

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Powell County High School
Deer Lodge, Montana
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-197376
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: October 12, 2001

Released: October 16, 2001

By the Common Carrier Bureau, Accounting Policy Division:

1. The Accounting Policy Division (Division) has under consideration a Request for Review filed by Powell County High School (Powell), Deer Lodge, Montana. Powell seeks a waiver to allow consideration of its application as timely filed within the filing window established by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator) for Funding Year 3 of the schools and libraries support mechanism. For the reasons that follow, we deny Powell'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 complied with the Commission's competitive bidding requirements and entered into agreements

1 Letter from Joseph A. Brott, Powell County High School, to Federal Communications Commission, filed July 3, 2000 (Request for Review); see also Letter from Joseph A. Brott, Powell County High School, to Schools and Libraries Division, Universal Service Administrative Company, filed January 27, 2000 (SLD Appeal).

2 47 C.F.R. §§ 54.501, 54.502.

3 47 C.F.R. § 54.504(b)(1), (b)(3).

for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.⁴ The Commission's rules allow the Administrator to implement an initial filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁵ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.⁶ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Powell applied for discount telecommunication services for Funding Year 3 on January 19, 1999.⁷ Instead of using the appropriate Year 3 FCC Form 471 application,⁸ Powell applied for support using a Funding Year 2 FCC Form 471 application.⁹ On January 20, 2000, SLD sent Powell a postcard indicating that its Funding Year 2 FCC Form 471 had been submitted after the Year 2 filing window closed. SLD declined to accept Powell's Funding Year 2 FCC Form 471 because Powell's Year 2 Form 471 failed to meet minimum processing standards for Year 3.¹⁰ SLD informed Powell that, because it used the Funding Year 2 FCC Form 471 rather than the Funding Year 3 Form 471, its application could not be processed.¹¹

4. On January 27, 2000, Powell filed an appeal with SLD, stating that, although it used a Funding Year 2 Form 471 for Funding Year 3 in error, its Funding Year 2 Form 471 was nonetheless filed before the filing window closed on January 19, 2000.¹² With its appeal, Powell also submitted a Funding Year 3 FCC Form 471 and requested that it be considered as filed within the Year 3 window.¹³ SLD issued an Administrator's Decision on Waiver Request on June 16, 2000, stating that it could not consider Powell's request.¹⁴ Powell then filed the instant

⁴ 47 C.F.R. § 54.504(c).

⁵ 47 C.F.R. § 54.507(c).

⁶ 47 C.F.R. § 54.507(g).

⁷ FCC Form 471, Powell County High School, filed January 19, 1999.

⁸ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Year 3 Form 471).

⁹ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (Year 2 Form 471).

¹⁰ SLD Appeal *supra* note 1, at 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Powell County High School, dated June 16, 2000.

Request for Review, again requesting that its Funding Year 3 FCC Form 471, submitted with its SLD appeal, be considered timely filed.¹⁵

5. Under our rules, SLD is authorized to establish and implement filing periods for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.¹⁶ Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.¹⁷ 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.¹⁸ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁹ The Year 3 FCC Form 471 required more information than the Year 2 FCC Form 471. It would be administratively burdensome if SLD were to accept the Year 2 FCC Form 471, only to return to the applicant to collect missing information that was required in the Year 3 Form 471. In this program, using the correct form and providing the correct information is particularly relevant in processing an applicant's application.

6. In this case, Powell asserts that despite submitting the wrong Form 471 during the filing window and the correct Form 471 with its SLD appeal after the filing window closed, its application should be accepted as completed within the filing window.²⁰ Powell further supports its argument by asserting that it did not receive notice from SLD that it used the wrong form until after the filing deadline.²¹ In its Request for Review, Powell explains that it downloaded the FCC Forms 470 and 471 from the USAC website in September 1999.²² Powell asserts that it understood that the new FCC Form 471 for Year 3 was not available to be downloaded at that time.²³ Instead of submitting the correct Funding Year 3 FCC Form 471, Powell manually submitted the Funding Year 2 FCC Form 471 that it downloaded in September 1999. Based on these facts, we conclude that Powell has provided an insufficient basis for a waiver from the general rule.

¹⁵ Request for Review *supra* note 1, at 1.

¹⁶ 47 C.F.R. § 54.507(c).

¹⁷ 47 C.F.R. § 1.3; *see also* *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹⁸ *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).

¹⁹ *Northeast Cellular*, 897 F.2d at 1166.

²⁰ Request for Review *supra* note 1, at 1; SLD Appeal *supra* note 1, at 1.

²¹ *Id.*

²² *Id.*

²³ *Id.*

7. SLD must review and process thousands of applications each funding year. It is administratively appropriate for SLD to require applicants to adhere to applicable program rules and application requirements.²⁴ It is incumbent upon applicants to determine whether their applications are in compliance with program requirements prior to filing. Because applications may change from year to year, applicants bear the responsibility of determining whether or not the correct form is being used. Powell acknowledged that it downloaded the Year 2 FCC Form 471. Based on this knowledge, Powell should have determined that it was using the wrong application for Funding Year 3. The FCC Form 471 application and instructions are funding year specific, and each set of instructions provides item-by-item instructions to the corresponding form.²⁵ Further, the instructions encourage applicants to reference the SLD website, to obtain guidance material from SLD's fax-on-demand service, or to contact SLD's Client Service Bureau for assistance with the application process.²⁶ Specifically, the website instructions for completing FCC Form 471 for Funding Year 3 provide that each form must be a "correct OMB-approved FCC Form 471, with a date of September 1999 in the lower right-hand corner."²⁷

8. We are not persuaded by Powell's assertion that the filing deadline should be waived because it downloaded the wrong forms and because SLD did not return Powell's application within the filing window. The FCC Form 471 instructions state that if a school or library does not provide the information requested on this form, "the processing of your application may be delayed or your application may be returned to you without action."²⁸ Applicants that fail to properly complete the required application or otherwise fail to follow program rules, run the risk that their applications may not be considered within the filing window.

9. SLD received a number of applications that used the wrong form for Funding Year 3. If we were to grant a waiver for using the wrong FCC Form 471, we would then have to grant similar relief to other entities that made similar mistakes, which would in turn increase administrative burdens for SLD. For Funding Year 3, SLD received over 36,000 applications.²⁹ It is impractical, if not impossible, for SLD to review each application and notify applicants of errors prior to the close of the filing window. Instead, the burden of ensuring that complete and accurate information is provided on the correct forms properly rests with applicants themselves.

²⁴ See generally 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>> (outlining the manual and online filing requirements for FCC Form 471).

²⁵ See generally Year 2 FCC Form 471.

²⁶ *Id.*

²⁷ 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>>.

²⁸ *Id.*

²⁹ Universal Service Administrative Company, Schools and Libraries Program, Funding Commitments: Year 3 Funding Commitments, <<http://www.sl.universalservice.org/funding/y3>>.

We therefore conclude that, under these circumstances, Powell has failed to make a showing warranting relief and, therefore, its Request for Review must be denied.

10. 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 July 3, 2000 by Powell County High School, Deer Lodge, Montana IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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