

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Craig County Public Schools)	File No. SLD-241515
New Castle, VA)	
)	
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: February 6, 2003

Released: February 7, 2003

By the Wireline Competition Bureau:

1. Before the Wireline Competition Bureau is a Request for Review by Craig County Public Schools (Craig County), New Castle, Virginia.¹ Craig County seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), reducing discounts for certain funding requests by Craig County because the funding requests were not submitted in a timely manner.² For the reasons set forth below, we affirm SLD's decision and deny Craig County's Request for Review.

2. The Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) administers the schools and libraries support mechanism under the direction of the Commission.³ After an applicant for discounted services under the schools and libraries support mechanism has entered into agreements for eligible services with one or more service providers, it must file with SLD an FCC Form 471

¹ Letter from Adele Morris, Craig County Public Schools, to Federal Communications Commission, filed July 22, 2002 (Request for Review).

² *See id.*

³ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

application.⁴ The FCC Form 471 notifies SLD of the services that have been ordered and supplies an estimate of funds needed to cover the discounts to be given for eligible services.⁵ SLD then issues a funding commitment decision letter indicating the discounts, if any, to which the applicant is entitled. After the funding year begins and the discounted service commences, the approved recipient of discounted services submits to SLD an FCC Form 486, which indicates that the service has begun and specifies the service start date.⁶ After receiving the FCC Form 486, SLD will accept invoices from the service provider and issue disbursements to the provider in cumulative amounts up to the amount of the discount awarded.⁷

3. With the passage of the Children's Internet Protection Act (CIPA), Congress amended section 254 of the Communications Act of 1934,⁸ imposing new conditions on schools and libraries that "hav[e] computers with Internet access" and request discounted services under the schools and libraries universal service support mechanism.⁹ Under section 254(h)(5), no school may receive universal service discounts unless the authority with responsibility for administration of the school makes certain certifications, and ensures the use of such computers in accordance with the certifications.

4. Congress established the conditions on the use of computers with Internet access in two separate acts-- CIPA, which added section 254(h)(5) (establishing certification requirements for schools) and (h)(6) (establishing similar requirements for libraries), and the Neighborhood Children's Internet Protection Act (NCIPA), which added section 254(l) (establishing additional requirements for both schools and libraries).¹⁰ Under section 254(h)(5), which governs schools, applicants are required to certify that they are enforcing a policy of Internet safety as defined in NCIPA, and that their policy of Internet safety also includes the use of a "technology protection measure," also referred to as a software filter, that is in accordance with requirements specified in the CIPA provisions.¹¹ Under section 254(h)(l), schools are

⁴ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

⁵ 47 C.F.R. § 54.504(c).

⁶ Schools and Libraries Universal Service, Receipt of Service Confirmation Form, OMB 3060-0853 (July 2001) (FCC Form 486); Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (July 2001) (Form 486 Instructions). In addition, an early filing option exists for Funding Year 2001 applicants whose services begin on or before October 28, 2001 and for applicants in subsequent funding years whose services begin on or before July 1 of the funding year. See FCC Form 486.

⁷ See FCC Form 486; Form 486 Instructions.

⁸ See 47 U.S.C. §§ 151 *et seq.* (Act).

⁹ 47 U.S.C. § 254(h)(5)(A). Section 254(h)(6)(A) applies the same requirements to libraries. However, as noted below, this latter section was recently found to be unconstitutional. See *infra*, n. 11.

¹⁰ See Neighborhood Children's Internet Protection Act (NCIPA), Pub. L. 106-554 §§ 1731 *et seq.*

¹¹ 47 U.S.C. § 254(h)(5), (6). These software filters are designed to block access to Internet sites containing sexually explicit or otherwise objectionable material. See *American Library Association, Inc. v. United States*, 201 F.Supp.2d 401, 412-413 (E.D. Penn. 2002).

required to adopt and implement an Internet safety policy that addresses (1) access by minors to inappropriate material on the Internet, (2) the safety and security of minors when using electronic communications, (3) unauthorized access, (4) unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and (5) measures designed to restrict minors' access to material harmful to minors.¹²

5. To implement these new provisions, the Commission issued the *CIPA Order*, which, *inter alia*, added new certifications to the FCC Form 486 beginning in Funding Year 2001.¹³ The Commission also amended its rules, adding the CIPA requirements at section 54.520.¹⁴

6. In accordance with CIPA's requirement that applicants in Funding Year 2001 make their certifications within 120 days of the start of the funding year, the Commission added an additional deadline to the normal 120-day rule for FCC Forms 486. Under CIPA, Funding Year 2001 applicants were required to file their FCC Forms 486 no later than October 28, 2001 unless their service began after that date or a funding commitment decision letter was issued after that date.¹⁵ A Funding Year 2001 applicant with a funding commitment decision letter who 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.¹⁶

7. In the instant case, Craig County filed a Funding Year 2001 FCC Forms 486 for services on October 1, 2001 (October Form 486).¹⁷ Craig County concedes that it inadvertently failed to include a number of funding requests on the form (Funding Request Numbers (FRNs) 574283, 574100, 574122, 574171, 574243, and 574255).¹⁸ On May 1, 2002, Craig County submitted a new FCC Form 486 in which it included the six missing FRNs.¹⁹ On May 29, 2002, SLD issued a Form 486 Notification Letter stating that although the May Form 486 was accepted, SLD was adjusting the funding awarded because of failure to meet the CIPA deadline.²⁰ Specifically, the notification letter reduced Craig County's funding commitment to provide discounts only for services provided on or after the FCC Form 486 filing date of May 1,

¹² See NCIPA, Pub. L. 106-554 § 1732, codified at 47 U.S.C. § 254(l).

