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

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In the Matter of	)	
	)	
Request for Review by	)	
	)	
Wayzata Public Schools Plymouth, Minnesota	))	File Nos. SLD-245041, SLD-260471
	)	
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: 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 Wayzata Public Schools (Wayzata), Plymouth, Minnesota.[1] Wayzata seeks review of a determination by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) that two applications filed by District No. 1 were filed outside the filing window for Funding Year 4.[2] For the reasons set forth below, we deny Wayzata's Request for Review. To the extent that Wayzata requests a waiver of the filing deadline, 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

[1] Letter from Mark Manning, Wayzata Public Schools, to the Federal Communications Commission, filed September 12, 2001 (Request for Review). Wayzata seeks review of an application filed on its behalf by Daniel Cincoski, Armstrong, Toreseth, Skold, & Rydeen, Inc. For purposes of this Order, we use the name Wayzata to refer to actions taken both by the school and by Mr. Cincoski on behalf of the school.

[2] *See* Request for Review. *See also* Letter to Schools and Libraries Division, Universal Service Administrative Company, to Daniel Cincoski, Wayzata Public Schools, dated August 13, 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. §§ 54.501–54.503.

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 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 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

[4] 47 C.F.R. § 54.504(b)(1), (b)(3).

[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.

filed when postmarked, rather than when received by SLD.[15] 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 postmarked no later than the close of the filing deadline.[16]

5. Wayzata filed the electronic portion of its FCC Forms 471 with SLD before the close of the filing window at 11:59 Eastern Standard Time on January 18, 2001.[17] Subsequently, Wayzata mailed its Block 6 certification pages, along with the Item 21 attachments, to SLD.[18] Specifically, the Block 6 certification pages and Item 21 attachments were postmarked on February 1, 2001.[19] SLD later informed Wayzata that its applications were filed after the filing window closed on January 18, 2001.[20]

6. On appeal to the Commission, Wayzata claims that it did meet the January 18, 2001 deadline by submitting the electronic filing within the window.[21] Wayzata asserts that: (1) it did not have sufficient notice that the Block 6 certification page and Item 21 attachments needed to be postmarked by January 18, 2001; and (2) it received information from SLD representatives that it would be within deadline if it mailed the paper components of the application at that time.[22] Specifically, Wayzata states that it periodically reviewed SLD web site and did not read the November 2, 2000 posting adding the requirement. Wayzata adds that a notice sent out by SLD was only mailed January 12, 2001. Further, Wayzata states it contacted SLD after becoming aware of the January 12, 2001 notice from SLD and was told it could file the certification and attachments after the deadline.[23]

7. Based on our review of the record, we find that Wayzata filed its Block 6 certification pages and Item 21 attachments outside the filing window, causing the entire application to be filed outside the window. There were several ways in which SLD notified applications about the change in deadline. The FCC Form 471 instructions refer applicants to the SLD Client Service Bureau or its website for annual filing deadline dates.[24] The website, in turn, explicitly informed applicants:

Year 4 features NEW and FIRM filing requirements: The January 18 deadline is a

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

[16] *Id.*

[17] FCC Forms 471, Wayzata Public Schools, filed January 18, 2001 (Wayzata Forms 471) (electronic copies).

[18] *Id.*

[19] *Id.* (postmark on envelope containing Block 6 certification pages and Item 21 descriptions of services).

[20] *See* Letters from Daniel Cincoski, Armstrong, Toreseth, Skold, & Rydeen, Inc., on behalf of Wayzata Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, dated July 23, 2001 (Appeals to SLD), at 1 (each stating the appeal was filed in response to SLD notice mailed July 12, 2001) (for applications SLD-245041 and SLD-260471).

[21] *See* Request for Review.

[22] *Id.*

[23] Wayzata states that its consultant contacted SLD, but that is not relevant to our analysis.

[24] Form 471 Instructions.

> 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.[25]

8. In addition, SLD further notified applicants about the postmark deadline: (1) through a November 6, 2000 letter mailed to 61,000 applicants, including previous applicants;[26] (2) through a press release distributed on November 2, 2000, to approximately 100 news outlets;[27] and (3) by posting several other notifications in different areas on the SLD website.[28] We therefore reject Wayzata's argument that there was not adequate notice of the requirement that the certification page and attachments must be postmarked by January 18, 2001.

9. As for the claim by Wayzata that incorrect information was provided by SLD, we have held that an applicant's claim of receiving incorrect advice from SLD is insufficient to merit a waiver of the Commission's rules.[29] Therefore, we conclude that Wayzata's claim of receiving incorrect advice from SLD does not relieve Wayzata of the requirements clearly presented in the notice and instructions described above. Accordingly, we find that Wayzata's complete application was not timely filed and deny the instant Request for Review.

10. To the extent that Wayzata requests a waiver of the Commission's rules, we conclude that Wayzata has not demonstrated a sufficient basis for such waiver. Wayzata argues that it is unreasonable and inappropriate for SLD to reject the application when the sole reason for the decision is that the paper components of the FCC Form 471 application were submitted after the due date announced by SLD and reinforced in its instructions and subsequent notices.[30]

11. A waiver is not appropriate unless 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.[31] A rule may be waived where the particular facts make strict compliance

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[25] *See* SLD Year 4 Change Notice.

[26] Letter from Schools and Libraries Division, Universal Service Administrative Company, to applicants, dated November 6, 2000. SLD records indicate that a copy of the letter was mailed to Gary Nunn at Wayzata School District 284, Wayzata, Minnesota.

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

[28] *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.

[29] *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).

[30] Request for Review.

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

inconsistent with the public interest.[32] We have held that an applicant's assertion that denial of its application may have an adverse impact on a particular school or library does not create the special circumstances or particular facts that warrant a waiver of the Commission's rules.[33]

12. We are not persuaded that Wayzata's justification rises to the level of good cause sufficient for the Commission to waive its rules. In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of getting its forms and other information to SLD for processing within the established deadline if the applicant wishes to be considered with other in-window applicants.[34] An applicant must further take responsibility for the actions of those employees or agents to whom it gives responsibility for submitting timely and proper requests for discounts on its behalf. As we explained above, applicants were on notice well before the close of the filing window in Funding Year 4 that certifications and attachments for FCC Forms 471 must be postmarked no later than the close of the filing window.[35] The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. We therefore find no basis for waiving the filing window deadline.

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 Request for Review filed by Wayzata Public Schools, Plymouth, Minnesota, on September 12, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

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

[33] *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.").

[34] *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.

[35] *See supra* paras. 4-8.