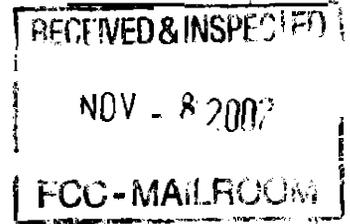


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Duncan Public Library	)	File No. SLD-325536
Duncan, Arizona	)	
	)	
Mid Peninsula School	)	File No. SLD-326068
Rock, Michigan	)	
	)	
Neches Independent School District	)	File No. SLD-325441
Neches, Texas	)	
	)	
Pottsgrove School District	)	File No. SLD-325298
Pottstown, Pennsylvania	)	
	)	
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: November 6, 2002

Released: November 7, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration the above-captioned Waiver Requests, seeking a waiver of the Commission's rules governing the schools and libraries universal service support mechanism.<sup>1</sup> Specifically, the above-captioned entities request waiver of the filing deadline for Funding Year 2002 because of delays related to

<sup>1</sup> Electronic mail from Barbara Blackburn, Duncan Public Library, to Federal Communications Commission, filed April 16, 2002 (Duncan Waiver Request); Letter from Tammy Winters, Mid Peninsula School, to Federal Communications Commission, filed April 23, 2002 (Mid Peninsula Waiver Request); Letter from Barbara Hudgens, Neches Independent School District, to Federal Communications Commission, filed April 22, 2002 (Neches Waiver Request); Letter from David L. Nester, Pottsgrove School District, to Federal Communications Commission, filed April 24, 2002 (Pottsgrove Waiver Request) (hereinafter collectively referred to as "Waiver Requests"). 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).

the actions or omissions of employees.<sup>2</sup> For the reasons set forth below, we deny the above-captioned Waiver Requests.

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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> The last day of the filing window for Funding Year 2002 was January 17, 2002.<sup>7</sup>

3. The requests from the above-captioned applicants can be granted only if waiving the deadline is supported by a showing of good cause.<sup>8</sup> 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>9</sup> We have traditionally held applicants to a **high** standard for waivers, noting that it is the applicant who is ultimately responsible for the timely submission of its application. We have held that neither employee illness nor misunderstanding relieves applicants of their responsibility to understand and comply with the Commission's rules and procedures.<sup>10</sup> We do not assess how an applicant delegates that responsibility to employees. Furthermore, we have rejected claims that special circumstances warranting waiver of the Commission's rules are created if a denial of an application may have a detrimental impact on a

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<sup>2</sup> See Waiver Request. Previously, this funding period would be referred to as Funding Year 5. Funding periods are now described by the year in which the funding period **starts**. Thus the funding period which began on July 1, 2002 and ends on June 30, 2003, previously would **have** been known as Funding Year 5, and is now called Funding Year 2002. The funding period which begins on July 1, 2003 and ends on June 30, 2004 is now **known** as Funding Year 2003, and **so** on.

<sup>3</sup> 47 C.F.R. §§ 54.501–54.503.

<sup>4</sup> 47 C.F.R. § 54.504(b).

<sup>5</sup> 47 C.F.R. § 54.504(c).

<sup>6</sup> 47 C.F.R. §§ 54.504(c), 54.507(g).

<sup>7</sup> SLD website, What's New Archives [January 10, 2002]  
<<http://www.sl.universalservice.org/whatsnew/2002.asp#011002b>>.

<sup>8</sup> See 47 C.F.R. § 1.3.

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

<sup>10</sup> See *Request for Waiver by Dermott Special School District, et al, Federal-State Joint Board on Universal Service. Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-252777, CC Docket Nos. 96-45 and 97-21, Order, DA 02-642 (Com. Car. Bur. rel. March 19, 2002); see also *Request for Waiver by art in contexts, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-262426, CC Docket Nos. 96-45 and 97-21, Order, DA 02-642 (Com. Car. Bur. rel. March 19, 2002) (denying waiver request in case involving employee illness).

particular school or library.” After reviewing the material before us, we conclude that each of the above-captioned applicants has failed to demonstrate special circumstances upon which its Waiver Request can be granted. We address each of the Waiver Requests below.

#### **Analysis of Individual Waiver Requests**

4. **Duncan Public Library**. Duncan Public Library filed its FCC Form 471 after the filing window had closed for Funding Year 2002.<sup>12</sup> The applicant states that due to an unusual snowstorm in December, the FCC Form 470 was submitted later than expected, and therefore the FCC Form 471 could not meet the competitive bidding requirements unless it was filed no earlier than January 16, 2002.<sup>13</sup> Although that still would have been within the filing window, the applicant did not submit the form at that time because of a family wedding. The applicant states that it is new to the process and was unaware of the deadlines. Duncan Public Library requests a waiver of the Funding Year 2002 filing window deadline, but has supported its request with only the explanation that it was new to the process and unaware of the deadlines. **As** noted above, we have not accepted such reasons as sufficient to warrant waiver of the Commission’s rules in the past. We therefore deny Duncan Public Library’s Waiver Request.

