

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Petition for Reconsideration of the)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Solon City Schools)	File No. SLD-68608
Solon, Ohio)	
)	
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: December 3, 2001

Released: December 4, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Petition for Reconsideration filed by Solon City Schools (Solon), Solon, Ohio.¹ Solon seeks reconsideration of our denial of its request for review of the decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).² For the reasons set forth below, we dismiss the reconsideration petition. To the extent that Solon seeks a waiver of the 30-day deadline to appeal SLD's denial of its application for funding, we deny that request as well.

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 The Commission's rules require that the applicant make a bona fide request for services by filing

¹ Letter from Kirk Miller, Solon City Schools, to Federal Communications Commission, filed February 8, 2001 (Petition for Reconsideration).

² *Request for Review by Solon City Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-68608, CC Dockets No. 96-45 and 97-21, Order, DA 01-1877 (Com. Car. Bur. rel. January 29, 2001) (*Request for Review by Solon*). Parties may seek reconsideration from a final action of the Commission or its designated authority pursuant to 47 C.F.R. § 1.106.

³ 47 C.F.R. §§ 54.502, 54.503.

with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website 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 471,⁶ which requests support for eligible services.⁷ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.⁸

3. On September 28, 2000, SLD issued a Funding Commitment Decision Letter relating to Solon's request for discounted services under the schools and libraries universal service support mechanism.⁹ Specifically, SLD denied a request for discounts for internet access, Funding Request Number (FRN) 65038.¹⁰ On November 7, 2000, Solon appealed SLD's decision, and on November 17, 2000, SLD denied the appeal.¹¹ Subsequently, on December 5, 2000, Solon filed a Request for Review with the Commission.¹² The Commission denied Solon's Request for Review on the basis that it was untimely filed.¹³

4. Under section 54.720 of the Commission's rules, an appeal must be filed with the Commission or SLD within 30 days of the issuance of the decision that the party seeks to have reviewed.¹⁴ Documents are considered to be filed with the Commission or SLD only upon

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (December 1997) (FCC Form 470).

⁵ 47 C.F.R. §54.502(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*, 122 S. Ct. 423 (November 2, 2000).

⁶ Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1997) (FCC Form 471).

⁷ 47 C.F.R. § 54.504(b), (c).

⁸ *Request for Review by Metropolitan School District of Pike Township, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-120821, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 13891, para. 2 (Com. Car. Bur. 2000).

⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kirk Miller, Solon City Schools, dated September 28, 2000 (Funding Commitment Decision Letter).

¹⁰ *Id.*

¹¹ Letter from Kirk R. Miller, Solon City Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed November 7, 2000; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kirk B. Miller, Solon City Schools, dated November 17, 2000 (Administrator's Decision on Appeal).

¹² Letter from Kirk B. Miller, Solon City Schools, to Federal Communications Commission, filed December 5, 2000 (Request for Review).

¹³ *See Request for Review by Solon.*

¹⁴ 47 C.F.R. § 54.720.

receipt.¹⁵ The 30-day deadline contained in section 54.720 of the Commission's rules applies to all requests for review filed by a party affected by a decision issued by the Administrator.

5. Solon filed the instant Petition for Reconsideration with the Commission, asserting that it was not given an adequate opportunity to file its appeal of the Funding Commitment Decision Letter.¹⁶ Solon repeats the explanation given in its Request for Review that it had not received this letter in a timely manner due to a change in its mailing address.¹⁷

6. Section 1.106 of the Commission's rules provides that a petition for reconsideration of an order denying an application for review will be entertained only if: 1) the petition relies on facts which have occurred or circumstances which have changed since the last opportunity to present such matters; or 2) the petition relies on facts unknown to the petitioner after the last opportunity to present such matters could not, through ordinary diligence, have been learned prior to that opportunity.¹⁸

7. We find that Solon's reconsideration petition fails to demonstrate that either a new fact or changed circumstance is present here. In the Petition for Reconsideration, Solon does not present any new facts or changed circumstances since its Request for Review. Instead, Solon merely repeats the same argument made in its Request for Review. As a result, Solon's Petition for Reconsideration is subject to dismissal as repetitious pursuant to Section 1.106(b)(3) of the Commission's rules.¹⁹

8. To the extent that Solon seeks a waiver of the 30-day deadline for filing an appeal of the Funding Commitment Decision Letter, we find no basis to grant the waiver. A 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.²⁰ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.²¹

9. We conclude that Solon's argument does not demonstrate the special circumstances necessary to warrant relief from the filing deadline. In the Petition for Reconsideration, Solon maintains that it did not receive the Funding Commitment Decision Letter in a timely manner on account of a change in its mailing address. The Commission has determined that a change in mailing address does not establish the special circumstances

¹⁵ 47 C.F.R. § 1.7.

¹⁶ Petition for Reconsideration at 1.

¹⁷ *Id.*

¹⁸ 47 C.F.R. § 1.106(b)(2).

¹⁹ 47 C.F.R. § 1.106(b)(3).

²⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

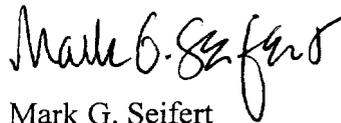
²¹ *Id.* at 1166; *see also WAIT Radio*, 897 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

necessary to allow waiver of the Commission's rules.²² As a result, this argument does not rise to the level of good cause necessary to justify waiving our rules. Therefore, to the extent that Solon requests that the Commission waive section 54.720(a) of its rules, we deny that request.

10. ACCORDINGLY, IT IS ORDERED, pursuant to sections 0.91, 0.291, and 1.106(j) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.106(j) that the Petition for Reconsideration filed by Solon City Schools, Solon, Ohio, on February 8, 2001 IS DISMISSED.

11. IF IS FURTHER ORDERED, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3 that the request to waive the 30-day time limit in which to file an appeal filed by Solon City Schools, Solon, Ohio, on February 8, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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

²² *Request for Review by Chabad Hebrew School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-185793, CC Dockets No. 96-45 and 97-21, Order, DA 01-1507 (Com. Car. Bur. rel. June 27, 2001).