

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
Buffalo Public Library) File No. SLD-227338
Buffalo, Oklahoma)
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: December 3, 2001

Released: December 4, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Buffalo Public Library (Buffalo), Buffalo, Oklahoma.1 Buffalo seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to reject Buffalo's appeal on the grounds that it was untimely filed.2 For the reasons set forth below, we deny Buffalo's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on July 23, 2001, granting Buffalo's request for discounted services under the schools and libraries universal service support mechanism.3 Specifically, SLD granted Buffalo's request for discounts for Internet access and telecommunications services, Funding Request Numbers (FRNs) 590738, 590846, 590911, and 616436.4 On September 4, 2001, Buffalo filed an appeal of SLD's decision stating that the discount percentage for its library was 50% and the percentage for its school district was

1 Letter from Kathy Summars, Buffalo Public Library, to Federal Communications Commission, filed October 10, 2001 (Request for Review).

2 Id.

3 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kathy Summars, Buffalo Public Library, dated July 23, 2001 (Funding Commitment Decision Letter).

4 Id.

75%, and challenging the difference.⁵ On September 21, 2001, SLD issued an Administrator's Decision on Appeal indicating that it would not consider Buffalo's appeal because it was received more than 30 days after the Funding Commitment Decision Letter was issued.⁶ Buffalo subsequently filed the instant Request for Review with the Commission.

3. 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.⁷ Documents are considered to be filed with the Commission or SLD only upon receipt.⁸ The 30-day deadline contained in section 54.720(b) of the Commission's rules applies to all requests for review filed by a party affected by a decision issued by the Administrator. Because Buffalo failed to file an appeal of the July 23, 2001 Funding Commitment Decision Letter within the requisite 30-day appeal period, we affirm SLD's decision to dismiss Buffalo's appeal to SLD as untimely and deny the instant Request for Review.

4. To the extent that Buffalo is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules, we deny that request.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 Buffalo has not shown good cause for the untimely filing of its initial appeal beyond stating that it did not receive notification from its state library consultant about the difference in discount percentages until after the 30-day appeal deadline. Buffalo further contends that this delay was exacerbated by the fact that it also did not receive notification of the Funding Commitment Decision letter from its state library consultant.

5. We conclude that Buffalo 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.¹¹ 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.

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

⁵ Letter from Kathy Summars, Buffalo Public Library, to Schools and Libraries Division, Universal Service Administrative Company, filed September 4, 2001 (Request for Administrator Review).

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kathy Summars, Buffalo Public Library, dated September 21, 2001 (Administrator's Decision on Appeal).

⁷ 47 C.F.R. § 54.720(b).

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

responsibility of adhering strictly to its filing deadline.¹² In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal 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, Buffalo 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 Buffalo Public Library, Buffalo, Oklahoma on October 10, 2001, and the request to waive the 30-day time limit in which to file an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

¹² 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-13364, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2630 (Comm. Car. Bur. Rel. November 24, 2000) at 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.”).