

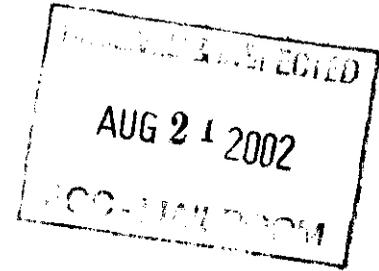
Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
St. Elizabeth Elementary School)
Wilmington, Delaware)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-267239

CC Docket No. 96-45 ✓

CC Docket No. 97-21

**ORDER****Adopted: August 14, 2002****Released: August 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 St. Elizabeth Elementary School (St. Elizabeth), Wilmington, Delaware.¹ St. Elizabeth seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting St. Elizabeth's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we affirm SLD's decision and deny St. Elizabeth's Request for Review.

2. SLD issued two Outside the Filing Window Postcards on July 6 and July 24, 2001 to St. Elizabeth.³ In the July 6, 2001 Postcard, SLD informed St. Elizabeth that its FCC Form 471 application for discount funding for Funding Year 2001 would be held pending final processing of those applications received within the filing window because SLD received St. Elizabeth's application after the 2001-2002 filing window had closed on January 18, 2001, and

¹ Letter from Susan Stuchlik, Office of Senator Thomas R. Carper on behalf of St. Elizabeth Elementary School, to Federal Communications Commission, filed January 9, 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 Postcard from Schools and Libraries Division, Universal Service Administrative Company, to P. Patricia Peterson, St. Elizabeth Elementary School, dated July 6, 2001 (July 6, 2001 Postcard); Postcard from Schools and Libraries Division, Universal Service Administrative Company, to P. Patricia Peterson, St. Elizabeth Elementary School, dated July 24, 2001 (July 24, 2001 Postcard).

pending SLD's determination whether late-filed FCC Form 471 applications would be considered for discount funding.⁴ In the July 24, 2001 Postcard, SLD further notified St. Elizabeth that its FCC Form 471 application, Block 6 certification page, and/or Item 21 attachments were postmarked after the 2001-2002 filing window had closed, and that it would not be considered for discount funding for Funding Year 2001 because sufficient funds were not available.⁵ In the July 24, 2001 Postcard, St. Elizabeth was specifically directed to SLD's website or, in the absence of Internet access, to its Client Service Bureau, if St. Elizabeth wished to appeal SLD's denial of its FCC Form 471 application and required additional information to do so.⁶

3. On September 21, 2001, St. Elizabeth filed an appeal of SLD's decision.⁷ In its appeal, however, St. Elizabeth asserts that it filed an earlier appeal with SLD within the 30-day window and sent such appeal by facsimile on August 23, 2001 to the Kansas-based SLD representative with whom it had worked the previous January to remedy a deficiency in its originally filed application.⁸ St. Elizabeth explains that it filed its appeal in this manner because it did not know the proper procedure for filing its appeal at that time.⁹ St. Elizabeth further explains that it received notification of SLD's denial when the person assigned to handle its application was away on vacation.¹⁰ Upon her return to work, St. Elizabeth's employee decided to "immediately" fax her Kansas-based SLD contact in order "to reverse the decision to hold back our funding" because she wanted to "stay in contact with the caseworker that had helped me through the process."¹¹ St. Elizabeth explains that she "did not understand that the proper channel of appeal was to do what [she was] doing now [mailing St. Elizabeth's SLD Appeal Letter to "Letter of Appeal, Schools and Libraries, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981]" and that she "only now . . . realize[s] that this would no longer be his concern."¹² After waiting for a response from her Kansas-based SLD contact and

⁴ July 6, 2001 Postcard. Previously, this funding period would be referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period which began on July 1, 2001 and ends on July 30, 2002, previously would have been known as Funding Year 4, and is now called Funding Year 2001. The funding period which began on July 1, 2002 and ends on June 30, 2003, is now known as Funding Year 2002, and so on.

⁵ July 24, 2001 Postcard.

