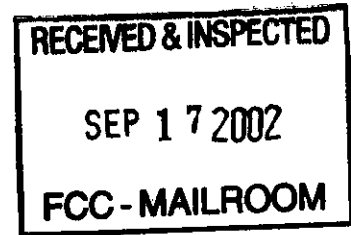


**Before the
Federal Communications Commission
Washington, DC 20554**



In the Matter of)) Request for Review of the) Decision of the) Universal Service Administrator by)) Graydon Manor Day School) Sterling, Virginia)) Federal-State Joint Board on) Universal Service)) Changes to the Board of Directors of the) National Exchange Carrier Association, Inc.)	File No. SLD-228457 CC Docket No. 96-45 ✓ CC Docket No. 97-21
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ORDER

Adopted: September 12, 2002

Released: September 13, 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 Graydon Manor Day School (Graydon Manor), Sterling, Virginia.¹ Graydon Manor seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting Graydon Manor's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we affirm SLD's rejection and deny Graydon Manor's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on March 15, 2002, approving Graydon Manor's request for discounted services under the schools and libraries universal service support mechanism.³ Specifically, SLD approved Graydon Manor's request for discounts for internal connections, Funding Request Number (FRN) 580295, but reduced the amount funded to remove the ineligible products or services.⁴ On May 15, 2002, Graydon Manor filed an appeal of SLD's decision.⁵ On June 3, 2002, SLD issued an Administrator's

¹ Letter from Walter D. Martin, Jr., Graydon Manor Day School, to Federal Communications Commission, filed June 25, 2002 (Request for Review).

² 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 Walter D. Martin, Jr., Graydon Manor Day School, dated March 15, 2002 (Funding Commitment Decision Letter).

⁴ *Id.*

⁵ Letter from Walter D. Martin, Jr., Graydon Manor Day School, to Schools and Libraries Division, Universal Service Administrative Company, filed May 15, 2002 (Request for Administrator Review).

Decision on Appeal indicating that it would not consider Graydon Manor's appeal because it was received more than 60 days after the March 15, 2002 Funding Commitment Decision Letter was issued.⁶ Graydon Manor 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 the instant Request for 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 Graydon Manor 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 services for FRN 580295, 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 Graydon Manor has not shown good cause for the untimely filing of its initial appeal. Graydon Manor states that upon calling the Client Service Bureau and inquiring via email, it was advised that the appeal needed only to be postmarked no later than 60 days of the date the relevant Funding Commitment Decision Letter was issued.¹¹

5. We conclude that Graydon Manor 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 submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits. The March 15, 2002 Funding Commitment Decision Letter clearly states that "your appeal must be ... RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) ... WITHIN 60 DAYS OF THE ... DATE ON [THE FUNDING

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Walter D. Martin, Graydon Manor Day School, dated June 3, 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 at 1.

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

COMMITMENT DECISION LETTER]¹³ and warns Graydon Manor that “failure to meet this requirement will result in automatic dismissal of your appeal.”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. 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.¹⁵ 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. Here, Graydon Manor argues that it deserves relief because it mailed its appeal after receiving assurances from an SLD representative that its appeal would be accepted as timely if it were postmarked by the deadline. We decline to grant relief on the basis of incorrect advice from SLD. Commission precedent establishes that where a party has received erroneous advice, the government is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly where relief is contrary to a rule.¹⁶ Thus, Graydon Manor 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 Graydon Manor Day School, Sterling, Virginia, on June 25, 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 Funding Commitment Decision Letter at 2.

¹⁴ *Id.*

¹⁵ 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 of understanding all relevant program rules and procedures.”).

¹⁶ *In re Mary Ann Salvatiello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-8, para.22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990)).