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

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| In the Matter of | ) | |
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| Request for Request by | ) | |
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| San Benito Literacy Center<br>San Benito, Texas | )<br>)<br>) | File No. SLD-256090 |
| | ) | |
| Federal-State Joint Board on<br>Universal Service | )<br>)<br>) | CC Docket No. 96-45 |
| | ) | |
| Changes to the Board of Directors of the<br>National Exchange Carrier Associations, Inc. | )<br>) | CC Docket No. 97-21 |

**ORDER**

**Adopted: June 27, 2002** **Released: June 28, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by the San Benito Literacy Center (San Benito), San Benito, Texas.[1] San Benito seeks review of a determination by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) that San Benito's application was filed outside the filing window for Funding Year 4.[2] For the reasons set forth below, we deny San Benito's Request for Review. To the extent that San Benito requests a waiver of the Commission's rules, we deny that request as well.

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 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] Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, the applicant must submit a completed FCC Form 471 application to the

[1] Letter from Ron Rogers, San Benito Literacy Center, to the Federal Communications Commission, filed September 19, 2001 (Request for Review).

[2] *See* Request for Review. *See also* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Annabelle Whitinger, San Benito Literacy Center, dated August 21, 2001 (Administrator's Decision on 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 Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

[3] 47 C.F.R. §§ 54.502, 54.503.

[4] 47 C.F.R. § 54.504(b)(1), (b)(3).

Administrator.[5] In the FCC Form 471 instructions, SLD has clearly set forth its standards for processing a FCC Form 471 application.[6] Specifically, the FCC Form 471 instructions state that if a school or library does not provide the information requested, "the processing of your application may be delayed or your application may be returned to you without action."[7]

3. Section 54.507(c) of the Commission's rules states that fund discounts will be available on a first-come-first-served basis.[8] The Commission's rules also allow the Administrator to implement an initial 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.[9] Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.[10] 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.[11]

4. Applicants may file their FCC Form 471 electronically.[12] In order to have successfully completed the submission of the FCC Form 471 application in Funding Year 4, applicants who filed electronically must have also completed and mailed to SLD the Item 21 description of services, and a paper copy of the Block 6 certification, the latter of which applicants must also have signed.[13] A commitment of support is contingent upon the timely filing of the applicants' completed FCC Form 471.[14] Prior to Funding Year 4, the deadline by which these items had to be received by SLD to be considered within the window was later than the deadline for the filing of the FCC Form 471, so that applicants could file electronically on the last day of the filing window, and mail their certifications and attachments thereafter. However, because in previous years the delivery of a number of applications was significantly delayed by the postal service, SLD, starting in Funding Year 4, directed that all FCC Forms 471 would be deemed filed when postmarked, rather than when received by SLD.[15] This procedural change protects applicants from excessive mail delays. Consequently, SLD notified all potential

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[5] 47 C.F.R. § 54.504(c).

[6] Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions). *See also* 47 C.F.R. § 54.504(c).

[7] Form 471 Instructions at 2.

[8] 47 C.F.R. § 54.507(c).

[9] *Id.*

[10] 47 C.F.R. § 54.507(g).

[11] 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).

[12] Form 471 Instructions at 4-5.

[13] Block 6 is the section of the FCC Form 471 where applicants must sign the form and make certifications required under program rules. *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000).

[14] Form 471 Instructions at 3-6.

[15] *See* SLD website, What's New (November 2, 2000) <http://www.sl/universalservice.org/whatsnew/110200.asp#110200> (SLD Year 4 Change Notice).

applicants that all Block 6 certifications and Item 21 attachments must also be postmarked no later than the close of the filing deadline.[16]

5. San Benito filed the electronic portion of its FCC Form 471 with SLD before the close of the filing window at 11:59 Eastern Standard Time on January 18, 2001.[17] Subsequently, San Benito mailed its Block 6 certification page, along with the Item 21 attachments, to SLD. The Block 6 certification page and Item 21 attachments were postmarked on January 19, 2001.[18] SLD later informed San Benito that its application, Block 6 Certifications, and/or Item 21 attachments were filed after the 2001-2002 filing window on January 18, 2001.[19]

6. On appeal to the Commission, San Benito claims that 1) it met the deadline, 2) it followed SLD directions, and 3) the deadline is arbitrary. First, San Benito argues that it did meet the Funding Year 4 deadline because the electronic portion of its application was filed by January 18, 2001.[20] In its Request for Review, San Benito included a copy of the screen printout of the Block 6 certification page and highlighted an item generated by the SLD website stating "Appl. Postmark Date: 01/18/2001." In addition, San Benito notes it "did indeed send the paper version of the needed documents in a timely manner via Federal Express."[21] Second, San Benito claims that it filed the application in accordance with the directions it received from SLD representatives. Specifically, San Benito claims that SLD representatives indicated that as long as the online deadline was met, the paper documents were of less importance. Third, San Benito calls the deadline arbitrary. San Benito suggests that the "needed 'signatures' " were already on file from its Funding Year 3 application.[22] It also argues that San Benito's need for resources from the schools and libraries universal service mechanism should be the determining factor in assessing the application. We treat the latter argument as support for San Benito's implicit request for waiver of the Commission's rules.

