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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

June 20, 2002

**DAVID A. O'CONNOR**  
202-828-1889

Internet Address:  
doconnor@hklaw.com

VIA HAND DELIVERY

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
236 Massachusetts Ave., NE  
Suite 110  
Washington, DC 20002

Re: Chawanakee Joint Elementary School District  
**Application for Review**  
File No. SLD-229391  
CC Docket Nos. 96-45, 97-21  
Billed Entity No. 144045  
Form 471 Application No. 229391

Dear Ms. Dortch:

Transmitted herewith, on behalf of Chawanakee Joint Elementary School District ("Chawanakee"), are an original and four (4) copies of its Application for Review. For the reasons set forth in the Application for Review, Chawanakee requests that the Commission grant the Application for Review and resolve the issues raised in Chawanakee's Request for Review filed on September 6, 2001.

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

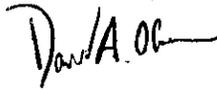
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Marlene H. Dortch, Esq.  
June 20, 2002  
Page 2

Should you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP



David A. O'Connor  
Counsel for Chawanakee Joint Elementary  
School District

Enclosure

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

WAS1 #1096753 v1

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

In the Matter of	)	
Request for Review by	)	
	)	
Chawanakee Joint Elementary	)	
School District	)	File No. SLD-229391
	)	
of Decision of Universal Service	)	
Administrator	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors	)	CC Docket No. 97-21
of the National Exchange Carriers	)	
Association, Inc.	)	

To: The Commission

Re: Chawanakee Joint Elementary School District, Billed Entity Number 144045  
Form 471 Application Number 229391, Funding Year 4, 7/1/2001- 6/30/2002

**APPLICATION FOR REVIEW**

Chawanakee Joint Elementary School District (“Chawanakee”), by its attorneys and pursuant to Sections 1.104(b), 1.115, and 54.722(b) of the rules of the Federal Communications Commission (“Commission”), 47 C.F.R. §§ 1.104(b), 1.115, 54.722(b), hereby submits this Application for Review of the Wireline Competition Bureau’s (“Bureau’s”) *Order* released May 23, 2002 in the above-captioned matter.<sup>1</sup> This Application for Review is timely filed pursuant to the Commission’s rules. *See* 47 C.F.R. § 1.115(d).

---

<sup>1</sup> Request for Review of the Universal Service Administrator by Chawanakee Joint Elementary School District, CC Docket Nos. 96-45 and 97-21, Order, DA 02-1211 (WCB rel. May 23, 2002) (“*Order*”). A copy of the Bureau’s decision is attached hereto as Exhibit 1.

In the *Order*, the Bureau dismissed Chawanakee's Request for Review,<sup>2</sup> stating that the Request was not filed during the 30-day window specified in the Commission's rules for such appeals.<sup>3</sup> However, Chawanakee's Request was based on the provisions of the Paperwork Reduction Act ("PRA"), 44 U.S.C. § 3501 *et seq.* Therefore, the applicable deadline for filing such an appeal is set forth in the PRA, which expressly overrules the due date set forth in Part 54 of the Commission's rules, 47 C.F.R. § 54.720.

Requests for relief under the PRA provisions cited in Chawanakee's appeal may be raised "at any time during the agency administrative process" and "[n]otwithstanding any other provision of law . . . ." 44 U.S.C. § 3512(a)-(b).<sup>4</sup> The question, therefore, is whether the appeal was filed during the Commission's administrative process.

The relevant administrative process is set forth in Section 1.117 of the Commission's rules, 47 C.F.R. § 1.117.<sup>5</sup> Pursuant to Section 1.117, within forty days after public notice of any action taken pursuant to delegated authority, the Commission may on its own motion order the record of the proceeding before it for review. 47 C.F.R. § 1.117; *see also* Chawanakee Request for Review, at 4 n.10 (citing Section 1.117). For purposes of the PRA, therefore, the Commission's administrative process does not conclude until the forty-first day after action has been taken pursuant to delegated authority.

---

<sup>2</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" or "Review"). A copy of the Request for Review, as supplemented, is attached hereto as Exhibit 2.

<sup>3</sup> *Id.* at 1-2, para. 1 (citing 47 C.F.R. § 54.720(b)). At the time that the Chawanakee appeal was filed, the deadline was thirty days from the date of the Schools and Libraries Division's decision. Currently, the deadline is sixty days.

