Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
West Ottawa Public Schools	)	File No. SLD-316678
Holland, 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: September 12, 2002 **Released: September 13, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. This Order dismisses the Request for Review filed by West Ottawa Public Schools (West Ottawa), Holland, Michigan.[1] West Ottawa seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) on March 1, 2002.[2] The Commission received West Ottawa's Request for Review on July 1, 2002.[3]

2. 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.[4]

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[1] Letter from Tim Wynsma, West Ottawa Public Schools, to Federal Communications Commission, filed July 1, 2002 (Request for Review).

[2] *See* Request for Review; Letter from the School and Libraries Division, Universal Service Administrative Company, to Tim Wynsma, West Ottawa Public Schools, dated March 1, 2002 (Funding Year 5 Rejection Letter). 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] *See* Request for Review.

[4] 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, FCC 01-376 (rel. Dec. 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. Dec. 28, 2001 and Jan. 4, 2002).

Documents are considered to be filed with the Commission only upon receipt.[5] Because the instant Request for Review was not filed within the requisite 60-day period, it will be dismissed without further consideration.

3. To the extent that West Ottawa is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules, we deny that request as well.[6] The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.[7] West Ottawa has not shown good cause for the untimely filing of its initial appeal. West Ottawa states that the Director of Data and Information Services (Director) was new to the position and received assurances from an SLD representative that notwithstanding the Rejection Letter, the Block 6 certification page of its FCC Form 471 was received and signed, and that it "had nothing to be concerned about."[8]

4. We conclude that West Ottawa 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.[9] 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 appeals to the Commission within the established deadline if the applicant wishes its appeals to be considered on the merits. The March 1, 2002 Funding Year 5 Rejection Letter clearly states that the Commission "must receive your appeal within 60 days of the date of the decision you are appealing" and warns West Ottawa that "failure to meet this requirement will result in automatic dismissal of your appeal."[10]

5. 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 responsibility of adhering strictly to its filing deadlines.[11] In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeals to the Commission if it wishes its appeals 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, West Ottawa argues that it deserves relief because it received assurances from an

[5] 47 C.F.R. § 1.7.

[6] *See* 47 C.F.R. § 54.720(b).

[7] *See* 47 C.F.R. § 1.3.

[8] Request for Review at 1.

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

[10] Funding Year 5 Rejection Letter.

[11] *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.").

SLD representative that its Block 6 certification page was signed and received and that it could disregard the Funding Year 5 Rejection Letter. We decline to grant relief on the basis of inconsistent 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.[12] Thus, West Ottawa fails to present good cause as to why it could not timely file its appeal to the Commission. We therefore find no basis for waiving the appeal filing deadline.

6. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed on July 1, 2002, by West Ottawa Public Schools, Holland, Michigan, IS DIMISSED and the request to waive the 60-day time limit in which to file an appeal with the Commission IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

[12] *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)).