DOCKET FILE COPY ORIGINAL

RECEIVED & INSPECTED
JUN 25 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	)	
	)	
Plymouth Board of Education Terryville, Connecticut	)	File No. SLD-255053
	)	
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 Plymouth Board of Education (Plymouth), Terryville, Connecticut.[1] Plymouth seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting Plymouth's appeal on the grounds that it was untimely filed.[2] For the reasons set forth below, we affirm SLD's rejection and deny Plymouth's Request for Review.

2. SLD issued a Year 4 Certification Rejection Letter on March 6, 2001, notifying Plymouth that the FCC Form 471 Certification of the Services Ordered and Certification Form it submitted did not meet the Minimum Processing Standards and could not be processed.[3] Specifically, SLD Plymouth's FCC Form 471 did not meet the Minimum Processing Standards because the FCC Form 471 did not contain an original signature.[4] On October 16, 2001, Plymouth filed an appeal of SLD's decision.[5] In its appeal, Plymouth explains that it failed to

[1] Letter from Keith Rafaniello, Plymouth Board of Education, to Federal Communications Commission, dated November 15, 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] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Keith Rafaniello, Plymouth Board of Education, dated March 6, 2001 (Year 4 Certification Rejection Letter).

[4] *Id.*

[5] Letter from Keith Rafaniello, Plymouth Board of Education, to Schools and Libraries Division, Universal Service Administrative Company, filed October 16, 2001 (Request for Administrator Review).

file its appeal within 30 days of SLD's rejection letter because it was instructed by SLD (in writing and on the phone) to respond by resubmitting a corrected Form 471 Certification and was not instructed to appeal. The March 6, 2001 Year 4 Certification Rejection Letter, however, also advised Plymouth to appeal SLD's rejection within 30 days of its issuance, if Plymouth "disagree[d] with this decision.[6] On November 5, 2001, SLD issued an Administrator's Decision on Appeal, indicating that it would not consider Plymouth's appeal because it was received more than 30 days after the March 6, 2001 Year 4 Certification Rejection Letter was issued.[7] Plymouth 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, any such 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.[8] Documents are considered to be filed with the Commission only upon receipt.[9] Because Plymouth's Request for Administrator Review was not filed within the requisite 30-day period, we affirm the Administrator's Decision on Appeal and deny the instant Request for Review.

4. To the extent that Plymouth is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules for its underlying appeal of SLD's rejection of its FCC Form 471, 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] Plymouth has not shown good cause for the untimely filing of its initial appeal. Plymouth explains that its appeal was not sent within 30 days of its SLD rejection letter because it was instructed by SLD to respond by resubmitting a corrected Form 471 Certification and was not instructed to appeal.[12]

5. We conclude that Plymouth 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. The March 6, 2001 Year 4 Certification Rejection letter clearly

[6] Year 4 Certification Rejection Letter at 1.

[7] Letter from Schools and Libraries Division, Universal Service Administrative Company, to Keith Rafaniello, Plymouth Board of Education, dated November 5, 2001 (Administrator's Decision on Appeal).

[8] 47 C.F.R. § 54.720(b).

[9] 47 C.F.R. § 1.7.

[10] *See* 47 C.F.R. § 54.720(b).

[11] *See* 47 C.F.R. § 1.3.

[12] Request for Review.

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

states that "your appeal must be made in writing and received by [SLD] within 30 days of issuance of this letter."[14]

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Although Plymouth contends that it should receive a waiver because an SLD representative incorrectly instructed Plymouth to resubmit a corrected Form 471 Certification instead of appealing SLD's rejection letter, our precedent is clear that even where a party has received erroneous advice from a government official or employee, the government is not estopped from enforcing its rules, particularly when relief is contrary to these rules.[15] 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 appeal to SLD if it wishes its appeal to be considered on the merits. Here, Plymouth 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.

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 filed by Plymouth School District, Terryville, Connecticut, on November 15, 2001, and the request to waive the 30-day time limit in which to file an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

[14] Year 4 Certification Rejection Letter at 1.

[15] *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990)).

[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*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Comm. Car. Bur. rel. Nov. 24, 2000), para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility for understanding all relevant program rules and procedures.").