<sup>4</sup> *See also* *Center for Auto Safety v. National Highway Traffic Safety Admin.*, 244 F.3d 144, 150 (D.C. Cir. 2001); *Saco River Cellular, Inc. v. FCC*, 133 F.3d 25, 29-30 (D.C. Cir. 1998).

<sup>5</sup> Commission authority for the promulgation of Section 1.117 is set forth in Section 5(c)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(4).

In this case, the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC”) took action on Chawanakee’s application on August 6, 2001. The Commission’s rules establish the SLD as the division within USAC that is delegated authority to administer the Schools and Libraries universal service support mechanism. *See* 47 C.F.R. § 54.701(a), (g). Therefore, for purposes of the Commission’s administrative process, SLD was acting pursuant to delegated authority when it took action on the Chawanakee appeal. Accordingly, pursuant to Section 1.117 of the rules, the Commission had forty days from the date of the SLD’s action (*i.e.*, until September 17, 2001) in which to order the record of the Chawanakee proceeding before it for review. Chawanakee filed its appeal on September 6, 2001. The proceeding therefore continued to be within the “agency administrative process,” within the meaning of the PRA, at the time that Chawanakee filed its PRA appeal, since Commission action on the SLD’s determination was not precluded until September 18, 2001. Because the Commission retained jurisdiction over Chawanakee’s application at the time of Chawanakee’s appeal, and had the discretion to review the SLD’s action concerning Chawanakee’s application, Chawanakee’s PRA argument must be deemed to have been made “during the [Commission’s] administrative process.” PRA § 3512(b). Consequently, the Bureau was required to consider the merits of Chawanakee’s PRA argument.

Chawanakee submits that the Bureau misconstrued the applicable procedures and deadlines for appeals based on the PRA. In the *Order*, the Bureau stated that:

the administrative proceeding ceased to be ongoing when the time for appeal of the [SLD] 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.<sup>6</sup>

---

<sup>6</sup> *Order* at 3, para. 5

As an initial matter, the terms “ongoing” and “closed” do not appear in the PRA. Rather, the relevant PRA provision states that the PRA argument may be raised at any time “during the agency administrative process.” As discussed above, the agency administrative process timeline in this instance is set forth in Section 1.117 of the Commission’s rules, which was cited in Chawanakee’s appeal<sup>7</sup> but was not discussed at all in the Bureau’s *Order*.<sup>8</sup> The Bureau therefore erred by looking to the deadline for filing an appeal rather than by focusing on the appropriate provisions of Section 1.117. In the limited circumstances raised in Chawanakee’s appeal, the thirty day deadline is irrelevant—it is the forty day period set forth in Section 1.117 that determines whether a party has raised a PRA argument “during the administrative process.”

It is important to note that Chawanakee is not arguing that a PRA objection may be raised at any time. The Bureau appears to state that the “ongoing” requirement is necessary so that timelines are not rendered meaningless. However, Chawanakee is simply arguing that the Bureau misconstrued the appropriate timeline for raising a PRA argument—Chawanakee is not arguing for an open-ended timeline for raising such an argument. Had Chawanakee filed its appeal on or after September 18, 2001, Chawanakee agrees that, unless the Commission had acted before then on its own motion, the school would have been precluded from raising the PRA argument. But because the school raised the PRA argument on September 6, 2001, well before the end of the “agency administrative process” under Section 1.117, the Bureau was required to consider the merits of Chawanakee’s argument.

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<sup>7</sup> Chawanakee Appeal at 4 n.10.

<sup>8</sup> Because the applicability of Section 1.117 was squarely presented to the Bureau, Chawanakee submits that the Bureau was afforded an opportunity to pass on the issues raised in this Application for Review. Accordingly, the requirements of Section 1.115(c) have been satisfied and an Application for Review is the appropriate appeal. However, to the extent that the Commission wishes the Bureau to reconsider its own decision, then Chawanakee respectfully requests that this appeal be treated as a Petition for Reconsideration pursuant to the provisions of Section 1.106 of the Commission’s rules.

Accordingly, for the reasons set forth above and in Chawanakee's Request for Review, as supplemented, the Commission should grant this Application for Review and resolve the issues raised in the Request for Review.

