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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Kings Local School District Kings Mills, Ohio	)	File Nos. SLD-223454, 228637
	)	
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: April 17, 2002 **Released: April 18, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Kings Local School District (Kings Local), Kings Mills, Ohio, seeking review of two decisions issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] Kings Local seeks review of SLD's refusal to consider Kings Local's appeals to SLD on the grounds that there were untimely filed. For the reasons set forth below, we deny Kings Local's Request for Review.

2. SLD issued two Funding Commitment Decision Letters on July 23, 2001, denying Kings Local's request for discounted services under the schools and libraries universal service support mechanism.[2] Specifically, SLD denied Kings Local's request for discounts for telecommunications service, Funding Request Numbers (FRNs) 514089, 514261, 514275, 514281, and 529136. At King Local's request, SLD provided another copy of the Funding Commitment Decision Letters on November 30, 2001.[3] On February 11, 2002, Kings Local filed

[1] Letter from Robert Grimshaw, Kings Local School District, to Federal Communications Commission, filed February 21, 2002.

[2] Letters from Schools and Libraries Division, Universal Service Administrative Company, to Robert Grimshaw, Kings Local School District, dated July 23, 2001 (Funding Commitment Decision Letters).

[3] Letter Re-Order Advisory Cover Sheet from Schools and Libraries Division, Universal Service Administrative Company, to Robert Grimshaw, Kings Local School District, dated November 30, 2001 (Re-Order Advisory Sheet). The Re-Order Advisory Sheet is usually sent when an applicant requests a copy of the Funding Commitment Decision Letter from SLD. The Re-Order Advisory Sheet advises the applicant that all terms, conditions, dates

an appeal of SLD's July 23, 2001 decisions to deny FRNs 514089, 514261, 514275, 514281, and 529136.[4] On February 11, 2002, SLD issued two Administrator's Decisions on Appeal, indicating that it would not consider Kings Local's appeals because they were received more than 60 days after the Funding Commitment Decision Letters were issued.[5] Kings Local 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.[6] Documents are considered to be filed with the Commission or SLD only upon receipt.[7] 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.[8] Because Kings Local failed to file an appeal of the July 23, 2001 Funding Commitment Decision Letters within the requisite 30-day appeal period, we affirm SLD's decision to dismiss Kings Local's appeal to SLD as untimely and deny the instant Request for Review.[9]

4. To the extent that Kings Local 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] Kings Local has not shown good cause for the untimely filing of its

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and/or notions imposed by the Schools and Libraries Program on applicants or service providers that are dependent upon the specific dates in effect with the original letter remain unchanged.

[4] Letter from Robert Grimshaw, Kings Local School District, to Schools and Libraries Division, Universal Service Administrative Company, filed December 13, 2001 (Request for Administrator Review).

[5] Letters from Schools and Libraries Division, Universal Service Administrative Company, to Robert Grimshaw, Kings Local School District, dated August 27, 2001 (Administrator's Decisions on Appeal). In fact, Kings Local was subject to the 30-day appeal period, as discussed below. *See infra* para. 3.

[6] 47 C.F.R. § 54.720(b).

[7] 47 C.F.R. § 1.7.

[8] 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 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 Kings Local, notwithstanding SLD's misapplication of the 60-day appeal period to Kings Local. *See* Administrator's Decisions on Appeal (applying the 60-day appeal period inadvertently to Kings Local).

[9] SLD's misapplication of the 60-day appeal period is an immaterial error and does not affect our decision in this case.

[10] *See* 47 C.F.R. § 54.720(b).

[11] *See* 47 C.F.R. § 1.3.

initial appeals. Kings Local explains that it never received the Funding Commitment Decision Letters and, as a result, the 30-day appeal period passed without filing timely appeals.[12]

5. We conclude that Kings Local 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 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. Kings Local asserts that it did not receive the July 23, 2001 Funding Commitment Decision Letters, and had to call SLD to reorder a copy of these letters.

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 appeals to SLD if it wishes its appeals 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, there is no evidence in the official record supporting Kings Local's assertion that it did not receive the Funding Commitment Decision Letters.[15] Moreover, Kings Local fails to present good cause as to why it could not timely file its appeals to SLD. We therefore find no basis for waiving the appeal filing deadline.

[12] Request for Review.

[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, Inc.*, 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.

[15] A review of the record indicates that SLD did issue two Funding Commitment Decision Letters on July 23, 2001. Merely stating that a letter was not received at the address provided to SLD and to which prior correspondence had been successfully mailed is insufficient grounds for granting relief. *See Request for Review by Whitehall City School District*, Docket Nos. 96-45 and 97-21, Order, DA 00-1892 (rel. August 18, 2000); *Juan Galiano*, Memorandum Opinion and Order, 5 FCC Rcd 6442, 6443 (1990) ("[I]f the Commission were to entertain and accept unsupported arguments that letters mailed in Commission proceedings were not delivered... procedural havoc and abuse would result.").

7. 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 Request for Review as well as the request for waiver of the appeal filing period, filed on February 21, 2002, by Kings Local School District, Kings Mills, Ohio ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert

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Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau