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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	)	
	)	
Fairfield Public Schools Fairfield, Connecticut	)	File No. SLD-228169
	)	
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: June 13, 2002 **Released: June 14, 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 Fairfield Public Schools (Fairfield), Fairfield, Connecticut, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).[1] Fairfield seeks review of SLD's refusal to consider Fairfield's appeal to SLD on the grounds that it was untimely filed.[2] For the reasons set forth below, we deny Fairfield's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on August 7, 2001, denying Fairfield's request for discounted services under the schools and libraries universal service support mechanism.[3] Specifically, SLD denied Fairfield's request for discounts for telecommunications service and Internet access, Funding Request Numbers (FRNs) 545468 and 545533. At Fairfield's request, SLD provided another copy of the Funding Commitment

[1] Letter from Brian Fagan, Fairfield Public Schools, to Federal Communications Commission, filed March 13, 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 Joanne LaVista, Fairfield Public Schools, dated August 7, 2001 (Funding Commitment Decision Letter).

Decision Letter on December 5, 2001.[4] On January 4, 2002, Fairfield filed an appeal of SLD's August 7, 2001 decision to deny FRNs 545468 and 545533.[5] On February 11, 2002, SLD issued an Administrator's Decisions on Appeal, indicating that it would not consider Fairfield's appeal because it was received more than 60 days after the Funding Commitment Decision Letter was issued.[6] Fairfield 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 Fairfield 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 Fairfield's appeal to SLD as untimely and deny the instant Request for Review.[10]

4. To the extent that Fairfield 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 Commission may waive any provision of its rules, but a request for waiver must be supported by

[4] In the past, SLD has provided a copy of the Re-Order Advisory Cover 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 original*)." However, in this case, SLD was unable to provide a copy of the Re-Order Advisory Sheet; instead it provided an excerpt from its log to show that a duplicate was mailed.

[5] Letter from Brian Fagan, Fairfield Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed January 4, 2002 (Request for Administrator Review).

[6] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Brian Fagan, Fairfield Public Schools, dated February 11, 2002 (Administrator's Decision on Appeal). In fact, Fairfield 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 Fairfield, notwithstanding SLD's misapplication of the 60-day appeal period to Fairfield. *See* Administrator's Decision on Appeal (applying the 60-day appeal period inadvertently to Fairfield).

[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).

a showing of good cause.[12] Fairfield has not shown good cause for the untimely filing of its initial appeal. Fairfield explains that it did not received the Funding Commitment Decision Letter until December 6, 2001, only after it requested a duplicate copy, and, as a result, the 30-day appeal period passed without filing a timely appeal.[13]

5. We conclude that Fairfield 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 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. Fairfield 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. Here, there is no evidence in the official record supporting Fairfield's assertion that it did not receive the Funding Commitment Decision Letter. Instead, the record shows only 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.[15]

7. 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.[16] 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. Fairfield 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 Administrator Review.

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

[15] *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.").

[16] *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.

8. 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 13, 2002, by Fairfield Public Schools, Fairfield, Connecticut ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert

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