RECEIVED & INSPECTED

FEB 17 2006

FCC - MAILROOM

DOCKET FILE COPY ORIGINAL

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

In the Matter of

Federal-State Joint Board on Universal Service	) CC Docket No. 96-45
Schools and Libraries Universal Service Support Mechanism	) CC Docket No. 02-6
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.	) CC Docket No. 97-21

Petition for Waiver or Extension of Filing Deadline for Form 472 for Funding Request Numbers 1163219.

Radford City Public Schools, E-Rate entity number: 126586 respectfully asks the Federal Communications Commission (Commission) to waive the deadline for filing FCC Form 472 (BEAR) for the above Funding Request Numbers (FRN) In accordance with Title 47, Chapter 1, Part 1, Section 1.3 of Commission rules, the Commission may waive its rules on its own motion or on petition.

We ask the Commission to waive or extend the Form 472 filing deadline because of misleading and inaccurate directions on the Form 472. Applicants attempting to file the Form 472 in accordance with official directions posted on the Schools and Libraries Division (Administrator) Web site would find it impossible to comply and therefore would not file the Form 472. We ask that the waiver or extension be 120 days after the date of publication on the Administrator's Web site of revised, accurate instructions for filing the Form 472.

Background

The Commission has charged the Administrator with operational responsibilities of the Schools and Libraries Mechanism, better known as E-Rate. The Administrator's functions are detailed in Title 47, Chapter 54, Section 54.702 of the Commission's rules, with pertinent cites below:

> § 54.702 Administrator's functions and responsibilities.
> (a) The Administrator, and the divisions therein, shall be responsible for administering the schools and libraries support mechanism, the rural health care support

No. of Copies rec'd 0
List A B C D E

> mechanism, the high cost support mechanism, the low income support mechanism, the interstate access universal service support mechanism described in subpart J of this part, and the interstate common line support mechanism described in subpart K of this part.
> (b) The Administrator shall be responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.
> (f) The Administrator shall create and maintain a website, as defined in § 54.5, on which applications for services will be posted on behalf of schools, libraries and rural health care providers.

The Commission's Fifth Order on Reconsideration directed the Administrator to submit to the Commission a list of all administrative procedures annually to the Commission.[1] The obvious purpose of such a filing is to make public all procedures the Administrator has in place to effectively and efficiently administer the program. Such filing also gives the Commission the opportunity review all procedures and, if appropriate, order the Administrator to eliminate certain procedures. No action by the Commission in response to the list of administrative procedures would constitute acceptance and validation of the procedures.

Section (f) charges the Administrator with creation and maintenance of a website specifically for posting applications for services. I am confident it was the Commission's desire that the website reflect accurate and timely information.

In a filing with the Commission dated October 29, 2004 the Administrator delivered to the Commission its administrative procedures. On page 21 of the document and under the headline "Invoice Deadlines," the Administrator states the following:

> FCC Forms 472 and 474 must be received within 120 days of the last date of service, or 120 days after the date of the FCC Form 486 Notification Letter, whichever is later.
> Disbursements are not made in response to forms received after that date, unless an extension is appropriate.

Because the Commission took no action relative to the statement that the Form 472 and Form 474 must be received within 120 days from the last date of service, such procedure became de facto Commission regulation. With this

---

[1] See Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Fifth Report and Order and Order, FCC 04-190, (2004) (Fifth Report and Order).

Petition, I ask the Commission to waive this regulation.

Discussion

The Administrator maintains a website with program applications and instructions for E-Rate. The instructions for the Form 472 state the following:

> The applicant should prepare and submit a Billed Entity Applicant Reimbursement Form to the fund administrator when ALL of the following conditions occur:
> 1. The applicant receives a Funding Commitment Decisions Letter from the fund administrator which approves discounts for services;
> AND
> 2. The applicant is already receiving or has received these services, and has already paid for the services, including the price of the discounts;
> AND
> 3. The applicant has filed FCC Form 486 (Receipt of Service Confirmation Form) and entered "Yes" in Column (I) of Item 6 of the FCC Form 486 to indicate its intention to submit a Billed Entity Applicant Reimbursement Form.[2]

These criteria are repeated throughout the instructions, specifically with reference to Item number 3, where Applicants must enter "Yes" in Column (I) of Item 6 of the FCC Form 486.

