DOCKET FILE COPY ORIGINAL

RECEIVED & INSPECTED
MAY 17 2002
FCC-MAIL ROOM

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Pleasantville Public Schools Pleasantville, New Jersey	)	File Nos. SLD-213514, 213494
	)	
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: May 10, 2002 **Released: May 13, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has before it a Request for Review filed by Pleasantville Public Schools (Pleasantville), Pleasantville, New Jersey, requesting review of a decision of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] Pleasantville seeks review of SLD's denial of its application for Year 2 funding under the schools and libraries universal service support program.[2] Because Pleasantville failed to appeal SLD's funding decision within 30 days of the corresponding Funding Commitment Decision Letter, we deny Pleasantville's Request for Review.

2. Under section 54.720(b) of the Commission's rules, any appeal must be filed within 30 days of the issuance of the decision as to which review is sought.[3] Documents are considered filed with the Commission only upon receipt.[4] On April 27, 2001, SLD issued Funding

[1] Letter from Addison Williams, Pleasantville Public Schools, to Federal Communications Commission, filed July 11, 2001 (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] 47 C.F.R. § 54.720(b).

[4] 47 C.F.R.§ 1.7.

Commitment Decision Letters (FCDLs) denying Pleasantville's applications.[5] It explained, "Applicant has not demonstrated that it has access to adequate resources to make effective use of discounts."[6] SLD sent a separate letter on that date explaining, "Since you did not respond to our repeated requests for the Item 22 worksheet, we were unable to determine that you have secured access to all of the resources necessary to effectively use the services you are ordering, as well as to pay for the discounted charges for eligible services."[7] Under our rules, Pleasantville had until May 29, 2001 to file its Request for Review.[8]

3. Pleasantville contends that it never received the April 27, 2001 letters. However, the record reflects that SLD did not receive from the U.S. Postal Service returned, undelivered FCDLs for Pleasantville. Pleasantville subsequently requested a Letter Re-Order of the April 27, 2001 letters, which were reissued on June 12, 2001.[9] When SLD re-mails the FCDL to the school or library, it also includes a Schools and Libraries Division FCDL Re-Mail Advisory Cover Sheet. If SLD did not receive a returned, undelivered FCDL for a particular application, the Re-Mail Advisory Sheet states, "It is important to note that all terms, conditions, dates and/or actions imposed by the Schools and Libraries Program on applicants or service providers that are dependent on the specific dates in effect with the *original* letter remain *unchanged*."[10] Therefore, if the school or library is considering filing an appeal the appeal must be filed within 30 days of the date of the original FCDL.

4. On July 11, 2001, Pleasantville filed the instant Request for Review of the Administrator's decision.[11] Upon review of the record, we find that, because Pleasantville failed to appeal the April 27, 2001 Funding Commitment Decision Letters within the requisite 30-day appeal period, its Request for Review is untimely and must be dismissed. Pleasantville does not dispute that SLD mailed the April 27, 2001 letters to the proper address, it merely states that it did not receive them. Pleasantville's claim is insufficient to raise an issue of error on the part of

[5] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Andrew Carrington, Pleasantville Public Schools, dated April 27, 2001 (Funding Commitment Decision Letter (SLD-213494)); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Andrew Carrington, Pleasantville Public Schools, dated April 27, 2001 (Funding Commitment Decision Letter (SLD-213514)). For requests seeking review of decisions issued before August 13, 2001 under section 54.720 of the Commission's rules, an appeal must be filed within thirty days of the issuance of the decision as to which review is sought. *See* 47 C.F.R. § 54.720.

[6] Funding Commitment Decision Letter (SLD-213494); Funding Commitment Decision Letter (SLD-213514).

[7] Letter from Kate L. Moore, Schools and Libraries Division, Universal Service Administrative Company, to Mike Williams, Pleasantville Public Schools, dated April 27, 2001.

[8] 47 C.F.R. § 54.720(b).

[9] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Andrew Carrington, Pleasantville Public Schools, dated April 27, 2001, reissued June 12, 2001 (Reissued Funding Commitment Decision Letter).

[10] *See* FCDL Re-Mail Advisory Cover Sheet Letter form, Schools and Libraries Division, Universal Service Administrative Company (emphasis in the original).

[11] Request for Review.

SLD or the Commission.[12] We have addressed cases in which SLD received from the U.S. Postal Service an undelivered, returned FCDL it had previously sent to an applicant, and then sent out a new letter with a date that forms the basis of a new 30-day deadline period. In this case, however, SLD received no such returned letter.[13] We therefore conclude that it was properly delivered.

5. To the extent that Pleasantville is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules, we deny that request.[14] The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.[15] Pleasantville has not demonstrated good cause for the untimely filing of its initial appeal.

6. In light of the thousands of applications that SLD must review and process each funding year, we believe it administratively appropriate for SLD to require applicants to adhere strictly to its filing deadlines. Pleasantville has failed to demonstrate the merits of its Request for Review, or good cause for waiving the filing deadline. For these reasons, we find that the circumstances here do not warrant relief and, therefore, we deny Pleasantville's request.

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 on July 11, 2001, by Pleasantville Public Schools, Pleasantville, New Jersey IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

[12] *See, e.g., In re Applications of Stephen E. Powell*, Memorandum Opinion and Order, 11 FCC Rcd 11925 (1996) (observing that "if the Commission were to entertain and accept unsupported arguments that letters mailed in Commission proceedings were not delivered . . . procedural havoc and abuse would result.").

[13] *See, e.g., 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 Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 12913 (Com. Car. Bur. 2001).

[14] *See* 47 C.F.R. § 54.720(b).

[15] *See* 47 C.F.R. § 1.3.