

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)
)
 ERIE 2 - Board of Cooperative Educational)
 Services)
 Fredonia, New York)
)
 Federal-State Joint Board on)
 Universal Service)
)
 Changes to the Board of Directors of the)
 National Exchange Carrier Association, Inc.)

File No. SLD-263989

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: July 12, 2002

Released: July 15, 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 ERIE 2 - Board of Cooperative Educational Services (ERIE 2 BOCES), Fredonia, New York.¹ ERIE 2 BOCES seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting ERIE 2 BOCES's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we affirm SLD's rejection and deny ERIE 2 BOCES's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on September 28, 2001, approving ERIE 2 BOCES's request for discounted services under the schools and libraries universal service support mechanism.³ Specifically, SLD approved ERIE 2 BOCES's request for discounts for telecommunications services, Funding Request Number (FRN) 711621, but modified the amount to be funded.⁴ On March 29, 2002, ERIE 2 BOCES filed an appeal of SLD's decision, stating that SLD's modification was incorrect and that it sent documentation to

¹ Letter from Penny Lester, ERIE 2 - Board of Cooperative Educational Services, to Federal Communications Commission, filed May 24, 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 Mat Dziuba, ERIE 2 - Board of Cooperative Educational Services, dated September 28, 2001 (Funding Commitment Decision Letter).

⁴ *Id.*

SLD proving that its monthly basic telecommunications services bills were \$6,199.87.⁵ On April 2, 2002, SLD issued an Administrator's Decision on Appeal indicating that it would not consider ERIE 2 BOCES's appeal because it was received more than 60 days after the September 28, 2001 Funding Commitment Decision Letter was issued.⁶ ERIE 2 BOCES subsequently filed the instant Request for Review with the Commission.

3. 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.⁷ Documents are considered to be filed with the Commission only upon receipt.⁸ Because ERIE 2 BOCES's Request for Administrator Review was not filed within the requisite 60-day period, we affirm the Administrator's Decision on Appeal and deny the instant Request for Review.

4. To the extent that ERIE 2 BOCES 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 its request for discounted services, FRN 711621, we deny that request as well.⁹ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹⁰ ERIE 2 BOCES has not shown good cause for the untimely filing of its initial appeal. ERIE 2 BOCES explains that it relied on its consortium representatives to check SLD's decisions with respect to ERIE 2 BOCES's funding requests. As a result, ERIE 2 BOCES apparently did not notice SLD's modification to this particular FRN until it recently started filing the necessary reimbursement documentation with SLD. ERIE 2 BOCES does not dispute that its consortium contact person received the Funding Commitment Decision Letter and further explains that its consortium contact person also did not notice the same.¹¹

5. We conclude that ERIE 2 BOCES 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.¹² In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of

⁵ Letter from Penny Lester, ERIE 2 – Board of Cooperative Services, to Schools and Libraries Division, Universal Service Administrative Company, filed March 29, 2002 (Request for Administrator Review).

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Tracey Smith-Dengler, ERIE 2 - Board of Cooperative Educational Services, dated April 2, 2002 (Administrator's Decision on Appeal).

⁷ 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).

⁸ 47 C.F.R. § 1.7.

⁹ See 47 C.F.R. § 54.720(b).

¹⁰ See 47 C.F.R. § 1.3.

¹¹ Request for Review.

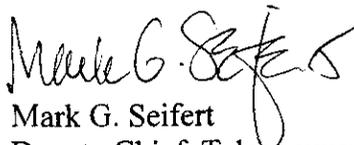
¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

submitting its appeal to SLD within the established deadline if the applicant wishes its appeal of a funding decision to be considered on the merits.

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.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 is responsible 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.¹⁴ Here, ERIE 2 BOCES 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, 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 ERIE 2 - Board of Cooperative Educational Services, Fredonia, New York, on May 24, 2002, and the request to waive the 60-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

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 (Com. Car. Bur. rel. November 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 of understanding all relevant program rules and procedures.").

¹⁴ See *Request for Review by Dermott Special School District, Hoven School District No. 53-2, Mastics-Moriches-Shirley Community Library, Mounds Public Schools, Reading-Muhlenberg Area Vocational-Technical School, Versailles Exempted Village Schools, Westbrook School Department, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-252777, SLD-261808, SLD-265880, SLD-257325, SLD-270374, and SLD-220712, CC Docket Nos. 96-45 and 97-21, Order, DA 02-643 (Com. Car. Bur. rel. March 19, 2001).