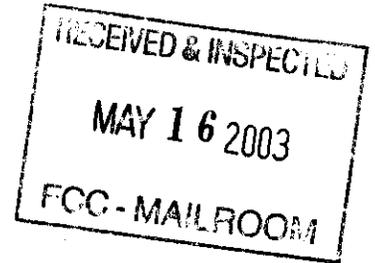


Before the
Federal Communications Commission
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL



In the Matter of)
)
Request for Review of the Decision of the)
Universal Service Administrative)
Company by)
)
Western New York Regional)
Information Center)
West Seneca, New York)
)
Federal-State Joint Board on Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)
)
)

File Nos. SLD-328966, 327289, 329244,
328892, 327366

CC Docket No. 96-45

CC Docket No. 97-21

ORDER

Adopted: May 14, 2003

Released: May 15, 2003

By the Wireline Competition Bureau:

1. Before the Wireline Competition Bureau is a Request for Review filed by the Western New York Regional Information Center (Petitioner), on behalf of Erie 1 Board of Cooperative Educational Services, Erie 2 – Chautauqua/Cattaraugus Board of Cooperative Educational Services, Cattaraugus/Allegany Board of Cooperative Education Service, Orleans/Niagara Board of Cooperative Educational Services, and Steuben/Allegany Board of Cooperative Educational Services (collectively, “Applicants”).¹ Petitioner seeks review of decisions issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).² For the reasons set forth below, we grant Petitioner’s Request for Review and remand Petitioner’s applications to SLD for further processing in accordance with this Order.

¹ Letter from Matt Dziuba, Western New York Regional Information Center, to the Federal Communications Commission, behalf Erie 1 Board of Cooperative Educational Services (Erie 1), Erie 2 – Chautauqua/Cattaraugus Board of Cooperative Educational Services (Erie 2), Cattaraugus/Allegany Board of Cooperative Educational Service (Cattaraugus/Allegany), Orleans/Niagara Board of Cooperative Educational Services (Orleans/Niagara), and Steuben/Allegany Board of Cooperative Educational Services (Steuben/Allegany), filed August 13, 2002 (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).

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 an applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth the school's technological needs and the services for which it seeks discounts.⁴ Once the school has complied with the Commission's competitive bidding requirements and signed a contract for the eligible services, it must file an FCC Form 471 application to notify the Administrator, among other things, of the services that have been ordered, the carrier with whom the school has signed the contract, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ Block 4 of the FCC Form 471 application consists of three different discount calculation worksheets.⁶ Depending upon the type of application submitted, applicants are required to complete one or more of these discount calculation worksheets.⁷ Applicants must complete Worksheet A when filing school/school district applications, Worksheet B when filing library applications, and Worksheet C when filing consortium applications.⁸

3. At the start of an application review, SLD utilizes what it calls "minimum processing standards" to facilitate the efficient review of the thousands of applications requesting funding.⁹ These minimum processing standards require an applicant to provide at least the basic data necessary for SLD to initiate review of the application under statutory requirements and Commission rules. When an applicant submits an FCC Form 471, SLD performs an initial visual inspection of the application to determine if the application has omitted an item required by the minimum processing standards. In such a case, SLD automatically returns the application to the applicant without considering the application for discounts under the program.¹⁰ Both the minimum processing standards and the automatic return for failure to comply are explained in a document available on SLD's website, from SLD's fax-on-demand service, and from SLD customer services representatives at its toll-free number.¹¹

4. In Block 1, Item 5 of their FCC Forms 471, Applicants indicated that the type of

³ 47 C.F.R. §§ 54.402, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ *Schools and Libraries Universal Service, Services Ordered and Certification Form OMB 3060-0806* (November 2001) (FCC Form 471).

⁷ *Id.*

⁸ *Id.*

⁹ 47 C.F.R. § 54.504(c); see SLD website, Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>> (Minimum Processing Standards).

¹⁰ Minimum Processing Standards.

¹¹ Minimum Processing Standards.

application was a “consortium.”¹² In each of their FCC Forms 471, Applicants submitted Block 4 Worksheet A (discount calculation worksheet for schools and school districts).¹³ Applicants did not submit a Block 4 Worksheet C (discount calculation worksheet for consortia).

5. SLD issued rejection letters for each application, notifying Applicants that their applications did not meet minimum processing standards.¹⁴ SLD explained that the FCC Forms 471 submitted did not contain at least one complete Block 4 Worksheet relevant to the “Type of Application” as selected in Block 1, Item 5.¹⁵ Applicants appealed to SLD.¹⁶ SLD denied the appeals, stating the original submissions were missing data.¹⁷ Specifically, SLD stated that the FCC Forms 471 submitted did not include at least one Block 4 Worksheet relevant to the type of application as selected in Block 1, Item 5.¹⁸

6. Petitioner then filed the instance Request for Review. Petitioner argues that its applications would have been considered complete had Applicants checked “school district” instead of “consortium” in Block 1, Item 5.¹⁹ Petitioner maintains that the rejected applications were substantially complete when filed and the missing information was easily discerned from the rest of the application. Thus, Petitioner maintains that granting its Request for Review would

¹² FCC Form 471, Erie 1, filed January 17, 2002; FCC Form 471, Erie 2, filed January 17, 2002; FCC Form 471, Cattaraugus/Allegany, filed January 17, 2002; FCC Form 471, Steuben/Allegany, filed January 14, 2002; FCC Form 471, Orleans/Niagara, filed January 17, 2002 (Collectively, FCC Forms 471).

