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

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In the Matter of	)	
	)	
Request for Review of a Decision of the Universal Service Administrative Company By	)	
	)	
Tallulah Academy-Delta Christian School Tallulah, Louisiana	)	SLD File No. 221446
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carriers Association, Inc.	)	CC Docket No. 97-21

ORDER

Adopted: February 28, 2002 **Released: March 6, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Tallulah Academy-Delta Christian School (Tallulah), Tallulah, Louisiana.[1] Tallulah seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) relating to Tallulah's application in Funding Year 4 of the schools and libraries universal service support mechanism.[2] For the reasons set forth below, we deny Tallulah'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.[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 complied with the Commission's competitive bidding requirements and entered into agreements

[1] Letter from John Beach, Tallulah Academy-Delta Christian School, to Federal Communications Commission, filed August 13, 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).

for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carriers with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.[5] Applicants may file a completed FCC Form 471 in paper form, or electronically using the SLD web site. Applicants that filed their FCC Forms 471 electronically using the Administrator's website are required to separately submit a signed Block 6 certification page and Item 21 attachments.[6] Applicants are required to make certain certifications in Block 6 of the FCC Form 471, including certification of compliance with state and local procurement laws, and the status of the entity's technology plan.[7] In Funding Year 4, the FCC Form 471 was considered as timely filed if all components associated with the FCC Form 471, including the Block 6 certification page and Item 21 attachments, were postmarked no later than the close of the filing window.[8]

3. Under the Commission's regulations, SLD is authorized to establish and implement filing periods and program standards for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.[9] 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.[10] In Funding Year 4, SLD instructions stated that minimum processing standards required applicants to use the correct form.[11] 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 has upheld SLD's minimum processing standard of requiring the applicants to use the correct form.[12]

4. On January 17, 2001, Tallulah electronically filed an application for discounted telecommunications and Internet access services for Funding Year 4.[13] Tallulah also mailed its

[5] 47 C.F.R. § 54.504(c).

[6] Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (Oct. 2000) (FCC Form 471 Instructions), at 5.

[7] Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FY 4 FCC Form 471).

[8] FCC Form 471 Instructions at 5.

[9] *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).

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

[11] *Id.*

[12] *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 (Common 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).

[13] FCC Form 471, Tallulah Academy-Delta Christian School, filed January 18, 2001 (Application No. 221446).

Block 6 certification page to SLD.[14] Instead of using the appropriate Block 6 certification page for Funding Year 4, however, Tallulah used a Funding Year 3 Block 6 certification page.[15] Because SLD determined that Tallulah used the incorrect OMB-approved FCC Form 471 for Block 6 of the application, SLD concluded that Tallulah failed to meet minimum processing standards.[16] As a result, the application was returned without being processed.[17]

5. Subsequently, Tallulah filed an appeal with SLD stating that, although it submitted a Year 3 Block 6 certification page for Funding Year 4 in error, the revised Block 6 did not alter or modify the required information that was submitted on the Block 6 certification page.[18] Furthermore, Tallulah asserted that SLD should consider the application, based on the guidelines set forth in the Commission's *Naperville* decision.[19] In *Naperville*, the Commission determined that, under the totality of the circumstances presented in that case, SLD should not have returned an application without consideration for failure to enter information required by SLD's minimum processing standards.[20] The Commission specifically found that "(1) the request for information was a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by SLD through examination of other information included in the application; and (3) the application is otherwise substantially complete."[21]

6. On July 13, 2001, SLD rejected Tallulah's appeal.[22] SLD stated that Tallulah's application failed minimum processing standards, because Tallulah failed to use the correct OMB-approved FCC Form 471.[23] In addition, SLD reasoned that Tallulah did not have appropriate grounds for reversal based on the totality of the circumstances outlined in the *Naperville* decision because it was not the first funding year in which applicants were required to file the correct OMB-approved FCC Form 471.[24] In the instant Request for Review, Tallulah argues that SLD's decision should be reversed based on *Naperville* and that it received inadequate notice of the revised FCC Form 471 after the start of the Funding Year.[25] Tallulah

[14] *Id.* at Block 6.

[15] *Id.*

[16] *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Milton Linder, Tallulah Academy-Delta Christian School, dated February 21, 2001.

[17] *Id.*

[18] *See* Letter from Milton Linder, Tallulah Academy-Delta Christian School, to Schools and Libraries Division, Universal Service Administrative Company, filed March 22, 2001.

[19] *Id.*

[20] *Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-203343, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5032, para. 12 (2001) (*Naperville*).