¹³ 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 (2001) (*CIPA Order*); 47 C.F.R. § 54.520.

¹⁴ 47 C.F.R. § 54.520.

¹⁵ 47 U.S.C. § 254(h)(5)(E), (6)(E); *CIPA Order*, 16 FCC Rcd at 8188-89, 8191, paras. 10, 18.

¹⁶ See Form 486 Instructions at 9.

¹⁷ FCC Form 486 (No. 11800424), Craig County Public Schools, filed October 1, 2001 (October Form 486). Craig County filed other FCC Forms 486 as well, but those are not at issue in this Request for Review.

¹⁸ See Request for Review.

¹⁹ See FCC Form 486 (No. 26700031), Craig County Public Schools, filed May 6, 2002 (May Form 486).

²⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Keni Homola, New Castle Tel. Co., dated May 29, 2002.

2002, instead of the funding year start date of July 1, 2001.²¹ Craig County then filed the instant Request for Review, seeking full funding.²²

8. As noted, Craig County admits that it inadvertently failed to include the relevant FRNs on the timely October Form 486, and provides no justification for the omission.²³ Craig County argues, however, that its October Form 486 included all schools for which it sought discounts in Funding Year 2001.²⁴ Therefore, Craig County contends, it is irrelevant that other FRNs for those same schools were filed in an untimely manner, because Craig County had already certified that all of its schools were in compliance with CIPA.²⁵ Craig County further argues that CIPA requires only that compliance should be at the school level, not at the level of actual FRNs.²⁶ It thus asserts that it fully complied with the statutory requirements.²⁷

9. We are unpersuaded by Craig County's argument that certification on behalf of schools is sufficient to comply with the statute. The Commission is clearly within its authority to provide for certification on the basis of individual FRNs rather than individual schools. CIPA explicitly authorizes the Commission to prescribe regulations governing that statute.²⁸ In addition, CIPA is an amendment to section 254 of the Act, which authorizes the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."²⁹ In the *CIPA Order*, the Commission set forth the requisite certification language, basing certifications on compliance with each FRN.³⁰ Providing for certifications for each FRN rather than each school ensures a streamlined implementation of the CIPA certification process, while affording applicants maximum flexibility. This is because discounts for the schools and libraries universal service support mechanism are provided on the basis of individual FRNs rather than particular schools. Some schools receive funding through multiple FRNs, while some FRNs fund multiple schools. In addition, many FRNs are for telecommunications services only, to which CIPA does not apply.³¹ Providing applicants the opportunity to structure FRNs to include some schools and

²¹ *Id.*

²² *See* Request for Review.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See* Pub. L. No. 106-554, § 1721.

²⁹ 47 U.S.C. § 4(i).

³⁰ *See CIPA Order*, 16 FCC Rcd. at 8198, para. 36. For example, the primary certification is that "the recipient(s) of service represented in the Funding Request Number(s) on this Form 486 has (have) complied with the requirements of the Children's Internet Protection Act" *Id.*

³¹ *See* 47 U.S.C. § 254(h)(5)(A)(ii); *CIPA Order*, 16 FCC Rcd at 8195-96, para. 28.

not others, based in part on CIPA compliance, provides flexibility for applicants in complying with the statute. Furthermore, in light of the tens of thousands of applications each year, it would be administratively burdensome for SLD to attempt to determine which FRNs matched which schools or libraries for purposes of CIPA certification. Given the existing FRN-based procedures in the well-established structure of the support mechanism, it is reasonable and appropriate to require certifications on an FRN basis.

10. Moreover, the statutory language of CIPA does not prohibit the Commission from providing for certifications on the basis of FRNs rather than individual schools. Section 254(h)(5)(A)(i) of the Act states:

(i) In General—Except as provided in clause (ii), an elementary or secondary school having computers with Internet access may not receive services at discount rates under paragraph (1)(B) unless the school, school board, local educational agency, or other authority with responsibility for administration of the school [submits the required certifications and ensures the use of such computers in accordance with the certifications] . . .

11. The required certifications include certifications that “the school, school board, local educational agency, or other authority with responsibility for the administration of the school [is enforcing the required Internet safety policy and employing the necessary technology protection measures].”³² Despite Craig County’s argument that the statutory language requires certification “at the school level,” it is clear that the statute allows for certifications at various levels of administration. Craig County cites to section 254(h)(5)(E)(ii), a provision regarding the timing of certifications, which discusses certifications by “schools.”³³ As the Commission noted in the *CIPA Order*, however, such references in the statute to “schools” should be construed to mean the relevant school, school board, local education agency, or other authority with responsibility for administration of a school.³⁴ The fact that under the statute these various entities may certify compliance clearly indicates that the statute does not contemplate that certification may be made only at the school level.³⁵

12. To the extent that Craig County is requesting that we waive our rules governing the filing of the FCC Form 486, we deny that request as well.³⁶ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.³⁷ Waiver is appropriate if special circumstances warrant a deviation from the general rule, and

³² 47 U.S.C. § 254(h)(5)(B-C).

³³ See Request for Review.

³⁴ See *CIPA Order*, 16 FCC Rcd. at 8193, para. 23.

³⁵ *Id.*

³⁶ See Request for Review.

³⁷ See 47 C.F.R. § 1.3.

such deviation would better serve the public interest than strict adherence to the general rule.³⁸ We conclude that the particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Craig County's inadvertent omission of necessary information from its October Form 486 does not constitute good cause for a waiver.

13. 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 Craig County Public Schools, New Castle, Virginia on July 22, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

³⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).