¹³ *Id.*

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mat Dziuba, Erie 1, dated March 4, 2002; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mat Dziuba, Erie 2, dated February 26, 2002; Letter from Schools and Libraries, Universal Service Administrative Company, to Mat Dziuba, Cattaraugus/Allegany, dated March 4, 2002; Letter from Schools and Libraries, Universal Service Administrative Company, to Mat Dziuba, Steuben/Allegany, dated February 28, 2002; Letter from Schools and Libraries, Universal Service Administrative Company, to Mat Dziuba, Orleans/Niagara, dated March 4, 2002.

¹⁵ *Id.*

¹⁶ See Letters from Mat Dziuba, Western New York Regional Information Center, to Schools and Libraries Division, Universal Service Administrative Company, filed April 16, 2002 (SLD Appeal). Petition also attached a FCC Form 471 Block 4 Worksheet C to its appeal for each application.

¹⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mat Dziuba, Erie 2, dated June 24, 2002; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mat Dziuba, Erie 1, dated June 24, 2002; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mat Dziuba, Steuben/Allegany, dated June 24, 2002; Letter from Schools and Libraries Division, Universal Service Administrative Company to Mat Dziuba, Cattaraugus/Allegany, dated July 1, 2002; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mat Dziuba, Orleans/ Niagara, dated July 1, 2002 (Collectively, Administrator’s Decisions on Appeal).

¹⁸ *Id.*

¹⁹ Request for Review.

be consistent with the *Naperville Order*.²⁰

7. Because the pending Request for Review seeks relief from an application procedure, we have reviewed the relevant procedure and the relevant applications. Based on this review, we find that the rejection of these applications should be reversed. We therefore grant Petitioner's Request for Review and remand its applications to SLD for further processing.

8. Funding Year 2002 Minimum Processing Standards provided, "at least one completed Block 4 Worksheet *relevant* to your application type ... must be submitted."²¹ In accordance with Minimum Processing Standards, if an applicant indicated in Block 1, Item 5 that its application type was a school or school district, the applicant was required to submit Block 4 Worksheet A.²² Similarly, where an applicant indicated that its application type was a consortium, the applicant was required to submit a completed Worksheet C.²³ Pursuant to these procedures, SLD deemed that the *relevant* worksheet for a consortium application was Worksheet C although this was not stated in the FCC Form 471 instructions. During its Minimum Processing Standards review, SLD rejected Petitioner's applications because Applicants indicated in Block 1, Item 5 that their application type was a consortium, but Applicants failed to attach Worksheet C.

9. We conclude that the FCC Form 471 instructions did not adequately state what constituted a relevant worksheet for consortium. Specifically, we find that where an applicant filed a consortium application, in which the consortium consisted of schools and/or school districts, Worksheet A could reasonably be considered to be a relevant worksheet. Indeed, an applicant filing a consortium application could have reasonably determined that a completed Worksheet A satisfied the relevant worksheet requirement. We note that SLD has modified the instructions for Funding Year 2003, and the instructions now state "if the application type is consortium, a completed Block 4 Worksheet C must be submitted."²⁴ We therefore reverse SLD's decision and remand Petitioner's application to SLD for further processing in accordance with this Order.

²⁰ Request for Review. *See also 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 Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 5032 (2001) (*Naperville Order*).

²¹ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (November 2001), at 6 (Funding Year 2002 FCC Form 471 Instructions) (emphasis added).

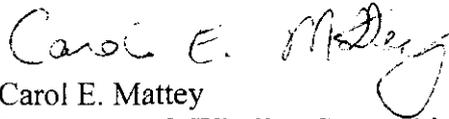
²² *See generally*, Funding Year 2002 FCC Form 471 Instructions at 13.

²³ *See generally*, Funding Year 2002 FCC Form 471 Instructions at 17, 18.

²⁴ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 2002), at 7, 13 (Funding Year 2003 FCC Form 471 Instructions).

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by the Western New York Regional Information Center, IS GRANTED to the extent provided herein, and the applications of Erie 1 Board of Cooperative Educational Services, Erie 2 - Chautauqua/Cattaraugus Board of Cooperative Educational Services, Cattaraugus/Allegany Board of Cooperative Education Service, Orleans/Niagara Board of Cooperative Educational Services, and Steuben/Allegany Board of Cooperative Educational Services are REMANDED to SLD for further processing consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Wireline Competition Bureau