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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of	)	
	)	
Petition for Reconsideration of the Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Levittown Union Free School District Levittown, New York	)	File No. SLD-144841
	)	
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 ON RECONSIDERATION

Adopted: May 10, 2002 **Released: May 13, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Petition for Reconsideration filed by E-Rate Central (E-Rate Central) on behalf of Levittown Union Free School District (Levittown), Levittown, New York.[1] In the Petition for Reconsideration, E-Rate Central requests that we reconsider our January 29, 2001 decision dismissing Levittown's Request for Review as untimely.[2] E-Rate Central also requests that we instruct the Universal Service Administrative Company to implement appeal notification procedures for its Schools and Libraries Division (SLD). For the reasons set forth below, we deny Levittown's Petition for Reconsideration.

2. For requests seeking review of decisions issued before August 13, 2001, under section 54.720 of the Commission's rules, any appeal seeking review of a decision issued by SLD, must be filed within 30 days of the issuance of the decision that the party seeks to have reviewed.[3] Documents are considered filed with the Commission only upon receipt.[4] SLD

[1] *Petition for Reconsideration by E-Rate Central on Behalf of Levittown Union Free School District,* CC Docket Nos. 96-45 and 97-21, Petition for Reconsideration, filed February 15, 2001 (Petition for Reconsideration).

[2] Petition for Reconsideration, at 1; *Request for Review by Levittown Union Free School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 01-204 (Com. Car. Bur. rel. January 29, 2001) (*Request for Review by Levittown*). Parties may seek reconsideration from a final action by the Commission or its designated authority pursuant to 47 C.F.R. § 1.106.

[3] 47 C.F.R. § 54.720.

[4] 47 C.F.R. § 1.7.

denied Levittown funding in an Administrator's Decision on Appeal letter dated May 10, 2000.[5] The Commission, however, did not receive Levittown's Letter of Appeal until November 28, 2000.[6] Because Levittown's Letter of Appeal was not filed within the specified 30-day period, it was dismissed without further consideration.[7]

3. E-Rate Central argues that neither it nor Levittown ever received the Administrator's Decision on Appeal.[8] The applicant sent an e-mail to SLD on November 17, 2000 to inquire about the status of Levittown's Letter of Appeal.[9] E-Rate Central contends that it was not aware that Levittown's appeal had been denied until November 22, 2000, when it was informed by SLD that it had been denied in the May 10, 2000 Administrator's Decision on Appeal.[10] In its Petition, E-Rate Central requests the Bureau to reconsider its earlier decision and instead conclude that the date of the e-mail or fax notification received by Levittown is the effective date of the Administrator's Decision on Appeal.[11] E-Rate Central also requests that we direct SLD to implement appeal notification procedures to prevent a reoccurrence of the situation encountered by Levittown and other unnamed applicants.[12]

4. Section 1.106(c) of the Commission's rules provides that a petition for reconsideration of an order may rely on facts not previously presented to the Commission or to its designated authority only if: 1) the petition relies on facts that have occurred or circumstances that have changed since the last opportunity to present such matters; or 2) the petition relies on facts unknown to the petitioner until after the last opportunity to present such matters could not, through ordinary diligence, have been learned prior to that opportunity; or 3) consideration of the facts relied on is required by the public interest.[13] Here, E-Rate Central essentially is repeating arguments previously raised in its appeal and rejected by the Bureau. E-Rate Central has not

[5] Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Winston E. Himsworth, Levittown Union Free School District, dated May 10, 2000 (Administrator's Decision on Appeal).

[6] Letter from Winston E. Himsworth, E-Rate Central, to Federal Communications Commission, filed November 28, 2000 (Letter of Appeal).

[7] *See Request for Review by Levittown.*

[8] Petition for Reconsideration, at 1.

[9] *Id.*

[10] *Id.* at 2.

[11] *Id.* The record fails to establish the date of the referenced e-mail and fax notifications. SLD's e-mail notification is undated, but it appears to have been written between November 17 and November 25, 2000. E-mail from George McDonald, Schools and Libraries Division, Universal Service Administrative Company, to Winston E. Himsworth, E-Rate Central, undated (between two e-mails from Winston E. Himsworth, E-Rate Central, to George McDonald, Schools and Libraries Division, Universal Service Administrative Company, dated November 17 and 25, 2000). Although SLD agreed to fax a copy of the Administrator's Decision on Appeal during this time frame, there is no copy of the fax notification in the record. E-mail from George McDonald, Schools and Libraries Division, Universal Service Administrative Company, to Winston E. Himsworth, E-Rate Central, undated (between two e-mails from Winston E. Himsworth, E-Rate Central, to George McDonald, Schools and Libraries Division, Universal Service Administrative Company, dated November 25 and 27, 2000).

