

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Hatboro-Horsham School District	)	File No. SLD-2001 HHSD 2
Horsham, 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 Association, Inc.	)	

**ORDER**

**Adopted: April 11, 2003**

**Released: April 15, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request filed by Hatboro-Horsham School District, Horsham, Pennsylvania (Hatboro-Horsham), seeking a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.<sup>1</sup> Specifically, Hatboro-Horsham requests a waiver of the filing deadline for Funding Year 2001.<sup>2</sup> For the reasons set forth below, we deny Hatboro-Horsham's Waiver Request.

2. SLD rejected Hatboro-Horsham's FCC Form 471 because it was postmarked after the Funding Year 2001 filing window closed on January 18, 2001.<sup>3</sup> Hatboro-Horsham appealed that decision to SLD, and the appeal was denied as requesting a waiver of the filing window,

<sup>1</sup> Letter from Susan Casagrand, Hatboro-Horsham School District, to Federal Communications Commission, filed February 20, 2002 (Waiver Request).

<sup>2</sup> 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 begins on July 1, 2002 and ends on June 30, 2003 is now known as Funding Year 2002, and so on.

<sup>3</sup> See Letter from Susan M. Casagrand, Hatboro-Horsham School District, to Schools and Libraries Division, Universal Service Administrative Company, dated December 18, 2001, attachment (showing November 29, 2001 mailing from SLD). See also SLD website, Form 471 Window Opens For Year 4 Applicants, (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>.

which is outside of SLD's authority to grant.<sup>4</sup> Hatboro-Horsham then filed the pending request with the Commission, seeking a waiver.

3. Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.<sup>5</sup> A waiver from the Commission is appropriate if 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.<sup>6</sup>

4. We find that a waiver is not appropriate. In its Waiver Request, Hatboro-Horsham states that it filed its FCC Form 471 late because of confusion with its vendor.<sup>7</sup> In particular, Hatboro-Horsham seeks a waiver because of the extenuating circumstances resulting from business transactions between two providers, Adelphia and Comcast.<sup>8</sup> Hatboro-Horsham states that Comcast, which had purchased Adelphia, informed Hatboro-Horsham in November 2000 that Comcast would cease providing it service in July 2001.<sup>9</sup> Hatboro-Horsham asserts that it was "too late" at that point to file a Form 470 for a replacement vendor, and it neither filed a new Form 470 nor filed an FCC Form 471 requesting discounts.<sup>10</sup> In late January 2001, Comcast informed Hatboro-Horsham that it would continue the contract after all.<sup>11</sup> By that time, however, Hatboro-Horsham had missed the January 18, 2001 Form 471 filing window. Hatboro-Horsham eventually filed its Form 471 on October 29, 2001, ten months past the filing window closing date.

5. Despite Hatboro-Horsham's contention that it did not have sufficient time to file a new Form 470 and Form 471 after it learned that Comcast was terminating service, we find that there was indeed sufficient time. Our rules require that an FCC Form 470 be filed 28 days before the filing of an FCC Form 471, in order to allow for competitive bidding.<sup>12</sup> In Funding Year 2001, FCC Forms 471 could be filed through January 18, 2001.<sup>13</sup> Hatboro-Horsham does

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<sup>4</sup> See Letter from Susan M. Casagrand, Hatboro-Horsham School District, to Schools and Libraries Division, Universal Service Administrative Company, dated December 18, 2001.

<sup>5</sup> 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*WAIT Radio*).

<sup>6</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio*, 897 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

<sup>7</sup> See Waiver Request.

<sup>8</sup> *Id.*

<sup>9</sup> Waiver Request.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> 47 C.F.R. § 54.504(b),(c).

<sup>13</sup> SLD website, Form 471 Window Opens For Year 4 Applicants, (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>.

not state when in November it learned that it needed to change vendors, but even if it learned of the problem at the end of November, it would have had several weeks to file its FCC Form 470, while still allowing for the requisite 28 days to file the Form 471 by January 18, 2001.

6. Moreover, Hatboro-Horsham gives no explanation why it waited until the end of October 2001 to submit its FCC Form 471, ten months after it learned that Comcast had agreed to continue the contract and the filing window had closed. In light of these considerations, we find that Hatboro-Horsham's argument does not justify a waiver of our rules and deny Hatboro-Horsham's Waiver Request.

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 Waiver Request filed by Hatboro-Horsham School District, Horsham, Pennsylvania on February 20, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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