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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	)	
	)	
Eastchester Union Free School District Eastchester, New York	)	File No. SLD-326886
	)	
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: February 10, 2003 **Released: February 11, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Eastchester Union Free School District (Eastchester), Eastchester, New York.[1] Eastchester seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting Eastchester's appeal on the grounds that it was untimely filed.[2] For the reasons set forth below, we affirm SLD's rejection and deny Eastchester's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on July 30, 2002, denying Eastchester's request for discounted services under the schools and libraries universal service support mechanism.[3] Specifically, SLD denied Eastchester's request for discounts for telecommunications services and Internet access, Funding Request Numbers (FRNs) 876086, 876087, and 876088.[4] On November 5, 2002, Eastchester filed an appeal of SLD's decision.[5]

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[1] Letter from Anita Better, Eastchester Union Free School District, to Federal Communications Commission, filed December 24, 2002 (Request for Review).

[2] *See* Request for Review; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Anita Better, Eastchester Union Free School District, dated November 11, 2002 (Administrator's Decision on Appeal). 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 Anita Better, Eastchester Union Free School District, dated July 30, 2002 (Funding Commitment Decision Letter).

[4] *Id.*

On November 11, 2002, SLD issued an Administrator's Decision on Appeal indicating that it would not consider Eastchester's appeal because it was received more than 60 days after the July 30, 2002 Funding Commitment Decision Letter was issued.[6] Eastchester 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 or SLD only upon receipt.[8] Because the Eastchester'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 Eastchester 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 funding request, 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] Eastchester states that its delay was based on information from SLD staff and that it was led to believe that it was to receive a new Funding Commitment Decision Letter.[11]

5. We conclude that Eastchester 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 July 30, 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

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[5] Letter from Anita Better, Eastchester Catholic School, to Schools and Libraries Division, Universal Service Administrative Company, filed October 28, 2002 (Request for Administrator Review).

[6] 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, 17 FCC Rcd 339 (Com. Car. Bur. rel. December 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. December 28, 2001 and January 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 Eastchester 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 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.[15] 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, Eastchester argues that it deserves relief because it was led to believe from a SLD staffer that the issue was resolved and that it would be getting a new Funding Commitment Decision Letter. 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, Eastchester 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 Eastchester Union Free School District, Eastchester, New York, on December 19, 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

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)).