[12] *Id.*

[13] *See* 47 C.F.R. § 1.106(c).

demonstrated new facts that have occurred since the last opportunity to seek review or that it could not have learned of before that time insofar as the timeliness of Levittown's original appeal. Further, because the purpose of the new evidence rule, which "encourages applicants and others to provide complete information at an early stage, thereby minimizing the need for reconsideration proceedings," is served by enforcing the rule here, we find that reconsideration of Levittown's original appeal is not required by the public interest.[14] We therefore deny Levittown's Petition for Reconsideration and do not reach the underlying merits of Levittown's original appeal.

5. As noted in previous orders, the Commission has consistently held that allegations that a letter was not received at an address provided to SLD by an applicant and to which prior correspondence had been successfully mailed is insufficient grounds for reconsideration.[15] SLD denies a number of applications on appeal each funding year and the vast majority of applicants are successfully informed of such decisions by reliance on the United States mail system.

6. E-Rate Central argues that a waiver of the 30-day appeal deadline for Levittown and other applicants who allegedly failed to receive notification of SLD's appeal decisions is justified by circumstances that existed during Funding Year 2 and subsequent funding years.[16] Specifically, E-Rate Central alleges that such time-sensitive correspondence is not delivered to the applicants in a timely manner and that there is no adequate back-up system for applicants to check when they should be receiving such correspondence.[17]

7. Insofar as E-Rate Central seeks waivers on behalf of unspecified applicants, we find that the pleading has not presented "a full statement of relevant, material facts" as required by the Commission's rules.[18] Specifically, E-Rate Central's petition describes a broad class of applications, which includes all applicants who filed untimely appeals in response to the Administrator's Decisions on Appeal.[19] However, a waiver is appropriate only 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] We find that, without more, this standard is not satisfied by general allegations concerning a lack of

[14] Application of Carolyn S. Hagedorn, 11 FCC 1695,1696 (1996).

[15] *See Request for Review by Whitehall City School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 15157, n.2 (Com. Car. Bur. 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.").

[16] Petition for Reconsideration, at 2-3.

[17] *Id.*

[18] 54 C.F.R. § 54.721(b).

[19] Petition for Reconsideration, at 3.

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

[21] *Id.*

timely notification of the Administrator's Decisions on Appeal by unidentified applicants. We therefore deny E-Rate Central's request on behalf of the unnamed applicants that we waive the 30-day appeal deadline for those applicants.

8. To the extent Levittown seeks a waiver of our rules regarding the appeal deadline, we deny that request as well. E-Rate Central has not pointed to any special circumstances in connection with Levittown beyond referring to the same allegation of lack of notice that we have discussed above. Upon our review of the record, we have found nothing that would support a waiver. Therefore, we also deny the request for waiver made on behalf of Levittown.

9. Because we deny E-Rate Central's request for retroactive waiver of the 30-day appeal deadline for applicants who filed untimely appeals of the Administrator's Decisions on appeal, there is no need to establish new appeal notification procedures for these unnamed applicants. Therefore, E-Rate Central's request that we authorize such procedures is moot.

10. E-Rate Central also asserts more broadly that any applicant who appeals an unfavorable decision by SLD should be entitled to notice of such decision, separate and apart from the mailing of the decision itself, to ensure that such notice is given before the 30-day appeal deadline passes. E-Rate Central offers a specific proposal that the FCC require the Administrator to supplement its appeal notification procedures by posting notice of such decision or the decision itself routinely to its web site. These arguments are not properly before the Bureau in a request for review of an Administrator decision. We note that the Commission recently initiated a rulemaking proceeding to examine its rules governing the schools and libraries universal service support mechanism in order to ensure its continued efficient and effective operation.[22] E-Rate Central is free to raise this proposal in the context of the rulemaking. We deny E-Rate Central's request that the FCC requires the Administrator to post appeals to its website.

11. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under section 1.106(j) of the Commission's rules, 47 C.F.R. § 1.106(j), that the Petition for Reconsideration filed by E-Rate Central on behalf of Levittown Union Free School District, Levittown, New York, on February 15, 2001, IS DENIED.

[22] *See generally Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Further Notice of Proposed Rulemaking, FCC 02-8 (rel. January 25, 2002).

12. IT IS FURTHER 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 waiver filed by E-Rate Central on behalf of Levittown Union Free School District, Levittown, New York, and other unspecified applicants, on February 15, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
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Wireline Competition Bureau