

ORIGINAL

Before the  
Federal Communications Commission  
Washington, DC 20554

Nov 10

In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Crispus Attucks YouthBuild Charter School	)	File No. SLD-312243
York, Pennsylvania	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: November 4, 2003**

**Released: November 5, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1 The Telecommunications Access Policy Division has under consideration a Request for Waiver filed by Crispus Attucks YouthBuild Charter School, York, Pennsylvania (Crispus Attucks), seeking a waiver of the Commission's rules governing the schools and libraries universal service support mechanism<sup>1</sup> Specifically, Crispus Attucks requests a waiver of the filing deadline for Funding Year 2002.<sup>2</sup> For the reasons set forth below, we deny the Waiver Request

2 In its decision, SLD determined that Crispus Attucks' application had been filed after the close of the January 17, 2002 FCC Form 471 filing window.<sup>3</sup> Crispus Attucks argues that it followed the instructions on the SLD website for electronically signing its application, and that an SLD representative assured them that their application had been electronically certified<sup>4</sup> Crispus Attucks also states that the SLD representative informed them that entering data for a Personal Information Number (PIN) would electronically sign the application and that it was not

<sup>1</sup> Letter from Chris Ginder, Crispus Attucks YouthBuild Charter School, to Federal Communications Commission, filed June 14, 2002 (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)

<sup>2</sup> See Waiver Request

<sup>3</sup> Postcard from Schools and Libraries Division, Universal Service Administrative Company, to Christina Ginder, Crispus Attucks YouthBuild Charter School, dated March 23, 2002

<sup>4</sup> Waiver Request

necessary to file the signed certification page before the filing deadline because SLD had the applicant's signature on file from previous years<sup>5</sup>

3 We find that a waiver is not appropriate. 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 There is no evidence in the record that Crispus Attucks' application was electronically certified. Instead, the record shows that Crispus Attucks electronically filed its application on January 16, 2002, but SLD did not receive Crispus Attucks' signed certification page until January 21, 2002.<sup>7</sup> Thus, pursuant to program rules, the entire application was considered to be filed outside the filing window, which closed on January 17, 2002.<sup>8</sup> Although the record shows that Crispus Attucks created a PIN on January 16, 2002, the creation of the PIN would not have completed the electronic certification process.<sup>9</sup> A PIN is simply an element necessary to enable an applicant to electronically certify an application.<sup>10</sup> Further, SLD Form 471 Instructions clearly state that when applicants electronically certify their applications, they will receive a confirmation to ensure that the application has met any filing deadlines.<sup>11</sup> Applicants are then instructed to "[m]ake a copy of the electronic certification confirmation page and attach that to the top of the Item 21 attachment...".<sup>12</sup> Crispus Attucks did not submit such confirmation along with its Item 21 attachments, nor is there any record of such confirmation being issued.<sup>13</sup>

5 In addition, Crispus Attucks seeks relief on the basis that an SLD representative provided incorrect advice.<sup>14</sup> Crispus Attucks asserts that the SLD representative provided assurances that entering data for a PIN would also electronically certify the application and that

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<sup>5</sup> *Id*

<sup>6</sup> *Northeast Cellular Telephone Co v FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*), see also *WAIT Radio v FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis), *cert denied*, 409 U.S. 1027 (1972)

<sup>7</sup> See FCC Form 471, Crispus Attucks YouthBuild Charter School, filed January 21, 2003 (Crispus Attucks Form 471)

<sup>8</sup> See SLD Website, Form 471 Minimum Processing Standards (Funding Year 5), <<http://www.sl/universalservice.org/reference/471mps.asp>>

<sup>9</sup> See Waiver Request at attachment

<sup>10</sup> See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (November 2001) (Form 471 Instructions) at 26

<sup>11</sup> *Id*

<sup>12</sup> *Id*

<sup>13</sup> See Crispus Attucks Form 471

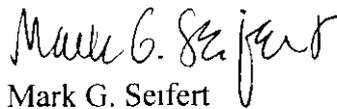
<sup>14</sup> See Waiver Request

it was not necessary for Crispus Attucks to file the signed certification page before the filing deadline<sup>15</sup> We decline to grant relief on those grounds. Where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule.<sup>16</sup>

6 In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.<sup>17</sup> In order for the program to work efficiently, the applicant must assume responsibility for timely submission of correct application materials if it wishes to be considered within the window. Here, Crispus Attucks fails to demonstrate a sufficient basis for waiving the Commission's filing window deadline.

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 Crispus Attucks YouthBuild Charter School, York, Pennsylvania, on June 14, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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

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<sup>15</sup> *Id*

<sup>16</sup> *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v Richmond*, 497 U.S. 1046 (1990))

<sup>17</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*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), at para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.")