

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMM

In the Matter of
Request for Review of the Decision of the
Universal Service Administrator by
Notre Dame High School
Riverside, California
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.

File No. SLD-132776

CC Docket No. 96-45

CC Docket No. 97-21

ORDER

Adopted: January 17, 2002

Released: January 18, 2002

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Notre Dame High School (Notre Dame), Riverside, California, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). Notre Dame seeks review of SLD's denial of its application for discounts under the schools and libraries universal service support mechanism. For the reasons set forth below, we grant Notre Dame's Request for Review and we remand Notre Dame's application to SLD for further processing in accordance with this Order.

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 SLD a completed FCC Form 470, in which the applicant sets forth its technological needs and

1 Letter from Lydia Dashkovitz, Notre Dame High School, to Federal Communications Commission, filed August 15, 2000 (Request for Review).

2 Id. 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).

3 47 C.F.R. §§ 54.502, 54.503.

the services for which it seeks discounts.<sup>4</sup> Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>5</sup> This information is generally provided in Block 5 of FCC Form 471.<sup>6</sup> Among other information, Block 5 requires the applicant to indicate the name of the service provider, the type of service or product for which support is sought, the award and expiration dates, and the estimated total annual pre-discount cost.<sup>7</sup> Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the applicant is eligible.<sup>8</sup>

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.<sup>9</sup> Section 54.507(c) of the Commission's rules states that fund discounts will be available on a first-come-first-served basis.<sup>10</sup> Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.<sup>11</sup> In Funding Year 2 the filing window closed on April 6, 1999.<sup>12</sup> However, SLD announced that it would consider FCC Forms 471 applications for Funding Year 2 that were received by SLD by March 31, 2000.<sup>13</sup>

4. Notre Dame filed its FCC Form 471 with SLD on March 12, 1999, seeking discounts for Internet access (Application 1).<sup>14</sup> On August 17, 1999, SLD approved Notre Dame's funding request in Application 1.<sup>15</sup> On September 10, 1999, Notre Dame submitted a request for

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<sup>4</sup> 47 C.F.R. § 54.504 (b)(1), (b)(3).

<sup>5</sup> 47 C.F.R. § 54.504(c).

<sup>6</sup> See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471), Block 5.

<sup>7</sup> *Id.*

<sup>8</sup> 47 C.F.R. § 54.504(c).

<sup>9</sup> 47 C.F.R. § 54.507(c).

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

<sup>11</sup> 47 C.F.R. § 54.507(g).

<sup>12</sup> See SLD's website, What's New at SLD (February 19, 1999), at <<http://www.sl.universalservice.org/whatsnew/021999.asp>>.

<sup>13</sup> See SLD's website, What's New at SLD (March 20, 2000), at <<http://www.sl.universalservice.org/whatsnew/032000.asp>>. The March 31, 2000 filing window deadline shall be hereinafter referred to as the "Second Filing Window."

<sup>14</sup> FCC Form 471, Notre Dame High School, Application Number 132776, filed March 12, 1999.

<sup>15</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lydia Dashkovitz, Notre Dame High School, dated August 17, 1999 (Funding Commitment Decision Letter).

a service substitution.<sup>16</sup> On January 12, 2000, Notre Dame filed a Service Provider Identification Number (SPIN) change request for Application 1.<sup>17</sup> SLD treated the service substitution and SPIN change requests as an appeal.<sup>18</sup>

5. Pursuant to communications with SLD, on March 2, 2000, Notre Dame filed a new FCC Form 471, reflecting its service substitution and SPIN change requests (Application 2).<sup>19</sup> In filing Application 2, Notre Dame used a photocopy of the Block 6 Certification and Signature page from its Application 1. Thus, Application 2 did not have an original signature.

6. On April 24, 2000, SLD issued a decision with respect to the service substitution and SPIN change request for Application 1. SLD informed Notre Dame that additional funding requests beyond those included in the original FCC Form 471 could only be considered if included in a new FCC Form 471.<sup>20</sup> SLD also informed Notre Dame that its new FCC Form 471 (Application 2) had been forwarded to the wrong address at SLD and provided the correct mailing address.<sup>21</sup> Notre Dame forwarded Application 2 to the address listed in the Administrator's Decision on Appeal.<sup>22</sup> The application was received by SLD on May 15, 2000, and given the following file number: NEC.471.05-15-00.32800001 (Application 3).<sup>23</sup>

7. By letter dated July 14, 2000, SLD informed Notre Dame that Application 2 would not be processed because it did not meet Minimum Processing Standards.<sup>24</sup> Specifically, SLD explained that the FCC Form 471 did not contain an original signature, rather the signature was a copy.<sup>25</sup> Subsequently, by letter dated July 19, 2000, SLD also rejected Application 3.<sup>26</sup> In this

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<sup>16</sup> Letter from Lydia Dashkovitz, Notre Dame High School, to Schools and Libraries Division, Universal Service Administrative Company, filed September 10, 1999.

<sup>17</sup> Letter from Lydia Dashkovitz, Notre Dame High School, to Schools and Libraries Division, Universal Service Administrative Company, filed January 12, 2000.

<sup>18</sup> See *infra* para 8.

<sup>19</sup> FCC Form 471, Notre Dame Public School, filed March 2, 2000 (NEC.471.03-02-00.28900016) (March 2, 2000 FCC Form 471).

<sup>20</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lydia Dashkovitz, Notre Dame High School, dated April 24, 2000 (Administrator's Decision on Appeal).

<sup>21</sup> *Id.* The record is unclear, but it appears that SLD also forwarded Application 2 to the correct address at SLD.

<sup>22</sup> Letter from Steve Krup, Notre Dame High School, to Schools and Libraries Division, Universal Service Administrative Company, dated May 11, 2000.

<sup>23</sup> FCC Form 471, Notre Dame High School, filed May 15, 2000 (NEC.471.05-15-00.32800001) (May 15, 2000 FCC Form 471). Upon review of the record we find that file numbers NEC.471.03-02-00.28900016 and NEC.471.05-15-00.32800001 are one and the same funding request. Compare May 15, 2000 FCC Form 471 with March 2, 2000 FCC Form 471.

<sup>24</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lydia Dashkovitz, Notre Dame High School, dated July 14, 2000.

<sup>25</sup> *Id.*

letter, SLD indicated that the application would not be processed because it was received after the close of the March 31, 2000 filing window deadline.<sup>27</sup>

8. Notre Dame then filed the instant Request for Review with the Commission.<sup>28</sup> Notre Dame argues that it followed all the proper procedures but its application was denied because its spin change and modification request were not properly processed.

9. Our review of the record reveals that SLD should have processed Notre Dame's letter filed on September 10, 1999 as a request for a service substitution relating to Application 1 rather than as an appeal. Initially, we note that processing Notre Dame's service substitution request as an appeal resulted in a delay in informing Notre Dame about the status of its application. However, even had the request been processed as a service substitution, the request would have been denied because the request violated SLD's then existing procedures governing requests for service changes.<sup>29</sup>

10. Under SLD's then existing rules, SLD granted post-funding approval requests for service changes to applicants in two limited situations. First, when the product or service originally planned for was no longer available, SLD would approve a service change for a substitute product or service that performs the same functionality.<sup>30</sup> Second, SLD would also approve a service change when an upgraded product or service was available which performs the same function.<sup>31</sup> In either case, under SLD's old procedures, three additional criteria applied. First, the product or service substitution would only be allowed if there was no increase in price. Second, the service substitution must not violate any contract provisions or state or local bidding laws. Finally, the proposed service substitution would be denied if it resulted in an increase to the percentage of ineligible services or functions. Notre Dame's service change request would have been denied because it resulted in increase in price. Application 1 involved funding for a single Funding Request Number (FRN) with a pre-discount amount of \$1,200.00.<sup>32</sup> However, the requested changes involved the funding of multiple FRNs, totaling \$29,703.10.<sup>33</sup> At the time the service substitution was filed, SLD should have informed Notre Dame that the requested

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<sup>26</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lydia Dashkovitz, Notre Dame High School, dated July 19, 2000.

<sup>27</sup> *Id.*

<sup>28</sup> Request for Review.

<sup>29</sup> In the Matter of Request for Review of the Decision of the Universal Service Administrator by Los Angeles Unified School District, Los Angeles, California, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, 16 FCC Rcd 4526 (2000) (LA Unified Order).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See Notre Dame's FCC Form 471, Block 5, Item 16, filed March 12, 1999.

<sup>33</sup> See Notre Dame's FCC Form 471, Block 5, Item 16, filed March 2, 2000.

modifications included additional FRNs and such request could only be processed by canceling the original FCC Form 471 and filing a new application.<sup>34</sup>

11. We conclude, however, that Notre Dame's Request for Review should be granted and that Application 2 with the photocopied signature should be processed. In *New Hartford*, we reviewed our rules relating to photocopied signatures.<sup>35</sup> In *New Hartford*, we stated that 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>36</sup> We concluded that a photocopied signature is a binding act that signifies the intent of the party to be bound by the program rules, and therefore meets the minimum processing standard for an original ink signature. Thus, we find that Notre Dame's Application 2 should be processed in accordance with *New Hartford*. The record demonstrates that Notre Dame's Application 2 complied with the program's requirements in all other respects. Under the circumstances, we remand Notre Dame's application to SLD for further processing in accordance with this Order.

12. 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 Notre Dame High School, Riverside, California on August 15, 2000, IS GRANTED to the extent provided herein, and Notre Dame's application is REMANDED to SLD for further processing in accordance with this decision.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert  
Deputy Chief, Accounting Policy Division  
Common Carrier Bureau

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<sup>34</sup> Even under the current service change procedures, Notre Dames's request would have been denied. *See LA Unified*, 16 FCC Rcd 4526. In *LA Unified*, we determined that SLD should grant service change requests for a substitute service or product where (1) that service or product has the same functionality; (2) the substitution does not result in an increase in price; (3) the substitution does not violate any contract provisions or state or local procurement laws; and (4) the substitution does not result in an increase in the percentage of ineligible services or functions.<sup>34</sup> Notre Dame's service change request violated the second element of the *LA Unified Order*.

<sup>35</sup> *New Hartford Central School District*, CC Dockets Nos. 96-45 and 97-21, DA 01-2536 (rel. November 1, 2001).

<sup>36</sup> *Id.*