LAW OFFICES

SHOOK, HARDY & BACON

DOCKET FILE COPY ORIGINAL

BUENOS AIRES
GENEVA
HOUSTON
KANSAS CITY
LONDON

HAMILTON SQUARE
600 14TH STREET, NW, SUITE 800
WASHINGTON, D.C. 20005-2004
TELEPHONE (202) 783-8400 ▪ FACSIMILE (202) 783-4211

MIAMI
OVERLAND PARK
SAN FRANCISCO
TAMPA
ZURICH

Ramsey L. Woodworth
202-783-8400
rwoodworth@shb.com

August 24, 2001

RECEIVED

AUG 24 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, D.C. 20554

Att: Common Carrier Bureau

Re: Request for Review by Consorcio de Escuelas y Bibliotecas de Puerto Rico of Decisions of Universal Service Administration filed on August 23, 2001.
CC Docket No. 96-45 and CC Docket No. 97-21

Dear Ms. Salas:

On August 23, 2001, we filed with the Commission a "Request for Review and Waiver" on behalf of the Consorcio de Escuelas y Bibliotecas de Puerto Rico (CEBPR) in the above-referenced proceedings. Subsequent to this filing, a typographical error was noted in footnote number 3, which due to a word processing error dropped most of the text of the footnote. This letter is to request the Commission to substitute the enclosed corrected pages 4, 5, and 6 of the document for the pages originally included in the document. The substitution of three pages is necessary as, in correcting footnote 3, the pagination for pages 4, 5, and 6 changed.

If you have any questions regarding this matter, please contact the undersigned.

Respectfully submitted,

Ramsey L. Woodworth

Enclosure

cc: Mark G. Seifert (via hand-delivery)
SLD/USAC (via U.S. Mail)

No. of Copies rec'd 0+4
List ABCDE

66235.1

and accompanying Instructions. Accordingly, CEBPR was not aware of the changed filing requirement.

As hereinafter shown, SLD's attempt to impose this more burdensome and stringent filing requirement only through informal and unofficial web site publications that were not approved by the Office of Management and Budget ('OMB") violates the Paperwork Reduction Act. As the Form 471 form itself notes, "an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number." See Block 6, Notice to Individuals. The scope of the "currently valid OMB control number" for Form 471 encompasses only the actual form and accompanying FCC Instructions which were followed by CEBPR in this case. Absent OMB approval, more burdensome and stringent information filing requirements lawfully cannot be imposed by SLD. Moreover, SLD's rejection of Applications that were properly filed electronically contravened the Electronic Signatures in Global and National Commerce Act and cannot be sustained for this reason.

II. SLD'S ATTEMPT TO IMPOSE A NEW AND MORE STRINGENT FILING REQUIREMENT REGARDING THE SUBMISSION OF PAPER DOCUMENTS WAS NOT ONLY INADEQUATE TO GIVE PROPER NOTICE TO APPLICANTS THAT SLD HAD CHANGED ITS PROCEDURES, BUT IT ALSO VIOLATES THE PAPERWORK REDUCTION ACT.

The requirement that applicants send hard copies of the Block 6 Certification and Item 21 attachments by the closing of the filing window is a new requirement for program Year 4. While it was noted by SLD in the context of certain informal web site documents,[3] the new and more

[3] Form 471 Minimum Processing Standards and Filing Requirements for FY4, Filing Requirements for Forms 471 Filed Manually and Online, Items 1 and 3; Tips For Completing Your Form 471, Tip 2; and Pitfalls to Avoid in Filing Form 471, Items 1 and 3. None of these documents imposing the additional and more restrictive filing

stringent requirements was not set forth on any form or set of Instructions approved by OMB. Both the paper and electronic versions of FCC Form 471, as well as the FCC Instructions to Form 471 at no time advised Applicants of a date or deadline by which the paper documents had to be mailed or filed with the SLD. The OMB approved Instructions for Form 471, a copy of the pertinent parts which is attached (Exhibit 3), only specifies the following requirements:

> You may complete and submit the Form 471 by filing the Form electronically online at the SLD web site, <www.sl.universalservice.org>. If filing your Form 471 electronically, you must also complete and mail to the SLD the following documents in order to successfully complete the submission of your Form 471 application within the application window:
>
> - The Item (21) description(s) of services, and
> - A paper copy of the Block 6 Certification, completed and signed with an original ink signature ...

Similarly, the "Reminders" section on FCC Form 471 Instructions provides that, "If you are filing electronically, you must also complete and sign with an original ink signature a paper copy of your completed Block 6 Certification, your Item (21) Description of Services, and any other attachments in order to successfully complete the submission of your Form 471 within the application window" (Exhibit 4). Thus, while requiring the paper submission of these documents "in order to successfully complete the submission of your Form 471 within the application window," the OMB approved FCC Instructions at no point specified a specific time deadline for the submission of the paper documents. Furthermore, the instructions for the filing of the paper documents displayed during the electronic filing process at no time advised Applicants of a date or deadline by which the paper documents had to be mailed or filed with the SLD (*See* attachment Exhibit 5). This would have been the most obvious place to inform applicants of the time by which the paper documents had to be received by SLD. Instead, the

---

requirement was approved by OMB under the Paperwork Reduction Act. Had they been, they would have born the OMB Control Number, as required by 44 U.S.C. § 3507(a)(1)(3).

instructions merely provided the address to send the paper documents, specifying no deadline whatsoever. Based on this guidance, it was CEBPR's understanding that the SLD only required that the paper copy of Block 6 and Item 21 be promptly submitted by mail or other delivery service following electronic filing.

SLD's attempt to impose and enforce the new and more stringent filing requirement is in clear violation of the Paperwork Reduction Act of 1995 ("PRA").[4] The PRA provides in pertinent part:

> An agency may not make a substantive or material modification to a collection of information after such collection has been approved by the Director [of the Office of Management and Budget], *unless the modification has been submitted to the Director for review and approval* under this subchapter.[5]

A new and more restrictive filing deadline for the paper documents is a substantive and material modification of the OMB approved filing requirements set forth on FCC Form 471 and the accompanying Instructions, particularly in this case because it has been the determiner of whether the funding requests will be considered at all by the SLD. In this specific instance, schools and libraries in Puerto Rico are being denied the opportunity to obtain funding for educational solely purposes because of this new filing requirement. Under the PRA, however, a person is not required to respond to a collection of information unless it has been approved by OMB and displays a currently valid OMB control number.[6] Accordingly, as the new requirement imposed by SLD was not included on the Form 471 and accompanying Instructions as approved by OMB, the failure to comply with it simply cannot be held against the applicant and used as the sole basis to reject the application.

---

[4] Pub. L. No. 104-13, 44 U.S.C. § 3501, *et seq.*

[5] 44 U.S.C.A. § 3507(h)(3) (1991 & Supp. 2001) (emphasis added).

[6] FCC Form 471, Block 6.