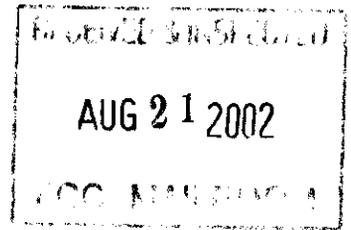


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)	
)	
Request for Waiver by)	
)	
West Oso Independent School District)	File Nos. SLD-268040, SLD-267787
Corpus Christi, Texas)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45 ✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Associations, Inc.)	

ORDER

Adopted: August 8, 2002

Released: August 9, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request filed by West Oso Independent School District (West Oso), Corpus Christi, Texas, seeking a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.¹ Specifically, West Oso requests a waiver of the filing deadline for Funding Year 2001 because of delays related to the actions or omissions of an employee.² For the reasons set forth below, we deny West Oso'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

¹ Letter from Ruben Corkill, West Oso ISD, to Federal Communications Commission, filed January 18, 2002 (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). In prior years, Funding Year 2001 was referred to as Funding Year 4. Funding priorities are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now known as Funding Year 2000, and so on.

³ 47 C.F.R. §§ 54.501-54.503.

470.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must submit a completed FCC Form 471 application to the Administrator.⁵ The Commission's rules require that the applicant file the FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.⁶ The last day of the filing window for Funding Year 2001 was January 18, 2001 and all paper components of the FCC Form 471 had to be postmarked by that date for the application to be considered as filed within the window.⁷

3. West Oso sent its FCC Form 471 applications to SLD on January 19, 2001, one day after the filing window closed.⁸ West Oso requests a waiver of the filing window from the Commission, as SLD can not give a waiver of the Commission's rules.⁹ In support of its request, West Oso notes that such correspondence was to be assigned to persons who left West Oso under unfavorable circumstances. West Oso further justifies its request for telecommunications services and Internet access discounts by noting that such requests are accorded priority treatment under our rules.¹⁰

4. West Oso's Waiver Request can be granted only if waiving the deadline is supported by a showing of good cause.¹¹ 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.¹² SLD reviews and processes thousands of applications each year, and therefore it is administratively necessary to place on the applicant responsibility for complying with our rules and procedures.¹³ 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.¹⁴

⁴ 47 C.F.R. § 54.504(b).

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. §§ 54.504(c), 54.507(c).

⁷ SLD website, FCC Form 471 Window Opens for Year 4 Applicants; New Filing Requirements Firmly Established (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>.

⁸ FCC Form 471, File No. SLD-268040, West Oso Independent School District, filed January 19, 2001 (postmark on envelope); FCC Form 471, File No. SLD-267787, West Oso Independent School District, filed January 19, 2001 (postmark on envelope).

⁹ Waiver Request; *see also* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Rolando Bazan, dated December 5, 2001 (Administrator's Decision on Waiver Request).

¹⁰ *Id.*

¹¹ *See* 47 C.F.R. § 1.3.

¹² *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).

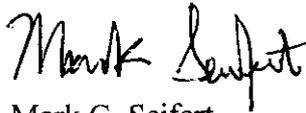
¹³ *See Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000).

¹⁴ *See* 47 C.F.R. §§ 54.504(c), 54.507(c).

5. 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 applicants.¹⁵ How the applicant delegates responsibility for the application is not relevant to our analysis. We have held that employee error does not relieve applicants of their responsibility to understand and comply with the program.¹⁶ While West Oso is correct in stating that the Commission has established rules that give higher priority to requests for telecommunications service and Internet access than internal connections, such priority only applies when requests are filed within the filing window.¹⁷ Because West Oso filed outside the filing window, it does not have priority status over any requests filed within the filing window. Therefore, we conclude that West Oso has not demonstrated the existence of any special circumstances warranting a deviation from our rules, and therefore, we deny its Waiver Request

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 West Oso Independent School District, Corpus Christi, Texas, on January 18, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

 by *CTE*

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

¹⁵ 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).

¹⁶ *Id.*

¹⁷ See 47 C.F.R. § 54.507(g)(1)(i); See also Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, CC Docket No. 96-45, 13 FCC Rcd 14915, 14934, at para. 31 (1998).