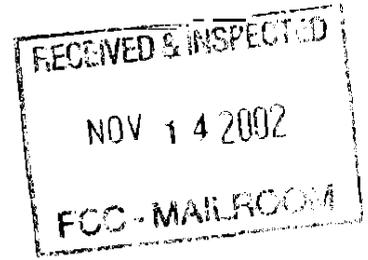


Before the  
Federal Communications Commission  
Washington, DC 20554



In the Matter of	)	
	)	
Petition for Reconsideration	)	
	)	
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 ON RECONSIDERATION

Adopted: **November 8, 2002**

Released: **November 12, 2002**

By the Wireline Competition Bureau:

1. Before the Wireline Competition Bureau is a Petition for Reconsideration filed by Chawanakee Joint Elementary School District (Chawanakee), North Fork, California.<sup>1</sup> In its Petition, Chawanakee seeks reconsideration of our decision dismissing its request for review of the rejection of its Funding Year 2001 application for universal service discounts by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company.<sup>2</sup> In our

<sup>1</sup> *Petition for Reconsideration by Chawanakee Joint Elementary School District*, CC Docket Nos. 96-45 and 97-21. Petition for Reconsideration, filed June 20, 2002 (Petition for Reconsideration). Although the pleading is captioned as an application for review by the full Commission pursuant to 47 C.F.R. § 1.115, Chawanakee also states that the appeal may be treated as a petition for reconsideration pursuant to 47 C.F.R. § 1.106. Petition for Reconsideration at n.8.

<sup>2</sup> *See 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). Previously, this funding period would be referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period which began on July 1, 2001 and ends on June 30, 2002 is now called Funding Year 2001. The funding period which began on July 1, 2002 and ends on June 30, 2003, previously described as Funding Year 5, is now called Funding Year 2002, and so on.

decision, we dismissed the Request for Review as untimely.<sup>3</sup> Chawanakee asserts that the request for review is timely under Commission regulations and the provisions of the Paperwork Reduction Act (PRA).<sup>4</sup> For the reasons set forth below, we deny the Petition for Reconsideration.

2. At issue is SLD's final decision on Chawanakee's Funding Year 2001 application for discounts: which SLD issued on August 6, 2001.<sup>5</sup> Section 54.720 of the Commission's rules requires requests for review of all Administrator decisions to be filed within 30 days of the issuance of the decision. Chawanakee did not file its Request for Review with the Commission until 31 days after the issuance of SLD's decision, but argued that the request for review was timely because Chawanakee's arguments rested on the legal protections provided to persons under section 3512 of the Paperwork Reduction Act (PRA) in connection with federal collections of information.<sup>6</sup> Section 3512(b) of the PRA 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."<sup>7</sup>

3. We found that this provision did not save the request for review because section 3512(b) permitted PRA arguments to be raised only where a proceeding was "ongoing."<sup>8</sup> Because the 30-day period for filing a request for review of the Administrator's decision had elapsed, we concluded, the instant proceeding was not ongoing.<sup>9</sup>

4. In its Petition for Reconsideration, Chawanakee does not dispute that a PRA argument may only be raised in an ongoing proceeding.<sup>10</sup> It argues, however, that the instant proceeding was ongoing at the time when it filed its Request for Review because of section 1.117 of the Commission's rules.<sup>11</sup> Section 1.117 provides that, "[w]ithin 40 days after public notice is given 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."<sup>12</sup> Chawanakee argues that,

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<sup>3</sup> See *Request for Review by Chawanakee Joint Elementary 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-229391, CC Dockets No. 96-45 and 97-21, Order, DA 02-1211 (Wireline Comp. Bur. rel. May 23, 2002) (*Chawanakee Order*).

<sup>4</sup> See Petition for Reconsideration

<sup>5</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Craig Treber, Chawanakee Joint School District, dated August 6, 2001.

<sup>6</sup> See Paperwork Reduction Act (PRA), 44 U.S.C. § 3501 *et seq*

<sup>7</sup> 44 U.S.C. § 3512(b)

<sup>8</sup> *Chawanakee Order*, para. 5

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

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.* at 3-4.

<sup>12</sup> 47 C.F.R. § 1.117(a).

within this 40-day period. the Commission “retains jurisdiction” and therefore, the administrative proceeding is ongoing.<sup>13</sup> Chawanakee further argues that this 40-day period is applicable to SLD’s rejection of Chawanakee’s application because “SLD was acting pursuant to delegated authority.”<sup>14</sup> Because Chawanakee submitted its Request for Review within 40 days of the relevant SLD decision, it argues, it submitted its Request for Review while the proceeding was ongoing and its PRA argument must be considered on the merits.”

5. We find, however, that the 40-day period provided under section 1.117 for *sua sponte* Commission review of actions taken pursuant to delegated authority is not applicable to the SLD decision on appeal because an SLD decision is not an action taken “pursuant to delegated authority” for purposes of section 1.117.<sup>16</sup> The meaning of the term “delegated authority” is provided by section 5(c)(1) of the Act, which provides that the Commission may “delegate any of its functions [with certain exceptions] to a panel of commissioners, an individual Commissioner, an employee board, or an individual employee.” Neither the Administrator nor SLD qualifies as a commissioner, employee or board of employees of the Commission. “Thus: the authority granted to it under Commission rules does not constitute “delegated authority” for purposes of section 1.117.

6. Further, to interpret actions taken pursuant to “delegated authority” in section 1.117 as including SLD decisions would be unreasonable in light of the use of that term in sections 1.106 and 1.115. “These sections provide, respectively, that a party may file with the Commission a petition for reconsideration of “actions taken pursuant to delegated authority” or an Application for Review by the full Commission of “an action taken pursuant to delegated authority.”<sup>18</sup> Indeed, if Chawanakee were correct, the request for review provided by section 1.119 as an avenue to appeal Administrator decisions would be redundant, because a party seeking Commission review of an SLD decision could file a petition for reconsideration or application for review pursuant to section 1.106 or 1.115. Thus, Chawanakee’s interpretation is plainly unreasonable and inconsistent with our rules. We conclude that SLD actions are not actions “taken pursuant to delegated authority” under section 1.117. Because section 1.117’s 40-day period for *sua sponte* review did not apply to the SLD decision, the relevant administrative proceeding was not ongoing when Chawanakee filed its appeal of that decision after the expiration of the 30-day appeal period, and the request for review was thus correctly dismissed as untimely under the Commission’s rules.

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<sup>13</sup> *Id.* at 3.

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

<sup>15</sup> *Id.* at 3-4

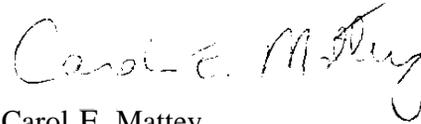
<sup>16</sup> We therefore need not decide whether a Commission proceeding otherwise resolved is still “ongoing” for PRA purposes solely because of the possibility that the Commission *may* exercise its discretion under section 1.117 to review an action.

<sup>17</sup> 5 U.S.C. § 155(c)(1). See also 47 C.F.R. §§ 0.11(c), 0.201(a) (listing the three basic categories of delegations “pursuant to section 5(c)”).

<sup>18</sup> 47 C.F.R. §§ 1.106(a)(1), 1.115(a)

7. ACCORDINGLY. IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.106, that the Petition for Reconsideration filed by Chawanakee Joint Elementary School District, North Fork, California, on June 20, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey  
Deputy Chief, Wireline Competition Bureau