5. **Mid Peninsula School**. Mid Peninsula School filed its FCC Form 471 after the filing window had closed for Funding Year 2002.<sup>14</sup> The applicant states that it was under the mistaken impression that the FCC Form 471 could be filed at **anytime**.<sup>15</sup> The applicant also states that the amount of the request is small, but important to this tiny and rural district. Mid Peninsula School notes that it would not be applying for reimbursement until January 2003. Mid Peninsula School requests a waiver of the Funding Year 2002 filing window deadline, but has supported its request with only the explanation that it misunderstood the process, is in need of the funds, that the amount is small and not required until January 2003. The amount of the request and the timing of the reimbursement is not relevant for purposes of waiver analysis. **As** noted above, we have not accepted misunderstanding of the process, nor need as sufficient to warrant waiver of the Commission’s rules in the past. We therefore deny Mid Peninsula School’s Waiver Request.

6. **Neches Independent School District (Neches)**. Neches filed its FCC Form 471 after

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<sup>11</sup> See *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.”).

<sup>12</sup> FCC Form 471, Duncan Public Library, filed January 28, 2002 (the electronic portion was submitted on January 23, 2002; the envelope containing the Block 6 Certifications and Signature pages and the Item 21 Attachment was postmarked January 28, 2002).

<sup>13</sup> Duncan Waiver Request

<sup>14</sup> FCC Form 471, Mid Peninsula School, filed February 6, 2002 (the electronic portion was submitted on February 5, 2002; the envelope containing the Block 6 Certifications and Signature pages and Item 21 Attachment was postmarked February 6, 2002).

<sup>15</sup> Mid Peninsula Waiver Request.

the filing window had closed for Funding Year 2002.<sup>16</sup> The applicant states that the district was not at fault, but rather health-related problems of the person responsible for submitting the applications caused the delay in filing.” The applicant also states that the amount includes only telecommunications and Internet access, but it is important to its area. Neches requests a waiver of the Funding Year 2002 filing window deadline, but has supported its request with only the explanation that the amount requested is not large, and that the district delegated the responsibility for filing with a person who was affected by health problems. The amount of the request is not relevant for purposes of waiver analysis. While it is unfortunate that the district had only one employee responsible for this application, **as** noted above, we have consistently held that problems of the employee to whom the applicant has delegated responsibility are not sufficient grounds for waiver of the Commission’s rules. **As** noted above, we have held that misunderstanding of the process is not sufficient reason to warrant a waiver. We therefore deny Mid Peninsula School’s Waiver Request.

7. Pottsgrove School District. Pottsgrove School District filed its FCC Form **471** after the filing window had closed for Funding Year 2002.<sup>18</sup> The applicant states that the reason for delay was a staffing change and the misunderstanding of an employee given the task of completing the application.<sup>19</sup> The applicant also states that it is struggling with costs. Pottsgrove School District requests a waiver of the Funding Year 2002 tiling window deadline, but **has** supported its request with only the explanation that it put the responsibility for filing with a person who did not know the Commission’s rules and procedures, and that the funding is needed. As noted above, we have not found either need of the funds or employee misunderstanding as sufficient grounds for a waiver of the Commission rules in the past. We therefore deny Pottsgrove’s Waiver Request.

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<sup>16</sup> FCC Form 471, Neches Independent School District, tiled January 22,2002 (the electronic portion was submitted on January 22,2002; the envelope containing the **Block 6** Certifications and Signature **pages** and the **Item 21** Attachment appears to **be** postmarked January 23,2002, but received by SLD on January 28,2002).

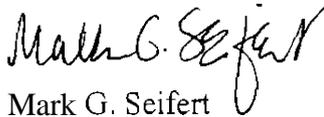
<sup>17</sup> Neches Waiver Request

<sup>18</sup> FCC Form 471, Pottsgrove School District, filed January 19,2002 (the electronic portion was submitted on January 18,2002; the envelope containing **the Block 6** Certifications and Signature pages and **Item 21** Attachment is postmarked January 19, 2002).

<sup>19</sup> Pottsgrove Waiver Request

8. 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 Requests filed by Duncan Public Library, Duncan, Arizona, on April 16,2002; Mid Peninsula School, Rock, Michigan, on April 23,2002; Neches Independent School District, Neches, **Texas**, on April 22,2002; and Pottsgrove School District, Pottstown, Pennsylvania, on April 24,2002 ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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