

Before the  
Federal Communications Commission  
Washington, DC 20554



In the Matter of )  
)  
Request for Review of the )  
Decision of the )  
Universal Service Administrator by )  
)  
Edgewood Independent School District )  
San Antonio, Texas )  
)  
Federal-State Joint Board on )  
Universal Service )  
)  
Changes to the Board of Directors of the )  
National Exchange Carrier Association, Inc. )

File No. SLD-263799

CC Docket No. 96-45 ✓

CC Docket No. 97-21

**ORDER**

**Adopted: March 1, 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 Edgewood Independent School District (Edgewood), San Antonio, Texas.<sup>1</sup> Edgewood seeks review of the decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting Edgewood's original Funding Year 4 application for failure to meet minimum processing standards and treating Edgewood's submitted corrections as untimely filed.<sup>2</sup> For the reasons set forth below, we deny Edgewood'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.<sup>3</sup> 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.<sup>4</sup> Once the applicant has

<sup>1</sup> Letter from David Ochoa, Edgewood Independent School District, to Federal Communications Commission, filed July 24, 2001 (Request for Review).

<sup>2</sup> 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).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.<sup>7</sup> 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.<sup>8</sup> 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. The minimum processing standards in Funding Year 4 required, among other things, that each submitted FCC Form 471 be the correct, OMB-approved FCC Form 471 for Funding Year 4, with a date of October 2000 in the lower right-hand corner.<sup>9</sup>

4. When an applicant submits an FCC Form 471 that omits an item subject to the minimum processing standards, SLD automatically returns the application to the applicant without considering the application for discounts under the program.<sup>10</sup> While an applicant may submit supplemental information to SLD where it has omitted information required by the minimum processing standards, SLD does not treat the FCC Form 471 as having been filed until all information necessary to pass the minimum processing standards is provided.<sup>11</sup> Thus, where a minimum processing standard correction is submitted after the close of the filing window, the FCC Form 471 is not entitled to in-window priority and will generally be ineligible for funding for that reason.

5. Edgewood applied for Funding Year 4 discounts on January 18, 2001.<sup>12</sup> By letter dated January 30, 2001, SLD rejected the application for failure to meet two of SLD's minimum

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<sup>5</sup> 47 C.F.R. § 54.504(c).

<sup>6</sup> 47 C.F.R. § 54.507(c).

<sup>7</sup> 47 C.F.R. § 54.507(g).

<sup>8</sup> 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).

<sup>9</sup> Minimum Processing Standards.

<sup>10</sup> Minimum Processing Standards.

<sup>11</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Noe Saucedo, PhD., Edgewood Independent School District, dated June 26, 2001 (Administrator's Decision on Appeal), at 2.

<sup>12</sup> FCC Form 471, Edgewood Independent School District, filed January 18, 2001 (Edgewood Form 471).

processing standards.<sup>13</sup> Instead of using the appropriate OMB-approved Funding Year 4 FCC Form 471 application, Edgewood applied for Funding Year 4 support using an incorrect FCC Form 471 application.<sup>14</sup> In addition, SLD found that the address information for the Billed Entity, *i.e.*, Edgewood, was incomplete.<sup>15</sup> SLD stated that because of these problems, the application could not be processed.<sup>16</sup>

6. On February 13, 2001, Edgewood appealed to SLD, arguing that SLD should not have rejected the application without giving Edgewood at least a brief opportunity to make corrections, that both errors were due to a glitch in Edgewood's application software, and that they were quickly corrected.<sup>17</sup> SLD denied the appeal, again finding that the original application failed to meet minimum processing standards.<sup>18</sup> It further found that the corrected submission had been filed after the close of the filing window, and would not be data-entered for that reason.<sup>19</sup> Edgewood then filed the pending Request for Review.

7. In its Request for Review, Edgewood again objects to the rejection of its original application without an opportunity to make corrections that date back to the original filing date.<sup>20</sup> Edgewood asserts that it should have been given 24 or 36 hours to provide the corrections before rejection of the application.<sup>21</sup> However, the Commission has upheld SLD's procedure of rejecting applications that fail minimum processing standards.<sup>22</sup> Thus, Edgewood's objection provides no basis for granting its Request for Review.

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<sup>13</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ed Richter, Edgewood Independent School District, dated January 30, 2001 (Rejection Letter).

<sup>14</sup> Rejection Letter, at 1. Edgewood used the FCC Form 471 approved for Funding Year 3 instead of the form approved for Funding Year 4. *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (Funding Year 4 Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Funding Year 3 Form 471).

<sup>15</sup> Rejection Letter, at 1.

<sup>16</sup> *Id.*

<sup>17</sup> Letter from Noe Saucedo, Ph.D, Edgewood Independent School District, to Schools and Libraries Division, Universal Service Administrative Company, filed February 13, 2001 (Appeal to SLD), at 1-2. It is not clear whether Edgewood actually submitted a corrected copy. We have found no such copy attached to the Appeal to SLD, but SLD did reference a corrected copy in the Administrator's Decision on Appeal. *See* Administrator's Decision on Appeal, at 1. Therefore, for purposes of this Request for Review, we assume *arguendo* that a corrected copy was submitted.