Respectfully submitted,

Chawanakee Joint Elementary School District



Mark J. Palchick

Alan Y. Naftalin

David A. O'Connor

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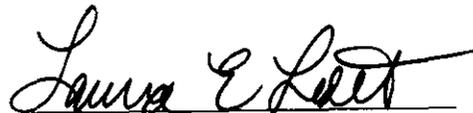
Its Attorneys

Dated: June 20, 2002

## CERTIFICATE OF SERVICE

I, Laura Ledet, an employee of Holland & Knight LLP, hereby certify that on June 20, 2002, I caused a copy of the foregoing Application 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

# **EXHIBIT 1**

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Chawanakee Joint Elementary School District	)	File No. SLD-229391
North Fork, California	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

**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

<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  
Deputy Chief, Wireline Competition Bureau

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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.").

## **EXHIBIT 2**

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September 6, 2001

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OFFICE OF THE SECRETARY

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VIA HAND DELIVERY

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

Re: Chawanakee Joint Elementary School District  
***Request for Review***  
CC Docket Nos. 96-45, 97-21  
Billed Entity No. 144045  
Form 471 Application No. 229391

Dear Ms. Salas:

Transmitted herewith, on behalf of Chawanakee Joint Elementary School District ("Chawanakee"), 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, Chawanakee requests that the Commission direct SLD to accept Chawanakee's application as having been filed during the SLD's January 2001 filing window.

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

Magalie Roman Salas, Esq.  
September 6, 2001  
Page 2

Should you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP



David A. O'Connor  
Counsel for Chawanakee Joint Elementary  
School District

Enclosure

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

WAS1 #1011234 v1

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

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

To: Accounting Policy Division, Common Carrier Bureau

Re: Chawanakee Joint Elementary School District, Billed Entity Number 144045  
Form 471 Application Number 229391, Funding Year 4, 7/1/2001- 6/30/2002

**Request for Review**

Chawanakee Joint Elementary School District ("Chawanakee"), 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") Administrator of the Universal Service Administrative Company regarding Chawanakee's Year Four Funding Request (Form 471 Application Number 229391).

Chawanakee electronically filed its FCC Form 471 on January 17, 2001.<sup>1</sup> However, Chawanakee did not mail the original signature page or Item 21

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<sup>1</sup> A copy of Chawanakee's FCC Form 471 is attached hereto as Exhibit 1.

supplemental attachments to SLD until January 19, 2001, one day after the filing window closed.

By a postcard dated July 10, 2001, SLD notified Chawanakee that its application was received after the January 18 window closed.<sup>2</sup> On July 26, 2001, Chawanakee filed a Letter of Appeal with the SLD.<sup>3</sup> The SLD Administrator denied Chawanakee's appeal, indicating that FCC rules did not permit SLD to consider Chawanakee's request.<sup>4</sup> Chawanakee now submits this appeal of the SLD Administrator's decision to the Commission.<sup>5</sup>

**I. In Attempting to Comply with the Paperwork Reduction Act, the Commission Failed to Comply with the Applicable OMB Approval**

The SLD improperly rejected Chawanakee's FCC Form 471 application.

While it is not stated, it would appear that Chawanakee's FCC Form 471 was rejected because of the FCC Form 471 instructions that require a paper signature in addition to the electronic signature, and that all attachments must be filed as hard copies within the filing window. These obligations, to the extent that they penalize Chawanakee, are invalid pursuant to the Paperwork Reduction Act ("PRA").

The "public protection" provisions of the PRA are as follows:

<sup>2</sup> See Exhibit 2.

<sup>3</sup> See Exhibit 3.

<sup>4</sup> See Exhibit 4.

<sup>5</sup> The SLD Administrator's letter is dated August 6, 2001, which would indicate that the deadline for filing Chawanakee's Request for Review would have been September 5, 2001 if the letter was postmarked the same date as it was dated. See 47 C.F.R. § 54.720(a). However, the Administrator's decision was not received by Chawanakee until August 13, 2001 at the earliest, exactly one week after the date of the letter. See Exhibit 4. Although Chawanakee is unable at this time to locate a copy of the SLD envelope showing a postmark date, it would appear that SLD did not mail the letter until some date after August 6, 2001. In any event, as shown in the text herein, Chawanakee may object to the filing requirements of FCC Form 471 "at any time" during the administrative process, pursuant to Section 3512(b) of the PRA, 44 U.S.C.A. § 3512(b).

