

Before the  
Federal Communications Commission  
Washington, DC 20554

2001 OCT -5 A 11:39

In the Matter of )  
)  
Request for Review of the )  
Decision of the )  
Universal Service Administrator by )  
)  
New Hartford Central School District )  
New Hartford, New York )  
)  
Federal-State Joint Board on )  
Universal Service )  
)  
Changes to the Board of Directors of the )  
National Exchange Carrier Association, Inc. )

File No.SLD- 007628

CC Docket No. 96-45 ✓

CC Docket No. 97-21

RECEIVED

ORDER

Adopted: October 31, 2001

Released: November 2, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) of the Federal Communications Commission has under consideration a Request for Review from New Hartford Central School District (New Hartford), New Hartford, New York.<sup>1</sup> New Hartford challenges the denial of its application for discounts in Funding Year 1 of the schools and libraries universal service support mechanism, by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). For the reasons set forth below, we grant New Hartford's Request 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.<sup>2</sup> 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

<sup>1</sup> Letter from James Dieso, New Hartford Central School District, to Federal Communications Commission, filed March 10, 2000 (Request for Review); *see also* Letter from James Dieso, New Hartford Central School District, to Schools and Libraries Division, dated March 18, 1999. On appeal to the Commission, New Hartford alleges that SLD misapplied our rules. New Hartford also requests a waiver of our rules to the extent necessary to remedy the harm that it asserts occurred as a result of the misapplication of our rules. We refer to New Hartford's pleading as a Request for Review throughout this Order.

<sup>2</sup> 47 C.F.R. §§ 54.502, 54.503.

technological needs and the services for which it seeks discounts.<sup>3</sup> 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.<sup>4</sup> In the Funding Year 1 FCC Form 470 and 471 instructions, SLD has clearly set forth its standards for processing FCC Form 470 and 471 applications.<sup>5</sup> Specifically, the FCC Form 470 instructions state that, "Block 6 requires you to certify certain information to ensure that only eligible entities receive support under the universal service discount mechanism."<sup>6</sup>

3. The record shows that New Hartford submitted a FCC Form 470 on March 12, 1998.<sup>7</sup> On March 21, 1998, SLD informed New Hartford that its FCC Form 470 application did not meet SLD's minimum processing standards because its FCC Form 470 Block 6 signature certification was photocopied.<sup>8</sup> Subsequently, attached to a letter dated March 24, 1998, New Hartford resubmitted the signature block of its FCC Form 470 with an original handwritten signature.<sup>9</sup> SLD posted New Hartford's FCC Form 470 for competitive bidding on March 30, 1998, thus creating an allowable contract date of April 27, 1998.<sup>10</sup> SLD received New Hartford's manually submitted Funding Year 1 FCC Form 471 on April 28, 1998, outside the Funding Year 1 filing window that closed on April 15, 1998.<sup>11</sup> On March 15, 1999, SLD sent New Hartford a letter stating that its FCC Form 471 was received outside of the filing window.<sup>12</sup>

4. On March 24, 1999, New Hartford appealed SLD's letter that stated that its FCC Form 471 was filed outside of the filing window because SLD improperly delayed posting of

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<sup>3</sup> 47 C.F.R. § 54.504(b)(1), (b)(3).

<sup>4</sup> 47 C.F.R. § 54.504(c).

<sup>5</sup> Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 470), OMB 3060-0806 (December 1997) (Funding Year 1 FCC Form 470 Instructions); Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 1997) (Funding Year 1 FCC Form 471 Instructions).

<sup>6</sup> FCC Form 470 Instructions, at 12.

<sup>7</sup> FCC Form 470, New Hartford Central School District, filed March 12, 1998.

<sup>8</sup> Universal Service Administrative Company, Schools and Libraries Division, Program Integrity Assurance (PIA) Log, New Hartford Central School District, dated March 23, 1998 (showing that PIA contacted New Hartford by telephone on March 18, 1998 and March 21, 1998 to get an original FCC Form 470 signature certification).

<sup>9</sup> FCC Form 470, New Hartford Central School District, filed March 30, 1998.

<sup>10</sup> *Id.*

<sup>11</sup> In Funding Year 1 the filing window closed on April 15, 1998. *See generally* Universal Service Administrative Company (USAC), Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>>; *see also* FCC Form 471, New Hartford Central School District, filed April 28, 1998.

<sup>12</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to New Hartford Central School District, dated March 15, 1999 (stating that New Hartford's FCC Form 471 could not be processed because it was outside of the filing window).

New Hartford's FCC Form 470.<sup>13</sup> New Hartford requested that SLD reconsider its decision to classify New Hartford's FCC Form 471 as a post window filing.<sup>14</sup> SLD issued an Administrator's Decision on Waiver Request letter on February 15, 2000, stating that SLD was not authorized to issue a decision regarding New Hartford's request that the filing window be waived.<sup>15</sup> SLD directed New Hartford to seek relief from the Commission.<sup>16</sup> Subsequently on March 10, 2000, New Hartford filed a Request for Review with the Commission.<sup>17</sup>

5. In support of its Request for Review, New Hartford argues that due to SLD's minimum processing standards, it was unable to complete its FCC Form 471 before the April 15, 1998 filing window.<sup>18</sup> For the reasons stated below, we grant New Hartford's Request for Review because we conclude that a photocopied signature constitutes a valid signature certification under FCC rules and that SLD improperly delayed posting New Hartford's FCC Form 471 application.

