

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

In the Matter of)	
)	
Request for Review of the Decision of the)	
Universal Service Administrator)	
By)	
)	
ACCEPT Education Collaborative)	File No. SLD-267054
Framingham, Massachusetts)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

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 ACCEPT Education Collaborative (ACCEPT), Framingham, Massachusetts.¹ ACCEPT seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to deny its application for Funding Year 4 of the schools and libraries universal service support mechanism.² For the reasons discussed below, we deny ACCEPT's Request for Review. To the extent that ACCEPT 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

¹ Letter from Michael Pallidino, ACCEPT Education Collaborative to Federal Communications Commission, filed July 31, 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.

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

3. Under the Commission's regulations, SLD is authorized to establish program standards for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.⁶ 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.⁷ In Funding Year 4, SLD instructions stated that minimum processing standards required applicants to use the correct form.⁸ 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.⁹

4. The Commission's rules also 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 subject to separate funding priorities under the Commission's rules.¹⁰ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.¹¹ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

5. ACCEPT filed a FCC Form 471 with SLD for Funding Year 4 on January 17, 2001.¹² Instead of using the appropriate Funding Year 4 Form 471 application, ACCEPT applied

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ 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).

⁷ 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).

⁸ *Id.*

⁹ 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).

¹⁰ 47 C.F.R. § 54.507(c).

¹¹ 47 C.F.R. § 54.507(g).

¹² FCC Form 471, ACCEPT Education Collaborative, filed January 17, 2001 (ACCEPT Funding Year 4 Form 471).

for support using a Funding Year 3 Form 471 application.¹³ On March 22, 2001, ACCEPT received a letter from SLD notifying the school that ACCEPT's application could not be processed because it did not meet minimum processing standards for Funding Year 4.¹⁴ ACCEPT 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 dated October 2000 in the lower-right hand corner of the form.¹⁵

6. On April 13, 2001, ACCEPT filed an appeal with SLD, stating that it mistakenly used the wrong form and that denial of the application would have significant repercussions for the applicants.¹⁶ Along with the appeal letter, ACCEPT submitted an application completed on the correct OMB-approved FCC Form 471, dated October 2000 in the lower right hand corner.¹⁷ ACCEPT noted that there were no substantive information or funding changes from the original application.¹⁸ On July 13, 2001, SLD denied ACCEPT's appeal because the original application failed to meet minimum processing standards.¹⁹ SLD also determined that it could not consider the FCC Form 471 ACCEPT submitted with its appeal because it was filed outside of the funding window.²⁰

7. On appeal, ACCEPT asserts that despite using the wrong form, its application should be accepted as completed within the filing window.²¹ ACCEPT contends that its Funding Year 3 FCC Form 471 was filed within the filing window and that SLD did not return the application until well after the filing deadline.²² ACCEPT states that it was an honest mistake that will have harsh ramification on the applicants.²³ In addition, ACCEPT contends that there were no substantive changes from application it submitted on the Funding Year 3 Form 471 to the application it provided on the Funding Year 4 Form 471.²⁴

8. We are not persuaded by ACCEPT's assertion that the Funding Year 4 Form 471 required no substantive information or funding changes from its Funding Year 3 Form 471

¹³ 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).

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michael Pallidino, ACCEPT Education Collaborative, dated March 22, 2001 (Funding Year 4 Form 471 Rejection Letter).

¹⁵ See Funding Year 4 Minimum Processing Standards.

¹⁶ Letter from Michael Palladino, ACCEPT Education Collaborative, to Schools and Libraries Division, Universal Service Administrative Company, filed April 13, 2001 (SLD Appeal Letter).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michael Pallidino, ACCEPT Education Collaborative, dated July 13, 2001.

²⁰ *Id.*

²¹ *Id.* at 1.

²² *Id.*

²³ *Id.* at 2.

²⁴ *Id.*

application.²⁵ In fact, there were several changes to the Funding Year 4 FCC Form 471, including changes to the certification page.²⁶ 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 Form 471 only to return to the applicant to collect missing information or acquire additional 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. ACCEPT also seeks a waiver of the requirement that the proper form be used, or in the alternative, waiver of the filing window.²⁷ 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. We conclude that ACCEPT has provided an insufficient basis for a waiver from the general rule and a departure from Bureau precedent on this issue. As noted above, ACCEPT states that using the wrong form was an honest mistake that will have detrimental consequences for the applicants.³¹ The Bureau previously has denied requests for waiver when the applicant asserted a need for waiver based on its own error or misunderstanding of the schools and libraries program's rules.³² Therefore, to the extent that ACCEPT requests a waiver due to its own mistake or misunderstanding of the program rules, we find it has not shown good cause for waiver.

11. It is administratively appropriate for SLD to require applicants to adhere to applicable program rules and application requirements.³³ It is therefore incumbent upon applicants to determine whether their applications are in compliance with program requirements

²⁵ Request for Review.

²⁶ See, e.g., Funding Year 4 FCC Form 471 at Block 6; Funding Year 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."

²⁷ Request for Review.

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 Request for Review at 2.

³² See, e.g., *Request for Review by Scranton School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112318, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 181 (Com. Car. Bur. 2000) at para. 8.

³³ See generally Funding Year 4 Minimum Processing Standards (outlining the manual and online filing requirements for Funding Year 4 FCC Form 471).

prior to filing. The FCC Form 471 application and instructions are funding year specific, and each set of instructions provides item-by-item instructions to the corresponding form.³⁴ The instructions encourage applicants to reference the SLD website, to obtain guidance material from SLD's fax-on-demand service, or to contact SLD's Client Service Bureau for assistance with the application process.³⁵ Specifically, in Funding Year 4, the minimum processing standards for a FCC Form 471 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."³⁶ Because applications may change from year to year, applicants bear the responsibility of determining whether or not the correct form is being used.

12. 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. For Funding Year 4, SLD received over 37,000 applications.³⁷ 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. Finally, we do not believe that it is appropriate to waive the filing window deadline to consider the FCC Form 471 ACCEPT submitted with its SLD appeal on April 13, 2001, as timely filed.³⁸ 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."³⁹ 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 ACCEPT has failed to make a showing warranting relief and, therefore, its Request for Review must be denied.

³⁴ See generally Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (Funding Year 4 FCC Form 471), OMB 3060-0806 (October 2000); Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (Funding Year 3 FCC Form 471), OMB 3060-0806 (September 1999).

³⁵ *Id.*

³⁶ Funding Year 4 Minimum Processing Standards.

³⁷ 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>>.

³⁸ See Request for Review; SLD Appeal Letter.

³⁹ *Id.*

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 July 31, 2001 by ACCEPT Education Collaborative IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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