

Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
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Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Our Lady of Loretto)
Redford, Mississippi)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-275520

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: April 23, 2002

Released: April 24, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division (Division) has under consideration a Request for Review filed by Our Lady of Loretto (OLL), Redford, Mississippi.¹ OLL seeks review of the decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting OLL's original Funding Year 4 application for failure to meet minimum processing standards and treating OLL's submitted corrections as untimely filed.² For the reasons that follow, we deny OLL'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

¹ Letter from Lynne Wendt, Our Lady of Loretto, to Federal Communications Commission, filed July 11, 2001 (Request for Review).

² 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 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 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.⁹ 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.¹⁰ 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 in years where demand is greater than the available funds such as Funding Year 4.¹¹

4. OLL applied for Funding Year 4 discounts on January 17, 2001.¹² By letter dated March 22, 2001, SLD rejected the application for failure to meet two of SLD's minimum

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 website, Form 471 Minimum Processing Standards and Filing Requirements for Funding Year 4, <<http://www.sl.universalservice.org/reference/471mps.asp>> (Minimum Processing Standards).

⁹ Minimum Processing Standards.

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lynne Wendt, Our Lady of Loretto, dated June 26, 2001 (Administrator's Decision on Appeal), at 1-2.

¹¹ In Funding Year 4, the total amount of discounts requested was \$5.195 billion. See Letter from Kate L. Moore, President, Universal Service Administrative Company, Schools and Libraries Division, to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, dated April 17, 2001. Pursuant to section 54.507 of the Commission's rules, the cap on universal service funds for schools and libraries is \$2.25 billion. 47 C.F.R. § 54.507(a).

¹² FCC Form 471, Our Lady of Loretto, filed January 17, 2001 (OLL Form 471).

processing standards.¹³ Instead of using the appropriate OMB-approved Funding Year 4 FCC Form 471 application, OLL applied for Funding Year 4 support using a Funding Year 3 FCC Form 471 application.¹⁴ In addition, SLD found that the Worksheet in Block 4, where applicants provide information on the entities that will receive the discounted services, was blank or incomplete.¹⁵ SLD stated that because of these problems, OLL's application could not be processed.¹⁶

5. On April 3, 2001, OLL appealed to SLD, re-submitting its original FCC Form 471 with the Block 4 omission corrected and, in addition, submitting its application on an Funding Year 4 FCC Form 471.¹⁷ OLL asserted that, during the application process, it had asked SLD about the difference in forms, and had been incorrectly told that it would be "okay to send" the old form.¹⁸ OLL further asserted that, after receiving the Rejection Letter, it again contacted SLD and was told not to use the new form, but to send in a corrected version of the old form, in contradiction to what was stated in the Rejection Letter.¹⁹

6. SLD denied the appeal, finding that the original application failed to meet minimum processing standards.²⁰ It further found that the corrected submissions had been filed after the close of the filing window for Funding Year 4, and would not be data-entered for that reason.²¹ OLL then filed the pending Request for Review.

7. In its Request for Review, OLL reiterates its assertion that SLD instructed it by phone to merely revise its old Funding Year 3 form, not send in a new Funding Year 4 form.²² It further reasserts that it sent in a revised Funding Year 3 form as well as a new Funding Year 4 form to address the errors mentioned in the Rejection Letter, and was still told, presumably in the

¹³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lynne Wendt, Our Lady of Loretto, dated March 22, 2001 (Rejection Letter).

¹⁴ Rejection Letter, at 1. *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).

¹⁵ Rejection Letter at 1.

¹⁶ *Id.*

¹⁷ Letter from Lynne Wendt, Our Lady of Loretto, to Schools and Libraries Division, Universal Service Administrative Company, filed April 9, 2001, at 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Administrator's Decision on Appeal at 1.

²¹ *Id.* at 2.

²² Request for Review at 1.

Administrator's Decision on Appeal, that it had not complied.²³ OLL requests clarification as to the reason why its revised applications were not accepted.²⁴

8. On review, we find that OLL's original application was correctly rejected for failure to satisfy minimum processing standards. These standards require, among other things, that the applicant use the correct OMB-approved FCC Form 471 for the year in which the applicant is applying.²⁵ The Commission has previously affirmed SLD's authority to implement minimum processing standards and to reject those applications that fail to meet those standards.²⁶ The Wireline Competition Bureau (Bureau) has also specifically upheld the use of the correct OMB-approved form for the year in which the applicant is applying as a minimum processing standard.²⁷ In this case, the record is undisputed that OLL used a Funding Year 3 form for Funding Year 4.²⁸ We therefore find that the minimum processing standards were not satisfied, and that, as a result, SLD correctly rejected OLL's application.

9. We also decline to grant relief on the grounds that OLL received incorrect information from SLD regarding the appropriateness of using the older form. Where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when relief is contrary to a rule.²⁹ In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the ultimate responsibility of complying with all relevant rules and procedures.³⁰ 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.³¹ We note that, to avoid use of the wrong form in the future, OLL can take

²³ *Id.*

²⁴ *Id.*

²⁵ See Minimum Processing Standards.

²⁶ *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).

²⁷ 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) (*Fair Lawn Order*) (upholding SLD's minimum processing standard that required applicants to use the correct FCC Forms for the funding years in which they were applying).

²⁸ See OLL Form 471.

²⁹ *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990)).

³⁰ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-13364, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000).

³¹ See *Fair Lawn Order*.

advantage of SLD's on-line electronic application system, which automatically uses the correct form for the funding year, offers step-by-step online instructions in filling out the form, and validates the answers entered for each item.³²

10. We also affirm SLD's rejection of both the new and corrected applications that OLL submitted with its Appeal to SLD. While an applicant may submit corrections to SLD where its original application has not satisfied the minimum processing standards, SLD does not treat the FCC Form 471 as having been filed until all information necessary to pass minimum processing standards is submitted.³³ As SLD noted, both the corrections to OLL's original application form and the new application using the correct form were submitted after the close of the filing window.³⁴ Thus, SLD correctly found that OLL's application had not been submitted within the filing window.

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 by Our Lady of Loretto, Redford, Mississippi, on July 11, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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

³² See SLD website, <<http://www.sl.universalservice.org/reference/471Tips.asp>>; see also SLD website, <<http://www.sl.universalservice.org/menu.asp>> (on-line application menu).

³³ Administrator's Decision on Appeal at 2.

³⁴ *Id.*