[21] *Id.* at para. 16.

[22] *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Milton Linder, Tallulah Academy-Delta Christian School, dated July 13, 2001.

[23] *Id.*

[24] *Id.*

[25] Request for Review.

also states that it filed another FCC Form 471 application in Funding Year 4 with the wrong OMB-approved Block 6 certification page, and argues that SLD applied its rules in an arbitrary and capricious manner.[26]

7. In light of thousands of applications that SLD must review and process each funding year, we find it administratively appropriate to require applicants to strictly adhere to minimum processing standards.[27] It is therefore incumbent upon applicants to determine whether all portions of their applications are in compliance with program requirements prior to filing. Because parts of applications may change from year to year, applicants bear the responsibility of determining whether or not the correct form is being used. In fact, Block 6 of the Year 4 FCC Form 471 required the applicants to make additional certifications than Block 6 of the Year 3 FCC Form 471.[28] It would be administratively burdensome if SLD were to accept the wrong Block 6 certification page for the FCC Form 471, only to return to the applicant with a request for the certification that was required on the revised FCC Form 471. In this program, using the correct form and providing the correct information is particularly relevant in processing an applicant's application.[29]

8. Furthermore, under the totality of the circumstances outlined in the *Naperville* decision, we conclude that SLD correctly denied Tallulah's application.[30] First, we note that Funding Year 4 was not the first Funding Year that required applicants to submit the correct OMB-approved FCC Form 471 for the Funding Year in which applications were sought.[31] Second, because the certification page had been modified, it would have been necessary for SLD to contact Tallulah in order to ensure full compliance with the certifications required in Funding Year 4. Accordingly, we find that by not submitting the correct form, Tallulah did not meet minimum processing standards for this request.

9. In addition, we are not persuaded by Tallulah's assertion that it received inadequate notice of the revised Block 6 after the start of the Funding Year. We note that the instructions encourage applicants to reference the SLD website, to obtain guidance material from

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[26] *Id. See also* FCC Form 471, Tallulah Academy-Delta Christian School, filed January 18, 2001 (Application No. 223427).

[27] *See Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (2000), para. 8 ("In light of the thousands of applications that SLD review and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures."); *see also* FY 4 Minimum Processing Standards.

[28] For example, in Funding Year 4, applicants were also required to certify that they would make available to the Administrator any worksheets or records if the applicant was audited. *Compare* FY 4 FCC Form 471 at Block 6 *with* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (FY 3 FCC Form 471) at Block 6.

[29] *Id.*

[30] *See Naperville.*

[31] *See* FY 4 FCC Form 471; FY 4 Minimum Processing Standards. *See also* SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for FY3, <http://www.sl.universalservice.org/reference/471mps.asp> (In Funding Year 3, applicants were required to submit "the correct, OMB-approved FCC Form 471, with a date of September 1999 in the lower right-hand corner.").

SLD's fax-on-demand service, or to contact SLD's Client Service Bureau for assistance with the application process.[32] Specifically, the website instructions for completing FCC Form 471 for Year 4 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."[33] As a result, the burden of ensuring that complete and accurate information is provided on the correct forms properly rests with applicants themselves. The FCC Form 471 instructions further 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.

10. Finally, we are not persuaded by Tallulah's argument that SLD applied its rules in an arbitrary and capricious manner. As indicated in its Request for Review, Tallulah filed two FCC Form 471s in Funding Year 4, both of which included the wrong OMB-approved Block 6 certification page.[35] Tallulah asserts that SLD applied its rules in an arbitrary and capricious manner because the second FCC Form 471 (Application No. 223427) was not denied on grounds similar to the application at issue in the instant Request for Review. The application, instead, was denied because the funding cap in Funding Year 4 would not provide discounts for internal connections below the 85 percent discount band.[36] The fact that SLD determined that the application should be denied on separate grounds does not necessarily establish that the applications were treated in an arbitrary and capricious manner. Indeed, SLD merely determined an independent basis for its denial, which is not necessarily exclusive from other, equally valid grounds for denial, such as the use of the wrong OMB-approved FCC Form 471. We therefore conclude that Tallulah's Request for Review must be denied.

11. 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 by Tallulah Academy-Delta Christian School on August 13, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert

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

[32] FCC Form 471 Instructions at 5.

[33] FY 4 Minimum Processing Standards.

[34] FCC Form 471 Instructions at 2.

[35] Request for Review.

[36] *See* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Milton Linder, Tallulah Academy-Delta Christian School, dated July 23, 2001.