*Even if viewed from Commission convenience, deadline (was) not applicable. This was a mailing deadline not a filing window deadline.*

*Commission can't act as though Commission convenience if others did not arrive*

*W/o question previously pointed out that OMB ... app. permitted to submit into ... even if ... other ...*

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information . . . if—

(1) the collection of information does not display a valid control number assigned by the Director [of the Office of Management and Budget (“OMB”)]. . . or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

(b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.<sup>6</sup>

These provisions supersede all other laws. See *Saco River Cellular, Inc. v. FCC*, 133 F.3d 25, 33 (D.C. Cir. 1998), *cert. denied*, 525 U.S. 813 (1998). In that case, following the enactment in 1995 of the above subsection (b), the Commission was required to entertain, and ultimately grant, a reconsideration request that was filed years late, because the Commission had not complied with the PRA requirements and because Section 3512(b) entitled the petitioner to raise the “protection provided by” subsection (b) “at any time during the agency administrative process” and “[n]otwithstanding any other provision of law.”

There can be no doubt that FCC Form 471 is a “collection of information,” and the Commission did in fact submit it for approval by OMB. On September 1, 2000, OMB conditionally approved an emergency extension of the form,<sup>7</sup> *subject to the following “Existing Terms of Clearance”*:

On both FCC Form 470 and FCC Form 471, the FCC shall clearly display *at the top of the forms* the following PRA disclosure statement: ‘An agency may

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<sup>6</sup> 44 U.S.C.A. § 3512.

<sup>7</sup> See Exhibit 5 hereto, page 1.

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. The OMB control number for this information collection is #3060-0806.’<sup>8</sup>

On page 1 of the conditional approval, OMB set forth the following:

“NOTE: The agency is required to display the OMB control number and inform respondents of its legal significance (see 5 CFR 1320.5(b)).”<sup>9</sup>

The Commission did not comply with these “terms of clearance.” Instead, the Commission placed only the following statement at the top of the year 2000 electronic edition of FCC Form 471, which Chawanakee used to make its filing: “Approval by OMB 3060-0806.”

Thus, the FCC Form 471 as used by Chawanakee was not approved by OMB, since it did not display the information notice required pursuant to Section 3512(a)(2) of the PRA, and since it failed to comply with the specific “terms of clearance” outlined by OMB in its approval of Form 471. The consequence of that failure is that Chawanakee should be permitted to supply any missing information at any time that its application is within the administrative process.<sup>10</sup> The OMB regulations implementing the PRA require that where, as here, an agency has imposed a collection of information as a means for proving or satisfying a condition for the receipt of a benefit that is not in compliance with OMB requirements, the agency must

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<sup>8</sup> *Id.* at 2 (emphasis added).

<sup>9</sup> *Id.* at 1.

<sup>10</sup> To the extent that the Commission determines that this Request for Review was not timely filed, Chawanakee submits that in light of Section 5(c)(4) of the Communications Act, as amended, 47 U.S.C. § 155(c)(4), and Section 1.117 of the Commission’s rules, 47 C.F.R. § 1.117, the Commission retains jurisdiction over this proceeding and the application therefore remains within the administrative process.

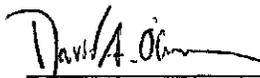
permit a respondent to satisfy the legal conditions in any other reasonable manner.<sup>11</sup> In this instance, Chawanakee submits that the most appropriate remedy would be to direct SLD to accept the materials Chawanakee submitted on January 19, 2001, and process the application.

## II. Conclusion.

Because Chawanakee cannot be penalized for having failed to comply with the filing requirements of an FCC form that did not comply with the requirements set forth in the OMB approval, and did not display the information notice required by the PRA, Chawanakee urges the Commission to direct SLD to accept Chawanakee's application as having been timely filed during the Year 4 filing window.

Respectfully submitted,

Chawanakee Joint Elementary School District



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Dated: September 6, 2001

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<sup>11</sup> 5 C.F.R. § 1320.6(c).

## CERTIFICATE OF SERVICE

I, Laura Ledet, an employee of Holland & Knight LLP, hereby certify that on September 6, 2001, I caused a copy 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