

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
South Barber Unified School District 255
Kiowa, Kansas
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No.SLD-158897
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: October 19, 2001

Released: October 23, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau of the Federal Communications Commission (Commission) has under consideration a Request for Review from South Barber Unified School District 255 (South Barber), Kiowa, Kansas. South Barber challenges the denial of its application for Funding Year 3 of the schools and libraries universal service support mechanism by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). For the reasons that follow, we deny South Barber's Request for Review.

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. In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts. Once the applicant has

1 Letter from David Bailey, South Barber Unified School District 255, to Federal Communications Commission, filed June 23, 2000 (Request for Review); see also Letter from David Bailey, South Barber Unified School District 255, to Schools and Libraries Division, dated March 9, 2000.

2 47 C.F.R. §§ 54.502, 54.503.

3 47 C.F.R. § 54.504(b)(1), (b)(3).

complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.⁴ A commitment of support is contingent upon the timely filing of the applicant's FCC Form 471.⁵ In the FCC Form 471 instructions, SLD has clearly set forth its standards for processing a FCC Form 471 application.⁶ Specifically, the FCC Form 471 instructions state that if a school or library does not provide the information requested on FCC Form 471, "the processing of your application may be delayed or your application may be returned to you without action."⁷

3. SLD received South Barber's manually submitted FCC Form 471 on January 5, 2000, within the Funding Year 3 filing window, which closed on January 19, 2000.⁸ SLD, however, returned South Barber's application on February 16, 2000, without processing it because South Barber's FCC Form 471 application failed to meet SLD's minimum processing standards.⁹ Specifically, South Barber failed the minimum processing standards because its FCC Form 471 was missing page 5, which contains Block 6, the section of FCC Form 471 where applicants must sign the form and make certifications required under program rules.¹⁰ By letter dated February 18, 2000, South Barber submitted page 5 of its FCC Form 471.¹¹ Because SLD had not received a completed FCC Form 471 before the filing window closed, SLD notified South Barber that its application would not be considered within the filing window.

4. South Barber then appealed SLD's decision to the Administrator by letter dated March 9, 2000.¹² South Barber claimed that it did not submit page 5 "because we had difficulty downloading [the FCC Form 471] from the Internet."¹³ South Barber acknowledged, however, that the omission was its "own mistake" and requested that its application be considered as filed

⁴ 47 C.F.R. § 54.504(c).

⁵ *Id.*

⁶ *Id.*; see also Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (Form 471 Instructions).

⁷ *Id.* at 7.

⁸ Pursuant to 47 C.F.R. § 54.507(c), the Administrator is directed to establish a filing period (filing window) that treats all applicants as though their applications were received on the same day. Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rule 47 C.F.R. § 54.507(g). It is to applicant's advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. In Funding Year 3, the window closed on January 19, 2000.

⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to South Barber Unified School District 255, dated February 16, 2000 (stating that the applicant, South Barber, did not meet minimum processing standards and its FCC Form 471 could not be processed).

¹⁰ *Id.*

¹¹ Letter from David Bailey, South Barber Unified School District 255, to Schools and Libraries Division, dated February 18, 2000.

¹² Request for Review, *supra* note 1, at 1.

¹³ *Id.*

within the window because it filed an FCC form 471 (albeit incomplete) before the window closed.¹⁴ The Administrator treated South Barber's March 9, 2000 letter as a Request for Waiver, declined to rule on the request, and directed South Barber to seek relief from the Commission.¹⁵

5. On appeal to the Commission, it is unclear whether South Barber is arguing that its application was timely filed within the filing window under program rules, or whether South Barber is acknowledging that its application was untimely and seeking a waiver of the filing window. Accordingly, we address both claims here and in so doing, we find no basis to grant relief to South Barber.

6. To the extent that South Barber is claiming that its incomplete FCC Form 471 satisfied program rules and should be considered timely, we disagree. We wish to underscore the importance of the signature certification on the FCC Form 471. The applicants' self certification is designed to ensure that eligible entities receive universal support and that those entities have adopted plans for securing cost effective access to, and use of, the discounted services received under program rules, thereby implementing statutory requirements. Further, the signature certification to the FCC Form 471 certifies that the application is complete and that all of the information is truthful. We note that the signature certification is fundamental to the administration of the schools and libraries program. SLD relies on the signature certification to establish the authority of the signer to represent the applicant. Signature certifications ultimately satisfy the program's policy objective of binding the applicants and service providers to the program requirements. Therefore, we find that the signature certification requirement is essential in that it protects the program from fraud and waste, serves as an additional means of holding applicants accountable for their representations, and assists in the efficient administration of the program. By failing to submit a signature certification, South Barber omitted the legally binding act that signifies compliance with program rules. Simply put, South Barber failed to meet the minimum processing standards for filing an application.

7. The purpose of the filing window is to put all applicants who file within the window on equal footing. Allowing applicants to file incomplete applications, and have those applications considered timely filed, would be unfair to the applicants who diligently filed their complete applications in a timely fashion. Moreover, complete applications are essential to USAC's ability to efficiently run the program. In light of the thousands of applications that SLD must review and process each year, we find that it is administratively necessary to require an applicant to be responsible for providing complete and accurate information in its FCC Form 471 upon which its ultimate funding is dependent. The applicant must act to ensure that its request for discounts satisfies the Commission's policies as well as program rules.¹⁶ If applicants were permitted to correct their applications after the window closed, it would eliminate any incentive

¹⁴ *Id.*

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to South Barber Unified School District 255, dated June 14, 2000.

¹⁶ 47 C.F.R. § 54.504 *et seq.*; See *Request for Review by Free Library of Philadelphia, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112605, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 23820 (Com. Car. Bur. 2000).

to avoid making unauthorized service requests or to comply with the SLD's document demands in a timely fashion.¹⁷ This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud.¹⁸ Furthermore, if applicants were permitted to amend their requests after the filing window closed, it could jeopardize SLD's ability to accurately apply the rules of priority in years where requests for funding exceed the annual funding cap.¹⁹ For these reasons, South Barber's request to have its FCC Form 471 considered timely filed within the filing window must fail.

8. To the extent that South Barber seeks a waiver of the filing window for its resubmitted FCC Form 471 certification page, page 5, which was submitted after January 19, 2000, we find no basis to grant the waiver.²⁰ A 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.²¹ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.²²

9. In the instant case, South Barber presents no evidence that convinces us to deter from our prior determinations. While South Barber claims that it had difficulty downloading page 5 of the FCC Form 471 from the USAC website, the record establishes that this difficulty occurred on or before January 5, 2000, two weeks before the filing window deadline. Furthermore, SLD provides alternative means for applicants to obtain forms, including having forms mailed to the applicants.²³ Based on these facts, South Barber has failed to demonstrate special circumstances that would warrant treating South Barber differently by granting it a waiver.

¹⁷ See also *Request for Review by Cheney 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-142969, CC Dockets No. 96-45 and 97-21, Order, DA 01-351 (Com. Car. Bur. rel. Feb. 13, 2001), at para. 6.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ FCC Form 471, South Barber Unified School District, filed June 9, 2000.

²¹ *Northeast Cellular*, 897 F.2d at 1166.

²² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio*, 897 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

²³ Universal Service Administrative Company (USAC), Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>>

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed June 23, 2000 by South Barber Unified School District 255, Kiowa, Kansas IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau