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August 9, 2001

DAVID A. O'CONNOR
202-828-1889

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VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

Re: St. John Central School
Request for Review
CC Docket Nos. 96-45, 97-21
Billed Entity No. 50794
Form 471 Application No. 239551

Dear Ms. Salas:

Transmitted herewith, on behalf of St. John Central School ("St. John"), are an original and four (4) copies of its Request for Review of the decision of the Schools and Libraries Division ("SLD") in the above-captioned proceeding. For the reasons set forth in the Request for Review, St. John is requesting that the Commission direct SLD to accept St. John's application as having been filed during the SLD's January 2001 filing window.

To expedite the filing of this application, the Declaration page included with this filing is a facsimile. The original Declaration will be forwarded under separate cover as soon as it is received by this office.

An extra copy of this filing is enclosed. Please date-stamp the extra copy and return it to the courier for return to me.

No. of Copies rec'd 0+4
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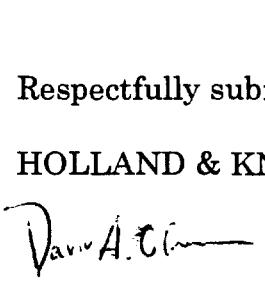
Should you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP



David A. O'Connor
Counsel for St. John Central School

Enclosure

cc: Universal Service Administrative Company
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

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AUG 9 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of Request for Review by	)	
St. John Central School	)	File No. SLD-_____
of Decision of Universal Service Administrator	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Changes to the Board of Directors of the National Exchange Carriers Association, Inc.	)	CC Docket No. 97-21

To: The Common Carrier Bureau

Re: St. John Central School, Billed Entity Number 50794
Form 471 Number 239551, Funding Year 4, 7/101/2001- 6/30/2002

Request for Review

St. John Central School ("St. John"), by its attorneys and pursuant to Sections 54.719(c) and 54.721 of the Commission's rules, 47 C.F.R. §§ 54.719(c), 54.721, hereby requests a review of the decision of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company regarding St. John's Year Four Funding Request (Form 471 Application Number 239551). For the reasons set forth below, the Commission should direct the SLD to accept St. John's application as having been filed during the SLD's filing window.

I. STATEMENT OF FACTS.

St. John's Form 471 application was filed electronically on January 12, 2001. As part of the application, Ms. Lori Flesher, Teacher Representative for St. John,

typed her name in the "Certification and Signature" section of Block 6.[1] The SLD confirmed electronic receipt of the application on January 12, 2001.[2] However, Ms. Flesher did not mail the original signature page to SLD until January 19, 2001, one day after the filing window closed.

On July 10, 2001, SLD sent a postcard to St. John indicating that the application was received after the January 18 window closed.[3] It appears that SLD's sole reason for making such a determination was that the printed signature page was not received until one day after the filing window closed. SLD indicated that because the application was considered late-filed, the application would be held pending final processing of those applications filed during the window. SLD further stated that it had not yet determined whether late-filed applications would be considered for discount funding. Applications that are received outside of the filing window are subject to separate funding priorities under the Commission's rules.[4]

Because it is highly unlikely that applications that are considered to have been received outside the filing window will result in the receipt of any E-rate funding, and because SLD erred in determining that St. John's application was late-filed, St. John now files this timely appeal of the SLD decision to the Commission.

II. The E-Sign Act Prohibits SLD from Requiring a Paper Signature Page.

St. John submits that the SLD is prohibited from rejecting the St. John application for failure to submit an original signature during the filing window, and

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[1] *See* Exhibit 1 attached hereto.
[2] *See id.*
[3] *See* Exhibit 2 attached hereto.

in fact is prohibited from requiring a paper signature page at all. The basis for this assertion is the E-Sign Act, which was signed into law last year.

On June 30, 2000, President Clinton signed into law the Electronic Signatures in Global and National Commerce Act, S. 761 ("E-Sign Act"). The E-Sign Act went into effect on October 1, 2000. The SLD's Form 471 for Year 4 is dated October 2000 and therefore is subject to the E-Sign Act.

The E-Sign Act states, in pertinent part:

Section 101. General Rule of Validity.

(a) IN GENERAL. - 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.

Thus, the Act specifically provides that applications can be filed electronically in lieu of being filed in paper form, and that electronic signatures cannot be denied legal effect simply because they were not filed in paper format.

In this instance, SLD specifically requested applicants to complete the "Certification and Signature" block as part of the electronic Form 471 application.

---

[4] 47 C.F.R. § 54.507(g).

Ms. Flesher, St. John's representative, did so and filed the electronic application during the filing window. Because St. John's electronic Form 471 contained the legally binding electronic signature of St. John's representative, Ms. Flesher, St. John submits that SLD was prohibited under the E-Sign Act from requiring St. John to subsequently submit a signature page in paper form.[5] Accordingly, St. John cannot be punished for failure to comply with an impermissible SLD rule. The Commission should therefore direct SLD to deem St. John's application as having been timely received during the filing window.[6]

In addition, Section 104(c) of the E-Sign Act prohibits state and federal agencies from imposing or reimposing "any requirement that a record be in a tangible printed or paper form." The only exception to this rule is if there is a "compelling government interest relating to law enforcement or national security" and imposing a paper requirement is essential to attaining that interest.[7]

Clearly in this situation there is no such compelling government interest relating to law enforcement. First, SLD is not a law enforcement agency and lacks law enforcement powers. Second, and more importantly, the prevention of fraud is not a sufficient justification for requiring original signature pages, because such a justification would undermine the very purpose of the E-Sign Act. The Act is

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[5] Furthermore, there is some evidence that the Administrative Procedure Act requires the instructions to Form 471 to be published in the *Federal Register* in order to be effective. St. John questions the validity of the SLD's original signature requirement if the instructions to Form 471 were not published in the *Federal Register*.

[6] This case should be distinguished from previous Commission decisions that were decided prior to the enactment of the E-Sign Act. *See, e.g., Application of Bruggemeyer Memorial Library, Order*, 14 FCC Rcd. 13,170 (1999). In that case, the Commission denied a request for review by an applicant who filed its Form 471 electronically and faxed the signature page to the SLD but did not submit the original signature page to the SLD until after the filing window closed. St. John submits that the E-Sign Act invalidates the rationale underpinning the *Bruggemeyer* decision.

designed to legitimize electronic signatures; if Congress intended the prevention of fraud to be a compelling interest justifying an original signature page, Congress would not have enacted the law in the first place.

Finally, it is worth noting that pursuant to former Section 64.1160(b) of the FCC's rules, 47 C.F.R. § 64.1160(b), the FCC required long distance carriers to obtain the written signature of new customers. In September 2000, in reaction to the E-Sign Act, the FCC began permitting electronic signatures without the need for the submission of original signatures.[8] As an agent of the FCC, SLD should not maintain stricter standards than the FCC itself.

II. Nothing of Value Is Gained by the Original Signature Page Requirement.

As a separate matter, St. John submits that the SLD's paper submission requirement serves no useful purpose and should not be required. By inserting a representative name and submitting the Form 471 application electronically, the signatory for St. completed the "Certification and Signature" portion of the form. The signatory thus certified that the information contained in the application was accurate and indeed the school was thus bound by that certification. Therefore, nothing is gained by a redundant requirement that applicants print out and submit a paper signature to the SLD.

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[7] E-Sign Act, § 104(b)(3)(B).

[8] *See* 47 C.F.R. § 64.1120(c)(1); *see also Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, FCC 00-255 (rel. Aug. 15, 2000) (Letters of Agency may be submitted electronically, without any written original signature requirement). In the decision, the FCC specifically cites as authority the E-Sign Act.

Importantly, FCC rules do not require the submission of a paper signature page in addition to the certifications made in electronic filings. Indeed, out of *all* of the available electronic applications that can be submitted to the FCC, *not one form* requires the applicant to follow up with a signed original. The SLD should not have a higher standard than the agency by whom it was established.