6. The Commission's rules authorize SLD to establish and implement filing periods and program standards for FCC Form 471 applications and minimum processing standards for the signature certification. We note that the signature certification is fundamental to the administration of the schools and libraries program. SLD relies on the signature certification to establish the authority of the signer to represent the applicant. Signature certifications on the FCC Form 470 ultimately satisfy the program's policy objective of binding the applicants to the program requirements. Therefore, we find that the original signature certification requirement is essential in protecting the program from fraud and waste, serves as an additional means of holding applicants accountable for their representations, and assists in the efficient administration of the program.

7. Based on the facts before us, we find that New Hartford's initially submitted FCC Form 471 with a photocopied signature was made with the intent to certify its FCC Form 471. New Hartford initially submitted a FCC Form 470 with a photocopied signature certification. It is settled under federal and common law that when a person attaches his name or causes it to be attached to a document with the intention of signing it, the document is regarded as "signed" in writing.<sup>19</sup> It is also well settled that a signature may be affixed by writing by hand, printing, stamping, or by various other means.<sup>20</sup> A printed name on an instrument that is intended to have

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<sup>13</sup> SLD Appeal, at 1

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

<sup>15</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to New Hartford Central School District, dated February 15, 2000 (Administrator's Decision on Waiver Request).

<sup>16</sup> *Id.*

<sup>17</sup> Request for Review, at 1.

<sup>18</sup> *Id.*

<sup>19</sup> *Denunzio Fruit Co. v. Crane*, 79 F. Supp. 117, 128 & n.16 (1948); *United States v. Tasher*, 453 F.2d 244 (10th Cir. 1972).

<sup>20</sup> *Carna v. Bessemer Cement Co.*, 558 F. Supp. 706, 708 (1983); 80 C.J.S. *Signatures* § 7 (1953).

the force of a signature is valid and thus will have the intended force and effect as though the name were written in the person's own handwriting.<sup>21</sup> The Uniform Commercial Code (UCC) definition of a signature includes "any symbol executed or adopted by a party with a present intention to authenticate a writing."<sup>22</sup> We find these precedents instructive in our determination that New Hartford's stamped signature was a signature made with the intent to certify its FCC Form 470 application. In the present case, we conclude that a photocopied signature is a binding act that signifies the intent of the party to be bound by the program rules. Based on this analysis, a photocopied signature meets the minimum processing standard for an original ink signature.

8. New Hartford also requests that we waive the filing window deadline to allow SLD to process its application, thereby according it the same priority as applicants that filed during the window.<sup>23</sup> Our review of the record reveals that a delay by SLD in posting New Hartford's FCC Form 470 occurred because SLD improperly concluded New Hartford had failed to meet minimum processing standards. The Administrator's error resulted in a circumstance that essentially forced New Hartford to choose between (1) complying with the 28-day waiting period required by the Commission's competitive bidding rules and, as a result, filing outside the window, and (2) filing its FCC Form 471 within the filing window in contravention of the 28-day waiting period requirement. Faced with this choice, New Hartford chose to wait 28 days and file outside the filing window.<sup>24</sup> In previous cases, the Bureau waived the 28-day waiting period when SLD delayed posting of an applicant's FCC Form 470 that resulted in the applicant's failure to timely file its FCC Form 471 within the filing window.<sup>25</sup> The record demonstrates that SLD's actions led New Hartford to file an out of window FCC Form 471. We find it appropriate to waive the filing window deadline for Funding Year 1 for New Hartford.

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<sup>21</sup> *Id.* at 708. For additional support, see *Denunzio Fruit Co. v. Crane*, 79 F. Supp. 117, 128 (1948) (citing *Smith v. Greenville County*, 188 S.C. 349, 199 S.E. 416, 419) ("A signature may be written by hand, printed, stamped, typewritten, engraved, photographed, or cut, from one instrument and attached to another, and a signature lithographed on an instrument by a party is sufficient for the purpose of signing it; it being immaterial with what kind of instrument a signature is made.").

<sup>22</sup> Uniform Commercial Code, § 21-2 (2d ed. 1980).

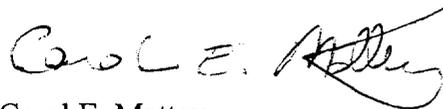
<sup>23</sup> Request for Review, at 1.

<sup>24</sup> FCC Form 471, New Hartford Central School District, filed April 28, 1998.

<sup>25</sup> *Council Bluffs Community Schools*, CC Docket Nos. 96-45 and 97-21, Order, DA 00-1909 (rel. August 22, 2000); see also *Runnemedede Public Schools*, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2957 (rel. December 21, 1999).

9. 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 March 10, 2000 by New Hartford Central School District, New Hartford, New York IS GRANTED and this matter is remanded to USAC for further processing.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey  
Deputy Chief, Common Carrier Bureau