

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
)
Application for Review of a Decision by )
the Common Carrier Bureau )
)
King and Queen County Public Schools ) NEC.471.01-19-00.05000968
King and Queen Courthouse, Virginia )
)
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: January 31, 2003

Released: February 4, 2003

By the Commission:

1. Before the Commission is an Application for Review filed by King and Queen County Public Schools (King and Queen), King and Queen Courthouse, Virginia, of a decision of the Accounting Policy Division of the Common Carrier Bureau (Bureau), made on delegated authority. King and Queen seeks review of the Division's decision, denying King and Queen's request for review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). For the reasons set forth below, we deny the Application 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.

1 Application for Review of the Decision of the Common Carrier Bureau by King and Queen County Public Schools, CC Docket Nos. 96-45 and 97-21, Application for Review, filed January 10, 2002 (Application for Review). The Common Carrier Bureau subsequently became the Wireline Competition Bureau pursuant to the Commission's reorganization in March, 2002.

2 See Application for Review; Request for Review by King and Queen County Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., NEC.471.01-19-00.05000968, CC Dockets No. 96-45 and 97-21, Order, DA 01-2796 (Com. Car. Bur. rel. December 4, 2001; erratum rel. December 11, 2001) (Request for Review by King and Queen). Any person aggrieved by an action taken pursuant to delegated authority may file an application requesting review of that action by the Commission. 47 C.F.R. § 1.115(a).

3 47 C.F.R. §§ 54.502, 54.503.

The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all potential competing service providers to review.<sup>4</sup> After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.<sup>5</sup> SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. 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.<sup>6</sup> 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.<sup>7</sup>

4. King and Queen filed an application in Funding Year 2000, which was rejected without review for failure to satisfy SLD's minimum processing standards because King and Queen had omitted the Name of the Billed Entity from Block 1 and, in each of its Block 5 funding requests, had left blank Item 22, the entity or entities receiving service.<sup>8</sup> King and Queen then filed a Request for Review with the Commission. In its Request for Review, King and Queen argued that sufficient information was available on the form for SLD to have discerned King and Queen's identity, and that the Item 22 information was left blank because King and Queen did not believe that it was necessary for them to specify that information.<sup>9</sup>

5. On December 4, 2001, the Bureau found that, under the standards that the Commission established in *Naperville*, the application was correctly rejected.<sup>10</sup> In *Naperville*,

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<sup>4</sup> Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (Year 3 Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

<sup>5</sup> 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Year 3 Form 471).

<sup>6</sup> See, e.g., SLD website, Form 471 Minimum Processing Standards and Filing Requirements for FY3, <<http://www.sl.universalservice.org/reference/471mps.asp>> (*Minimum Processing Standards*).

<sup>7</sup> *Minimum Processing Standards*.

<sup>8</sup> See *Request for Review of King and Queen*, para. 1.

<sup>9</sup> See Letter from Lloyd A. Hamlin, King and Queen County Public Schools, to Federal Communications Commission, filed July 12, 2000 (Request for Review).

<sup>10</sup> *Request for Review by King and Queen*, para. 1; see *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) (*Naperville*).

the Commission determined that SLD should not return an application without consideration for having omitted information required by SLD's minimum processing standards where (1) the request for information is a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by SLD through examination of other information included in the application; and (3) the application is otherwise substantially complete.<sup>11</sup> The Bureau found that King and Queen had not satisfied the first condition, because, although the omitted Item 22 information was a first-time request in Funding Year 3, the omitted Block 1 information was not. The Bureau therefore concluded that the standards for relief from a minimum processing rejection as established by *Naperville* were not satisfied.

6. King and Queen argues that two decisions by the Bureau, *Asociacion de Educacion Privada* and *Methacton School District*, support the conclusion that the Block 1 omission should not be grounds for rejection of the application.<sup>12</sup> King and Queen also notes that SLD adopted different minimum processing standards in Funding Year 2002, under which the omission of Item 1 of Block 1 does not lead to rejection.<sup>13</sup> King and Queen argues that these new Funding Year 5 standards should be applied to its Funding Year 2000 application.<sup>14</sup>

7. King and Queen's application was properly rejected because it omitted Item 22 information, the entity or entities receiving service.<sup>15</sup> This omission is directly governed by the standards that we set out in *Naperville*, discussed above. Here, King and Queen failed to satisfy all of the elements established as grounds for not applying minimum processing standards in *Naperville* because the Item 22 information could not be easily discerned from other information in the application. In *Naperville*, we found that, although the Block 5 funding request at issue did not specify the entities that would receive service, the discount rate requested in the funding request was uniquely attributable to the average discount rate of all of the schools, as calculated on an accompanying Block 4 worksheet.<sup>16</sup> Thus, it was clear that the funding request sought shared services for the district schools. Here, in contrast, the discount rate sought for the request,

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<sup>11</sup> *Naperville*, para. 16.

<sup>12</sup> Application for Review, at 2-3; *Request for Review by Asociacion de Educacion Privada, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-265532, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 17712 (Com. Car. Bur. 2001) (*Asociacion de Educacion Privada*); *Request for Review by Methacton 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-120123, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 16633 (Com. Car. Bur. 2000) (*Methacton School District*).

<sup>13</sup> Application for Review, at 3.

<sup>14</sup> *Id.*

<sup>15</sup> In each Block 5 service funding request, an applicant specifies in Item 22 which entity or group of entities listed in the applicant's Block 4 worksheets will receive the service. In Block 4, an entity (*i.e.*, an eligible school or library) is listed together with its associated discount rate, and a group of entities that will be receiving shared services is listed with the group's average rate. See Year 2000 Form 471.

<sup>16</sup> *Naperville*, para. 13.

80%, is both the district average discount rate and the rate of each of the individual schools.<sup>17</sup> Because the requested discount rate was not uniquely associated with a particular site or group of sites presented in the Block 4 worksheets accompanying the application, SLD could not determine, based on the discount rate, what entity or entities would be receiving the requested services.

8. King and Queen's arguments regarding the applicability of prior Bureau-level decisions and the change in minimum processing standards in Funding Year 2002 only address whether its application should have been rejected due to the omission in Block 1. They do not cure the omission of the Block 5, Item 22 data. Therefore, even if the Block 1 omission does not support rejection, we would still conclude that King and Queen's application was properly rejected under *Naperville* for failure to satisfy minimum processing standards.

9. King and Queen also asserts that SLD has enforced the minimum processing standards inconsistently, contacting applicants for further information in some cases and rejecting the application outright in others. Section 1.115(c) of the Commission's rules provides that "[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass."<sup>18</sup> King and Queen's assertion of inconsistent enforcement was not presented to the Bureau, and it will therefore not be considered.<sup>19</sup>

10. ACCORDINGLY, IT IS HEREBY ORDERED that the Application for Review filed by King and Queen County Public Schools, King and Queen Courthouse, Virginia, on January 8, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>17</sup> FCC Form 471, King and Queen County Public Schools, NEC 471.01-19-00.050000968, at Block 4.

<sup>18</sup> 47 C.F.R. § 1.115(c).

<sup>19</sup> See *In re Crawford*, 17 FCC Rcd 2014, para. 10 (2002).