III. SLD Should Not Reject Applications Based on *De Minimis* Errors.

Finally, St. John submits that the kind of inadvertent procedural discrepancy at issue here should not be the sole basis for depriving a school of the funds Congress intended it to obtain through the E-Rate program. The St. John application was a perfectly good application with the minor exception that its paper signature was not submitted at the same time as its electronic counterpart. The benefits of the E-Rate program should not be withheld due to a *de minimis* noncompliance with an unjustified and irrational procedural rule.

V. Conclusion.

In sum, the Commission should direct SLD to deem St. John's application as having been properly filed during the filing window.

Respectfully submitted,

ST. JOHN CENTRAL SCHOOL

Mark J. Palchick
David A. O'Connor
HOLLAND & KNIGHT LLP
2099 Pennsylvania Ave., N.W., Suite 100
Washington, DC 20006
(202) 955-3000

Its Attorneys

Dated: August 9, 2001

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Request for Reviewby	)	
St. John Central School	)	File No. SLD-_____
of Decision of Universal Service Administrator	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Changes to the Board of Directors of the National Exchange Carriers Association, Inc.	)	CC Docket No. 97-21

To: The Common Carrier Bureau

Re: St. John Central School
Billed Entity Number 50794
Form 471 Number 239551
Funding Year 4, 7/101/2001- 6/30/2002

Supporting Declaration

I, Lori Flesher, hereby swear under penalty of perjury of the laws of the United States that I have reviewed the foregoing Request for Review, and that all statements of fact contained within the Request for Review, except those for which official notice may be taken, are true and correct to the best of my personal knowledge.

Executed this 8th day of August, 2001.

Lori Flesher

Lori Flesher
Teacher Representative
St. John Central School

CERTIFICATE OF SERVICE

I, Laura Ledet, an employee of Holland & Knight LLP, hereby certify that on August 9, 2001, I caused copies of the foregoing Request for Review to be delivered via first-class mail, postage prepaid to the following:

Universal Service Administrative Company
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Laura Ledet

Laura Ledet

EXHIBIT 1

Schools and Libraries Universal Service Program
Services Ordered and Certification Form 471
Application Display

Block 2 & 3 | Block 4 | Block 5 | Block 6 | Misc

471 Application No: 239551 | **Funding Year: 07/01/2001 - 06/30/2002** | **Appl. Postmark Date: 01/12/2001**

Applicant's Form Identifier: y4 internet

Block 1: Billed Entity Information

Billed Entity Number: 50794
Applicant Name: ST JOHN SCHOOL
Address: RR Box 383
City: MARIETTA **State:** OH **Zip:** 45750 9789
Phone: 740-896-2697 **Ext:**
Fax Number: --
E-mail: flesher@ee.net
Contact Name: Lori A. Flesher
Address: RR 2 BOX 383
City: Marietta **State:** OH **Zip:** 45750 9789
Contact Phone: 740-896-2697 **Ext:**
Contact Fax: -- **Ext:**
E-mail: flesher@ee.net
Contact Mode: PHONE
Alternate Contact Info.: 740/373-2877
Type of Application: SCHOOL **Ineligible Orgs:** N

Previous | Display Entire Application

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Schools and Libraries Division

Schools and Libraries Universal Service Program
Services Ordered and Certification Form 471
Application Display

Block 1: Billed Entity Information

Applicant's Form Identifier: y4 internet
471 Application Number: 239551 **Funding Year:** 07/01/2001 - 06/30/2002 **Billed Entity Number:** 50794

Name: ST JOHN SCHOOL
Address: RR Box 383
City: MARIETTA **State:** OH **Zip:** 45750 9789
Phone: 740-896-2697 **Ext:**
Fax: --
E-mail: flesher@ee.net

Contact Name: Lori A. Flesher
Address: RR 2 BOX 383
City: Marietta **State:** OH **Zip:** 45750 9789
Contact Phone: 740-896-2697 **Ext:**
Contact Fax: -- **Ext:**
E-mail: flesher@ee.net
Contact Mode: PHONE
Alternate Contact Info.: 740/373-2877

