

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Petition for Reconsideration of the)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Grand Isle Supervisory Union) File No. SLD-69254
North Hero, Vermont)
)
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 ON RECONSIDERATION

Adopted: December 20, 2001

Released: December 21, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Petition for Reconsideration filed by Grand Isle Supervisory Union (Grand Isle), North Hero, Vermont. Grand Isle seeks reconsideration of a decision by the Bureau dismissing Grand Isle's Request for Review as untimely. For the reasons discussed below, the Petition is denied. To the extent that Grand Isle also requests a waiver of the Commission's rules, we deny that request as well.

2. Under section 54.720 of the Commission's rules, an appeal must be filed with the Commission or the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) within 30 days of the issuance of the decision that the party seeks to have reviewed. Documents are considered to be filed with the Commission or

1 Petition for Reconsideration of Request for Review of the Decision of the Universal Service Administrator by Grand Isle Supervisory Union, File No. SLD-69254, CC Dockets No. 96-45 and 97-21, filed November 24, 1999 (Petition for Reconsideration).

2 Request for Review by Grand Isle Supervisory Union, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-69254, CC Dockets No. 96-45 and 97-21, Order, DA 99-2338 (Com. Car. Bur. rel. October 28, 1999) (Request for Review by Grand Isle). Parties may seek reconsideration from a final action of the Commission or its designated authority pursuant to 47 C.F.R. § 1.106.

3 47 C.F.R. § 54.720.

SLD only upon receipt.⁴ 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.

3. On February 18, 1999, SLD issued a Funding Commitment Decision Letter relating to Grand Isle's request for discounted services under the schools and libraries universal service support mechanism.⁵ Specifically, SLD denied a request for discounts for internal connections, Funding Request Number (FRN) 82466.⁶ On March 10, 1999, Grand Isle appealed SLD's decision, and on May 25, 1999, SLD denied the appeal.⁷ Subsequently, on June 29, 1999, Grand Isle filed a Request for Review with the Commission.⁸ The Commission denied Grand Isle's Request for Review on the basis that it was untimely filed.⁹

4. Grand Isle filed the instant Petition for Reconsideration with the Commission, asserting that it was not given adequate notice of the Request for Review deadline.¹⁰ In addition, Grand Isle argues that its Request for Review should be considered timely for three reasons. Grand Isle argues that it did not have adequate time to prepare its appeal.¹¹ Grand Isle also argues that the school experienced staff turnover during the appeal period.¹² Finally, Grand Isle argues that its appeals should be considered timely due to the complexity of the appeals process.¹³

5. With respect to Grand Isle's request for reconsideration of the Commission's 30-day Request for Review deadline, we conclude that Grand Isle received adequate notice of the deadline and deny that request. First, this rule was published in the Federal Register on December 21, 1998, and has been in effect since January 1, 1999.¹⁴ Moreover, according to the record, the Administrator's Decision on Appeal letter clearly stated that applicants must file an

⁴ 47 C.F.R. § 1.7.

⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Armand Premo, Grand Isle Supervisory Union, dated February 18, 1999.

⁶ *Id.* at 4.

⁷ Letter from Jim Reid, Grand Isle Supervisory Union, to Schools and Libraries Division, Universal Service Administrative Company, filed March 10, 1999; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jim Reid, Grand Isle Supervisory Union, dated May 11, 1999 (Administrator's Decision on Appeal).

⁸ Letter from George Nelson, Grand Isle Supervisory Union, to Federal Communications Commission, filed June 29, 1999 (Request for Review).

⁹ *See Request for Review by Grand Isle.*

¹⁰ Petition for Reconsideration at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21, and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25091-96, paras. 64-74 (1998); *see also* 63 Fed. Reg. 70564, 70577 (1998).

appeal with the Commission “no later than 30 days from the date of the issuance of this letter.”¹⁵ In addition, in Funding Year 1, the Administrator’s website informed applicants of the 30-day deadline.¹⁶ It was Grand Isle’s responsibility to carefully review all instructions, and file any materials with the Commission in a timely manner. Despite clear rules and adequate notice relating to the deadline, Grand Isle failed to meet the 30-day filing deadline. Thus, we deny Grand Isle’s request for reconsideration.

6. Grand Isle also maintains that its Request for Review should be considered timely because of inadequate time to prepare the appeal, school staff turnover during the appeal period, and the complexity of the appeals process. To the extent that Grand Isle seeks a waiver of the filing window based on these arguments, we find no basis to grant the waiver. A 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.¹⁷ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁸

7. We conclude that Grand Isle’s arguments do not demonstrate the special circumstances necessary to warrant relief from the filing deadline. In the Petition for Reconsideration, Grand Isle maintains that it did not receive the Administrator’s Decision on Appeal until 9 days after the letter was issued.¹⁹ By calculating the filing window based on the date that a decision is issued, however, the Commission’s rules contemplate that there may be some period of time between when a decision is issued and when an entity may receive written notice of the decision. Nothing in the record demonstrates that the applicant would have been prevented from submitting its Request for Review in the time remaining after the Administrator’s Decision on Appeal arrived.²⁰ Furthermore, we note that the Commission has previously determined that staff turnover and confusion about the appeals process do not establish the special circumstances necessary to allow waiver of the Commission’s rules.²¹ As a result, these arguments do not rise to the level of good cause necessary to justify waiving our rules. Therefore, to the extent that Grand Isle requests that the Commission waive section

¹⁵ See Administrator’s Decision on Appeal at 2. In fact, we note that Grand Isle mailed the Commission a complete copy of the letter in its Request for Review.

¹⁶ See SLD web site, SLD Procedure for Post-Commitment Appeals (November 1998) <<http://www.sl.universalservice.org/reference>>.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁸ *Id.*; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

¹⁹ Petition for Reconsideration at 2.

²⁰ See Request for Review.

²¹ *Request for Review by Newburgh Enlarged City School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-151012, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd. 3832 (2001) (stating that staffing difficulties do not rise to the level of good cause to waive appeal filing deadline); *Request for Review by E-Rate Central Plandome, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-33699, 84909, 1275, 84495, 13397, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2137 (Com. Car. Bur. rel. September 14, 2001) (stating that general applicant confusion in Funding Year 1 is insufficient to justify waiver of appeal filing deadline).

54.720(b), we deny that request.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 1.106(j) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 1.106(j) that the Petition for Reconsideration filed by Grand Isle Supervisory Union, North Hero, Vermont, dated November 24, 1999 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief
Common Carrier Bureau