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

In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Lineville-Clio Community School District Lineville, Iowa	))	File Nos. SLD-254652, SLD-282425
	)	
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: July 12, 2002 **Released: July 15, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Waiver filed by Lineville-Clio Community School District (Lineville-Clio), Lineville, Iowa, seeking waiver of the Commission's rules governing the schools and libraries universal service support mechanism.[1] Specifically, Lineville-Clio requests a waiver of the Funding Year 2001 filing window.[2] For the reasons set forth below, we deny Lineville-Clio'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.[3] 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.[4] Once the applicant has complied with the Commission's competitive bidding

[1] Letter from Robert McCurdy, Lineville-Clio Community School District, to the Federal Communications Commission, filed January 22, 2002 (Waiver Request). Although Lineville-Clio states that it is appealing the ruling, the substance of its claim is that it missed the deadline and it specifically requests a waiver. Therefore, we treat it as a request for a waiver.

[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). Previously, this funding period was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period which begins on July 1, 2001 and ends on June 30, 2002, previously known as Funding Year 4, is now called Funding Year 2001.

[3] 47 C.F.R. §§ 54.501–54.503.

[4] 47 C.F.R. § 54.504 (b)(1), (b)(3).

requirements and entered into agreements for eligible services, the applicant must submit a completed FCC Form 471 application to the 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. The Commission's rules require 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.[8] Applications that are received outside of 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. In Funding Year 2001, the window closed on January 18, 2001.[10]

4. Applicants may file their FCC Form 471 electronically.[11] In order to have successfully completed the submission of the FCC Form 471 application in Funding Year 2001, applicants who filed electronically must also have completed and mailed to SLD the Item 21 description of services, and a paper copy of the Block 6 certification page, the latter of which applicants must also have signed.[12] A commitment of support is contingent upon the timely filing of the applicants' completed FCC Form 471.[13] Prior to Funding Year 2001, 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 2001, directed that all FCC Forms 471 would be deemed filed when postmarked, rather than when received by SLD.[14] This procedural change protects applicants from excessive mail delays. Consequently, SLD notified all potential applicants that all Block 6 certifications and Item 21 attachments must also be

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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] *See* 47 C.F.R. § 54.507(c).

[9] 47 C.F.R. § 54.507(g).

[10] In Funding Year 2001, 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 2001 Minimum Processing Standards).

[11] Form 471 Instructions at 4-5.

[12] 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).

[13] Form 471 Instructions at 3-6.

[14] *See* SLD website, What's New (November 2, 2000) <http://www.sl/universalservice.org/whatsnew/110200.asp#110200> (SLD Year 2001 Change Notice).

postmarked no later than the close of the filing deadline.[15]

5. In its Waiver Request, Lineville-Clio does not identify its application by file number. Lineville-Clio states that it filed an FCC Form 471 application in January 2001, when SLD was accepting applications for Funding Year 2001.[16] Lineville-Clio does attach correspondence it had with SLD that refers to two different applications: SLD-282425 and SLD-254652.[17] SLD confirms that Lineville-Clio did not file any other applications in Funding Year 2001.

6. Based on the record before us, we conclude that Lineville-Clio's Waiver Request can only be for FCC Form 471 application SLD-254652. In its Waiver Request, Lineville-Clio states that it is appealing a determination on a postcard received August 6, 2001 regarding a form filed January 13, 2001.[18] Because SLD's records show that Lineville-Clio's FCC Form 471 application SLD-282425 was initiated eight months later, Lineville-Clio's Waiver Request cannot logically relate to this application.[19] Furthermore, Lineville-Clio's Waiver Request discusses the completion of its application, while the record shows that application SLD-282425 is incomplete, with data entered for only the first two of six information blocks.[20] There is no evidence in the record demonstrating that Lineville-Clio ever sent any additional material for that application to SLD.[21] Therefore, we find that Lineville-Clio's Waiver Request does not concern FCC Form 471 application SLD-282425, and can only relate to the only other FCC Form 471 application filed during Funding Year 2001, SLD-254652.

7. Lineville-Clio states that it submitted the application at issue on January 13, 2001, five days before the filing window closed.[22] The record shows, however, that Lineville-Clio submitted online its FCC Form 471 application SLD-254652 on January 18, 2001.[23] Although there is a discrepancy in the dates, there is no dispute that Lineville-Clio filed the bulk of its application in January 2001, before the filing deadline had passed. Lineville-Clio mailed its

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[15] *Id.*

[16] *See* Waiver Request.