Type of Application: SCHOOL **Ineligible Orgs:** N

Block 3: Impact of Services Ordered in THIS Application

Number of students to be served: 113 **Number of library patrons to be served:**

SERVICE DESCRIPTION	BEFORE ORDER	AFTER ORDER
f. Direct connections to the Internet: How many before and after your order?	1	1
g. Direct connections to the Internet: Highest speed before and after your order?	1.5mb	1.5mb
h. Internet access(for schools): How many rooms have Internet access before and after your order?	7	7
j. Internet Access: How many computers (or other devices) with Internet access before and after your order?	5	14

Block 4: Worksheets

Worksheet A No: 260841 **Student Count:** 113

Weighted Product (Sum. Column 8): 45.2

Shared Discount: N/A

1. School Name: ST JOHN SCHOOL
2. Entity Number: 50794
3. Rural/Urban: Urban
4. Student Count: 113
5. NSLP Students: 20
6. NSLP Students/Students: 17.699%
7. Discount: 40%
8. Weighted Product: 45.2

Block 5: Discount Funding Request(s)

FRN: 567274	
11. Category of Service: Internet Access	**12. 470 Application Number:** 612340000319480
13. SPIN: 143022774	**14. Service Provider Name:** Council of Governments, SE Ohio Voluntary Ed. Coop.
15. Contract Number: NPSJ	**16. Billing Account Number:** NPSJ
17. Allowable Contract Date: 12/29/2000	**18. Contract Award Date:** 01/12/2001
19a. Service Start Date: 07/01/2001	**19b. Service End Date:**
20. Contract Expiration Date: 06/30/2004	
21. Attachment #: 1	**22. Block 4 Entity Number:** 50794
23a. Monthly Charges: $.00	**23b. Ineligible monthly amt.:** $.00
23c. Eligible monthly amt.: $0.00	**23d. Number of months of service:** 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): $0.00	
23f. Annual non-recurring (one-time) charges: $11,800.00	**23g. Ineligible non-recurring amt.:** $.00
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): $11,800.00	
23i. Total program year pre-discount amount (23e + 23h): $11,800.00	
23j. % discount (from Block 4): 40	
23k. Funding Commitment Request (23i x 23j): $4,720.00	

Block 6: Certifications and Signature

24a. Schools: Y
24b. Libraries or Library Consortia: N

26a. Individual Technology Plan: N
26b. Higher-Level Technology Plan(s): Y
26c. No Technology Plan Needed:

27a. Approved Technology Plan(s): Y
27b. State Approved Technology Plan: N
27c. No Technology Plan Needed:

36. Printed Name of Authorized Person: Lori A. Flesher
37. Title or Position of Authorized Person: teacher
38. Telephone Number of Authorized Person: (740) 896-2697 ext.

<< Previous

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EXHIBIT 2

YOUR FORM 471 HAS BEEN RECEIVED – BUT AFTER THE JANUARY 18 WINDOW CLOSED

We're sending this card to thank you for your recent Form 471 application but to let you know that your application was received by the Schools and Libraries Division/USAC after the 2001-2002 filing window closed at 11:59 p.m. ET on January 18, 2001.

We are holding your application pending final processing of those applications which were received within the filing window. It has not yet been determined whether late-filed Form 471 applications will be considered for discount funding.

For more information about the processing of 2001-2002 applications, or about plans for the 2002-2003 application process, please visit our web site at www.sl.universalservice.org.

Schools and Libraries Division
Universal Service Administrative Company

meeting 1/12 - mailed 1/19

USAC

Schools and Libraries Division
P.O. Box 7026
3833 Greenway Drive
Lawrence, KS 66044-7026

Lori Flesher
ST JOHN SCHOOL
RR 2 BOX 383
Marietta, OH
45750-9789

MAILING DATE:
July 10, 2001

[redacted] RATE APPLICANTS
[redacted] Identifier: y4 internet
[redacted]

Attn: Rob Lindsay