⁶ *Id.*

⁷ Letter from P. Patricia Peterson, St. Elizabeth Elementary School, to Schools and Libraries Division, Universal Service Administrative Company, filed September 21, 2001 (Request for Administrator Review).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

not receiving one, St. Elizabeth's representative "called [SLD] and learned that [she] had to go through a formal appeal process."¹³

4. On December 12, 2001, SLD issued an Administrator's Decision on Appeal, indicating that it would not consider St. Elizabeth's appeal because it was received more than 30 days after the July 26, 2001 Postcard was issued.¹⁴ St. Elizabeth subsequently filed the instant Request for Review with the Commission.

5. 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.¹⁵ Documents are considered to be filed with the Commission or SLD only upon receipt.¹⁶ 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 SLD.¹⁷ For appeals filed with SLD during Funding Year 2001 at the time St. Elizabeth was sent the July 24, 2001 Postcard, applicants were informed that "appeals submitted by fax . . . CANNOT be processed" and were directed to submit their appeals by letter to "Letter of Appeal, Schools and Libraries Division, Box 125-Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981."¹⁸

6. We are unpersuaded that St. Elizabeth did not know how to appeal SLD's July 24 Postcard, or could not have determined, through the exercise of ordinary care and diligence, the appropriate procedure for filing its appeal in a timely manner. The July 24, 2001 Postcard directed St. Elizabeth to SLD's website or, in the absence of Internet access, to its Customer Service Bureau if St. Elizabeth wished to appeal SLD's denial of its application.¹⁹ SLD's appeal procedures clearly warned applicants at the time of St. Elizabeth's appeal that appeals could not be processed if submitted by facsimile and directed applicants, such as St. Elizabeth, to submit their appeal by letter to SLD's address in Whippany, New Jersey.²⁰ Had St. Elizabeth's

¹³ *Id.*

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to P. Patricia Peterson, St. Elizabeth Elementary School, dated December 12, 2001 (Administrator's Decision on Appeal).

¹⁵ 47 C.F.R. § 54.720(b).

¹⁶ 47 C.F.R. § 1.7.

¹⁷ 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 *Interim Filing Procedures*; SLD web site, What's New (January 20, 2002), <<http://www.sl.universalservice.org/whatsnew/012002.asp#extend3ed>>. Because the July 24, 2001 Postcard was issued before August 13, 2001, the extended appeal period does not apply to St. Elizabeth.

¹⁸ See SLD web site, Reference Area, <<http://www.sl.universalservice.org/reference/AppealsProcedureYR4.asp>> (as of July 24, 2001) (Appeal Procedures).

¹⁹ July 24, 2001 Postcard.

²⁰ Appeal Procedures. When the Federal Communications Commission changed its procedures for filing appeals with the Commission to include submission by facsimile, SLD conformed its procedures to the Commission's procedures and also provided for this option. 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

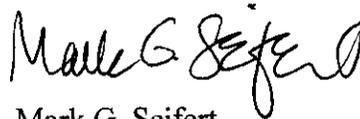
representative followed SLD's instruction in the July 24, 2001 Postcard, St. Elizabeth would have determined the appropriate procedure to follow.

7. We have held that it is incumbent upon applicants to determine whether their applications are in compliance with program rules and procedures prior to filing.²¹ This principle applies to the filing of appeals with SLD as well. The appeal procedures for Funding Year 2001 in effect at the time of St. Elizabeth's appeal to SLD explicitly stated in bold print that appeals to SLD could not be processed if submitted by facsimile and directed applicants to mail them to the Whippany, New Jersey address.²² In light of the hundreds of appeals that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.²³

8. Because St. Elizabeth failed to file its initial appeal of the July 24, 2001 Postcard in the appropriate manner and because its subsequent appeal of the postcard was filed outside the requisite 30-day appeal period, we affirm SLD's decision to dismiss St. Elizabeth's appeal to SLD as untimely and deny the instant Request for Review.

9. 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 St. Elizabeth Elementary School, Wilmington, Delaware on January 9, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



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

(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) (*Interim Filing Procedures Order*). Because this change did not take effect until January 24, 2002, it does not bear on St. Elizabeth's facsimile to SLD on August 23, 2001.

²¹ See *Request for Waiver by Bellevue Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.470.01-02-01.9300001, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2522 (Com. Car. Bur. rel. October 31, 2001), para. 7.

²² Appeals Procedure.

²³ See *Request for Review by Anderson State 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. 2000), para. 8.