

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
Tariff Affiliates, Inc.) File No. SLD-166675
Fairport, New York)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
Changes to the Board of Directors of the) CC Docket No. 97-21
National Exchange Carrier Association, Inc.)

ORDER

Adopted: November 13, 2001

Released: November 14, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Tariff Affiliates, Inc. (Tariff Affiliates), Fairport, New York, on behalf of Perkins Elementary School, Lancaster, Massachusetts, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).1 Tariff Affiliates seeks review of SLD's decision to reject Tariff Affiliates' appeal to SLD on the grounds that it was untimely filed. For the reasons set forth below, we deny Tariff Affiliates' appeal.

2. SLD issued a Funding Commitment Decision Letter on October 13, 2000, denying Tariff Affiliates' request for discounted services under the schools and libraries universal service support mechanism.2 Specifically, SLD denied Tariff Affiliates' request for discounts for telecommunications services, Funding Request Numbers (FRNs) 325792 and 325802. On May 14, 2001, Tariff Affiliates filed an appeal of SLD's decision to deny FRNs 325792 and 325802.3 On May 25, 2001, SLD issued an Administrator's Decision on Appeal indicating that it would not consider Tariff Affiliates' appeal because it was received more than

1 Letter from Kim Fish, Tariff Affiliates, Inc., to Federal Communications Commission, filed June 11, 2001.

2 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kim Fish, Tariff Affiliates, Inc., dated October 13, 2000.

3 Letter from Kim Fish, Tariff Affiliates, Inc., to Schools and Libraries Division, Universal Service Administrative Company, filed May 14, 2001.

30 days after the Funding Commitment Decision Letter was issued.⁴ Tariff Affiliates subsequently filed the instant Request for Review with the Commission.

3. Tariff Affiliates asserts that it submitted a timely appeal to SLD, and provides a copy of a letter dated October 17, 2000 that appears to be an appeal of SLD's Funding Commitment Decision Letter dated October 13, 2000. SLD has no record that this Request for Review was filed. The proffered letter without more, is insufficient to demonstrate that an appeal was filed with SLD. We find no reason to depart from this finding in the instant case. It is well established law that the absence of official record of an event is the evidence of the non-occurrence of the event.⁵

4. Under section 54.720 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.⁶ Documents are considered to be filed with the Commission or SLD only upon receipt.⁷ The 30-day deadline contained in section 54.720 of the Commission's rules applies to all requests for review filed by a party affected by a decision issued by the Administrator. Because Tariff Affiliates failed to file an appeal of the October 13, 2000 Funding Commitment Decision Letter within the requisite 30-day appeal period, we affirm SLD's decision to dismiss Tariff Affiliates' appeal to SLD as untimely and deny the instant Request for Review.

5. 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 Tariff Affiliates, Inc., Fairport, New York on June 11, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kim Fish, Tariff Affiliates, Inc., dated May 25, 2001.

⁵ In *re Application of Herbert L. Rippe*, 44 FCC. 2d 91, at para. 9 (Rev Bd 1973). See also *Request for Review of the Decision of the Universal Service Administrator by Pediatric Library of Rainbow Babies and Children's Hospital, Cleveland, Ohio, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-23380, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 3416 (Common Carrier Bur. 1999), where we dismissed the Pediatric Library of Rainbow Babies and Children's Hospital Letter of Appeal because it was unable to demonstrate that its Letter of Appeal was filed with the Administrator within the thirty-day appeal window. We note that, in certain situations, we would consider a date-stamped postal return receipt to be persuasive evidence that a communication had in fact been received by the Commission.

⁶ 47 C.F.R. § 54.720.

⁷ 47 C.F.R. § 1.7.

