

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of the
Decision of the
Universal Service Administrator by
St. John Central School
Marietta, Ohio
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-239551
CC Docket No. 02-6

ORDER

Adopted: October 31, 2003 Released: November 3, 2003

By the Wireline Competition Bureau:

1. Before the Wireline Competition Bureau (Bureau) is a Request for Review filed by St. John Central School (St. John), Marietta, Ohio. St. John seeks review of the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), which found that St. John's Funding Year 2001 application for discounts under the schools and libraries universal service mechanism was received outside the Funding Year 2001 filing window. For the reasons set forth below, the Request for Review is denied.

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. 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. Once the applicant has

1 Request for Review of the Decision of the Universal Service Administrator by St. John Central School, CC Docket Nos. 96-45 and 97-21, Request for Review, filed August 9, 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). Previously, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 1999 and ended on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 1999. The funding period that began on July 1, 2000 and ended on June 30, 2001 is now known as Funding Year 2000, and so on.

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 In the FCC Form 471 instructions, SLD has clearly set forth its standards for processing a FCC Form 471 application.⁶ Specifically, the FCC Form 471 instructions state that if a school or library does not provide the information requested, "the processing of your application may be delayed or your application may be returned to you without action."⁷

3. 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.⁸ Section 54.507(c) of the Commission's rules states that fund discounts will be available on a first-come-first-served basis.⁹ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.¹⁰ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. In Funding Year 2001, the window closed on January 18, 2001.¹¹

4. Applicants may file their FCC Form 471 electronically.¹² In order to successfully complete the submission of the FCC Form 471 application, applicants who file electronically must also mail to SLD the Item 21 description of services, and a paper copy of the Block 6 certification, completed, and signed.¹³ A commitment of support is contingent upon the timely filing of the applicant's completed FCC Form 471.¹⁴ Prior to Funding Year 2001, the deadline by which these items had to be received by SLD to be considered within the window was later than the deadline for the filing of the FCC Form 471, so that applicants could file electronically on the last day of the filing window, and mail their certifications and attachments thereafter. However, because in previous years the delivery of a number of applications was significantly delayed by the postal service, SLD, starting in Funding Year 2001, directed that all FCC Forms

⁵ 47 C.F.R. § 54.504(c).

⁶ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (FCC Form 471 Instructions). *See also* 47 C.F.R. § 54.504(c).

⁷ FCC Form 471 Instructions at 2.

⁸ 47 C.F.R. § 54.507(c).

⁹ *Id.*

¹⁰ 47 C.F.R. § 54.507(g).

¹¹ SLD will process in-window applications that have been postmarked by January 18, 2001. *See* SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for Funding Year 4, <<http://www.sl.universalservice.org/reference/471mps.asp>>.

¹² FCC Form 471 Instructions at 4-5.

¹³ Block 6 is the section of the FCC Form 471 where applicants must sign the form and make certifications required under program rules. *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

¹⁴ FCC Form 471 Instructions at 3-6.

471 would be deemed filed when postmarked, rather than when received by SLD.¹⁵ This procedural change protects applicants from excessive mail delays. Consequently, SLD notified all potential applicants that all Block 6 certifications and Item 21 attachments must also be postmarked no later than the close of the filing deadline.¹⁶

5. St. John electronically filed its Funding Year 2001 FCC Form 471 with SLD on January 12, 2001.¹⁷ However, St. John did not mail the signed Block 6 certification page and Item 21 attachments until January 19, 2001.¹⁸ On July 10, 2001, SLD informed St. John that its “application was received . . . after the 2001-2002 filing window closed”¹⁹ St. John then filed the pending Request for Review.

6. In its Request for Review, St. John argues that, by requiring applicants to submit their signed certifications on paper, SLD violated the Electronic Signatures in Global and National Commerce Act (E-Sign Act).²⁰ Specifically, St. John argues that SLD’s practice violates section 101 of the E-Sign Act, codified at 15 U.S.C. § 7001 (hereinafter “section 7001”).²¹ This provision states, in relevant part:

Notwithstanding any statute, regulation, or other rule of law . . . with respect to any transaction in or affecting interstate or foreign commerce -

- (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
- (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

St. John notes that this provision became effective as of October 1, 2000, and thus was effective at the time that St. John filed its application.²²

7. St. John asserts that it submitted an electronic signature in connection with its Block 6, and that section 7001’s prohibition against denying the legal effect of an electronic

¹⁵ See SLD website, What’s New (November 2, 2000) <<http://www.sl/universalservice.org/whatsnew/110200.asp#110200>>.

¹⁶ *Id.*

¹⁷ FCC Form 471, St. John Central School, filed January 12, 2001 (St. John Form 471).

¹⁸ *Id.*; see also Request for Review, at 2.

¹⁹ Postcard from Schools and Libraries Division, Universal Service Administrative Company, to Lori Flesher, St. John Central School, dated July 10, 2001.

²⁰ See Request for Review; Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. § 7001, *et seq.*

²¹ Request for Review, at 3-4; see 15 U.S.C. § 7001.

²² Request for Review, at 3.

signature therefore applies here.²³ We find that St. John's section 7001 argument is insufficient to warrant relief because it does not, even on its face, address St. John's failure to timely file its Item 21 attachments. It is undisputed on the record before us that St. John failed to file the Item 21 attachments within the filing window. St. John's FCC Form 471 therefore was untimely because the Item 21 attachment was not submitted within the filing window.²⁴ Finding no merit to St. John's legal arguments, we affirm the decision of SLD to treat St. John's application as filed outside the Funding Year 2001 filing window.

8. 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 St. John Central School, Marietta, Ohio, on August 9, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

²³ Request for Review, at 3-4. In support of this assertion, St. John argues that, when an applicant who used the electronic filing process in Funding Year 2001 reached the stage of the process for Block 6, the applicant was required to enter the printed name of the person authorized to make the application. Block 6 would then be printed out with the authorized person's name printed on the form in Item 36. See FCC Form 471, Block 6. Under program requirements, the authorized party was then required to sign the Block 6 in Item 34 and submit the certification page for filing. See FCC Form 471 Instructions, at 25-26. St. John asserts that merely by entering the authorized party's name in Item 36, the applicant accomplished an electronic signature. Request for Review, at 4.

²⁴ It is well-established that program deadlines are enforced strictly. See, e.g., *Request for Review by Kings Local 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- Nos. 223454, 228637, CC Dockets No. 96-45 and 97-21, Order, DA 02-891, para. 6 (Com. Car. Bur. rel. April 18, 2002) ("In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of adhering strictly to its filing deadlines.").