

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

In the Matter of)	
)	
Request for Review of the Decision of the)	
Universal Service Administrator)	
By)	
)	File No. SLD-267054
Southern Adirondack Library System)	
Saratoga Springs, New York)	
)	CC Docket No. 96-45
Federal-State Joint Board on)	
Universal Service)	
)	CC Docket No. 97-21
Changes to the Board of Directors of the)	
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: March 29, 2002

Released: April 4, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Southern Adirondack Library System (Adirondack), Saratoga Springs, New York.¹ Adirondack review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to deny its application for Funding Year 4 of the schools and libraries universal service support mechanism.² For the reasons discussed below, we deny Adirondack's Request for Review. To the extent that Adirondack request's a waiver of the Commission's rules, we deny that request as well.

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 Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has

¹ Request for Review of the Decision of the Universal Service Administrator by Southern Adirondack Library System, CC Docket Nos. 96-45 and 97-21, Request for Review, filed November 5, 2001 (Request for Review).

² See Request for Review. 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).

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.⁵

3. Under the Commission's regulations, SLD is authorized to establish program standards for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.⁶ Pursuant to this authority, every funding year, SLD establishes and notifies applicants of a "minimum processing standard" to facilitate the efficient review of the thousands of applications requesting funding.⁷ In Funding Year 4, SLD instructions stated that minimum processing standards required applicants to use the correct form.⁸ When an applicant submits an application that does not comply with an item subject to the minimum processing standard, SLD automatically rejects the application and returns it to the applicant. The Common Carrier Bureau (Bureau) has upheld SLD's minimum processing standard of requiring the applicants to use the correct form.⁹

4. The Commission's rules also 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 subject to separate funding priorities under the Commission's rules.¹⁰ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.¹¹ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

5. Adirondack filed a FCC Form 471 with SLD for Funding Year 4 on January 22, 2001.¹² Instead of using the appropriate Funding Year 4 Form 471 application, Adirondack applied for support using a Funding Year 3 Form 471 application.¹³ On July 26, 2001,

⁵ 47 C.F.R. § 54.504(c).

⁶ See 47 C.F.R. § 54.507(c); *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).

⁷ See, e.g., SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for FY4, <<http://www.sl.universalservice.org/reference/471mps.asp>> (Funding Year 4 Minimum Processing Standards).

⁸ *Id.*

⁹ See *Request for Review by Fair Lawn Board of Education, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-10-99.02300008 and NEC.471.11-19-99.01100003, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 12901 (Com. Car. Bur. 2001) (upholding SLD's minimum processing standard that required applicants to use the correct FCC Forms for the funding years in which they were applying).

¹⁰ 47 C.F.R. § 54.507(c).

¹¹ 47 C.F.R. § 54.507(g).

¹² FCC Form 471, Southern Adirondack Library System, filed January 22, 2001 (Adirondack Funding Year 4 Form 471).

¹³ See *Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (October 2000) (Funding Year 4 Form 471); *Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (September 1999) (Funding Year 3 Form 471).

Adirondack received a letter from SLD notifying the school that Adirondack's application could not be processed because it did not meet minimum processing standards for Funding Year 4.¹⁴ Adirondack did not meet Funding Year 4 minimum processing standards because it had used the incorrect OMB-approved FCC Form 471, rather than the Funding Year 4 Form 471 that was dated October 2000 in the lower-right hand corner of the form.

6. On August 8, 2001, Adirondack filed an appeal with SLD, stating that, although it submitted a Funding Year 3 Form 471 in error, its Funding Year 3 Form 471 was filed before the Funding Year 4 filing window closed on January 18, 2001.¹⁵ Along with the appeal letter, Adirondack submitted an application completed on the correct OMB-approved FCC Form 471, dated October 2000 in the lower right hand corner.¹⁶ On October 1, 2001, SLD denied Adirondack's appeal because the application failed to meet minimum processing standards.¹⁷ SLD also determined that it could not consider the corrected FCC Form 471 Adirondack submitted with its appeal because it was filed outside of the funding window.¹⁸