7. Based on our review of the record, we find that San Benito did not meet the deadline. Instead, it filed its Block 6 certification page and Item 21 attachments outside the filing window and therefore its entire application was appropriately considered outside the filing window. As noted previously, San Benito's Block 6 certification page and Item 21 attachments were postmarked on January 19, 2001, and were therefore not eligible to be considered within the filing window.[23]

8. We emphasize that the deadline for the certification pages and attachments was clearly established and SLD notified applicants in several ways. SLD explicitly notified applicants about the postmark deadline in the following ways: (1) through a November 6, 2000

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[16] *Id.*

[17] FCC Form 471, San Benito, filed January 18, 2001 (San Benito FCC Form 471) (electronic copy).

[18] *Id.* (Federal Express receipt on envelope dated January 19, 2001).

[19] Postcard from Schools and Libraries Division, Universal Service Administration, to Annabelle Whitinger, San Benito Literacy Center, dated July 9, 2001.

[20] Request for Review.

[21] *Id.*

[22] *Id.*

[23] *See* San Benito Form 471.

letter mailed to 61,000 applicants, including previous applicants;[24] (2) through a press release distributed on November 2, 2000, to approximately 100 news outlets;[25] and (3) by posting several notices in different areas on the SLD website.[26] We do not find that a reference on SLD's website to January 18, 2001 as the "Appl. Postmark Date" relieves the applicant of its requirement to file the certification page by the close of the filing window. SLD's written material clearly indicated the postmarking deadline. We must therefore reject San Benito's argument that it properly followed instructions.

9. Although San Benito claims that it received incorrect information regarding the postmarking deadlines from the SLD Client Services Bureau, we have held that an applicant's claim of receiving incorrect oral advice from SLD is insufficient to merit a waiver of the Commission's rules.[27] Therefore, we reject San Benito's argument that incorrect oral advice would relieve it of the requirements clearly presented in documentation.

10. Moreover, the rejection of the application is not arbitrary as it is based upon the filing window deadline announced and established by SLD. As described above, the filing window treats all schools and libraries filing within that period as if their applications were simultaneously received.[28] Applicants bear the burden of getting forms and other information to SLD for processing within the established deadline if they wish to be considered with other in-window applicants.[29] In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on applicants the responsibility of complying with all relevant rules and procedures.[30] We are not persuaded by San Benito's argument that the signatures on file from the previous year should be sufficient. The certifications upon which

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[24] Letter from Schools and Libraries Division, Universal Service Administrative Company, to applicants, dated November 6, 2000. SLD records indicate that one copy of the letter was mailed to Annabelle Whitinger and Norma Aguilar at the San Benito Literacy Center.

[25] "Window Opens For Year Four E-rate Applications," Schools and Libraries Division, Universal Service Administrative Company, Press Release, November 2, 2000.

[26] *See, e.g.,* SLD website, Program Description for the 2001-2002 Funding Year (November 2000) at 1, 4-5, 14-15 <http://www.sl.universalservice.org/data/doc/ProgramDescriptionY4.doc>; Funding Year 4 Minimum Processing Standards at 3. *See also* SLD Year 4 Change Notice ("Year 4 features NEW and FIRM filing requirements: The January 18 deadline is a POSTMARKING deadline. In order to make sure your application is in the window, all manually submitted materials must be postmarked no later than January 18. Unlike Year 3, all materials associated with the Form 471 have a January 18 deadline: the 471 Form itself (whether electronic or paper); the Block 6 certification for the Form 471 with an original signature by the authorized person; all attachments for Item 21; [and] the Block 5 certification of Form 470 filed for Year 4 (and which is cited in a Year 4 Form 471) with an original signature by the authorized person").

[27] *Request for Review by Smackover Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-205330, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2963, para. 8 (Com. Car. Bur. rel. December 19, 2001).

[28] *See supra* para. 3.

[29] *See Request for Review by Winnebago Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-196317, 196417, 196438, 196460, 196469, 196478, 196481, 196491, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 20966 (Com. Car. Bur. 2001), para. 8.

[30] *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 (Com. Car. Bur. 2000), para. 8.

San Benito relies only certify to the particular application with which they are affiliated. In addition, for Funding Year 4 the certification items were different from previous years.[31] Therefore, we find the deadline was not arbitrary and San Benito's complete application was not timely filed. We deny the instant Request for Review.

11. Finally, to the extent that San Benito requests a waiver of the Commission's rules, we conclude that San Benito has not demonstrated a sufficient basis for such waiver. A waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.[32] A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.[33]

12. San Benito argues that the detrimental impact the denial may have on the Lower Rio Grande Valley region is good cause to waive the Commission's rules.[34] In support of its argument, San Benito notes that the area has one of the highest illiteracy rates in the United States. As we have found in the past, the assertion that a denial of an application may have a detrimental impact on a particular school or library does not create the special circumstances that warrant waiver of the Commission's rules.[35] Therefore, San Benito has failed to demonstrate good cause to justify waiving the filing window deadline.

[31] *Compare* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (Year 4 Form 471) at Block 6 *with* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Year 3 Form 471) at Block 6. For example, the Funding Year 4 certification page also requires applicants to certify that "if audited, [the applicant] will make available to the Administrator such records." *See* Year 4 Form 471.

[32] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[33] *Id.* (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

[34] *See* Request for Review.

[35] *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.").

13. 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 San Benito Literacy Center, San Benito, Texas, on September 19, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
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Wireline Competition Bureau