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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	)	
	)	
Floyd County Board of Education Rome, Georgia	)	File Nos. SLD-263665, 275627
	)	
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 22, 2002 **Released: March 27, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division (Division) has under consideration two Requests for Review filed by Floyd County Board of Education (Floyd County), Rome, Georgia.[1] Floyd County seeks review of the decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting two of Floyd County's Funding Year 4 applications for failure to meet minimum processing standards.[2] For the reasons that follow, we deny Floyd County's Requests for Review.

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[1] Letter from Jerry Gatlin, Floyd County Board of Education, to Federal Communications Commission, filed April 3, 2001 (First Request for Review); Letter from Jerry Gatlin, Floyd County Board of Education, to Federal Communications Commission, filed July 24, 2001 (Second Request for Review) (collectively, Requests for Review).

[2] *See* Requests 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). We note that Floyd County filed a simultaneous appeal to the Administrator of the decision in Application No. 275627. *See* Letter from Jerry Gatlin, Floyd County Board of Education, to Schools and Libraries Division, Universal Service Administrative Company, filed April 2, 2001. The Commission's regulations do not contemplate simultaneous appeals to the Commission and the Administrator. 47 C.F.R. § 54.720 (allowing appeals to either the Commission or the Administrator, but tolling the filing period with the Commission, when an applicant has an appeal pending with the Administrator, until the Administrator issues a decision on the appeal). Therefore, we would ordinarily dismiss this appeal without prejudice to file a new appeal once the Administrator had rendered a decision. However, because we find that the Administrator has already rendered a decision on Floyd County's appeal, and because we have the virtually identical Second Request for Review properly before us, we will proceed to review the First Request for Review on the merits. *See* Letter from Schools and Libraries Division, Universal

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 for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.[5] 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.[6] Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.[7] It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Consistent with the Commission's rule requiring applicants to submit a "completed FCC Form 471 to the Administrator," SLD utilizes what it calls "minimum processing standards" to facilitate the efficient review of the thousands of applications requesting funding.[8] These minimum processing standards are designed to require an applicant to provide at least the minimum data necessary for SLD to initiate review of the application under statutory requirements and Commission rules. When an applicant submits an FCC Form 471 that does not meet the minimum processing standards, SLD automatically returns the application to the applicant without considering the application for discounts under the program.[9]

4. Floyd County filed two applications for discount services for Funding Year 4.[10] Instead of using the appropriate Funding Year 4 FCC Form 471 application forms, however, Floyd County applied for support using Funding Year 3 FCC Form 471 application forms.[11]

Service Administrative Company, to Jerry Gatlin, Floyd County Board of Education, dated July 13, 2001. By so doing, we do not abridge Floyd County's right to seek review under 47 C.F.R. § 54.719(c), of the Administrator's July 13, 2001 decision.

[3] 47 C.F.R. §§ 54.502, 54.503.

[4] 47 C.F.R. §§ 54.504(b)(1), (b)(3).

[5] 47 C.F.R. § 54.504(c).

[6] 47 C.F.R. § 54.507(c).

[7] 47 C.F.R. § 54.507(g).

[8] 47 C.F.R. § 54.504(c); *see* SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for FY 4, <http://www.sl.universalservice.org/reference/471mps.asp> (Minimum Processing Standards).

[9] Minimum Processing Standards.

[10] FCC Form 471, Floyd County Schools, App. No. 275627 (First Form 471); FCC Form 471, Floyd County Schools, App. No. 263665 (Second Form 471).

5. SLD issued letters to Floyd County for each application stating that the application for funding had been rejected because "[t]he Form 471 submitted is not the correct OMB-approved FCC Form 471 dated October 2000 in the lower right-hand corner of the form."[12] In connection with Application No. 263665, Floyd County first filed an appeal with SLD, which was denied.[13] Floyd County then filed the pending Second Request for Review. In connection with Application No. 275627, Floyd County appealed the rejection letter directly to the Commission. Because the Requests for review present substantially identical issues, we address them together.

