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

In the Matter of	)	
	)	
Request for Review of a Decision of the Universal Service Administrative Company By	)	
	)	
Saint Martin of Tours School Bronx, New York	)	File No. SLD-262800
	)	
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: March 29, 2002 **Released: April 4, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Saint Martin of Tours School (Saint Martin), Bronx, New York.[1] Saint Martin seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to deny its application for support in Funding Year 4 of the schools and libraries universal service support mechanism.[2] For the reasons discussed below, we deny Saint Martin's Request for Review. To the extent that Saint Martin requests a waiver of the Commission's rules, we deny that request as well.

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

[1] Letter from Sister Nora McArt, Saint Martin of Tours School, to Federal Communications Commission, filed July 30, 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).

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] A commitment of support is contingent upon the timely filing of the applicant's FCC Form 471.[6]

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.[7] 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.[8] In Funding Year 4, SLD instructions stated that minimum processing standards required applicants to use the correct form.[9] 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 (Bureau) has upheld SLD's minimum processing standard of requiring the applicants to use the correct form.[10]

4. Saint Martin filed a FCC Form 471 with SLD for Funding Year 4 on January 16, 2001.[11] Instead of using the appropriate Funding Year 4 Form 471 application, Saint Martin applied for support using a Funding Year 3 Form 471 application.[12] On January 29, 2001, Saint Martin received a letter from SLD notifying the school that Saint Martin's application could not be processed because it did not meet minimum processing standards for Funding Year 4.[13] Saint Martin did not meet Funding Year 4 minimum processing standards because it had used the incorrect OMB-approved FCC Form 471, rather than the Funding Year 4 Form 471 that was

[5] 47 C.F.R. § 54.504(c).

[6] *Id.* Pursuant to 47 C.F.R. § 54.507(c), the Administrator is directed to establish a filing period (filing window) that treats all applicants as though their applications were received on the same day. Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rule, 47 C.F.R. § 54.507(g). It is to the applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. In Funding Year 4, the window closed on January 18, 2001.

[7] *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).

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

[9] *Id.*

[10] *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 (Com. 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).

[11] FCC Form 471, Saint Martin of Tours School, filed January 16, 2001 (Saint Martin Funding Year 4 Form 471).

[12] *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).

[13] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Saint Martin of Tours School, dated January 29, 2001 (Funding Year 4 Form 471 Rejection Letter).

dated October 2000 in the lower right hand corner of the form.

5. On February 7, 2001, Saint Martin filed an appeal with SLD, stating that, although it submitted a Funding Year 3 Form 471 in error, its application should be considered as a timely Funding Year 4 filing.[14] Along with the appeal letter, Saint Martin submitted an application completed on the correct OMB-approved FCC Form 471, dated October 2000 in the lower right hand corner.[15] On July 13, 2000, SLD denied Saint Martin's appeal because the application failed to meet minimum processing standards.[16] SLD also determined that it could not consider the FCC Form 471 Saint Martin submitted with its appeal because it was filed outside of the funding window.[17]

6. Saint Martin then filed the instant Request for Review with the Commission, again requesting that its Form 471 be considered for Funding Year 4.[18] Saint Martin asserts that the Funding Year 3 FCC Form 471 it submitted was almost identical to the Funding Year 4 FCC Form 471.[19] In addition, Saint Martin states that SLD should have disabled the Funding Year 3 FCC Form 471 in order to ensure that applicants did not confuse the forms.[20] Finally, Saint Martin contends that its original application was filed within the filing window and that SLD should consider the application it submitted on February 7, 2001, as timely.[21]

7. Based our review of the record, we conclude that SLD appropriately determined that Saint Martin's application failed to meet minimum processing standards. As noted above, the Bureau has previously upheld SLD's minimum processing standard of requiring the applicants to use the correct form.[22] Specifically, the minimum processing standards for a FCC Form 471 for Funding 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."[23] In addition, 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. The instructions encourage applicants to reference the SLD website, to obtain guidance material from SLD's fax-on-demand

[14] Letter from Sister Nora McArt, Saint Martin of Tours School, to Schools and Libraries Division, Universal Service Administrative Company, filed February 7, 2001 (SLD Appeal Letter).

[15] *Id.*

[16] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Saint Martin of Tours School, dated July 13, 2001.

[17] *Id.*

[18] Request for Review.

[19] *Id.* at 2.

[20] *Id.* at 1.

[21] *Id.*; *see also* SLD Appeal Letter.

[22] *See supra* note 10.

[23] Funding Year 4 Minimum Processing Standards.

[24] *See generally* Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FY 4 FCC Form 471), OMB 3060-0806 (October 2000); Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FY 3 FCC Form 471), OMB 3060-0806 (September 1999).

service, or to contact SLD's Client Service Bureau for assistance with the application process.[25] It is administratively appropriate for SLD to require applicants to adhere to applicable program rules and application requirements.[26] It is therefore 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.

8. We are not persuaded by Saint Martin's assertion that the Funding Year 3 FCC Form 471 was essentially identical to the Funding Year 4 FCC Form 471. In fact, the Funding Year 4 FCC Form 471 required more information than was required on the Funding Year 3 FCC Form 471.[27] Because SLD must review and process thousands of applications each funding year, it would be administratively burdensome if SLD were to accept the Funding Year 3 FCC Form 471 only to return to the applicant to collect missing information or certifications that are 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.

9. To the extent that Saint Martin requests a waiver of the Commission's rules, we deny that request as well. Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.[28] 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.[29] A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.[30]

10. Further, 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 4, SLD received over 37,000 applications.[31] 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. As a result, we believe that it was Saint Martin's responsibility to use the correct form, and we decline to find that SLD should have disabled forms for previous funding

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[25] *Id.*

[26] *See generally* Funding Year 4 Minimum Processing Standards (outlining the manual and online filing requirements for FY 4 FCC Form 471).

[27] *See, e.g.*, FY 4 FCC Form 471 at Block 6; FY 3 FCC Form 471 at Block 6. For example, the Funding Year 4 FCC Form 471 also requires applicants to certify that "if audited, [the applicant] will make available to the Administrator such records."

[28] 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*).

[29] *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).

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

[31] Universal Service Administrative Company, Schools and Libraries Program, What's New: March 2001, SLD Provides Updated Demand Estimate for Year 4 to FCC, <http://www.sl.universalservice.org/whatsnew/032001.asp>.

years on its web-site.

11. Moreover, we do not believe that it is appropriate to waive the filing window deadline for the application Saint Martin submitted on February 7, 2001.[32] 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."[33] 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. We therefore conclude that Saint Martin has failed to make a showing warranting relief and, therefore, its Request for Review must be denied.

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 July 30, 2001 by Saint Martin of Tours School, Bronx, New York IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

[32] *See* SLD Appeal Letter.

[33] *Id.*