Close examination of the current Form 486, dated August 2003, and OMB approval number 3060-0853, reveals no Column (I) of Item 6. In fact, there is no (I) at all connected with Item 6 of the form.

Instructions further require applicants to verify the start date for services from the Form 486 Column (E). Column (E) of the current Form 486 is a provision for the Service Provider Identification Number, not the start date for services.

The instructions repeatedly reference the "Schools and Libraries Corporation" and "SLC" and the "SLC Web Site" at www.slcfund.org. This website has not been operational since 1999. It is obvious that these instructions pre-date the establishment of the Schools and Libraries Division under FCC Order.

Applicants certify compliance with all program rules, as required and certified on various FCC Forms, including Item 30 of the current FCC

---

[2] Form 472 instructions, Page 4. Current location on the Administrator's Web site at: http://www.universalservice.org/_res/documents/sl/pdf/472i.pdf

Form 471:

> I certify that I and the entity(ies) I represent have complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. There are signed contracts covering all of the services listed on this Form 471 except for those services provided under non-contracted tariffed or month-to-month arrangements. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.

Applicants reading instructions for completing the Form 472, attempting to comply with all program rules, would not file the Form 472 and forgo all funding entitled to applicants under the Telecommunications Act of 1996.

It should be noted here that the Commission announced approval of a Form 472 and Instructions on March 4, 2004 (DA 04-527). The announcement indicated that the new Form was attached but there is no attachment connected with the announcement on the Commission's Daily Digest web site for March 4, 2004. The announcement indicates OMB approved the Form on January 26, 2004 with an approval number of 3060-0856. The current Form 472 has OMB approval number 3060-0856, but is dated October 1998 – over five years before the Commission's March 4, 2004 announcement.

The Federal Communications Commission has a long and staid history of providing precise and accurate information and instructions to entities subject to Commission jurisdiction. Broadcast regulations, for example, precisely enumerate transmission power limits, beam tilt, frequency, antenna height, and a myriad of other requirements. The same applies for virtually all other divisions within the Commission. We are confident that the Commission has the same expectation of clear and accurate information from the Wireline Competition Bureau and the Administrator for the E-Rate program. These instructions are beyond misleading and inaccurate. If followed to the letter, and in compliance with Form 471 Item 30 certification, applicants will not complete the Form 472 and lose committed funding.

We applaud the Commission with its recent decision in Glendale Unified School District, where the Commission stated:

> We find that although Glendale committed an unintentional, clerical error when it listed the incorrect service start date on its FCC Form 486, it adhered to the core program requirements. As we recently noted, the E-rate program is fraught with complexity from the perspective of beneficiaries, resulting in a significant number of applications for E-rate support being denied for ministerial or clerical errors. We find that the action we take here promotes the statutory requirements of section 254(h) of the

> Communications Act of 1934, as amended (the "Act"), by helping to ensure that Glendale obtains access to discounted telecommunications and information services.[3]

Like Glendale, complex rules and misleading instructions resulted in denial of funding in this case. It would serve the public interest to waive the Form 472 filing deadline in this instance.

Conclusion

We ask the Commission to waive or extend the Form 472 filing deadline for the FRN here under appeal and require the Administrator to accept and remit payment representing E-Rate discounts previously funded.

Respectfully submitted this 8th day of (February), 2006,

Dr. B. Keith Rowland
Radford City Schools
1612 Wadsworth St.
P.O. Box 3698
Radford, VA. 24143
(540) 731-3669

[3] Request for Review or Waiver by Glendale Unified School District, WCB DA 06-244, CC Docket No. 02-6, released February 1, 2006, at 5.