DOCKET FILE COPY ORIGINAL

NOV 5 4 15 PM '03

Before the
Federal Communications Commission
Washington, DC 20554

DISP

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Magen David Yeshiva	)	File No. SLD-231377
Brooklyn, NY	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

ORDER

Adopted: October 31, 2003 **Released: November 3, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Magen David Yeshiva (Magen David).[1] Magen David requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[2] For the reasons set forth below, we deny the Request for Review.

2. In this instance, Magen David filed an FCC Form 486 asserting services began on July 1, 2000.[3] Magen David, however, did not use the most up to date version of the FCC Form 486, dated July 2001. The July 2001 FCC Form 486 differed from the prior April 2000 version in several aspects, and one particularly critical.[4] The July 2001 version contained the newly-mandated Children's Internet Protection Act (CIPA) certification.[5] In accordance with the

[1] Letter from Sheila Rubin, Magen David Yeshiva, to Federal Communications Commission, filed October 24, 2002 (Request for Review); *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sheila Rubin, Magen David Yeshiva, dated January 30, 2002.

[2] *Id*

[3] FCC Form 486, Magen David Yeshiva, filed December 3, 2001 We note that Magen David actually submitted versions of the FCC Forms 486 on several dates, but it first submitted the proper versions of the forms on December 3, 2001 *See* Administrator's Decision on Appeal.

[4] *Compare* Universal Service for Schools and Libraries Receipt of Service Confirmation Form, OMB 3060-0853 (July 2001) (July 2001 FCC Form 486) *with* Universal Service for Schools and Libraries Receipt of Service Confirmation Form, OMB 3060-0853 (April 2000) (April 2000 FCC Form 486)

[5] *See* 47 U S.C §§ 151 *et seq*

requirements of CIPA, Funding Year 2001 FCC Forms 486 were to be filed no later than October 28, 2001, unless the service began after that date or a funding commitment decision letter was issued after that date.[6] 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.[7]

3 Magen David concedes that it submitted an outdated April 2000 version of the FCC Form 486, rather than the proper July 2001 form.[8] Magen David argues, however, that SLD should be reversed because in a letter dated December 14, 2001, in which it informed Magen David of the changed service start date, SLD stated that the basis of its decision was that Magen David had not submitted the proper FCC Form 486 dated "July 2001 *or April 2000*."[9] As Magen David points out, it had, in fact, submitted an April 2000 form.[10]

4 We find that although SLD erred in its December 14, 2001 letter explaining its decision, its decision to change Magen David's service start date to December 3, 2001 was correct. Magen David improperly submitted an April 2000 form rather than a July 2001 form for Funding Year 2001. Because our rules changed in the intervening time period to implement CIPA, it is essential that program applicants and participants submit the proper current forms. SLD's decision is consistent with our precedent and we affirm substantially for the reasons stated by SLD.[11]

5. Further, construing Magen David's argument as a request for a waiver of our rules, 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.[12] Magen David fails to

---

[6] 47 U S.C. § 254(h)(5)(E), (6)(E), *CIPA Order*, 16 FCC Rcd at 8188-89, 8191, paras. 10, 18. The implementation of the filing deadline meets CIPA's requirement that applicants in Funding Year 2001 make their certifications within 120 days of the start of the funding year.

[7] *See* Instructions for Completing the Schools and Libraries Universal Service Receipt of Service Confirmation Form, OMB 3060-0853 (July 2001) at 9 (Form 486 Instructions)

[8] *See* Request for Review.

[9] *Id* (emphasis added)

[10] *Id*

[11] *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sheila Rubin, Magen David Yeshiva, dated September 26, 2002 (Administrator's Decision on Appeal). *See also Request for Review of the Decision of the Universal Service Administrator by Fair Lawn Board of Education Fair Lawn, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket No. 96-45 and 97-21, Order, 16 FCC Rcd 12901 (Com. Car. Bur. 2001) (*Fair Lawn Order*).

[12] *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)

demonstrate special circumstances warranting a waiver our rules. Therefore, we affirm SLD and deny the Request for Review

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 Request for Review filed by Magen David Yeshiva, Brooklyn, New York on October 24, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert

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