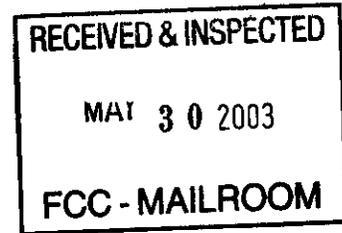


Atlanta Public Schools
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REQUEST FOR WAIVER

Via Federal Express

May 7, 2003

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: CC DOCKET NOS. 96-45 AND 97-21

Please Respond To:

Dr. Beverly L. Hall
Superintendent
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210 Pryor Street, S.W.
Atlanta, Georgia 30303-3624
blhall@atlanta.k12.ga.us
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Documents Containing SLD Action On Appeal:

Funding Year 2003 Form 471 Certification Postmarked Outside Of Window
Date: March 12, 2003
Funding Year 2003
Applicant Name: Atlanta Public Schools
Billed Entity Number: 127319
Applicant's Form Identified: SERE2003
Form 471 Application Number: 368262

No. of Copies rec'd 2
List ABCDE

Funding Year 2003 Form 471 Certification Postmarked Outside Of Window
Date: March 12, 2003
Funding Year 2003
Applicant Name: Atlanta Public Schools
Billed Entity Number: 127319
Applicant's Form Identified: APSEN2003
Form 471 Application Number: 382100

Funding Year 2003 Form 471 Certification Postmarked Outside Of Window
Date: March 12, 2003
Funding Year 2003
Applicant Name: Atlanta Public Schools
Billed Entity Number: 127319
Applicant's Form Identified: VOIP2003
Form 471 Application Number: 382102

Funding Year 2003 Form 471 Certification Postmarked Outside Of Window
Date: March 12, 2003
Funding Year 2003
Applicant Name: Atlanta Public Schools
Billed Entity Number: 127319
Applicant's Form Identified: BSLD2003
Form 471 Application Number: 382121

Nature Of Appeal:

This is an Appeal from an adverse decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company. The Atlanta Public Schools (APS) formally requests a review of the above listed *Funding Year 2003 Form 471 Certification Postmarked Outside Of Window* letters.

According to the letters, the APS Form 471 Certifications were postmarked on February 7, 2003, which was after the 2003-2004 filing window that closed at 11:59 p.m. EST on February 6, 2003. Therefore, according to program rules, the APS applications will be held pending final review of those applications that were filed within the filing window. If funds are fully utilized by applicants that filed within the window, then the APS application will be denied. APS requests a waiver of the deadline and equitable relief.

Facts

E-rate, established to provide significant discounts on telecommunications, networking and Internet services to the poorest schools in the nation, has long assisted APS with obtaining affordable telecommunications and Internet access. APS represents the poorest students in the state of Georgia with the highest need for this type of assistance. Due to the poverty level and the status of the population served in the district, APS is usually funded at the eighty to ninety percent (80-90%) discount rate. Because of the urgent need in the area, APS has been awarded approximately forty percent (40%) of the funds awarded to all Georgia schools for the past two years.

On December 2, 2002, in accordance with SLD requirements, APS posted Form 470 Application Number 618750000430456 (Form Identifier ERE2003) to notify service providers that APS was seeking Erate eligible products and services. The Form 470 correctly indicated that APS had issued request for proposals (RFPs) for the needed services. These RFPs were posted on the APS website. APS then waited the twenty-eight (28) days for vendor response.

On December 3, 2002, the SLD issued a *Warning to Funding Year 2003 Applicants and Service Providers Regarding Application Patterns That Violate FCC Rules* which stated that the "SLD has determined that a sizable number of Funding Year 2002 applications associated with a particular service provider [were] not consistent with Federal Communications Commission (FCC) regulations governing the Schools and Libraries Universal Service Support Mechanism" and that the SLD had begun to deny these application.¹ It went on to provide guidance for future applications and urged current applicants to avoid application processes that were inconsistent with Federal Communications Commission (FCC) rules.²

Issuance of this statement forced APS to adjust its 470 process and the procedures for the posted RFPs. APS already had a very rigid schedule. It had

¹ See <http://www.sl.universalservice.org/whatsnew/122002.asp#121202>.

