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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
St. Margaret's-McTernan School Waterbury, Connecticut	)	File No. SLD - 32393
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: October 18, 1999 **Released: October 18, 1999**

By the Deputy Chief, Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration an appeal by St. Margaret's-McTernan School, Waterbury, Connecticut (St. Margaret's-McTernan), filed July 20, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). For the reasons set forth below, we deny St. Margaret's-McTernan's appeal.

2. By letter dated January 19, 1999, the SLD denied in part St. Margaret's-McTernan's requests for discounts pursuant to section 254 of the Communications Act.[1] St. Margaret's-McTernan states that it filed an appeal of that decision with the Administrator on March 10, 1999. In response, the Administrator issued a decision on appeal, stating that it would "not be able to consider [the] appeal" because the letter was not received within 30 days of the date of the January 19, 1999 SLD decision letter as required by the Commission's rules.[2] Subsequently, St. Margaret's-McTernan filed the instant request for review of the Administrator's decision on appeal, reiterating its view that it was incorrectly denied discounts by SLD and

[1] 47 U.S.C. § 254 (h)(1)(B).

[2] 47 C.F.R. § 54.720.

setting forth reasons why it believes its appeal to the Administrator should be considered timely.

Specifically, St. Margaret's-McTernan states that: (1) the January 19, 1999 SLD letter did not specify a 30-day requirement for filing appeals, and (2) the appeal process was not announced on the SLD website until March 9, 1999, which was the first time it became aware of the 30-day requirement.[3]

3. Section 54.720 of the Commission's rules requires schools to seek review of an SLD initial decision within 30 days of the issuance of that decision.[4] St. Margaret's-McTernan, by its own admission, filed its Letter of Appeal with the Administrator no earlier than March 10, 1999. Therefore, because St. Margaret's-McTernan filed its Letter of Appeal with the Administrator outside the specified 30-day period, we deny its request for review here.

4. In addition, to the extent that St. Margaret's-McTernan seeks a waiver of the 30-day filing period, we deny that request. Although the Commission may waive any provision of its rules, a request for waiver must be supported by a showing of good cause.[5] That is, "[t]he FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest" and where "special circumstances" might warrant a waiver.[6] We find that St. Margaret's-McTernan has failed to make the required showing to justify a waiver under these circumstances.[7] Although the SLD website may not have posted the appeal process rules until March, the rule at issue became effective on January 1, 1999.[8] Therefore, notice of the rules was provided long before St. Margaret's-McTernan was required to file its appeal with the Administrator. Moreover, St. Margaret's-McTernan has failed to show why it should not be held to the same standard of notice as all parties potentially affected by this rule.

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[3] *See* Letter from Henry A. Cirpiano, Jr. to Federal Communications Commission, Office of the Secretary, dated July 16, 1999, at 2.

[4] *See* 47 C.F.R. § 54.720(b) ("[a]n affected party requesting review of a division decision by a Committee of the Board pursuant to § 54.719(a), shall file such request within thirty (30) days of issuance of the decision by the division.").

[5] *See* 47 C.F.R. § 1.3.

[6] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) ("An applicant for waiver faces a high hurdle even at the starting gate.").

[7] "An applicant for waiver faces a high hurdle even at the starting gate." *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969),).

[8] *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21, and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25096-97, para. 76 (1998) (stating that rules would go into effect on January 1, 1999). *See also* 47 C.F.R. § 54.720.

5. 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 appeal filed July 20, 1999 by St. Margaret's-McTernan School IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Yog R. Varma
Deputy Chief, Common Carrier Bureau