

FCC MAIL ROOM

Federal Communications Commission

DA 01-175

2001 JAN 30 P 2: 22

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
 RECEIVED)
 Request for Review of the)
 Decision of the)
 Universal Service Administrator by)
)
 East Side Union High School District)
 San Jose, California)
)
 Federal-State Joint Board on)
 Universal Service)
)
 Changes to the Board of Directors of the)
 National Exchange Carrier Association, Inc.)

File No. SLD- 153147

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: January 24, 2001

Released: January 25, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Letter of Appeal filed by East Side Union High School District (East Side Union), San Jose, California, on April 11, 2000, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ East Side Union seeks review of SLD's refusal to consider East Side Union's appeal to SLD on the grounds that it was untimely filed. For the reasons set forth below, we deny East Side Union's appeal and request for waiver of the 30-day time limit for filing appeals.

2. On November 2, 1999, SLD issued a Funding Commitment Decision Letter approving East Side Union's request for funding for internal connections. East Side Union filed appeals of the funding decision with SLD on December 8, 1999 and January 5, 2000.² SLD

¹ Letter of Appeal from Mac Cage, East Side Union High School District, to Federal Communications Commission, filed April 11, 2000 (Letter of Appeal).

² Letter from Mac Cage, East Side Union High School District, to Schools and Libraries Division, Universal Service Administrative Co., filed December 8, 1999; Letter from Mac Cage, East Side Union High School District, to Schools and Libraries Division, Universal Service Administrative Co., filed January 5, 2000.

dismissed the appeals as untimely.³ East Side Union subsequently filed the instant Letter of Appeal and request for waiver of the 30-day deadline for filing appeals.

3. Under section 54.720(b) of the Commission's rules, an appeal must be filed within 30 days of the issuance of the decision as to which review is sought.⁴ Documents are considered to be filed with the Commission or the SLD only upon receipt.⁵ The 30-day deadline applies to all requests for review filed by a party affected by a decision issued by the Administrator. Because East Side Union failed to appeal the Funding Commitment Decision Letter within the requisite 30-day appeal period, East Side Union's appeals to SLD were correctly denied as untimely.

4. To the extent that East Side Union is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules,⁶ we deny that request. The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.⁷ In light of the thousands of applications that the SLD must review and process each funding year, we believe it is administratively appropriate for the SLD to require applicants to adhere strictly to its filing deadlines. Accordingly, we believe that, absent special circumstances warranting a deviation from the general rule, waivers of these deadlines should not be granted. Although East Side Union argues that the 30-day deadline should be waived because it was not made aware of an SLD mistake regarding a contract expiration date until after the 30-day period had expired, the data entry error was evident in the Funding Commitment Decision Letter.⁸ Moreover, following the receipt of an applicant's FCC Form 471, SLD provides the applicant with a "Form 471 Receipt Acknowledgement Letter" (RAL) confirming the services requested on the FCC Form 471. Applicants are instructed to review the RAL and to notify SLD of incorrect information. East Side Union had notice of the error in both the RAL and the Funding Commitment Decision Letter. East Side Union bears the burden of carefully reviewing all documents sent to and received from SLD for accuracy. Accordingly, we conclude that East Side Union has not presented the special circumstances necessary to warrant relief from the filing deadline. We therefore deny East Side Union's request to waive section 54.720(b).

³ Letter from Schools and Libraries Division, Universal Service Administrative Co., to Mac Cage, East Side Union High School District, dated December 10, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Co., to Mac Cage, East Side Union High School District, dated March 24, 2000. (Administrator's Decisions on Appeal).

⁴ 47 C.F.R. § 54.720(b).

⁵ 47 C.F.R. § 1.7.

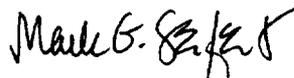
⁶ See 47 C.F.R. § 54.720(b).

⁷ See e.g. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("Waiver is [] appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule."); 47 C.F.R. § 1.3.

⁸ See Funding Commitment Decision Letter page 5.

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 Letter of Appeal filed on April 11, 2000, by East Side Union High School District, San Jose, California, and the request to waive the 30-day time limit in which to file appeals ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau