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Before the
Federal Communications Commission
Washington, DC 20554

INSPECTED
JUN 2 6 2002
FCC-MAIL ROOM

In the Matter of	)	
	)	
Request for Review of the Decision of the Universal Service Administrator by	)	
	)	
Professional Information Networks Bangor, Maine	)	File No. SLD-260493
	)	
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. This Order dismisses the Request for Review filed by Professional Information Networks, on behalf of Bangor Public Library (Bangor), Bangor, Maine.[1] Bangor seeks review of a funding commitment decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) on November 16, 2001.[2] The Commission received Bangor's Request for Review on April 24, 2002.[3]

2. For requests seeking review of decisions issued on or after 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 60 days of the issuance of the decision that the party seeks to have reviewed.[4] Documents are considered to be filed with the Commission only upon receipt.[5] Because the

[1] Letter from James Rogers, Jr., Professional Information Networks, to Federal Communications Commission, filed April 24, 2002 (Request for Review).

[2] *See* Request for Review; Letter from the School and Libraries Division, Universal Service Administrative Company, to James Rogers, Jr., Professional Information Networks, dated November 16, 2001 (Funding Commitment Decision Letter). 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] *See* Request for Review.

[4] 47 C.F.R. § 54.720(b). *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).

[5] 47 C.F.R. § 1.7.

instant Request for Review was not filed within the requisite 60-day period, it will be dismissed without further consideration.

3. To the extent that Bangor is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules for its underlying appeal of SLD's denial of discounted funding requests for telecommunications services, Funding Request Numbers (FRNs) 659288, 659319, and 659351, we deny that request as well.[6] The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.[7] Bangor has not shown good cause for the untimely filing of its initial appeal. Bangor explains that its appeal was untimely because in June 2001 its office was contacted by an SLD representative concerning a correction that Bangor had to make to its FCC Form 471 application.[8] Bangor asserts that it had numerous conversations with this representative and was reassured that everything was in order. Bangor also claims that it called SLD on numerous occasions between July and October 2001 to inquire about the status of the Funding Commitment Decision Letter. Bangor further claims that once the Funding Commitment Decision Letter denying the funding requests arrived in November 2001, it repeatedly called SLD between the months of December 2001 and March 2002, but its calls were not returned.[9]

4. We conclude that Bangor 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.[10] 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 November 16, 2001 Funding Commitment Decision Letter clearly states that "your appeal must be ... RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) ... WITHIN 30 DAYS OF THE ... DATE ON [THE FUNDING COMMITMENT DECISION LETTER]."[11]

5. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Although Bangor contends that it should receive a waiver because an SLD representative provided it with false assurances, our precedent is clear that even where a party has received erroneous advice, the government is estopped from enforcing its rules in a manner that is inconsistent with the advice provided by its employee, particularly when relief is contrary to a rule.[12] In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the

[6] *See* 47 C.F.R. § 54.720(b); Funding Commitment Decision Letter.

[7] *See* 47 C.F.R. § 1.3.

[8] Request for Review.

[9] Request for Review.

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

[11] Funding Commitment Decision Letter at 2 (*emphasis in original*).

[12] *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)).

responsibility of adhering strictly to its filing deadlines.[13] 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. 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, Bangor 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.

6. 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 by Professional Information Networks, Bangor, Maine, on April 24, 2002, IS DISMISSED, and the request to waive the 60-day time limit in which to file an appeal IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

[13] *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 (Comm. Car. Bur. rel. Nov. 24, 2000), para. 8.