

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 Harrison Community School District
Mondamin, Iowa
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.
File No. SLD-217462
CC Docket No. 96-45
CC Docket No. 97-21

ORDER

Adopted: February 28, 2002

Released: March 6, 2002

By the Accounting Policy Division, Common Carrier Bureau:

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

2. SLD issued a Funding Commitment Decision Letter on July 23, 2001, denying West Harrison's request for discounted services under the schools and libraries universal service support mechanism. Specifically, SLD denied West Harrison's request for discounts for internal connections, Funding Request Number (FRN) 501792. On September 27, 2001, West Harrison filed an appeal of SLD's decision, explaining that West Harrison inadvertently checked

1 Letter from Jane Roden, West Harrison Community School District, to Federal Communications Commission, filed January 8, 2002 (Request for Review).

2 See Request for Review. 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 Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jane Roden, West Harrison Community School District, dated July 23, 2001 (Funding Commitment Decision Letter).

4 Id.

the box on the form for internal connections when it should have marked the box for telecommunications.⁵ On October 15, 2001, SLD issued an Administrator's Decision on Appeal indicating that it would not consider West Harrison's appeal because it was received more than 30 days after the July 23, 2001 Funding Commitment Decision Letter was issued.⁶ West Harrison subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued before August 13, 2001, 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 such requests for review filed by a party affected by a decision issued by the Administrator.⁹ Because West Harrison 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 West Harrison's appeal to SLD as untimely and deny the instant Request for Review.

4. To the extent that West Harrison is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules, we deny that request as well.¹⁰ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹¹ West Harrison has not shown good cause for the untimely filing of its initial appeal. West Harrison explains that it did not understand the need to appeal when it received the Funding Commitment Decision Letter, because, it contends, the letter stated that West Harrison's request was "not funded yet." In fact, the Funding Commitment Decision Letter reads in relevant part with respect to FRN 501792, "not funded."¹² West Harrison further states that it assumed that it would be receiving another letter saying that it was funded starting with

⁵ Letter from Jane Roden, West Harrison Community School District, to Schools and Libraries Division, Universal Service Administrative Company, filed September 27, 2001 (Request for Administrator Review).

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jane Roden, West Harrison Community School District, dated October 15, 2001 (Administrator's Decision on Appeal).

⁷ 47 C.F.R. § 54.720(b).

⁸ 47 C.F.R. § 1.7.

⁹ We note that, due to recent disruptions in the reliability of the mail service, the 30-day appeal period has been extended by an additional 30 days for requests seeking review of decisions issued on or after August 13, 2001. 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 (Com. Car. Bur. rel. Jan. 4, 2002). Because the July 23, 2001 Funding Commitment Decision Letter was issued before August 13, 2001, the extended appeal period does not apply to West Harrison.

¹⁰ See 47 C.F.R. § 54.720(b).

¹¹ See 47 C.F.R. § 1.3.

¹² Funding Commitment Decision Letter at 6.

July 2001 and as a result it allowed the 30-day appeal period to pass without filing a timely appeal.¹³

5. We conclude that West Harrison 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.¹⁴ 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 responsibility of adhering strictly to its filing deadlines.¹⁵ 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, West Harrison 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, 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 by West Harrison Community School District, Mondamin, Iowa on January 8, 2002, 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

¹³ Request for Review.

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ *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, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. 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.").