

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Request for Review of the )
Decision of the )
Universal Service Administrator by )
Whitehall District Schools ) File No. SLD-256253
Whitehall, Michigan )
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 Whitehall District Schools (Whitehall), Whitehall, Michigan, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).1 Whitehall seeks review of SLD's refusal to consider Whitehall's appeal to SLD on the grounds that it was untimely filed. For the reasons set forth below, we deny Whitehall's appeal.

2. SLD issued a Funding Commitment Decision Letter on April 27, 2001, denying Whitehall's request for discounted services under the schools and libraries universal service support mechanism.2 Specifically, SLD denied Whitehall's request for discounts for internal connections, Funding Request Number (FRN) 303830. On July 23, 2001, Whitehall filed an appeal of SLD's decision to deny FRN 303830.3 On August 3, 2001, SLD issued an Administrator's Decision on Appeal indicating that it would not consider Whitehall's appeal

1 Letter from James Decker, Whitehall District Schools, to Federal Communications Commission, filed August 16, 2001.

2 Letter from Schools and Libraries Division, Universal Service Administrative Company, to James Decker, Whitehall District Schools, dated April 27, 2001.

3 Letter from James Decker, Whitehall District Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed December 19, 2000.

because it was received more than 30 days after the Funding Commitment Decision Letter was issued.<sup>4</sup> Whitehall subsequently filed the instant Request for Review with the Commission.

3. 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 as to which review is sought.<sup>5</sup> Documents are considered to be filed with the Commission or SLD only upon receipt.<sup>6</sup> 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 Whitehall failed to file an appeal of the April 27, 2001 Funding Commitment Decision Letter within the requisite 30-day appeal period, we affirm SLD's decision to dismiss Whitehall's appeal to SLD as untimely and deny the instant Request for Review.

4. Whitehall asserts that it submitted a timely appeal of SLD's April 27, 2001 decision to the Commission on April 30, 2001, and provides a copy of a letter dated April 30, 2001 that appears to be a request for review of SLD's initial decision letter addressed to the Commission with its Request for Review.<sup>7</sup> Our records, however, do not indicate that such a request was filed. It is well established law that the absence of official record of an event is the evidence of the non-occurrence of the event.<sup>8</sup> The proffered copy of the April 30, 2001 letter, without more, is insufficient to demonstrate that an appeal was timely filed with the Commission.

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<sup>4</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to James Decker, Whitehall District Schools, dated August 3, 2001.

<sup>5</sup> 47 C.F.R. § 54.720.

<sup>6</sup> 47 C.F.R. § 1.7.

<sup>7</sup> See *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 wasn't able 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.

<sup>8</sup> 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.

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 Whitehall District Schools, Whitehall, Michigan on August 16, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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