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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Green Bay Area Public Schools Green Bay, Wisconsin	)	SLD No. 275616
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

ORDER

Adopted: March 1, 2002 **Released: March 6, 2002**

By the Common Carrier Bureau, Accounting Policy Division:

1. The Accounting Policy Division (Division) has under consideration a Request for Review filed by Green Bay Area Public Schools (Green Bay), Green Bay, Wisconsin.[1] Green Bay 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 Green Bay'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 complied with the Commission's competitive bidding requirements and entered into agreements

[1] Letter from Danielle A. Nerad, Green Bay Area Public Schools, to Federal Communications Commission, dated August 2, 2001 (Request for Review); *see also* Letter from George A. Smith, Green Bay Area Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, dated March 28, 2001 (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. Green Bay applied for discounted telecommunication services for Funding Year 4 on January 20, 2001.[7] Instead of using the appropriate Year 4 FCC Form 471 application,[8] Green Bay applied for support using a Funding Year 3 FCC Form 471 application.[9] On March 23, 2001, SLD sent Green Bay a letter indicating that its Funding Year 3 FCC Form 471 had been rejected because it was not the correct OMB-approved FCC Form 471 for Funding Year 4.[10] This letter further stated that SLD declined to accept Green Bay's Funding Year 3 FCC Form 471 because Green Bay's Year 3 Form 471 failed to meet minimum processing standards for Year 4.[11] Finally, this letter informed Green Bay that, because it used the Funding Year 3 FCC Form 471 rather than the Funding Year 4 Form 471, its application could not be processed.[12]

4. On March 28, 2001, Green Bay filed an appeal with SLD, stating that, although it used a Funding Year 3 Form 471 for Funding Year 4 in error, its Funding Year 3 Form 471 was nonetheless filed before the filing window closed on January 18, 2001.[13] With its appeal, Green Bay also submitted a Funding Year 4 FCC Form 471 and requested that it be considered as filed within the Year 4 window.[14] SLD issued an Administrator's Decision on Appeal on July 13, 2001, stating that it could not consider Green Bay's request.[15] Green Bay 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, Green Bay Area Public Schools, filed January 20, 2001.

[8] *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (Year 4 Form 471).

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

[10] Letter from Schools and Libraries Division, to Green Bay Area Public Schools, dated March 23, 2001(Minimum Processing Standards Letter).

[11] SLD Appeal, at 1.

[12] Minimum Processing Standards Letter, at 1.

[13] SLD Appeal, at 2.

[14] *Id.*

[15] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Green Bay Area Public Schools, dated July 13, 2001.

Request for Review, again requesting that its Funding Year 4 FCC Form 471, submitted with its SLD appeal, be considered timely filed.[16]

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.[17] Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.[18] 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.[19] A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.[20]

6. The Year 4 FCC Form 471 required more information than the Year 3 FCC Form 471. For example, the Year 4 Form 471 requires additional information in Block 5, Item 19 regarding the service end date. In addition, the Funding Year 4 Form 471 Block 6 contains additional certification language in Item 30 regarding rule compliance and the necessity for technology plans in Items 27c and 26c. It would be administratively burdensome if SLD were required to accept Year 3 FCC Forms 471 for any applicants filing in Funding Year 4. In each case, SLD would then be required to return to the applicant its application in order for SLD to collect missing information that was required in the Funding Year 4 Form 471. In this program, using the correct form and providing the correct information is particularly relevant in processing an applicant's application.

7. In this case, Green Bay asserts that despite submitting the wrong FCC Form 471, it submitted the correct FCC Form 471 with its SLD appeal after the filing window closed, and its application should therefore be accepted as completed within the filing window.[21] Green Bay 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.[22] In its Request for Review, Green Bay explains that it downloaded the wrong form from the SLD website on December 1, 2000.[23] Green Bay asserts

[16] Request for Review, at 1.

[17] 47 C.F.R. § 54.507(c).

[18] 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*).

[19] *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).

[20] *Northeast Cellular*, 897 F.2d at 1166.

[21] Request for Review, at 1; SLD Appeal, at 1.

[22] *Id.*

[23] *Id.* at 2. The Funding Year 4 filing window began on November 6, 2000 and ended on January 19, 2001. On August 1, 2000 the Common Carrier Bureau issued an order that waived the Funding Year 3 filing window. *See Federal-State Joint Board on Universal Service*, CC Docket No 96-45, Order, FCC 00-260 (Com. Car. Bur. rel. August 11, 2000). This Order granted Funding Year 3 applicants that fell within the ambit of the enumerated

that because it was not aware that there was a new version of the FCC Form 471 for Funding Year 4, it manually submitted the Funding Year 3 FCC Form 471 that it downloaded on December 1, 2000.[24]

8. 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.[25] 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. Green Bay acknowledges that it downloaded the Year 3 FCC Form 471. Based on this knowledge, Green Bay should have determined that it was using the wrong application for Funding Year 4. 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.[26] 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.[27]

9. Moreover, we are not persuaded by Green Bay's assertion that the filing deadline should be waived because it downloaded the wrong forms or because SLD did not return Green Bay's application within the filing window. The FCC Form 471 instructions inform an applicant that if it 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."[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.

10. SLD received a number of applications that used the wrong form for Funding Year 4. If we were to grant relief 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. 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

conditions, until December 11, 2000, to refile their Funding Year 3 FCC Forms 471. Thus, on December 1, 2000, it was possible for applicants to download both the Funding Year 3 and Funding Year 4 FCC Forms 471 from the SLD website.

[24] *Id.*

[25] *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).

[26] *See generally* Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form, OMB 3060-0806 (October 2000) (Year 4 FCC Form 471 Instructions).

[27] *Id* at 5.

[28] *Id* at 2.

burden of ensuring that complete and accurate information is provided on the correct forms properly rests with applicants themselves. We therefore conclude that, under these circumstances, Green Bay 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 August 2, 2001 by Green Bay Area Public Schools, Green Bay, Wisconsin IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark Seifert, Deputy Chief
Accounting Policy Division
Common Carrier Bureau