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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Mulberry Elementary School District Brawley, California	)	File No. SLD-241563
	)	
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: February 13, 2002 **Released: February 15, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Mulberry Elementary School District (Mulberry), Brawley, California.[1] Mulberry seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to reject Mulberry's appeal on the grounds that it was untimely filed.[2] For the reasons set forth below, we deny Mulberry's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on July 23, 2001, denying Mulberry's request for discounted services under the schools and libraries universal service support mechanism.[3] Specifically, SLD denied Mulberry's request for discounts for internal connections, Funding Request Numbers (FRNs) 599442, 599909, and 600155.[4] On October 31,

[1] Letter from Sue Hess, Mulberry Elementary School District, to Federal Communications Commission, filed January 9, 2002 (Request for Review).

[2] *See* Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

[3] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sue Hess, Mulberry Elementary School District, dated July 23, 2001 (Funding Commitment Decision Letter).

[4] *Id.*

2001, Mulberry filed an appeal of SLD's decision to deny FRNs 599442, 599909, and 600155.[5] On November 9, 2001, SLD issued an Administrator's Decision on Appeal indicating that it would not consider Mulberry's appeal because it was received more than 30 days after the July 23, 2001 Funding Commitment Decision Letter was issued.[6] Mulberry subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued before August 13, 2001, under section 54.720(b) 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.[7] Documents are considered to be filed with the Commission or SLD only upon receipt.[8] The 30-day deadline contained in section 54.720(b) of the Commission's rules applies to all such requests for review filed by a party affected by a decision issued by the Administrator.[9] Because Mulberry failed to file an appeal of the July 23, 2001 Funding Commitment Decision Letter within the requisite 30-day appeal period, we affirm SLD's decision to dismiss Mulberry's appeal to SLD as untimely and deny the instant Request for Review.

4. To the extent that Mulberry is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules, we deny that request as well.[10] The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.[11] Mulberry has not shown good cause for the untimely filing of its initial appeal. Mulberry explains that it did not open the Funding Commitment Decision Letter until late August 2001, when the school year resumed, because it was understaffed.[12]

5. We conclude that Mulberry has not demonstrated a sufficient basis for waiving the Commission's rules. 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

[5] Letter from Sue Hess, Mulberry Elementary School District, to Schools and Libraries Division, Universal Service Administrative Company, filed October 31, 2001 (Request for Administrator Review).

[6] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sue Hess, Mulberry Elementary School District, dated November 9, 2001 (Administrator's Decision on Appeal).

[7] 47 C.F.R. § 54.720(b).

[8] 47 C.F.R. § 1.7.

[9] We note that, due to recent disruptions in the reliability of the mail service, the 30-day appeal period has been extended by an additional 30 days for requests seeking review of decisions issued on or after August 13, 2001. *See Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. Dec. 28, 2001) and (Com. Car. Bur. rel. Jan. 4, 2002). Because the July 23, 2001 Funding Commitment Decision Letter was issued before August 13, 2001, the extended appeal period does not apply to Mulberry.

[10] *See* 47 C.F.R. § 54.720(b).

[11] *See* 47 C.F.R. § 1.3.

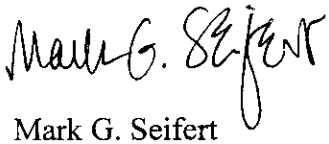
[12] Request for Review.

the general rule.[13] In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of adhering strictly to its filing deadlines.[14] In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal to be considered on the merits. An applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf. Here, Mulberry fails to present good cause as to why it could not timely file its appeal to SLD. We therefore find no basis for waiving the appeal filing deadline.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Mulberry Elementary School District, Brawley, California, on January 9, 2002, and the request to waive the 30-day time limit in which to file an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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

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

[14] *See Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. rel. Nov. 24, 2000), para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").