16</sup> Molalla acknowledged that it probably submitted its material outside the window, but it sent in its material again requesting to be considered in any case.<sup>17</sup> In support of its request for waiver, Molalla contends that the deadlines for those two years were confusing.<sup>18</sup>

6. SLD directed Molalla to appeal directly to the Commission, because SLD does not have authority to grant a request to waive our rules.<sup>19</sup> In its subsequent letter to the Commission, Molalla argues that its employee was clearly confused about the deadlines due to extended filing deadline for Funding Year 2.<sup>20</sup> Molalla notes that it is a poor district and desperately needs the funding support.<sup>21</sup> Molalla asks that the filing deadline for Funding Year 3 be waived.<sup>22</sup>

7. Molalla's Waiver Request can be granted only if waiving the deadline is supported by a showing of good cause.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

8. As we have consistently held in the past, it is the applicant who has responsibility ultimately for the timely submission of its application.<sup>27</sup> We have denied waiver requests based

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<sup>16</sup> Schools and Libraries Division, Universal Service Administrative Company, Call Sheet, Molalla River School District, issued May 30, 2001 (SLD Call Log).

<sup>17</sup> Letter from Michael Nickless, Molalla River School District, to Schools and Libraries Division, Universal Service Administrative Company, filed June 7, 2001 (the letter was dated May 30, 2001, the same day as the call from SLD).

<sup>18</sup> Waiver Request.

<sup>19</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michael Nickless, Molalla River School District, dated June 12, 2001 (Administrator's Decision on Waiver Request).

<sup>20</sup> Waiver Request.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See 47 C.F.R. § 1.3.

<sup>24</sup> *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).

<sup>25</sup> 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).

<sup>26</sup> See 47 C.F.R. §§ 54.504(c), 54.507(c).

<sup>27</sup> See *FCC Overrules Caldwell Televisions Associates, Ltd.*, Public Notice, 58 RR 2d 1706, 1707 (1985).

upon an applicant's claim that it misunderstood the program rules.<sup>28</sup> For these reasons, Molalla's contention that it misunderstood the rules does not warrant relief and, therefore, we deny Molalla's request.

9. 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 Molalla River School District, Molalla, Oregon, on July 2, 2001, IS DENIED.

## FEDERAL COMMUNICATIONS COMMISSION



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

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<sup>28</sup> 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 Rod 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).