² Id.

to wait the required twenty-eight (28) days, evaluate the proposals, choose service providers, obtain Board approval for the service providers, and obtain signed contracts, all before the 11:59 p.m. EST February 6, 2003 deadline for submission. APS made every effort to adhere to FCC rules and meet the required deadline.

As allowed by the SLD, APS had entered all of the substantive information for the Form 471 electronically by February 6, 2003. When APS attempted to certify the Form 471s late on February 6, 2003, they learned that certification required a PIN number which they did not have. In order to obtain a PIN number, APS had to apply via the SLD website. Although they attempted to get a PIN number, they could not obtain it before the deadline. APS proceeded to submit hard copies of the Form 471 Certifications in several different ways. They utilized Express Mail and Delta Dash. The time to assemble hard copies of the certifications caused APS to miss the deadline by various times, ranging from six minutes up to twelve hours. Nonetheless, all certifications were submitted on February 7, 2003. Moreover, most were received by the SLD on February 7, 2003, before many applications that were postmarked correctly arrived and before it would have reached the SLD had it been mailed at 11:58 p.m. on February 6, 2003.

Appeal

APS requests that the SLD consider the Form 471 filed within the filing window. APS made every effort possible to meet the required deadline. Several circumstances, beyond its control, contributed to APS missing the deadline, in some instances by six (6) minutes, but in no instance, by more than twelve (12) hours. This is based upon several circumstances that were beyond the control of APS.

I. Substantive Part Of Form 471 Was Timely.

All information on the Form 471 was entered timely. The only issue was the certification, which amounts to a signature. In order to certify electronically, APS needed a PIN number. When APS realized that it needed a PIN number, it could not obtain one in time.³ APS immediately assembled hard copy Form 471s and proceeded to file them. All of them were postmarked no more than twelve (12) hours late.

II. Changes In Rules.

In the middle of the application process, the SLD issued a warning that several applicants may not be following the correct procedures. They urged those applicants to reevaluate their current applications and make adjustments where necessary. APS adhered to those warnings. Unfortunately, adequate time was not allowed for a school district like APS, without acquisition of additional resources, to make the necessary corrections and adjustments to processes and procedures. Along with SLD rules, APS must follow its own Board policies and procedures. These required the E-rate contracts to have Board approval, which can only be obtained once a month, unless there is an emergency and in fact special sessions were held, because of this issue. Again, APS made every effort to comply with SLD and Board policies, but in the process missed the deadline by no more than twelve (12) hours.

III. No Delay In Processing.

APS submitted their certifications via Express Mail, next day service, and Delta Dash. Therefore, the SLD received the certifications on February 7, 2003. This was earlier than many applications that were postmarked by February 6, 2003. Since all APS applications were received in a timely manner, there was no delay in processing and no adverse effect on the SLD.

³ SLD procedures did not allow a PIN number to be issued immediately.

IV. Equitable Relief.

The children of APS are in urgent need of E-rate assistance. E-rate has allowed APS to implement its Technology Plan, provided ongoing support, and drastically improved the learning environment for its students. APS would not want a clerical mistake or misunderstanding, not obtaining a PIN number, to cause students to miss out on valuable technology resources.

Summary

The SLD states that the waiver standard generally requires a showing of circumstances that could not be avoided even with careful planning.⁴ APS believes that the combination of the above stated conditions created a situation that they could not have been avoided. Please grant APS a deadline waiver and consider their applications filed within the 2003-2004 filing window.

Sincerely,

Robert W. Beman

xc: Dr. Beverly L. Hall
Mr. Charles Engstrom
Ms. Margaret Coleman
Mr. Rodney Moore
Ms. Betrice Scott
Mr. Arthur Scott
Mr. Richard Horton

Attachment(s)

⁴ Reference Area – Appeals Procedure.