7. On appeal, Adirondack asserts that, despite using the wrong form, its application should be accepted as completed within the filing window because its Funding Year 3 Form 471 was filed well within the filing window and SLD did not notify it of the problem until after the filing window deadline.¹⁹ Adirondack also contends that the information it submitted on the Funding Year 3 Form 471 was the same as the information it provided on the Funding Year 4 Form 471, and that the two forms were identical in all material respects.²⁰

8. We are not persuaded by Adirondack's assertion that the information it submitted on the Funding Year 3 Form 471 contained all the information necessary for SLD to process the application and that Funding Year 3 Form 471 and Funding Year 4 Form 471 were identical in all material respects.²¹ In fact, there were several changes to the Funding Year 4 FCC Form 471, including changes to the certification page.²² Because SLD must review and process thousands of applications each funding year, it would be administratively burdensome if SLD were to accept the Funding Year 3 Form 471 only to return to the applicant to collect missing information or acquire additional certifications that are required in the Funding Year 4 Form 471. In this program, using the correct form and providing the correct information is particularly

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bill Whittaker, Southern Adirondack Library System, dated July 26, 2001 (Funding Year 4 Form 471 Rejection Letter).

¹⁵ Letter from Miriam Meier and William Whittaker, Southern Adirondack Library System, to Schools and Libraries Division, Universal Service Administrative Company, filed August 8, 2001 (SLD Appeal Letter).

¹⁶ *Id.*

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to William Whittaker, Southern Adirondack Library System, dated October 1, 2001.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Request for Review.

²² Compare Funding Year 4 FCC Form 471 at Block 6 with Funding Year 3 FCC Form 471 at Block 6 (the Funding Year 4 FCC Form 471 also requires applicants to certify that "if audited, [the applicant] will make available to the Administrator such records").

relevant in processing an applicant's application.

9. Adirondack also seeks a waiver of the requirement that the proper form be used so that the FCC Form 471 may be considered as originally submitted, or in the alternative, waiver of the filing window so that the corrected application may be considered.²³ Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.²⁴ 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.²⁵ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.²⁶

10. We conclude that Adirondack has provided an insufficient basis for a waiver from the general rule and a departure from Bureau precedent on this issue. 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.²⁷ It is therefore 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. Adirondack should have determined that it was using the wrong application form.

11. 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.²⁸ 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.²⁹ Specifically, in Funding Year 4, the minimum processing standards for a FCC Form 471 provide that each form must be a "correct OMB-approved FCC Form 471, with a date of October 2000 in the lower right-hand corner."³⁰ Moreover, 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

²³ Request for Review at 2.

²⁴ 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*).

²⁵ *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).

²⁶ *Northeast Cellular*, 897 F.2d at 1166.

²⁷ *See generally* Funding Year 4 Minimum Processing Standards (outlining the manual and online filing requirements for Funding Year 4 FCC Form 471).

²⁸ *See generally* Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (Funding Year 4 FCC Form 471), OMB 3060-0806 (October 2000)(Funding Year 4 FCC Form 471 Instructions); Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (Funding Year 3 FCC Form 471), OMB 3060-0806 (September 1999).

²⁹ *Id.*

³⁰ Funding Year 4 Minimum Processing Standards.

returned to you without action.”³¹ 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.

12. SLD received a number of applications that used the wrong form for Funding Year 4. 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 4, SLD received over 37,000 applications.³² 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.

13. Moreover, we do not believe that it is appropriate to waive the filing window deadline to consider the FCC Form 471 Adirondack filed on August 8, 2001 as timely filed.³³ 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.”³⁴ 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. We therefore conclude that Adirondack has failed to make a showing warranting relief and, therefore, its Request for Review must be denied.

14. 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 November 5, 2001 by Southern Adirondack Library System, Saratoga Springs, New York IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

³¹ Funding Year 4 FCC Form 471 Instructions at 2.

³² Universal Service Administrative Company, Schools and Libraries Program, What's New: March 2001, SLD Provides Updated Demand Estimate for Year 4 to FCC, <<http://www.sl.universalservice.org/whatsnew/032001.asp>>.

³³ See Request for Review; SLD Appeal Letter.

³⁴ *Id.*