

**Before the  
Federal Communications Commission  
Washington, DC 20554**

OCT 7 2002

In the Matter of )

Request for Review of the  
Decision of theUniversal Service Administrator )  
and Request for )  
Waiver of the Funding Year 2000 Filing  
Deadline byLincoln County Board of Education  
Hamlin, West Virginia

NEC.47 1.0 1-26-00.5600005

Federal-State Joint Board on )  
Universal Service )

CC Docket No. 96-45 ✓

Changes to the Board of Directors of the  
National Exchange Carrier Association, Inc. )

CC Docket No. 97-21

**ORDER****Adopted: October 4, 2002****Released: October 7, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review and Waiver filed by Lincoln County Board of Education (Lincoln County), Hamlin, West Virginia.<sup>1</sup> Lincoln County seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) on March 7, 2000, or, in the alternative, waiver of the Funding Year 2000 filing deadline? For the reasons set forth below, we dismiss the Request for Review and deny the Request for Waiver.

2. The Commission received Lincoln County's Request for Review on April 30, 2002.<sup>3</sup> For requests seeking review of decisions issued before August 13, 2001 under section 54.720(b)

<sup>1</sup> Electronic mail from Birdie Gandy, Lincoln County Board of Education, to Federal Communications Commission, filed April 30, 2002 (Request for Review and Waiver).

<sup>2</sup> Postcard from the School and Libraries Division, Universal Service Administrative Company, to Birdie Gandy, Lincoln County Board of Education, dated March 7, 2000 (Pink Postcard). 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). In prior years, Funding Year 2000 was referred to as Funding Year 3. Funding priorities are now described by the year in which the funding period **starts**. Thus the funding period that began on July 1, 2000 and ended on June 30, 2001, previously known as Funding Year 3, **is** now called Funding Year 2000. The funding period that began on July 1, 2001 and ended on June 30, 2002 is now known as Funding Year 2001, and so on.

<sup>3</sup> See Request for Review and Waiver

of the Commission's rules, any such appeal must be filed with the Commission or SLD within 30 days of the issuance of the decision that the party seeks to have reviewed.<sup>4</sup> Documents are considered to be filed with the Commission only upon receipt.<sup>5</sup> The 30-day deadline contained in section 54.720(b) of the Commission's rules applies to all such requests for review filed by a party affected by a decision issued by the Administrator.<sup>6</sup> Because Lincoln County failed to file the instant Request for Review within the requisite 30-day period, it will be dismissed without further consideration.

3. In the alternative, Lincoln County requests our waiver of the deadline for filing its Funding Year 2000 application.' 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.' In order to receive discounts on eligible services, the Commission's rules require that all applicants submit to the Schools and Libraries Division (SLD) of the Administrator a completed FCC Form 470, in which the applicants set forth their technological needs and the services for which they seeks discounts.' 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.'" 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.'" All applicants must file completed FCC Form 471 applications for each funding year. The FCC Form 471 is necessary to notify the Administrator of the services that applicants have ordered, the carrier with whom they have entered into agreements, and estimates of funds needed to cover the discounts to be given for eligible services.<sup>12</sup> The Commission's rules require that applicants file completed FCC Forms 471 by the filing window deadline to be

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<sup>4</sup> 47 C.F.R. § 54.720(b).

<sup>5</sup> 47 C.F.R. § 1.7

<sup>6</sup> We note that, due to disruptions in the reliability of the mail service, the 30-day appeal period has been extended by an additional 30 days for requests seeking review of decisions issued on or after August 13, 2001. *See Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel Dec. 28, 2001 and Jan. 4, 2002). Because the March 7, 2000 Pink Postcard was issued before August 13, 2001, the extended appeal period does not apply to Lincoln County.

<sup>7</sup> *See* 47 C.F.R. § 54.720(b).

<sup>8</sup> 47 C.F.R. §§ 54.501–54.503

<sup>9</sup> 47 C.F.R. § 54.504(b). Applicants with multi-year contracts in existence before July 11, 1997 are exempt from this requirement. *See* 47 C.F.R. § 54.511(b).

<sup>10</sup> 47 C.F.R. § 54.504(b)(3), (4); § 54.511

<sup>11</sup> 47 C.F.R. § 54.504(c)

<sup>12</sup> 47 C.F.R. § 54.504(c); *See also* Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806, at 2-3 (September 1999) (FCC Form 471 Instructions).

considered pursuant to the funding priorities for in-window applicants.<sup>13</sup> The last day of the filing window for Funding Year 2000 was January 19,2000.<sup>14</sup>

4. Lincoln County mailed a paper copy of its entire application to SLD on January 19, 2000, but it did not reach SLD until after the filing window had closed.” SLD mailed Lincoln County a pink postcard informing Lincoln County that its FC Form 471 application was submitted after the Funding Year 2000 filing window had closed at 11:59p.m. EST on January 19,2000. Because SLD does not have the authority to grant a waiver of the Commission’s rules, Lincoln County is seeking a waiver of the filing window from the Commission.<sup>16</sup> In support of its Request for Waiver, Lincoln County states that it did not become aware that it was not funded for Funding Year 2000 until it attempted to file its FCC Form 472 and was notified by one of its vendors to this effect.<sup>17</sup> Further, Lincoln County concedes that it was informed by postcard that its FCC Form 471 application was received after the filing window had closed but explains that the postcard failed to advise or instruct Lincoln County to take any further action.<sup>18</sup>

5. Lincoln County’s Request for Waiver can be granted only if waiving the deadline is supported by a showing of good cause.” 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.<sup>20</sup> 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.” 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.<sup>22</sup>

6. As we have consistently held in the past, it is the applicant who has the ultimate responsibility for the timely submission of its application. Neither staffing problems nor misunderstanding relieves applicants of their responsibility to understand the program and

<sup>13</sup> 47 C.F.R. §§ 54.504(c), 54.507(g).

<sup>14</sup> SLD website, Form 471 Window Closes January 19,2000 at 11:59 PM ET, (December 6, 1999) <<http://www.sl.universalservice.org/whatsnew/121999.asp#fnl>> (Year 3 Window Notice).

<sup>15</sup> FCC Form 471, Lincoln County Board of Education, filed January 26,2000.

<sup>16</sup> Request for Review and Waiver

<sup>17</sup> Request for Review and Waiver at 2.

<sup>18</sup> *Id.*

<sup>19</sup> See 47 C.F.R. § 1.3.

<sup>20</sup> *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).

<sup>21</sup> 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-I33664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000).

<sup>22</sup> See 47 C.F.R. §§ 54.504(c), 54.507(c)

comply with its rules and procedures.<sup>23</sup> Therefore, we conclude that Lincoln County has failed to demonstrate special circumstances upon which its Waiver Request can be granted.

7. 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 April 30, 2002, by Lincoln County Board of Education, Hamlin, West Virginia, IS DISMISSED and the Request for Waiver is DENIED.

## FEDERAL COMMUNICATIONS COMMISSION



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

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<sup>23</sup> 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).