

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

In the Matter of	)	
	)	
Request for Waiver	)	
	)	
Winans Academy of Performing Arts	)	Billed Entity No. 55217
Detroit, Michigan	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: February 2, 2004**

**Released: February 3, 2004**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Waiver filed by Winans Academy of Performing Arts, Detroit, Michigan (Winans).<sup>1</sup> Winans requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>2</sup> For the reasons set forth below, we deny the Waiver Request.

2. Winans requests a waiver of the January 18, 2001 FCC Form 471 filing window deadline because of a misunderstanding regarding filing procedures.<sup>3</sup> Specifically, Winans states that it submitted its completed FCC Form 471 application for Funding Year 2001 (FY 2001), but that it is now lost. Winans requests to submit another Form 471 application for consideration, even though the filing deadline has passed.<sup>4</sup> Winans therefore requests a waiver of the Commission's rules because it approached the filing process without understanding that it needed to retain proof of mailing. Winans states that this minor oversight has become a \$20,000 mistake

<sup>1</sup> Letter from Tony Mottley, Winans Academy of Performing Arts, to Federal Communications Commission, filed October 30, 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> Waiver Request.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

for its school, which is not affiliated with a school district.<sup>5</sup> Winans further states that most of its students are unable to obtain Internet access unless Winans provides it.<sup>6</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>7</sup> The fact that Winans was unable to provide documentation indicating that the application was submitted within the filing window does not create the special circumstances or particular facts that warrant a waiver of the Commission's rules.<sup>8</sup> We have consistently held that it is the applicant who has responsibility ultimately for the accurate and timely submission of the application.<sup>9</sup> Further, we have concluded that detrimental impact alone does not create special circumstances that warrant a waiver.<sup>10</sup> Therefore, we deny the Waiver Request.

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

<sup>6</sup> *Id.*

<sup>7</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>8</sup> See, e.g., *Request for Waiver by Duncanville Independent School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-272355, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 11863 (Wireline Comp. Bur. 2002) (The Applicant bears the responsibility of completing the relevant forms and submitting them within the established deadline.)

<sup>9</sup> See, e.g., *Request for Waiver by Center City Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-3256719, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 22424 (Wireline Comp. Bur. 2003); *Application for Review by Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, FCC 03-240 (Wireline Comp. Bur. rel. Oct. 21, 2003).

<sup>10</sup> See, e.g., *Application for Review by Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, FCC 03-240 (Wireline Comp. Bur. rel. Oct. 21, 2003); *Request for Review of the Decision of the Universal Service Administrator by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4035 ("While enforcement of these requirements has a harsh consequence for these particular applicants, the underlying policy... is critical to the integrity of the program.")

4. 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 Winans Academy of Performing Arts on October 30, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Narda Jones  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau