

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Queen of Apostles School	)	File No. SLD-226515
Alexandria, Virginia	)	
	)	
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: February 6, 2003**

**Released: February 7, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this Order, the Telecommunications Access Policy Division (Division) reconsiders, sua sponte, a January 15, 2003 decision to clarify the basis for granting the Request for Review filed by Queen of Apostles School, Alexandria, Virginia (Queen of Apostles).<sup>1</sup> In its Request for Review, Queen of Apostles sought review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) issued on October 15, 2001.<sup>2</sup>

2. The record shows that SLD issued a Funding Commitment Decision Letter (FCDL) to Queen of Apostles on July 23, 2001.<sup>3</sup> On July 31, 2001, Queen of Apostles notified SLD that the final page relating to its funding requests was missing.<sup>4</sup> On September 11, 2001, 42 days later,

<sup>1</sup> *Request for Review by Queen of Apostles School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carriers Association, Inc.*, File No. SLD-226515, CC Docket Nos. 96-45 and 97-21, Order, DA 03-122 (Wire. Comp. Bur. rel. January 15, 2003).

<sup>2</sup> Letter from Craig Wojay, Queen of Apostles School, to Federal Communications Commission, filed March 5, 2002 (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).

<sup>3</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Mary West, Queen of Apostles School, dated July 23, 2001 (Funding Commitment Decision Letter).

<sup>4</sup> *See* Letter from Craig Wojay, Queen of Apostles School, to Schools and Libraries Division, Universal Service Administrative Company, filed September 21, 2001 (Request for Administrator Review).

SLD faxed the final page of the FCDL to Queen of Apostles.<sup>5</sup> Queen of Apostles then filed an appeal with SLD on September 21, 2001, appealing one of the funding requests listed on the final page of the FCDL.<sup>6</sup> Subsequently, SLD denied the appeal, stating that it was received more than 30 days after the July 23, 2001 Funding Commitment Decision Letter was issued.<sup>7</sup>

3. In the Queen of Apostles' Order, the Division found that the school's ability to appeal was prejudiced by SLD's unreasonable delay in responding to Queen of Apostles' request for a copy of a missing page from the Funding Commitment Decision Letter.<sup>8</sup> In this Order, we affirm our prior decision, but seek to clarify the reasoning set forth in the Queen of Apostles' Order.

4. For requests seeking review of decisions issued on or before 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 30 days of the issuance of the decision that the party seeks to have reviewed.<sup>9</sup> Documents are considered to be filed with SLD or the Commission only upon receipt.<sup>10</sup> Accordingly, appeals of funding commitments must be filed within 30 days of the date of the original FCDL.<sup>11</sup> A waiver from the Commission 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.<sup>12</sup>

5. Although Queen of Apostles filed its appeal more than 30 days after the FCDL was issued, we find that special circumstances warrant waiver of the Commission's rules. The record shows that Queen of Apostles acted promptly to preserve its rights by notifying SLD of the missing page a week after the letter was issued. Indeed, Queen of Apostles acted well before the appeal deadline, and notified SLD of the problem with its FCDL in a timely manner. The record also shows that SLD took a total of 42 days to respond to Queen of Apostles' request for the missing page.<sup>13</sup> Our action today concludes that under these limited circumstances, Queen of

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Craig Wojay, Queen of Apostles School, dated October 15, 2001 (Administrator's Decision on Appeal).

<sup>8</sup> *See* Request for Review.

<sup>9</sup> 47 C.F.R. § 54.720(b).

<sup>10</sup> 47 C.F.R. § 1.7.

<sup>11</sup> 47 C.F.R. § 54.720(b).

<sup>12</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis), *cert. denied*, 409 U.S. 1027 (1972).

<sup>13</sup> *See, e.g., Request for Review by Lettie W. Jensen Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-267950, CC

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Apostles acted promptly to notify SLD of a defect to their FCDL. We further find that such action put SLD on notice of the missing page, and that SLD's subsequent delay caused Queen of Apostles to miss the filing deadline.<sup>14</sup>

6. Therefore, with the above modifications, we affirm our Order granting Queen of Apostles' Request for Review and remanding its application to SLD for further review. We emphasize that, in remanding the Queen of Apostles' appeal for SLD's review and adjudication, we make no conclusions as to its merits.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to section 0.291 and 1.108 of the Commission's rules, 47 C.F.R. §§ 0.291 and 1.108, we hereby reconsider and affirm, on our own motion, our January 15, 2003, Order GRANTING the Request for Review and REMANDING the application filed by Queen of Apostles School, Alexandria, Virginia, on March 5, 2002.

FEDERAL COMMUNICATIONS COMMISSION

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

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Docket Nos. 96- 45 and 97-21, Order, 16 FCC Rcd 18526 (Acc. Pol. Div. 2001) (delay of nearly two months deemed excessive).

<sup>14</sup> We distinguish this situation from others where, for instance, an applicant would contact SLD with a similar problem closer to the appeal deadline. Applicants that wait until near the end of a filing period risk "unexpected but reasonably foreseeable" delays, and applicants are therefore encouraged to file as early as possible. *See Request for Waiver by Scottsdale Horizons School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-228975, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 654 (Com. Car. Bur. 2002).