

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Waiver by)	
)	
Yeshivah and Mesivta Arugath Habosem)	File No. SLD-271637
Brooklyn, New York)	
)	
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: May 10, 2002

Released: May 13, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a waiver request filed by Yeshivah and Mesivta Arugath Habosem (Arugath), Brooklyn, New York.¹ Arugath seeks a waiver of the Commission's rules governing discounts for services in Funding Year 4 under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Arugath'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.³ 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, in which the applicant sets forth its technological needs and the services for which it seeks discounts.³ The Administrator must post the FCC Form 470 on its web site, and the applicant is required to wait 28 days before making a commitment with a selected service provider.⁵ Once the applicant has complied with the

¹ Letter from Israel Engelman, Yeshivah and Mesivta Arugath Habosem, to Federal Communications Commission, filed August 2, 2001 (Waiver Request).

² See 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 Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. §§ 54.504(b)(1), (b)(3).

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

Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC 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.⁶ The Commission's rules allow the Administrator to implement an internal filing period for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received ("filing window").⁷ Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.⁸ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Arugath requests a waiver of the Funding Year 4 application window, which closed on January 18, 2001.⁹ Arugath filed its FCC Form 471 application on February 26, 2001, 5 weeks past the filing window deadline.¹⁰ While the application was under review, SLD contacted Arugath on April 25, 2001, and requested information relating to Arugath's Form 471.¹¹ Subsequently, on July 10, 2001, SLD informed Arugath that its application had been received by SLD, but after the close of the filing window.¹²

4. On July 19, 2001, Arugath filed a waiver request with SLD, requesting that its FCC Form 471 be accepted for processing within the filing window, notwithstanding their late submission.¹³ On July 26, 2001, SLD informed Arugath that because the Commission's rules did not permit SLD to consider such requests, the applicant was required to submit any waiver requests to the Commission.¹⁴ Arugath filed the instant Waiver Request with the Commission on

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. § 54.507(c).

⁸ 47 C.F.R. § 54.507(g).

⁹ See Waiver Request; SLD web site, What's New (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>. Starting with the application process for Funding Year 4, SLD, in consultation with the Commission, directed that FCC Forms 471 would be considered filed when *postmarked*, not when received. The new policy is designed to ensure that applicants are held harmless in the event of a failure of the postal system or courier to deliver the application within a reasonable period of time. SLD's new policy applies only starting in Funding Year 4, and does not apply retroactively to the first three funding years. See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions).

¹⁰ See FCC Form 471, Yeshivah and Mesivta Arugath Habosem, filed February 26, 2001 (Arugath Form 471). SLD records indicate that the post-mark on the application, February 22, 2001, was also well after the filing deadline.

¹¹ Facsimile from Patrick Hoopes, Client Services Bureau/Problem Resolution, Schools and Libraries Division, Universal Service Administrative Company, to Israel Engelman, Yeshivah and Mesivta Arugath Habosem, dated April 25, 2001 (April 2001 Information Request).

¹² See Postcard from Schools and Libraries Division, Universal Service Administrative Company, to Israel Engelman, Yeshivah and Mesivta Arugath Habosem, dated July 10, 2001.

¹³ See Letter from Israel Engelman, Yeshivah and Mesivta Arugath Habosem, to Schools and Libraries Division, Universal Service Administrative Company, filed July 19, 2001.

¹⁴ See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Israel Engelman, Yeshivah and Mesivta Arugath Habosem, dated July 26, 2001 (Administrator's Decision on Waiver Request).

August 2, 2001.¹⁵ In its Waiver Request, Arugath explains that it complied with SLD's April 2001 Information Request.¹⁶ Arugath asks the Commission to reconsider and approve its application for funding.¹⁷

5. We conclude that Arugath has not demonstrated a sufficient basis for waiving the Commission's rules. The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹⁸ Absent special circumstances warranting a deviation from the general rule, waivers of filing deadlines should not be granted. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.¹⁹ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its application materials if it wishes to be considered within the window. The applicant must also assume responsibility over the actions of those employees to whom it gives responsibility for submitting timely and proper requests for discounts in its name. Although Arugath may have responded in a timely and complete manner to SLD's April 2001 Information Request, this has no bearing on whether Arugath's application was filed in a timely manner. Here, the record reflects that Arugath did not file its FCC Form 471 within the filing window and Arugath fails to present good cause as to why it could not timely file its application. We therefore find an insufficient basis for waiving the filing window deadline.

6. 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 Yeshivah and Mesivta Arugath Habosem, Brooklyn, New York, on August 2, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁵ See Waiver Request.

¹⁶ *Id.* See April 2000 Information Request.

¹⁷ Waiver Request.

¹⁸ 47 C.F.R. § 1.3; *see, e.g., Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“[W]aiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”).

¹⁹ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), para. 8.