6. On review of the pending Requests for Review, it is unclear whether Floyd County is arguing that its applications were timely filed within the filing window under program rules, or whether Floyd County is acknowledging that its applications were untimely and is seeking a waiver of the filing window. Accordingly, we address both claims here and in so doing, we find no basis to grant relief to Floyd County.

7. Floyd County asserts that it downloaded the FCC Forms 471 for the wrong Funding Year from SLD's website, and that it completed its applications with the help of SLD representatives.[14] Floyd County does not dispute that it used Funding Year 3 FCC Forms 471 to request discounts in Funding Year 4. However, Floyd County argues that SLD never informed it that there was a new FCC Form 471 for Funding Year 4 and that the use of this new form was required.[15] Thus, Floyd County asserts that it did not have notice of such a requirement until after the close of the filing window.[16]

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

[12] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jerry Gatlin, Floyd County Schools, dated January 30, 2001 (App. No. 275627 Rejection Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jerry Gatlin, Floyd County Schools, dated March 23, 2001 (App. No. 263665 Rejection Letter).

[13] Letter from Jerry Gatlin, Floyd County Board of Education, to Schools and Libraries Division, Universal Service Administrative Company, dated February 5, 2001; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Floyd County Board of Education, dated July 13, 2001.

[14] *See* First Request for Review, at 1; Second Request for Review, at 1. 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 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

[15] First Request for Review, at 1; Second Request for Review, at 1.

[16] First Request for Review, at 1.

8. We affirm the decisions of SLD. The Commission's rules direct SLD to establish procedures for processing applications.[17] Under these procedures, an application will be rejected without processing if it is not made on the correct OMB-approved form for the year in which the application is made.[18] We have affirmed this procedure as applied to Funding Year 3 applications.[19] We continue to affirm the procedure in Funding Year 4. Specifically, the Funding Year 4 FCC Form 471 differed in several respects from the Funding Year 3 FCC Form 471.[20] For example, 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.[21] It would be administratively burdensome if SLD were to accept the Year 3 FCC Form 471, only to return to the applicant to collect missing information that was required in the 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.

9. The fact that Floyd County was not informed by SLD representatives of the new form does not excuse the failure to follow program requirements. SLD must review and process thousands of applications each funding year. It therefore is administratively necessary for SLD to require applicants to adhere to applicable program rules and application requirements, and the burden is upon applicants to ensure that their applications are in compliance with program requirements prior to filing.[22] In particular, because applications may change from year to year, applicants bear the responsibility of determining whether or not the correct form is being used.[23] Thus, it was Floyd County's responsibility to determine that it was using the wrong application forms.

10. To the extent that Floyd County seeks a waiver of the filing window to enable it to file corrected FCC Forms 471, we find no basis to grant the waiver. A waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better

[17] 47 C.F.R. § 54.705.

[18] *See* Minimum Processing Standards.

[19] *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 Nos. NEC.471.11-19-99.01100003 and NEC.471.12-10-99.02300008, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 12901 (Com. Car. Bur. 2001) (*Fair Lawn Order*).

[20] *Compare* Year 4 Form 471 *with* Year 3 Form 471.

[21] *Compare* Year 4 Form 471, Block 6 *with* Year 3 Form 471, Block 6.

[22] *Id.* at para. 6.

[23] *Id.*

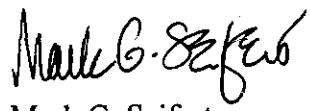
serve the public interest than strict adherence to the general rule.[24] A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.[25]

11. In the instant case, Floyd County presents no evidence that convinces us to depart from our prior determinations. As noted above, Floyd County's lack of awareness that a new form was being used in Funding Year 4 and SLD's failure to notify Floyd County of the new form are not circumstances that warrant a deviation from program requirements. We therefore find that Floyd County has failed to demonstrate grounds for a waiver.

12. 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 by Floyd County Board of Education, Rome, Georgia, on April 3, 2001 IS DENIED.

13. IT IS FURTHER ORDERED that the Request for Review filed by Floyd County Board of Education, Rome, Georgia, on July 24, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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

[24] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

[25] *Northeast Cellular*, 897 F.2d at 1166; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).