

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
Cooperative Educational Service Agency #2
Milton, Wisconsin
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-265173
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: May 20, 2002

Released: May 21, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division (Division) has under consideration a Request for Review filed by Cooperative Educational Service Agency #2 (CESA), Milton, Wisconsin. CESA seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator) for Funding Year 4 of the schools and libraries support mechanism to allow consideration of its application as timely filed within the filing window. For the reasons that follow, we deny CESA'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 Sharon Webb, Cooperative Educational Service Agency #2, to Federal Communications Commission, dated July 24, 2001 (Request for Review); see also Letter from Sharon Webb, Cooperative Educational Service Agency #2, to Schools and Libraries Division, Universal Service Administrative Company, dated April 19, 2001 (SLD Appeal).

2 47 C.F.R. §§ 54.501, 54.502.

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 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. On January 18, 2001, CESA manually submitted a FCC Form 471 seeking discounts for Funding Year 4.⁷ The application consisted of 6 Blocks of information.⁸ Pages 1, 2 and 5 of CESA's application used the Funding Year 3 FCC Form 471, as indicated by the September 1999 date in the lower right hand corner.⁹ However, the remaining 83 pages, which included the applicant's Block 3 and Block 4 information, used the Funding Year 4 Form 471 as indicated by the October 2000 date on the bottom right hand side of the form.¹⁰ Accordingly, on March 22, 2001, SLD rejected CESA's FCC Form 471 because CESA's Form 471 failed to meet minimum processing standards for Year 4.¹¹ Specifically, SLD stated that CESA's FCC Form 471 had been rejected because CESA had not used the correct OMB-approved FCC Form 471 for Funding Year 4.¹²

4. On April 19, 2001, CESA filed an appeal with SLD. In its appeal to SLD, CESA stated that only pages 1, 2, and 5 were submitted on the Funding Year 3 FCC Form 471.¹³ It appears that CESA was arguing that, because Blocks 4 and 5 of its application were submitted on the correct FCC Form 471 for Funding Year 4, SLD should consider its entire Form 471 as complete and timely filed.¹⁴ SLD issued an Administrator's Decision on Appeal on June 26,

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, Cooperative Educational Service Agency #2, filed January 18, 2001.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*; *see also* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (Year 4 Form 471).

¹¹ *Id.*

¹² Letter from Schools and Libraries Division, to Cooperative Educational Service Agency #2, dated March 22, 2001 (Minimum Processing Standards Letter).

¹³ SLD Appeal, at 1.

¹⁴ *Id.*

2001, stating that it could not consider CESA's request.¹⁵ CESA then filed the instant Request for Review, again requesting that the FCC Form 471 it submitted for Funding Year 4 be considered complete and timely filed.¹⁶

5. In its appeal to the Commission, it is unclear whether CESA is arguing that its complete application was filed within the window or whether CESA is acknowledging that its application was incomplete as filed within the window and is seeking a waiver of the complete timely filing requirement. Accordingly, we address both claims here. We find no basis under either claim to grant relief to CESA.

6. To the extent that CESA is claiming that its Form 471 submitted on the wrong form, satisfies program rules. We disagree. Using the correct form and providing the correct information is particularly relevant in processing an applicant's application. CESA asserts that although it submitted the incorrect FCC Form 471 for pages 1, 2 and 5, there were no substantive differences between Funding Year 3 and Funding Year 4 FCC Forms 471.¹⁷ CESA is incorrect. The Year 4 FCC Form 471 required more information than the Year 3 FCC Form 471. Specifically, the Funding Year 3 Blocks that CESA submitted were missing both the applicants' certification that it had complied with program rules at Item 30, and information required in Item 27c, which reported on the status of its technology plan. In the past, the Wireline Competition Bureau (Bureau) has held that it would be administratively burdensome if SLD were to accept the incorrect FCC Form 471, only to return to the applicant to collect missing information that was required in the FCC Form 471 application for the appropriate Funding Year.¹⁸ We find no reason to deviate from that finding here.

7. The FCC Form 471 instructions inform an applicant that if a school does not provide the information requested on the form, "the processing of your application may be delayed or your application may be returned to you without action."¹⁹ The Bureau has previously upheld this requirement.²⁰ 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.²¹ It is incumbent upon applicants to determine whether their

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Cooperative Educational Service Agency #2, dated June 26, 2001.

¹⁶ Request for Review, at 1.

¹⁷ Request for Review, at 1; SLD Appeal, at 1.

¹⁸ See generally *Request for Review by Fair Lawn Board of Education, Federal-State Joint Board on Universal Service, 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, (Com. Car. Bur. rel. June 27, 2001) (upholding SLD's minimum processing standard that required applicants to use the correct FCC Forms for the funding years in which it was applying) (*Fair Lawn Order*).

¹⁹ *Id.* at 2.

²⁰ See *Fair Lawn Order*.

²¹ See generally Universal Service Administrative Company, Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements,

applications are in compliance with program requirements prior to filing. Because applications may change from year to year, we find that applicants bear the responsibility of determining whether or not the complete and correct form is being used.

8. CESA also argues that it used the “e-rate Advisor 2001” software from Funding For Learning, LLC to create the FCC Form 471.²² CESA seems to be arguing that it should not be penalized for using what it believed to be the correct version of the forms provided by a vendor.²³ We cannot excuse CESA's failure to submit the correct form because it relied on a format provided by a third party. USAC posts the correct Forms to its website in each Funding year. The Bureau's precedent is clear that applicants bear the responsibility of determining that they are using the correct year's form.²⁴ Furthermore, SLD provides alternative means for applicants to obtain forms, including having forms mailed to the applicants.²⁵

9. To the extent that CESA seeks a waiver of the requirement of complete timely filings of 471's within the filing window, we find no basis to grant the waiver.²⁶ 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.²⁷ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.²⁸ Based on these facts, CESA has failed to demonstrate special circumstances that would warrant treating CESA differently by granting it a waiver.

10. Based on the record before us, we find that CESA has failed to demonstrate that it submitted a complete Funding Year 4 FCC Form 471 application in compliance with the required minimum processing standards for Funding Year 4.²⁹ We therefore conclude that, under these

<<http://www.sl.universalservice.org/reference/471mps.asp>> (outlining the manual and online filing requirements for FCC Form 471).

²² *Id.*

²³ *Request for Review.*

²⁴ *See Request for Review by South Barber Unified School District, 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 Dockets No. 96-45 and 97-21, Order, (Com. Car. Bur. rel. October 23, 2001).

²⁵ 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>>

²⁶ FCC Form 471, Cooperative Educational Service Agency #2, filed January 18, 2001.

²⁷ *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).

²⁸ *Northeast Cellular*, 897 F.2d at 1166.

²⁹ *See Request for Review by Old Town School Department, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-142237, CC Dockets No. 96-45 and 97-21, Order, DA 01-1090 (Com. Car. Bur. rel. April 30, 2001) (stating that in the absence of evidence presented by the applicant to the contrary, the Commission accepts the FCC Form 471 in the record as the application which was received by SLD).

circumstances, CESA has failed to make a showing warranting relief and, therefore, its Request for Review must be denied.

11. 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 22, 2001 by Cooperative Educational Service Agency #2, Milton, Wisconsin IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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