

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Waiver of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Smithton School District)	File No. SLD-226486
Smithton, Missouri)	
)	
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: October 3, 2003

Released: October 6, 2003

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Smithton School District (Smithton), Smithton, Missouri.¹ Smithton requests waiver of the Commission’s rules governing the schools and libraries program of the universal service support mechanism. Specifically, Smithton requests a waiver of the filing deadline for the FCC Form 486 for Funding Year 2001.² For the reasons set forth below, we deny the Waiver Request.

2. In accordance with the requirements of the Children’s Internet Protection Act (CIPA),³ Funding Year 2001 FCC Forms 486 were to be filed no later than October 28, 2001, unless their service began after that date or a funding commitment decision letter was issued after that date.⁴ A Funding Year 2001 applicant with a funding commitment decision letter who

¹ Letter from Bill Hadlow, Smithton School District, to Federal Communications Commission, filed November 5, 2002 (Waiver Request).

² *Id.*

³ *See* 47 U.S.C. §§ 151 *et seq.* (Act).

⁴ 47 U.S.C. § 254(h)(5)(E), (6)(E); *CIPA Order*, 16 FCC Rcd at 8188-89, 8191, paras. 10, 18. The implementation meets CIPA’s requirement that applicants in Funding Year 2001 make their certifications within 120 days of the start of the funding year.

failed to meet the October 28, 2001 deadline could obtain discounts only for services received on or after the date that its FCC Form 486 was postmarked.⁵

3. In this case, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company reduced discounts for two of Smithton's funding requests for telecommunications services because the FCC Form 486 were filed after the October 28, 2001 deadline.⁶ The funding requests, funding request numbers (FRNs) 524239 and 524244, were reduced to adjust the start of services to the date the forms were postmarked, rather than the dates that services actually started.⁷

4. Smithton claims that it was late in filing its FCC Form 486 because SLD failed to mail a Funding Commitment Decision Letter (FCDL).⁸ Smithton asserts that because it did not receive the FC DL, it was not aware of the need to send SLD an FCC Form 486.⁹ Smithton states that it is partially responsible because some confusion resulted from Smithton incorrectly filing two funding applications.¹⁰ Smithton asserts that SLD should share responsibility for failing to generate a FC DL and requests a waiver of the FCC Form 486 deadline.

5. We note that the October 28, 2001 deadline for the FCC Form 486 in Funding Year 2001 was created by statute.¹¹ Thus, the Commission has no authority to consider the reasonableness of the deadline or to consider waiving the statutory deadline in cases involving applications for Internet service. However, the filing of certifications by applicants that requested only telecommunications services is a regulatory requirement for and therefore may be considered by the Commission.¹² Here, Smithton only requested telecommunications services.¹³

⁵ *Id.* See also Universal Service for Schools and Libraries Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (July 2001) (Form 486 Instructions) at 9.

⁶ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bill Hadlow, Smithton School District, dated September 30, 2002 (Administrative Decision Letters on Appeal); see also Letter from Schools and Libraries Division, Universal Service Administrative Company, to Tammy Bremer, Smithton School District, dated January 30, 2002 (Form 486 Notification Letter).

⁷ See Administrative Decision Letters on Appeal; see also Form 486 Notification Letter.

⁸ Waiver Request.

⁹ *Id.*

¹⁰ *Id.* According to Smithton, the first application that it submitted to SLD was partially incomplete. The second application, application number SLD-226486, is at issue in the instant appeal.

¹¹ See *supra* note 5.

¹² See *Request for Review by Eastern Lebanon County School and Newport News Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-220549, 220586, 231477, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 5466, para. 10 (Wireline Comp. Bur. 2003).

¹³ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Tammy Bremer, Smithton School District, dated July 23, 2001 (Funding Commitment Decision Letter).

6. After review of the record, we find that a waiver is not appropriate. A waiver 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.¹⁴

7. In this case, SLD records indicate that SLD mailed Smithton a FCDL on July 23, 2001.¹⁵ As noted in the *Port Angeles Order*, the Bureau has held repeatedly that an item mailed is presumed to be received by the addressee, and Smithton has not provided evidence to rebut this presumption.¹⁶ Thus, consistent with our precedent in the *Port Angeles Order*, we conclude that SLD's decision is supported by precedent and the underlying record.¹⁷ Further, Smithton could have become aware of its application status in a timely fashion even without the Funding Commitment Decision Letter by periodically checking SLD's website or contacting SLD directly.¹⁸ Either method would have apprised it of the funding decision in time to meet all applicable deadlines. Therefore, we conclude that Smithton has failed to demonstrate circumstances that would warrant waiver of the deadline.

8. 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 Request for Review filed by School District, Smithton, Missouri, on November 5, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁴ *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).

¹⁵ Funding Commitment Decision Letter.

¹⁶ See *Request for Waiver by Port Angeles School District 121, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-233361 and SLD-237708, CC Dockets No. 96-45 and 97-21, Order, 18 FCC Rcd 301 (Wireline Comp. Bur. 2003) (*Port Angeles Order*); *Columbia Millimeter Communications, LP*, 14 FCC Rcd 2782, para. 10 (1999).

¹⁷ *Port Angeles Order*.

¹⁸ *Id.* (citing SLD's website, <<http://www.sl.universalservice.org/funding>>).