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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	)	
	)	
Bloomingdale Elementary Schools Bloomingdale, Illinois	)	File No. SLD-236639
	)	
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 28, 2002 **Released: May 29, 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 Bloomingdale Elementary Schools (Bloomingdale), Bloomingdale, Illinois, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] Bloomingdale seeks review of SLD's refusal to consider Bloomingdale's appeal to SLD on the grounds that it was untimely filed. For the reasons set forth below, we deny Bloomingdale's Request for Review and affirm SLD's decision.

2. SLD issued a Funding Commitment Decision Letter on August 8, 2001, denying Bloomingdale's request for discounted services under the schools and libraries universal service support mechanism.[2] Specifically, SLD denied Bloomingdale's request for discounts for Internet access, Funding Request Number (FRN) 555547.[3] At Bloomingdale's request, SLD provided

[1] Letter from Janis M. Prehn and Jerome E. Gordon, Bloomingdale Elementary Schools, to Federal Communications Commission, filed March 18, 2002.

[2] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Nanci Greene, Bloomingdale Elementary Schools, dated August 7, 2001 (Funding Commitment Decision Letter).

[3] SLD also denied Bloomingdale's request for discounts for internal connections, FRN 569008, but Bloomingdale does not appeal SLD's decision as it relates to this FRN.

another copy of the Funding Commitment Decision Letter on December 18, 2001.[4] On January 10, 2002, Bloomingdale filed an appeal of SLD's August 7, 2001 Funding Commitment Decision Letter to deny FRN 555547.[5] On February 11, 2002, SLD issued an Administrator's Decision on Appeal, indicating that it would not consider Bloomingdale's appeal because it was received more than 60 days after the Funding Commitment Decision Letter was issued.[6] Bloomingdale 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 Bloomingdale failed to file an appeal of the August 7, 2001 Funding Commitment Decision Letter within the requisite 30-day appeal period, we affirm SLD's decision to dismiss Bloomingdale's appeal to SLD as untimely and deny the instant Request for Review.[10]

4. To the extent that Bloomingdale 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.[11] The

[4] Letter Re-Order Advisory Cover Sheet from Schools and Libraries Division, Universal Service Administrative Company, to Nanci Greene, Bloomingdale Elementary Schools, dated December 18, 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 and/or actions 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 (*emphasis in the original*)."

[5] Letter from Janis M. Prehn, Bloomingdale Elementary Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed January 10, 2002 (Request for Administrator Review).

[6] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Janis M. Prehn, Bloomingdale Elementary Schools, dated February 11, 2002 (Administrator's Decision on Appeal). In fact, Bloomingdale was subject to the 30-day appeal period, as discussed below. *See infra* para. 3.

[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 Jan. 4, 2002). Because the August 7, 2001 Funding Commitment Decision Letter was issued before August 13, 2001, the extended appeal period does not apply to Bloomingdale, notwithstanding SLD's misapplication of the 60-day appeal period to Bloomingdale. *See* Administrator's Decision on Appeal (applying the 60-day appeal period inadvertently to Bloomingdale).

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

[11] *See* 47 C.F.R. § 54.720(b).

Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.[12] Bloomingdale has not shown good cause for the untimely filing of its initial appeal. Bloomingdale explains that it did not receive the Funding Commitment Decision Letter until December 18, 2001, when it was faxed at the request of Bloomingdale's technology coordinator.[13]

5. We conclude that Bloomingdale 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.[14] In requesting funds from the schools and libraries universal servicesupport 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. Bloomingdale asserts that it did not receive the August 7, 2001 Funding Commitment Decision Letter, and had to call SLD to reorder a copy of this letter.

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.[15] 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 Bloomingdale's assertion that it did not receive the Funding Commitment Decision Letter.[16] Moreover, Bloomingdale 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.

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[12] *See* 47 C.F.R. § 1.3.

[13] Request for Review.

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

[15] *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.

[16] A review of the record indicates that SLD did issue a Funding Commitment Decision Letter on August 7, 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, 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 as well as the request for waiver of the appeal filing period, filed on March 18, 2002, by Bloomingdale Elementary Schools, Bloomingdale, Illinois ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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