

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



In the Matter of)
)
Request for Waiver of Decision of the)
Universal Service Administrator)
)
North Carolina)
Department of Commerce – SIPS)
Halifax County School District)
Halifax, North Carolina)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Associations, Inc.)

File No. SLD-184216

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 North Carolina Office of Information Technology Services (NC OIT) on behalf of North Carolina Department of Commerce – SIPS, Halifax County School District (Halifax), Halifax, North Carolina.¹ NC OIT seeks a waiver of the Commission’s rules governing the schools and libraries universal service support mechanism as they were applied to Halifax’s Funding Year 3 request for discounts.² Specifically, NC OIT requests a waiver of the priority filing window deadline for Funding Year 3.³ For the reasons set forth below, we remand the application to SLD for further processing.

¹ Letter from Nancy Atkins, North Carolina Office of Information Technology Services, on behalf of North Carolina Department of Commerce- SIPS, Halifax County School District, to Federal Communications Commission, filed May 18, 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 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 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.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 last day of the filing window for Funding Year 3 was January 19, 2000.⁸

3. Due to problems with USAC'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.⁹ 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.¹⁰ First, the applicants had to have started the electronic application process on or before January 19, 2000 and must have tried to complete the application on January 19, 2000.¹¹ The applicant also 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, 2000.¹² In the latter case, applicants were given until July 21, 2000 to complete the applications.¹³

⁴ 47 C.F.R. §§ 54.501–54.503.

⁵ 47 C.F.R. § 54.504(b).

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. §§ 54.504(c), 54.507(g).

⁸ SLD web site, SLD Announces Availability of Year 3 Forms, (October 29, 1999) <<http://www.sl.universalservice.org/whatsnew/101999.asp#form>>.

⁹ *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*).

¹⁰ *Year 3 Server Failure Order*, 15 FCC Rcd at 13835, paras. 8-9.

¹¹ *Id.*

¹² *Year 3 Server Failure Order*, 15 FCC Rcd at 13834-138935, paras. 8, 5.

¹³ *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).

4. NC OIT asserts that Halifax tried to complete its application before January 19, 2000.¹⁴ In support of this assertion, NC OIT has provided evidence that Halifax was in the process of electronically filing its FCC Form 471 on January 19, 2000.¹⁵ That evidence includes screen printouts of the filled out electronic form, with a computer-generated printout date of January 19, 2000 on a banner at the bottom of the page.¹⁶ The Common Carrier Bureau has held that such electronic date stamps constitute evidence of when a printout was generated.¹⁷ Therefore, we find that Halifax tried to complete its electronic application on January 19, 2000 and thus meets the first part of the test established in the *Year 3 Server Failure Order*.

5. 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 January 20, 2000; or, alternatively, taken steps to inform SLD about its electronic filing problems by the end of January 20, 2000.¹⁸ SLD's server log indicates that Halifax's electronic application was completed February 3, 2000.¹⁹ NC OIT states that Halifax manually filed its FCC Form 471 by sending it via express mail to SLD on January 19, 2000.²⁰ Nothing in the record indicates that such material was received by SLD. Therefore, we conclude that Halifax's application was not completed by January 20, 2000.

6. While we do not find that Halifax's application was completed by January 20, 2000, we believe it appropriate for SLD to investigate whether the applicant attempted to contact SLD January 20, 2000. In the *Year 3 Server Failure Order*, the Commission directed the Administrator to verify whether an applicant attempted to contact SLD in time, allowed that in cases "where the Administrator is unable to make such verification," to allow applicants to certify that was the case, and to supply supporting documentation.²¹ We direct SLD to do so in this case. We note that the Commission made allowances for situations in which applicants contacted a state coordinator before or instead of contacting SLD directly, if SLD could obtain certifications from state coordinators that those applicants that contacted them, and that the state

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. Halifax's printouts also have facsimile date stamps with that date on those pages.

¹⁷ *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. re. December 4, 2001).

¹⁸ *See supra* note 11.

¹⁹ Schools and Libraries Division, Universal Service Administrative Company, Server Log, North Carolina Department of Commerce, December 3, 2001 (SLD Server Log).

²⁰ Waiver Request; *see also* Letter from Nancy Atkins, State of North Carolina Office of Information Technology Services, to Schools and Libraries Division, Universal Service Administrative Company, filed December 19, 2000, at 2 ("[W]hen the server went down, this agency bundled up a number of applications and sent them surface express delivery to Kansas.... We believe this application was among those").

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

coordinators contacted SLD on their behalf on or before midnight January 20, 2000.²² If SLD determines that Halifax did attempt to contact SLD directly or through its state coordinator about its inability to electronically file, then Halifax's application should be treated as timely. If SLD determines the applicant did not attempt to do so, then no waiver is appropriate.

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 North Carolina Office of Information Technology Services on behalf of North Carolina Department of Commerce – SIPS, Halifax County School District, on May 18, 2001, IS REMANDED to SLD for further processing in accordance with this Order.

FEDERAL COMMUNICATIONS COMMISSION



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

²² *Year 3 Server Failure Order*, 15 FCC Rcd at 13936, para. 9.