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FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Finley-Sharon Public School)	NEC.471.01-10-00.25900005
Finley, North Dakota)	NEC.471.06-09-00.15100001
)	
Federal-State Joint Board on)	CC Docket No. 96-45 ✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: December 19, 2001

Released: December 20, 2001

By the Accounting Policy Division, Common Carrier Division:

1. The Accounting Policy Division has under consideration a Request for Review filed by Finley-Sharon Public School (Finley-Sharon), Finley, North Dakota.¹ Finley-Sharon seeks a waiver to allow consideration of its application as filed timely within the filing window established by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) for Funding Year 3 of the schools and libraries universal service support mechanism. For the reasons discussed below, we deny Finley-Sharon'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.² 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.³ Once the applicant has

¹ Letter from Lee E. Kelm, Finley-Sharon Public School, to Federal Communications Commission, filed August 7, 2000 (Request for Review); *see also* Letter from Lee E. Kelm, Finley-Sharon Public School, to Schools and Libraries Division, Universal Service Administrative Company, dated June 27, 2000 (SLD Appeal).

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 The Commission's rules allow the Administrator to implement an initial filing period ("filing window") for 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. Finley-Sharon applied for discount telecommunication services for Funding Year 3 on January 10, 2000.⁷ Instead of using the appropriate Funding Year 3 FCC Form 471 application, Finley-Sharon applied for support using a Funding Year 2 FCC Form 471 application.⁸ On January 24, 2000, Finley-Sharon received a letter from SLD stating that its application for funding had been denied.⁹ Finley-Sharon contacted SLD's Client Service Bureau by phone.¹⁰ An SLD representative informed Finley-Sharon that, because it used a Funding Year 2 FCC Form 471 rather than the Funding Year 3 Form, its application could not be processed because it did not meet minimum processing standards for Funding Year 3.¹¹

4. On June 27, 2000, Finley-Sharon filed an appeal with SLD, stating that, although it submitted a Year 2 Form 471 for Funding Year 3 in error, its Funding Year 2 Form 471 was nonetheless filed before the Funding Year 3 filing window closed on January 19, 2000 and should be considered as a timely Funding Year 3 filing.¹² On June 9, 2000, Finley-Sharon submitted a Funding Year 3 FCC Form 471 and requested that it be considered as filed timely within the Funding Year 3 window.¹³ SLD issued an Administrator's Decision on Waiver Request on July 6, 2000, stating that it could not consider Finley-Sharon's request.¹⁴ Finley-

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 Funding Year 2 FCC Form 471, Finley-Sharon Public School, filed January 10, 2000.

⁸ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Year 3 Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (Year 2 Form 471).

⁹ SLD Appeal, at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*; Funding Year 3 FCC Form 471, Finley-Sharon Public School, filed June 9, 2000

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Finley-Sharon Public Schools, dated July 6, 2000.

Sharon filed the instant Request for Review with the Commission, again requesting that its Year 3 FCC Form 471 be considered as filed timely for Funding Year 3.¹⁵

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, Finley-Sharon asserts that despite using the wrong form, its application should be accepted as completed within the filing window.²⁰ Finley-Sharon contends that its Year 2 FCC Form 471 was filed well within the filing window and SLD did not notify it of the problem until after the filing deadline.²¹ Finley-Sharon further contends that it was unaware that the Funding Year 2 forms were improper forms for Funding Year 3.²²

7. We conclude that Finley-Sharon has provided an insufficient basis for a waiver from the general rule. 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.²³ It is therefore incumbent upon applicants to determine whether

¹⁵ Request for Review, 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, at 1; SLD Appeal, at 1.

²¹ SLD Appeal, at 1.

²² *Id.*

²³ *See generally* Universal Service Administrative Company, 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).

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. Finley-Sharon should have determined that it was using the wrong application form.

8. The FCC Form 471 application and instructions are funding year specific,²⁴ and each set of instructions provides item-by-item instructions to the corresponding form. 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.²⁵ Specifically, the website instructions for completing FCC Form 471 for 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."²⁶ 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 returned to you without action."²⁷ 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.²⁸ 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. We therefore conclude that Finley-Sharon has failed to make a showing warranting relief and, therefore, its Request for Review must be denied.

²⁴ See generally Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (Funding Year 2 FCC Form 471), OMB 3060-0806 (December 1998); 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).

²⁵ *Id.*

²⁶ Universal Service Administrative Company, Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>>.

²⁷ *Id.*

²⁸ Universal Service Administrative Company, Schools and Libraries Program, Funding Commitments: Year 3 Funding Commitments, <<http://www.sl.universalservice.org/funding/y3>>.

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 August 7, 2000 by Finley-Sharon Public School, Finley, North Dakota IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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