

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Aleutians East Borough School District
Sand Point, Alaska
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-237125
CC Docket No. 02-6

ORDER

Adopted: February 24, 2004 Released: February 25, 2004

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Aleutians East Borough School District (Aleutians East), Sand Point, Alaska. Aleutians East requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) reducing discounts for a certain funding request by Aleutians East because the funding request was not submitted in a timely manner. For the reasons set forth below, we affirm SLD's decision and deny Aleutians East's Request for Review.

2. On April 11, 2002, Aleutians East submitted FCC Form 486 for FRN 557902. On May 8, 2002, SLD issued a Form 486 Notification Letter stating that although the Form 486 was accepted, SLD was adjusting the funding awarded because of failure to meet the Children's Internet Protection Act (CIPA) deadline. Specifically, the notification letter reduced Aleutians East's funding commitment to provide discounts only for service provided on or after the FCC

1 Letter from Wesley L. Knapp, Ph.D, Aleutians East Borough School District, to Schools and Libraries Division, filed with the Federal Communications Commission on February 12, 2003 (Request for Review).

2 Id.

3 FCC Form 486, Aleutians East Borough School District, filed April 11, 2002 (April Form 486). Aleutians East filed another Funding Year 2001 FCC Form 486 for other FRNs relating to the same application on August 20, 2001 (August Form 486). The August Form 486 was timely filed and not at issue in this Request for Review.

4 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bill Burr, Aleutians East Borough School District, dated May 8, 2002.

Form 486 filing date of April 11, 2002, instead of the funding year start date of July 1, 2001.⁵ Aleutians East then filed the instant Request for Review, seeking full funding.⁶

3. Aleutians East asserts that it did not receive a Funding Commitment Decision Letter (FCDL) for Funding Request Number (FRN) 557092 and, therefore, was not aware that the FRN was approved for funding.⁷ Aleutians East does not dispute the filing date of April 11, 2002, but requests that the April Form 486 be treated as timely filed and that funding be restored to the originally approved amount because it did not receive the FCDL.⁸

4. The record, however, demonstrates that SLD issued the FCDL for FRN 557092 on July 23, 2001. The Bureau has addressed similar situations in which the applicant argues that a letter was not received at the address provided to SLD and to which prior correspondence had been successfully mailed, holding that this is not grounds for overturning SLD's decision.⁹ Similarly, the Commission has ruled that "if the Commission were to entertain and accept unsupported arguments that letters mailed in Commission proceedings were not delivered ... procedural havoc and abuse would result."¹⁰ Thus, under this precedent, we uphold SLD's action and deny Aleutians East's Request for Review.

5. In addition, Aleutians East states that its August Form 486 provided a CIPA certification for the school district including any schools that sought discounts in FRN 557092.¹¹ Therefore, Aleutians East argues, it is irrelevant that the FCC Form 486 for FRN 557092 was filed in an untimely manner, because Aleutians East already certified that all entities receiving support under FRN 557092 were in compliance with CIPA.¹² Aleutians East further contends that CIPA requires that compliance should be at the district level, not at the level of the actual FRNs. It thus asserts that it fully complied with the statutory requirements.¹³

6. We are not persuaded by Aleutians East's argument that certification on behalf of the district is sufficient to comply with the statute. The Bureau has previously addressed this issue in the *Craig County Order* and determined that it is reasonable to require certification to CIPA on the basis of individual FRNs.¹⁴ Similarly, Aleutians East argues that the timely filed

⁵ *Id.*

⁶ *See* Request for Review.

⁷ *Id.*

⁸ *Id.*

⁹ *See Request for Review by Telfair County School District*, File No. SLD-238489, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 3087 (Com. Car. Bur. 2002).

¹⁰ *Juan Galiano*, Memorandum Opinion and Order, 5 FCC Rcd 6442, 6443 (1990).

¹¹ *See* Request for Review

¹² *Id.*

¹³ *Id.*

¹⁴ *Request for Review by Craig County Public Schools*, File No. SLD-241515, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 1718 (Wireline Comp. Bur. 2003) (*Craig County Order*). Craig County filed an FCC Form 486

August Form 486 that included a CIPA certification for the district should apply to the untimely April Form 486.¹⁵ Consistent with our precedent in the *Craig County Order*, we affirm the SLD's decision and deny Aleutians East's Request for Review.

7. To the extent that Aleutians East is requesting a waiver, we deny that request. Although the Commission has authority to waive regulatory requirements, it does not have authority to waive a requirement imposed by statute.¹⁶ The October 28, 2001 deadline for schools receiving Internet access and internal connections discounts to submit their CIPA certifications in Funding Year 2001 is set in the statute, which requires that CIPA certifications must be made within 120 days of the start of the first funding year following the effective date of the statute.¹⁷ Because Aleutians East was receiving discounts on Internet access, and was therefore subject to the October 28, 2001 deadline imposed by the CIPA statute, we are without authority to waive that deadline in this case.¹⁸

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 Aleutians East Borough School District on February 12, 2003, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Narda Jones
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Wireline Competition Bureau

on October 1, 2001, which included all schools for which it sought discounts in Funding Year 2001. On May 1, 2002, Craig County filed an FCC Form 486 which included six FRNs that were previously omitted. SLD adjusted the service start date and the funding awarded for the FRNs included in the FCC Form 486 filed on May 1, 2002 because of failure to meet the CIPA deadline. Craig County appealed, arguing that it had already certified that all of its schools were in compliance with CIPA and that compliance should be at the school level, not at the level of actual FRNs. *Id.* at 1721, para. 8. The Bureau determined that it is reasonable and appropriate to require certification on an FRN basis, and denied Craig County's request. *Id.* at 1721-22, para. 9.

¹⁵ See Request for Review.

¹⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order, 15 FCC Rcd 7170, para. 13 (1999); see also *Chrysler v. Brown*, 441 U.S. 281, 302 (1979) ("the exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to the limitations which that body imposes.")

¹⁷ 47 U.S.C. § 254(h)(5)(E)(i)(I), (h)(6)(E)(i)(I); see *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, paras. 10-14 (2001).

¹⁸ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Chick Beckley, Aleutians East Borough School District, dated July 23, 2001 (Funding Commitment Decision Letter). See *Request for Review by East Carroll Parish School Board, Federal-State Joint Board on Universal Service Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-232946, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 24591 (Wireline Comp. Bur. 2002).