

May 23 2 13 PM '00 Before the Federal Communications Commission Washington, D.C. 20554

DISP

In the Matter of)	
)	
Federal-State Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors)	CC Docket No. 97-21 ✓
Of the National Exchange Carriers)	
Association, Inc.)	
)	
)	

ORDER

Adopted: May 16, 2000

Released: May 22, 2000

By the Commission:

1. In this Order, we amend a procedural rule which sets out the time period by which the Common Carrier Bureau (Bureau) or the Commission must take action on a request for review of a decision issued by the Schools and Libraries Division of the Universal Service Administrative Company (USAC or Administrator).¹ We amend section 54.724 of the Commission's rules to make clear that a decision of the Administrator will not be deemed approved upon the running of the 90-day deadline for taking action on requests for review that are pending before the Bureau.

2. Section 54.724(a) of the Commission's rules establishes procedures for a request for review of an Administrator decision that is properly before the Bureau.² Matters that are properly before the Bureau are appeals of Administrator decisions that do not involve novel issues of fact, law or policy.³ If the Bureau does not take action within 90 days regarding a request for review not involving novel issues, the decision issued by the Administrator is deemed approved.⁴ The rule also specifies that either the Commission or the Bureau may extend the time

¹ The Commission's rules provide that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

² 47 C.F.R. § 54.724(a).

³ *Id.* See also *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Third Report and Order and Fourth Order on Reconsideration in CC Docket No. 97-21, Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25092-25093, para. 68 (1998) (*Eighth Order on Reconsideration*).

⁴ 47 C.F.R. § 54.724(a); *Eighth Order on Reconsideration*, 13 FCC Rcd at 25093-25094, para. 70.

period for taking action on a matter before the Bureau.⁵

3. In contrast, section 54.724(b) of the Commission's rules directs the Commission to issue, within 90 days, a written decision resolving a request for review of an Administrator decision that involves novel questions of fact, law or policy.⁶ The rules provide that the Commission or Bureau may extend the time period for taking action.⁷ Unlike appeals pending before the Bureau, if the Commission does not issue a decision within 90 days or does not extend the time period for taking action on the request for review, the Commission's rules do not provide that the Administrator's decision will be automatically approved.⁸

4. The procedural distinction between matters pending before the Commission and those pending before the Bureau may pose problems for schools and libraries that request reviews of Administrator decisions. The appellants will not be certain whether or not their requests for review raise novel questions of fact, law or policy. As a consequence, appellants are not in a position to determine whether their appeals are pending before the Bureau or the Commission. Without knowledge of whether an appeal is being considered by the Bureau or Commission, a school or library cannot determine whether its appeal remains pending before the Commission or was subject to automatic denial where the 90-day time period for taking action ran without a decision or extension of time having been issued by the Bureau. Because of this lack of certainty, appellants cannot know when a denial is final and when the time period for pursuing further review has begun.

5. We believe that this uncertainty puts appellants in an untenable position. A party adversely affected by a Bureau decision has the right to seek reconsideration or Commission review of the decision.⁹ In order to exercise their right to seek review of an adverse decision, however, appellants must file either a petition for reconsideration or an application for review within thirty days from the date of public notice of the final action or release of the decision.¹⁰ The rules fail, however, to set forth a mechanism for public notice of Administrator decisions that are deemed approved upon the passage of 90 days in the absence of action by the Bureau.

6. The requirement in section 54.724(a) that Administrator decisions will be deemed approved in the absence of Bureau action on matters not involving new or novel issues was adopted to promote the prompt and efficient resolution of pending requests for review.¹¹ We did

⁵ 47 C.F.R. § 54.724(a).

⁶ 47 C.F.R. § 54.724(b).

⁷ 47 C.F.R. §§ 54.724(a), (b).

⁸ 47 C.F.R. § 54.724(b).

⁹ See The Communications Act of 1934, as amended, 45 U.S.C. §§ 155(c)(4), 405; 47 C.F.R. §§ 1.106(f), 1.115(d).

¹⁰ 47 C.F.R. §§ 1.106(f), 1.115(d); see also 45 U.S.C. § 405.

¹¹ *Eighth Order on Reconsideration*, 13 FCC Rcd at 25093-25094, para. 70.

not anticipate, however, that this means of streamlining our review process would add uncertainty to the appeals process or interfere with the ability of appellants to seek further review. Because we conclude that the different procedural processes found in sections 54.724(a) and (b) generate uncertainty as to the status of certain requests for review, we find that it is in the public interest to eliminate the provision in section 54.724(a) specifying that a decision by the Administrator will be deemed approved where the Bureau has not acted within the 90-day review period. Accordingly, we find that it is appropriate to amend section 54.724(a) in this respect to conform to the rule that applies to Commission-level appeals. At the same time, we recognize the need of applicants under the schools and libraries program to have certainty over the status of their funding requests, and we remain committed to timely resolution of all appeals before us.

7. We believe this procedural amendment will clarify our administrative processes and prevent confusion regarding the procedural status of requests for review of Administrator decisions that are pending before the Bureau. Accordingly, as set forth in Appendix A, we amend section 54.724(a) of the Commission's rules to clarify that a decision of the Administrator will not be deemed approved upon the running of the 90-day time period for taking action on requests for review that are pending before the Bureau.

ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 218-220, 254, 303(r), 403, and 405, section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, this ORDER IS ADOPTED.

9. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 218-220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 218-220, 254, 303(r), 403, and 405, section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, Part 54 of the Commission's rules, 47 C.F.R. Part 54, is revised as set forth in Appendix A hereto.

10. IT IS FURTHER ORDERED that this action is exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. § 553, because it affects only rules of agency procedure or practice.

11. Because this action involves an internal procedural matter, IT IS FURTHER ORDERED that the rule change set forth in Appendix A IS EFFECTIVE immediately upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION


Magalie Roman Salas
Secretary

Appendix A – Rule Change

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 54 -- Universal Service

1. The authority citation for part 54 continues to read as follows:

Authority: 47 USC Secs. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.724 Time periods for Commission approval of Administrator decisions.

2. Amend section 54.724(a) by revising paragraph 54.724(a) to read as follows:

(a) The Common Carrier Bureau shall, within ninety (90) days, take action in response to a request for review of an Administrator decision that is properly before it. The Common Carrier Bureau may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days. The Commission may also, at any time, extend the time period for taking action on a request for review of an Administrator decision pending before the Common Carrier Bureau.

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