

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

In the Matter of	)	
	)	
Request for Review of the Decision of the	)	
Universal Service Administrator	)	
	)	
Northwest Tri-County Intermediate Unit	)	File Nos SLD-306571, 308208, 308225
Edinboro, Pennsylvania	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: October 31, 2003**

**Released: November 3, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1 The Telecommunications Access Policy Division has before it a Request for Review filed by the Northwest Tri-County Intermediate Unit (Northwest), Edinboro, Pennsylvania, challenging a denial by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) of Northwest's application for discounts in Funding Year 2002 of the schools and libraries universal service support mechanism.<sup>1</sup> For the reasons set forth below, we remand Northwest's application to SLD for further processing in accordance with this Order.

2. Under the universal service support mechanism, eligible schools, libraries, and consortia including eligible schools and libraries, may apply for discounts for certain telecommunications services, Internet access, and internal connections. The Commission's rules require that the applicant submit to SLD a FCC Form 471 stating the services and carrier selected, and the funds needed.<sup>2</sup>

3 Funding Year 2002 FCC Form 471 applications were required to be postmarked before or on January 17, 2002 to be considered on-time.<sup>3</sup> Northwest deposited its three Funding Year 2002 FCC Form 471s in three separate packages in a FedEx courier box at 3:45 p.m. on January 16, 2002, upon the belief that the packages would be picked up at 4 p.m. and delivered

<sup>1</sup> Letter from Vince Humes, Northwest Tri-County Intermediate Unit, to the Federal Communications Commission, filed March 19, 2002 (Request for Review). Previously, Funding Year 2002 was referred to as Funding Year 5. Thus, the funding period that began on July 1, 2002 and ended on June 30, 2003, is now called Funding Year 2002. 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).

<sup>2</sup> 47 C.F.R. §§ 54.502, 54.503, 54.504.

<sup>3</sup> Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2001) at 8, and SLD website, Form 471 Minimum Processing Standards and Filing Requirements for FY 5, <<http://www.sl.universalservice.org/reference/471mps.asp>>

overnight to SLD.<sup>4</sup> Late on January 17, 2002, Northwest checked the progress of its packages, and learned that the packages had not been delivered.<sup>5</sup> Northwest immediately contacted FedEx, and FedEx acknowledged, and apologized for, its failure to pick up the packages, saying that that particular drop-box used by Northwest was “out of service and scheduled for removal.”<sup>6</sup> FedEx contacted SLD and stated that the packages would be picked up January 18, and delivered to SLD on Saturday, January 19, which, in fact, occurred.<sup>7</sup> Northwest appealed to SLD to waive the January 17 deadline, attaching copies of its three FedEx deposit receipts, each initially dated January 16 and each requesting overnight delivery service.<sup>8</sup> SLD declined to grant the waiver, and Northwest filed the instant waiver request with the Commission.<sup>9</sup>

4. The issue is whether the deposit receipts submitted by Northwest to SLD are sufficient evidence that Northwest’s packages were “postmarked” on or before January 17, 2002. We conclude that they are. In the *Hardee County Order*, the Wireline Competition Bureau held that an applicant fulfilled the filing deadline requirement where the applicant deposited its application “at least one day in advance of the deadline by guaranteed overnight courier” because such an applicant has “a . . . reasonable expectation of timely delivery and should not be penalized for the failures of the . . . courier service.”<sup>10</sup>

5. Here, Northwest asserts that the date of January 16 on its receipts is accurate, and this is consistent with our review of the record.<sup>11</sup> Under our review of the record, and in light of the *Hardee County Order*, we find that Northwest complied with the deadline. We emphasize that, in remanding the applications for SLD’s review, we make no conclusions as to their merits.

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<sup>4</sup> Request for Review

<sup>5</sup> *Id.*

<sup>6</sup> Request for Review at attachment 1

<sup>7</sup> *Id.* FCC Form 471, Northwest Tri-County Intermediate Unit, File Nos. SLD-306571, 308208, 308225, filed January 18, 2002

<sup>8</sup> Letter from Vince Humes, Northwest Tri-County Intermediate Unit, to Schools and Libraries Division, Universal Service Administration Company, dated January 29, 2002

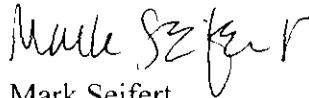
<sup>9</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Vince Humes, Northwest Tri-County Intermediate Unit, dated February 1, 2002, Request for Review

<sup>10</sup> *Request for Review by Hardee County School Board et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 22562, 22565 (Com. Car. Bur. 2001) (*Hardee County Order*). See also Federal Express USA Airbills 803547652224, 803547652235 and 803547652257, Date of Pickup January 18, 2002 (FedEx January 18, 2002 Receipts)

<sup>11</sup> FedEx January 18, 2002 Receipts

6        ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291 and 54.722(a), that the Request for Review filed March 19, 2002 by Northwest Tri-County Intermediate, Edinboro, Pennsylvania, IS GRANTED, and we REMAND to the Administrator for further processing consistent with this decision

FEDERAL COMMUNICATIONS COMMISSION



Mark Seifert

Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau