

Before the  
Federal Communications Commission  
Washington, DC 20554

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In the Matter of )  
)  
Request for Review of the )  
Decision of the )  
Universal Service Administrator by )  
)  
Chawanakee Joint Elementary School District )  
North Fork, California )  
)  
Federal-State Joint Board on )  
Universal Service )  
)  
Changes to the Board of Directors of the )  
National Exchange Carrier Association, Inc. )

File No. SLD-229391

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: May 20, 2002

Released: May 23, 2002

By the Wireline Competition Bureau:

1. This Order dismisses the Request for Review filed by Chawanakee Joint Elementary School District (Chawanakee), North Fork, California.<sup>1</sup> Chawanakee seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) on August 6, 2001.<sup>2</sup> The Commission received Chawanakee's Request for Review on September 6, 2001.<sup>3</sup> For requests seeking review of decisions issued before August 13, 2001, under section 54.720(b) of the Commission's rules, any such appeal must be filed with the Commission or SLD within 30 days of the issuance of the decision that the party seeks to have reviewed.<sup>4</sup> Documents are considered to be filed with the Commission only upon receipt.<sup>5</sup> The 30-day deadline contained in section 54.720(b) of the

<sup>1</sup> Request for Review of the Decision of the Universal Service Administrator by Chawanakee Joint Elementary School District, CC Docket Nos. 96-45 and 97-21, Request for Review, filed September 6, 2001 (Request for Review).

<sup>2</sup> See Request for Review; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Craig Treber, Chawanakee Joint School District, dated August 6, 2001 (Administrator's Decision on Waiver Request). 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).

<sup>3</sup> See Request for Review.

<sup>4</sup> 47 C.F.R. § 54.720(b).

<sup>5</sup> 47 C.F.R. § 1.7.

Commission's rules applies to all such requests for review filed by a party affected by a decision issued by the Administrator.<sup>6</sup>

2. Chawanakee argues that it did not receive the Administrator's Decision on Waiver Request until at least August 13, 2001.<sup>7</sup> However, this does not demonstrate that the Request for Review is timely because the 30-day period is measured from the date of issuance, not the date of receipt.<sup>8</sup>

3. Chawanakee also argues that its Request for Review should be considered without regard to whether it was filed within the 30-day appeal period because Chawanakee's argument rests on the legal protections provided to persons under section 3512 of the Paperwork Reduction Act (PRA) in connection with federal collections of information.<sup>9</sup> Chawanakee argues that its application was rejected for failure to comply with a collection of information that was unlawful under the requirements of section 3512 of the PRA.<sup>10</sup> Chawanakee asserts that this argument may be raised even though the 30-day period for filing a Request for Review has passed, pointing to section 3512(b) of the PRA, which provides that "[t]he protection provided by this section may be raised . . . at any time during the agency administrative process or judicial action applicable thereto."

4. In *Saco River Cellular, Inc. v. Federal Communications Commission*, the D.C. Circuit affirmed the Commission's determination in *Portland Cellular Partnership* that section 3512(b) allows an affected party to raise PRA violations at any time in an ongoing administrative proceeding, *i.e.*, so long as "the administrative or judicial process in connection with a particular license or with a particular application continues."<sup>11</sup> As a result, a PRA argument may not be waived by a party that does not raise the argument at the first opportunity.<sup>12</sup> However, the party

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<sup>6</sup> We note that, due to recent disruptions in the reliability of the mail service, the 30-day appeal period has been extended by an additional 30 days for requests seeking review of decisions issued on or after August 13, 2001. *See Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel Dec. 28, 2001 and Jan. 4, 2002). Because the Administrator's Decision on Waiver Request was issued before August 13, 2001, the extended appeal period does not apply to Chawanakee.

<sup>7</sup> Request for Review, at n.5.

<sup>8</sup> 47 C.F.R. § 54.720.

<sup>9</sup> *See* Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 *et seq.*

<sup>10</sup> Request for Review, at 2-5.

<sup>11</sup> *See Saco River Cellular, Inc. v. Federal Communications Commission*, 133 F.3d 25, 30-31 (D.C. Cir. 1998); *Portland Cellular Partnership*, 11 FCC Rcd 19997, 20003, paras. 15-16 (1996).

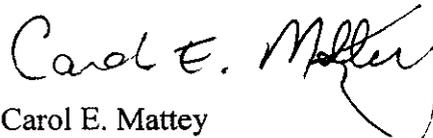
<sup>12</sup> *See Portland Cellular Partnership*, 11 FCC Rcd at 20002-03, para. 14 ("Section 3512 may be raised at any time during the life of the matter. The protection cannot be waived. Failure to raise them at an early stage does not preclude later assertion of rights under this section, regardless of any agency or judicial rules to the contrary.") (quoting 141 CONG. REC. S5274-75 (Apr. 6, 1995) (statement of Sen. Roth)).

is still required to raise the PRA argument while an administrative or judicial proceeding is "ongoing." In *Portland Cellular Partnership*, which involved a proceeding to adjudicate competing applications to provide cellular service, the Commission had found that the licensing proceeding was still ongoing when the PRA argument was raised because a timely filed petition for reconsideration of the merits of the Commission's license award was still pending.<sup>13</sup>

5. Here, in contrast, the administrative proceeding ceased to be ongoing when the time for appeal of the Administrator's Decision expired without any appeal having been filed. The subsequent filing of an appeal after the matter is closed cannot be considered to constitute part of the ongoing proceeding. If it were, then the requirement that the proceeding be "ongoing" would be meaningless. Therefore, we find that Chawanakee is not entitled to raise a PRA challenge to the application decision, and the Request for Review must be dismissed as untimely in accordance with Commission regulations.

6. 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 Chawanakee Joint Elementary School District, North Fork, California, on September 6, 2001 IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey  
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<sup>13</sup> *Portland Cellular Partnership*, 11 FCC Rcd at 19999-20000, paras. 7, 9 (noting that Port Cell's timely filed petition for reconsideration regarding the grant of license application was still pending); *id.*, 11 FCC Rcd at 2003, para. 16 ("We do not agree . . . that Port Cell is raising its PRA defense outside of the administrative process. Port Cell's petition for reconsideration is still pending before us, and therefore the administrative process for licensing and operating the cellular system to serve the Portland NECMA is ongoing. Consequently, Port Cell's motion raising Section 3512 relates to an on-going administrative process.").

