

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

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| In the Matter of |) | |
| |) | |
| Request for Review of the |) | |
| Decision of the |) | |
| Universal Service Administrator by |) | |
| |) | |
| St. Lucy School |) | File No. SLD-314487 |
| Newark, New Jersey |) | |
| |) | |
| 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: February 10, 2003**Released: February 11, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. This Order dismisses the Request for Review filed by St. Lucy School, Newark, New Jersey.¹ St. Lucy School seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) on August 27, 2002.² The Commission received St. Lucy's Request for Review on October 30, 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

¹ Letter from Scott DeCarolis, St. Lucy School, to Federal Communications Commission, filed October 30, 2002 (Request for Review).

² See Request for Review; Letter from the School and Libraries Division, Universal Service Administrative Company, to Howard Gerber, St. Lucy School, dated August 27, 2002 (Administrator's Decision on Appeal 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, 17 Rcd 339 (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); SLD web site, What's New (January 20, 2002), <<http://www.sl.universalservice.org/whatsnew/012002.asp#extend3ed>>.

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 St. Lucy School is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules for its underlying appeal of SLD's denial of its funding request, 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 St. Lucy School has not shown good cause for the untimely filing of its appeal with SLD. St. Lucy School states that the technology coordinator at St. Lucy School was forced to take an emergency medical leave of absence and as a result, St. Lucy School was prevented from filing the appeal in a timely fashion.⁸

4. We conclude that St. Lucy School 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 appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits.

5. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Here, St. Lucy School states that the technology coordinator was unavailable, due to emergency medical leave. 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, even when such persons are away from the office on medical leave or otherwise incapacitated.¹⁰ Thus, St. Lucy School fails to present good cause as to why it could not timely file its appeal with SLD. We therefore find no basis for waiving the appeal filing deadline.

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 See, e.g., *Request for Review by New Orleans Public Schools, New Orleans, Louisiana, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-201456, 201463, 201409, 201449, and 201493, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 16653 (Com. Car. Bur. rel. September 18, 2001), para. 17 (unavailability of responsible staff person due to sick leave is not a basis for granting an appeal).

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 Requests for Review filed on October 30, 2002, by St. Lucy School, Newark, New Jersey, as well as the request to waive the deadline for filing its appeal with SLD ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
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