

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
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Request for Waiver by)
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Tuxedo Park School)
Tuxedo Park, New York)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-267980

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: May 20, 2002

Released: May 21, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request filed by Tuxedo Park School (Tuxedo), Tuxedo, New York.¹ Tuxedo seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.² Specifically, Tuxedo requests that its application be considered as filed within the filing deadline for Funding Year 4.³ For the reasons set forth below, we deny Tuxedo'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

¹ Letter from James Pearson and Ann Doherty Cooke, Tuxedo Park School, to Federal Communications Commission, filed December 13, 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. §§ 54.502-54.503.

discounts.⁵ The Administrator must post the FCC Form 470 on its website, and the applicant is required to wait 28 days before making a commitment with a selected service provider.⁶ 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.⁷ 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.⁸ Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.⁹ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. The Funding Year 4 application window closed on January 18, 2001.¹⁰

3. Tuxedo mailed a paper copy of its entire application to SLD on January 26, 2001, after the filing window had closed.¹¹ Tuxedo requests a waiver of the filing window from the Commission, as SLD can not give a waiver of the Commission's rules.¹² In support of its Waiver Request, Tuxedo notes that it is a small independent school, its staff exercises many responsibilities while handling a vast amount of paperwork, and that the lack of such funding has presented an undue financial hardship on the operation of the school.¹³

4. Tuxedo'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

⁵ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁶ 47 C.F.R. § 54.504(b)(3), (4); § 54.511.

⁷ 47 C.F.R. § 54.504(c).

⁸ 47 C.F.R. § 54.507(c).

⁹ 47 C.F.R. § 54.507(g).

¹⁰ SLD website, What's New (November 2, 2000)
<<http://www.sl/universalservice.org/whatsnew/110200.asp#110200>>.

¹¹ FCC Form 471, Tuxedo Park School, filed January 26, 2001 (postmarked envelope).

¹² Waiver Request; *see also* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ann Doherty Cooke, Tuxedo Park School, dated October 31, 2001 (Administrator's Decision on Waiver Request).

¹³ Waiver Request at 1, 3 (attaching a copy of a letter from Ann Doherty Cooke, Tuxedo Park School, to Schools and Libraries Division, Universal Service Administrative Corporation, dated October 3, 2001).

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).

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 applicants.¹⁷

5. As we have consistently held in the past, it is the applicant who has responsibility ultimately for the timely submission of its application.¹⁸ Neither staffing problems nor misunderstanding relieves applicants of their responsibility to understand the program and comply with its rules and procedures.¹⁹ We have denied waiver requests based upon applicants' claims that the denial of funding would have a detrimental impact on the school or library in question and that such impact is a special circumstance warranting a waiver of the Commission's rules.²⁰ Therefore, we conclude that Tuxedo has failed to demonstrate special circumstances upon which its Waiver Request can be granted.

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).

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

¹⁸ See *FCC Overrules Caldwell Televisions Associates, Ltd.*, Public Notice, 58 RR 2d 1706, 1707 (1985).

¹⁹ See, e.g., *Request for Review by Danbury Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.04-13-00.31900001, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 10910 (Com. Car. Bur. 2001) (denying waiver request in case when employee responsible for filing failed to do so); *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).

²⁰ 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.").

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 Tuxedo Park School, Tuxedo Park, New York, on December 13, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert

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Wireline Competition Bureau