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	)	
	)	
Onondaga Cortland Madison BOCES Syracuse, New York	)	File No. NEC.471.04-06-99.087055354
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

ORDER

Adopted: July 9, 2002 **Released: July 10, 2002**

By the Wireline Competition Bureau:

1. The Wireline Competition Bureau has before it a Request for Review filed by Onondaga Cortland Madison BOCES (OCM), Syracuse, New York, seeking review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company.[1] SLD returned without consideration sixty two funding requests for discounts in Funding Year 1999 because they failed SLD's minimum processing standards.[2] For the reasons set forth below, we deny the 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.[3]

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[1] Letter from Lawrence Dismore, Onondaga Cortland Madison BOCES, to Federal Communications Commission. filed August 18, 2000 (Request for Review). 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).

[2] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lawrence Dismore, Onondaga Cortland Madison BOCES, dated August 24, 1999 (Rejection Letter); Request for Review, at 1. In prior years, this funding period was referred to as Funding Year 2. Funding periods are now described by the year in which the funding period starts. Thus the funding period which begins on July 1, 1999 and ends on June 30, 2000, previously known as Funding Year 2, is now called Funding Year 2001.

[3] 47 C.F.R. §§ 54.502, 54.503.

The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470,[4] which is posted to the Administrator's web site for all potential competing service providers to review.[5] After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.[6] SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. To facilitate the efficient review of the thousands of applications requesting funding, every funding year, SLD establishes and notifies applicants of a "minimum processing standard."[7] When an applicant submits a Block 5 worksheet with data that reflects a violation of program rules, SLD automatically returns that Block 5 to the applicant without considering the funding request for discounts under the program.[8] One program rule applied during minimum processing standards review is the requirement that the signature date on the Block 6 certification page "CANNOT be earlier than the 29th day following the posting of the associated FCC Form 470," also referred to as the Allowable Contract Date for that FCC Form 470.[9] Thus, where an application has a signature date that is earlier than the Allowable Contract Date of an FCC Form 470 associated with a funding request, the funding request is returned without further consideration.

4. Here, SLD found that OCM's application failed minimum processing standards because the application signature date, March 6, 1999, was earlier than the March 31, 1999 Allowable Contract Date for the FCC Form 470 cited by each of the 62 funding requests at issue.[10] OCM appealed to SLD, asserting that the signature date was a clerical error, and should

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[4] Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 470).

[5] 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

[6] 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (FCC Form 471).

[7] *See, e.g.*, SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for FY2, <http://www.sl.universalservice.org/reference/471mps.asp> (*Minimum Processing Standards*).

[8] *Minimum Processing Standards*.

[9] Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 1998) (Form 471 Instructions), at 24.

[10] Rejection Letter, at 1; FCC Form 470, The Regional Information Center, filed March 3, 1999 (RIC Form 470).

have been April 6, 1999 instead of March 6, 1999.[11] SLD denied the appeal, finding that the original date on the signature page established a violation of program rules.[12] OCM then filed the pending Request for Review.[13]

5. We conclude that OCM's application was properly rejected, because the date on the signature page, March 6, 1999, was earlier than the March 31, 1999 Allowable Contract Date of the FCC Form 470 associated with each of the 62 requests, and because there was no evidence attached to OCM's application that demonstrated conclusively, or indeed, even suggested that the application was in fact been signed after the end of the 28-day waiting period for any of the 62 FRNs at issue.[14] In the *Joliet Order*, the Common Carrier Bureau, now called the Wireline Competition Bureau, considered a similar case, in which SLD had denied an application because an applicant had entered a signature date indicating that it had signed the application before the end of the 28-day waiting period.[15] The Common Carrier Bureau granted the appeal because, although the FCC Form 471 on its face bore a signature date of March 6, 1999, copies of bids and contracts attached to the FCC Form 471 demonstrated conclusively that the service agreements were entered into on April 3, 1999, and that the March 6, 1999 signature date was merely a clerical error.[16] In this case, there was no documentary evidence contained in the application suggesting that the signature date was a clerical error, and it therefore was appropriate for SLD to reject the application.

6. In support of its assertion of a clerical error, OCM offers new evidence on appeal before the Commission in support of its assertion that the signature date was a clerical error.[17]

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[11] Letter from Lawrence Dismore, Onondaga Cortland Madison BOCES, to Schools and Libraries Division, Universal Service Administrative Company, filed September 7, 1999.

[12] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lawrence Dismore, Onondaga Cortland Madison BOCES, dated July 20, 2000, at 1.

[13] We note that, whereas the *Joliet Order* required SLD to consider attached documents when engaging in the detailed application review that occurs after data entry, the application at issue here was rejected in the initial stage of application data entry during which the minimum processing standards are applied. In general, we have not found it appropriate to require SLD to consider attached documentation in determining whether applications satisfy minimum processing standards. *See Request for Review by East Meadow School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-208882, CC Dockets No. 96-45 and 97-21, Order, DA 02-1121, para. 10 (Wireline Comp. Bur. rel. May 13, 2002). However, we conclude that, in all cases where application signature dates facially indicate a violation of the 28-day waiting period, applicants should receive the same degree of review that we applied in the *Joliet Order*. Thus, regardless of what stage of application processing SLD chooses to address a competitive bidding violation evidenced by the signature date, the analysis must take into account the attached documentary evidence.

[14] *See* RIC Form 470; FCC Form 471, OCM BOCES Consortium, App. No. NEC.471.04-06-99.087055354, filed April 6, 1999 (OCM Form 471).

[15] *Request for Review by Joliet Public Schools – District 86, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-149421, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 8765 (Com. Car. Bur. 2001) (*Joliet Order*).

[16] *Id.*, paras. 5-6.

[17] Request for Review at 1.

Specifically, it attaches a letter dated April 6, 1999 from William Heppeler, Assistant Director of the "CNYRIC," stating: "Please accept this letter as authorization for Xerox Connect to act as a representative of [OCM BOCES] and grants [sic] permission to sign for [OCM BOCES] Consortium Form 471."[18] Even if this letter demonstrated that the signature date was a clerical error, it would not warrant relief because it was not evidence that was submitted to SLD with the application, as required by the *Joliet Order*. OCM also asserts that the application was signed on the date that it was submitted, April 6, 1999, but, again, there is no evidence within or attached to the application to support this assertion.[19]

7. OMC asserts that, in the same funding year, in FCC Form 471 App. No. 152152, it submitted 15 additional requests for service similar to what it requested here, and that these requests were granted.[20] OCM asserts that it is therefore unclear why the requests at issue in this appeal, being similar in nature and thus "part of the same application," were not also granted.[21] However, the reason for the difference in outcomes is clear. In FCC Form 471 App. No. 152152, the signature date was April 5, 1999, not March 6, 1999, and thus, it did not indicate that a competitive bidding violation had occurred.[22]

8. 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 Onondaga Cortland Madison BOCES, Syracuse, New York, on August 18, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Mattey

Carol E. Mattey
Deputy Chief, Wireline Competition Bureau

[18] Request for Review, Attachment.

[19] Request for Review at 1.

[20] *Id.*

[21] *Id.*

[22] *See* FCC Form 471, OCM BOCES Consortium, App. No. 152152, filed April 6, 1999.