

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Waiver by)	
)	
Lettie W. Jensen Library)	File No. SLD-267950
Amherst, Wisconsin)	
)	
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 15, 2001

Released: October 16, 2001

By the Common Carrier Bureau, Accounting Policy Division:

1. The Common Carrier Bureau’s Accounting Policy Division has under consideration a Waiver Request filed by Lettie W. Jensen Library (Lettie Jensen), Amherst, Wisconsin. Lettie Jensen seeks a waiver of the Commission’s rules governing discounts for services under the schools and libraries universal service support mechanism.¹ For the reasons set forth below, we grant Lettie Jensen’s Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.² In order to receive discounts on eligible services, the Commission’s rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470 (Form 470), in which the applicant sets forth its technological needs and the services for which it seeks discounts.³ The Administrator must post the Form 470 on its website, and the applicant is required to wait 28 days before making a commitment

¹ Letter from Kristi Pennebecker, Lettie W. Jensen Library, to Federal Communications Commission, filed February 26, 2000 (Waiver Request).

² 47 C.F.R. §§ 54.502, 54.503.

³ 47 C.F.R. § 54.504(b)(1), (b)(3).

with a selected service provider.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 (Form 471) application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ The Commission's rules allow the Administrator to implement an internal filing period ("filing window") for the Form 471 applications that treats all schools and libraries filing within that period as if their applications were received simultaneously.⁶ Applications that are postmarked outside this filing window are subject to separate funding priorities under the Commission's rules.⁷ It is to all applicants' advantage, therefore, to ensure that prior to the close of the filing window, they either file their Forms 471 electronically, or mail them to the Administrator.

3. Lettie Jensen requests a waiver of the Funding Year 4 application window, which closed on January 18, 2001 at 11:59 p.m. Eastern Standard Time.⁸ In order to comply with the program's competitive bidding requirements and also file an application within the filing window, it was incumbent upon applicants in Funding Year 4 to have their Forms 470 posted 28 days before the filing window closed.⁹ On October 18, 2000, well in advance of the filing window deadline, Lettie Jensen mailed its Form 470 to SLD, which received it on October 23, 2000.¹⁰

4. Nearly two months later, on December 19, 2000, SLD sent Lettie Jensen a letter stating that Lettie Jensen had omitted the signature of the authorized person on the form, and that it should therefore resubmit its Form 470 with the proper signature in order for SLD to post it.¹¹ Lettie Jensen asserts that it received SLD's letter on December 21, 2000, and that it signed and mailed the Form 470 to SLD on the following day.¹² SLD received the form on December 27, 2000, and posted it two days later, on December 29, 2000.¹³ Because the posting date was December 29, 2000, in order to comply with the 28-day competitive bidding period, Lettie Jensen was prohibited from filing its Form 471 until January 26, 2001, which is after the filing window closed on January

⁴ 47 C.F.R. § 54.504(b)(3), (4); § 54.511.

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. § 54.507(c).

⁷ 47 C.F.R. § 54.507(g).

⁸ Waiver Request; SLD web site, What's New (November 2000)
<<<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>>

⁹ 47 C.F.R. § 54.504(b)(3), (4); § 54.511.

¹⁰ Waiver Request; Lettie W. Jensen Library, filed initially October 23, 2000, FCC Form 470 (Form 470).

¹¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kristi Pennebecker, Lettie W. Jensen Library, dated December 19, 2000.

¹² Waiver Request.

¹³ Form 470.

18, 2001. In compliance with the competitive bidding rules, Lettie Jensen filed its Form 471 on February 5, 2001.¹⁴

5. Lettie Jensen contends that SLD unreasonably delayed processing its Form 470.¹⁵ It argues that if SLD had processed the form more promptly and notified Lettie Jensen of the incomplete Form 470, Lettie Jensen would have been able to resubmit its completed Form 470 in time for SLD to post the form, and for Lettie Jensen to wait 28 days after the posting of the form before filing its Form 471 within the filing window.¹⁶ In accordance with our previous decisions, we agree with Lettie Jensen that it is entitled to a waiver of the filing window because SLD erred by unreasonably delaying its notification to Lettie Jensen of the problems with its Form 470. The Administrator's error essentially forced Lettie Jensen to choose between (1) complying with the 28-day waiting period required by the Commission's competitive bidding rules and, as a result, filing outside the window, or (2) filing its FCC Form 471 within the window in contravention of the 28-day waiting period requirement. Lettie Jensen chose the first option.

6. 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.¹⁷ In *Council Bluffs*, the Common Carrier Bureau granted waiver of the filing window deadline to an applicant that was similarly affected by an Administrator error.¹⁸ As in the instant case, the applicant in *Council Bluffs* properly waited at least 28 days after the Form 470 was posted before filing its Form 471, but due to SLD's delay, was unable to file its Form 471 within the filing window.¹⁹ In granting relief in *Council Bluffs*, the Bureau noted that SLD excessively delayed posting the applicant's Form 470.²⁰

7. Unlike the applicant in *Council Bluffs*, who submitted a properly completed Form 470, Lettie Jensen submitted a Form 470 without the necessary signature, and SLD properly rejected it because it did not comply with SLD's minimum processing standards.²¹ However, we find that the

¹⁴ FCC Form 471, Lettie W. Jensen Library, filed February 5, 2001.

¹⁵ Waiver Request.

¹⁶ Waiver Request.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁸ *Request for Review by Council Bluffs Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. E007282, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 18,836 (Com. Car. Bur. 1999) (*Council Bluffs*).

¹⁹ *Id.* We have similarly granted relief where SLD excessively delayed posting a Form 470, and the applicant, who was aware that the delay had placed its application outside the Form 471 filing window, filed its Form 471 before the end of the 28-day competitive bidding period in violation of our rules, in order to be considered within the filing window. See *Request for Review by Runnemede Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-154153, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2957 (Com. Car. Bur. rel. December 21, 1999).

²⁰ *Council Bluffs*. SLD failed to post the form for approximately six weeks.

²¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kristi Pennebecker, Lettie W. Jensen Library, dated December 19, 2000.

period between October 23, 2000, when SLD received the Form 470, and December 19, 2000, when SLD mailed a notice to Lettie Jensen informing it of its failure to provide the authorized signature, constitutes an excessive delay by SLD which adversely affected Lettie Jensen's application. Had SLD informed Lettie Jensen of its mistake within a more reasonable timeframe, Lettie Jensen would have been able to resubmit its Form 470 early enough to comply with the 28-day competitive bidding requirement and then file its Form 471 before the filing window closed. We routinely encourage applicants to begin the application process as early as possible in order to deal with any problems that may arise. In this case, we find that, based on the early submission date of Lettie Jensen's FCC Form 470, SLD should have notified Lettie Jensen of the signature deficiency in the form in time for Lettie Jensen to submit an in-window FCC Form 471 that complied with the competitive bidding rules. We therefore further find that good cause exists to grant Lettie Jensen's Waiver Request.

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 Waiver Request filed by Lettie W. Jensen Library, Amherst, Wisconsin, on February 26, 2001 IS GRANTED to the extent provide herein, and Lettie Jensen's application is REMANDED to SLD for further consideration in light of this decision.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau