

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

In the Matter of
Request for Review of a Decision of the Universal
Service Administrator by
Sundale Elementary School District
Tulare, California
Schools and Libraries Universal Service Support
Mechanism
File No. SLD-825729
CC Docket No. 02-6

ORDER

Adopted: April 25, 2014

Released: April 25, 2014

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Consistent with precedent, we grant a request for review filed by Sundale Elementary School District (Sundale), seeking review of a decision of the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program).

2. USAC issued a funding commitment funding decision (FCDL) on August 28, 2012 denying one of Sundale's E-rate funding requests on the grounds that Sundale's contract did not comply with program rules. By letter dated and mailed on October 26, 2012, Sundale sought review by USAC of the denial of Sundale's funding request. USAC denied Sundale's appeal as untimely because the appeal was received at USAC's mail facility on November 10, 2012, more than 60 days after the issuance

1 See Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-134 et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 25 FCC Rcd 5684 (Wireline Comp. Bur. 2010) (basing timeliness of E-rate appeals on the date the appeal was postmarked).

2 Letter from Fred Brakeman, E-rate Consultant, Infinity Communications and Consulting, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 27, 2012) (Request for Review).

3 See Letter from Schools and Libraries Division, Universal Service Administrative Company, to Celia Acosta or Nanette Rodriguez, Sundale Elementary School District (dated Aug. 28, 2012) (FCDL). 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).

4 See FCDL.

5 Request for Review at 2, Attachment 3 (the attachment is a photocopy of the United States Postal Service certified mail receipt with a date stamp showing Oct. 26, 2012 as the date Sundale mailed its appeal to USAC).

of the FCDL.⁶ Sundale then filed the instant request for review, arguing that USAC should have treated the date the appeal was postmarked, not the date it was received by USAC, as the date filed.⁷

3. The Commission treats appeals to USAC or the Commission as having been filed on the date they are postmarked, not the date received.⁸ The record demonstrates that Sundale's appeal to USAC was postmarked on October 26, 2012 and was therefore timely. We therefore grant Sundale's request for review and remand the underlying appeal to USAC for consideration on the merits.

4. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 54.720(b) and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.720(b) and 54.722(a), that the appeal filed by Sundale Elementary School District, Tulare, California, IS GRANTED and its underlying appeal IS REMANDED to USAC for further consideration in accordance with the terms of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly A. Scardino
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

⁶ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Nanette Rodriguez, Sundale Elementary School District (dated Nov. 27, 2012). Appeals to USAC of USAC decisions must be filed within 60 days of the issuance of the adverse decision. *See* 47 C.F.R. § 54.720(b).

⁷ Request for Review at 2.

⁸ 47 C.F.R. 54.720(e); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9222, para. 57 (2003) (changing the Commission's rules to treat appeals filed with USAC or with the Commission as having been filed on the date the appeal is postmarked).