<sup>18</sup> Administrator's Decision on Appeal, at 1.

<sup>19</sup> *Id.*, at 2.

<sup>20</sup> Request for Review, at 1.

<sup>21</sup> *Id.*

<sup>22</sup> *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 (2001) (*Naperville Order*).

8. Edgewood also appears to argue that it did not violate minimum processing standards under the Commission's precedents. With regard to the use of the wrong form, Edgewood appears to argue that it did use the correct version of the application, and that the application software only entered the wrong date at the corner of the form, indicating that it was the September 1999 form instead of the October 2000 form.<sup>23</sup> Edgewood also argues that, under the *Naperville Order*, the State abbreviation should not have been grounds for a minimum processing rejection because the information could be deduced from other data in the form.<sup>24</sup>

9. After reviewing the record, we find that Edgewood's application was properly rejected because it did not use the correct, OMB-approved FCC Form 471.<sup>25</sup> In reaching this conclusion, we need not address whether an applicant that submits a form that is otherwise correct but that has an incorrect form date on the lower right-hand corner is properly rejected. After reviewing Edgewood's FCC Form 471, we find that the form was in fact a Funding Year 3 Form 471 rather than, as Edgewood alleges, a Funding Year 4 Form 471 with an incorrect date in the lower right-hand corner.<sup>26</sup> Therefore, Edgewood's application did not satisfy SLD's minimum processing standards.

10. Edgewood argues that two circumstances applicable to this case warrant relief despite the Commission's prior decisions upholding SLD's minimum processing standards procedures. We construe this argument as a request for a waiver from the filing window for Edgewood's corrected application, which uses the correct Funding Year 4 FCC Form 471. Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.<sup>27</sup> 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.<sup>28</sup> A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.<sup>29</sup>

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<sup>23</sup> Request for Review, at 3.

<sup>24</sup> Request for Review, at 2 (citing *Naperville Order*).

<sup>25</sup> We therefore need not decide whether it was also properly rejected based on the absence of the State abbreviation in Block 1.

<sup>26</sup> For example, the certification in Block 6, Item 24 begins, "The applicant is eligible for support . . .," the language used in Funding Year 3, whereas the analogous certification in Funding Year 4 reads, "The entities listed in Block 4 of this application are eligible for support . . ." Compare Edgewood Form 471, Block 6, Item 24 with Funding Year 4 Form 471, Block 6, Item 24.

<sup>27</sup> 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*).

<sup>28</sup> *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).

<sup>29</sup> *Northeast Cellular*, 897 F.2d at 1166.

11. Based on our review of the record, we conclude that Edgewood has provided an insufficient basis for a waiver from the general rule. In support of its request, Edgewood first asserts that the necessary corrections were minimal, innocent errors resulting from a glitch in Edgewood's application software.<sup>30</sup> However, we find that the use of the Funding Year 3 FCC Form was not a minimal error. The Year 4 FCC Form 471 required more information than the Year 3 FCC Form 471 and used different language in some of the certifications.<sup>31</sup> 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 and obtain certifications using the correct language. In this program, using the correct form and providing the correct information is particularly relevant in processing an applicant's application.

12. Edgewood also asserts that SLD provided little advance notice that it was going to change the FCC Form 471 before the beginning of the application period.<sup>32</sup> It is true that SLD provided notice of the change in form on its web site on November 2, 2000, only four days before the opening of the application filing window on November 6, 2000.<sup>33</sup> However, this does not provide the basis for a waiver of the requirement that applicants use the correct form. SLD must review and process thousands of applications each funding year.<sup>34</sup> 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.

13. We also note that SLD received a number of applications that used the wrong form for Funding Year 4. 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. We therefore conclude that, under these circumstances, Edgewood has failed to make a showing warranting relief and that its Request for Review must be denied.

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<sup>30</sup> Request for Review, at 2-3.

<sup>31</sup> Compare Funding Year 4 FCC Form 471, Block 6, Items 24 and 25 with Funding Year 3 FCC Form 471, Block 6, Items 24 and 25.

<sup>32</sup> Request for Review, at 2.

<sup>33</sup> See SLD Web Site, What's New (November 2, 2000), <[http://www.sl.universalservice.org/whatsnew/112000.asp#110300\\_2](http://www.sl.universalservice.org/whatsnew/112000.asp#110300_2)>.

<sup>34</sup> For example, in Funding Year 3, it received over 36,000 applications. Universal Service Administrative Company, Schools and Libraries Program, Funding Commitments: Year 3 Funding Commitments, <<http://www.sl.universalservice.org/funding/y3>>.

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14. 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 Edgewood Independent School District, San Antonio, Texas, on July 24, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
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Common Carrier Bureau