[17] Waiver Request.

[18] Waiver Request (also referring to a letter of appeal it sent to SLD on August 16, 2001). *See also* Letter from Robert McCurdy, Lineville-Clio Community School District, to Schools and Libraries Division, Universal Service Administrative Company, filed December 4, 2002 (dated August 16, 2001, and referring to its FCC Form 471 filed on January 13, 2001). SLD incorrectly treated Lineville-Clio's August letter as a request for waiver of the filing deadline for application SLD-282425. Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robert McCurdy, Lineville-Clio Community School District, dated December 7, 2001 (Administrator's Decision on Waiver Request). SLD directs entities that request such waivers to appeal directly to the Commission, because it lacks authority to waive the Commission's rules even in cases supported by a showing of good cause. *See* 47 C.F.R. § 1.3 (authorizing the Commission to waive its rules).

[19] FCC Form 471, File No. SLD-282425, Lineville-Clio Community School District, initiated August 10, 2001(online portion of the application started and last updated August 10, 2001).

[20] *Id.* (online portion of the application contains data in Blocks 1 and 2).

[21] *Id.*

[22] Waiver Request.

[23] FCC Form 471, File No. SLD-254652, Lineville-Clio Community School District, filed January 18, 2001 (electronic portion only) (Lineville-Clio Form 471).

Block 6 certification page on January 18, 2001, also within the filing window.[24] However, as Lineville-Clio concedes, it had failed to send in the Item 21 attachments before the close of the filing window.[25]

8. Lineville-Clio states that it learned of its error in August 2001, when SLD sent a postcard stating that the application, Block 6 certification page, and/or Item 21 attachments were postmarked after the filing window had closed on January 18, 2001.[26] SLD later sent Lineville-Clio a letter concerning the missing attachments and allowed Lineville-Clio to submit the Item 21 attachments again if it certified that the attachments were sent before the deadline closed.[27] Lineville-Clio responded by sending the attachments with a Letter of Appeal in which it admitted that the attachments were not sent originally, and it asked that the attachments be accepted.[28] Therefore, Lineville-Clio completed the submission of its entire Form 471 on or about October 31, 2001, when its Letter of Appeal was sent.

9. Lineville-Clio offers several reasons for failing to submit its application materials on time. Lineville-Clio states that it must have failed to submit the paper attachments properly because it did not understand that the Block 3 information could not serve as the Item 21 attachment.[29] Lineville-Clio also states that it did not follow the proper procedure for filing the Block 6 certification page, but, as described above, the certification page is not at issue in either of Lineville-Clio's applications.[30] Rather, the critical issue is the failure to submit the Item 21 attachments within the window. Lineville-Clio also states that the school district has 100 students and is in a very rural portion of Iowa. Lineville-Clio's superintendent notes that he only serves part-time.

10. Lineville-Clio's Waiver Request can be granted only if waiving the deadline is supported by a showing of good cause.[31] 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.[32] 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 if the applicant wishes to be considered with other in-window

[24] *Id.*

[25] Waiver Request; *see* Lineville-Clio Form 471 (Item 21 attachments filed January 22, 2001).

[26] Waiver Request.

[27] Letter from George McDonald, Schools and Libraries Division, Universal Service Administrative Company, to Robert McCurdy, Lineville-Clio Community School District, dated October 25, 2001.

[28] Letter from Robert McCurdy, Lineville-Clio Community School District, to Schools and Libraries Division, Universal Service Administrative Company, filed November 5, 2002 (Letter of Appeal). Lineville-Clio admits that it sent the Item 21 attachments approximately nine months after the filing window closed. Thus, the exact date of the postmarking is not relevant for our analysis here. We have used the date the letter was dated as the date of filing in this case.

[29] Letter of Appeal.

[30] *See* Waiver Request.

[31] *See* 47 C.F.R. § 1.3.

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

applicants.[33] We have held that neither employee error nor misunderstanding relieves applicants of their responsibility to understand and comply with the program's rules and procedures.[34] As we have noted 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, we conclude that Lineville-Clio has not demonstrated a sufficient basis for a waiver of the deadline, and we deny its Waiver Request.

11. 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 Lineville-Clio Community School District, Lineville, Iowa, on January 30, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

[33] *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).

[34] *Id.*

[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.").