

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)		
	)		
Request for Review of a Decision of the	)		
Universal Service Administrative	)	CC Docket No.	02-6
Company by the	)		
	)	Application No.	161033546
St. Louis County Library District	)		

**REQUEST OF ST. LOUIS COUNTY LIBRARY DISTRICT FOR REVIEW OF A DECISION OF THE  
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

Pursuant to sections 54.719(b) and 54.722 of the Federal Communication Commission’s (the “Commission”) rules,<sup>1</sup> the St. Louis County Library District (the “Library”) hereby respectfully requests that the Commission conduct a *de novo* review of this appeal of a funding reduction notice issued by the Universal Service Administrative Company (“USAC”) through the issuance of a Recovery of Improperly Disbursed Funds Letter and Revised Funding Commitment Decision Letter for funding year 2016.<sup>2</sup> The Library requests that the Commission direct USAC to accept the applicant’s late-filed Form 486 for funding year 2016 and reinstate its full funding commitments for the subject requests, in accordance with the standard the Commission articulated in its *Archdiocese of New Orleans Order*.<sup>3</sup>

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<sup>1</sup> 47 C.F.R. §§ 54.719(b), 54.722.

<sup>2</sup> Attachment A, FY 2016 Recovery of Improperly Disbursed Funds Letter, dated July 30, 2018. Attachment A-1 FY 2016 Revised Funding Commitment Decision Letter, dated October 24, 2018.

<sup>3</sup> *Requests for Waiver of Decisions of the Universal Service Administrator by Archdiocese of New Orleans, Louisiana et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 11747, at ¶ 10 (WCB 2016) (“*Archdiocese of New Orleans Order*”). The Library recognizes that the Commission finds the FCC Form 486 deadline to be procedural in nature and, thus, requires appeals to be filed in the first instance directly with USAC. See, e.g., *Request for Review of a Decision of the Universal Service Administrator by La Canada Unified School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 30 FCC Rcd 4729, 4729, at ¶ 2 (WCB 2015) (“*La Canada Unified School District Order*”) (dismissing an appeal that properly belongs before USAC pursuant to Commission rules). As shown in Attachment G, USAC has rejected the Library’s appeal of this decision. Because the Form 486 filing

## **I. Background**

On May 23, 2016, the Library filed and certified its Form 471 (Application No. 161033546), seeking \$45,960.00 in reimbursement for data transmission and Internet access services it provides for the benefit of its patrons for funding year 2016.<sup>4</sup> The Library received a Funding Commitment Decision Letter (“FCDL”), on September 2, 2016, from USAC approving the requested amount.<sup>5</sup>

Due to lack of familiarity with the newly launched EPC portal that made notices more difficult to understand and find, the Library filed its FY 2016 Form 486 late. Under USAC’s procedural rules, the FCC Form 486 was due on December 31, 2016, 120 days after September 2, 2016. The USAC’s transition to online-only notifications beginning in 2016, combined with the Library personnel’s lack of familiarity with the new system and the fact that only one Library staff member had access to the Library’s EPC portal at that time, meant that the Library was unaware that it had received a Form 486 Urgent Reminder notice from USAC notifying it that the Library’s Form 486 was past due.<sup>6</sup> The Library only became aware of this later at which time the Form 486 was filed on May 4, 2017.<sup>7</sup>

Over a year later, on July 30, 2018, USAC issued the Recovery of Improperly Disbursed Funds Letter adjusting the Library’s funding commitment for FY 2016 after the funds had already been disbursed to the Library. The Library initially appealed this decision with USAC on

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deadline is established by USAC, no waiver of the Commission’s rules or orders is necessary. *See Archdiocese of New Orleans Order*, at ¶ 4, n.10.

<sup>4</sup> Attachment B, FY 2016 Form 471 for St. Louis County Library, dated May 23, 2016.

<sup>5</sup> Attachment C, St. Louis County Library FY 2016 Funding Commitment Letter, dated Sept. 2, 2016.

<sup>6</sup> Attachment D, USAC Form 486 Urgent Reminder, dated March 9, 2017.

<sup>7</sup> Attachment E, St. Louis County Library FY 2016 Form 486, dated May 4, 2017.

September 12, 2018.<sup>8</sup> On October 24, 2018, USAC issued a Revised Funding Commitment Decision Letter, reducing the Library's FY 2016 E-Rate funding.<sup>9</sup> The Library timely appealed this decision with USAC on October 25, 2018, and on November 2, USAC issued a Final Decision denying the Library's appeal, without addressing the merits, and therefore maintained its earlier reduction in funding.<sup>10</sup>

## **II. Discussion**

In 2016, the Commission revisited its standard for granting late-filed 486 appeals in the landmark *Alaska Gateway Order*.<sup>11</sup> Specifically, the Commission clarified that “absent extraordinary circumstances, we will only grant relief for late-filed Forms 486 that were filed no later than 120 days after the last day to receive service for the funding request at issue and the applicants have demonstrated good cause for the late filing.”<sup>12</sup>

The Library meets the revised standard established by the *Archdiocese of New Orleans Order*. First, the Library filed its Form 486 on May 4, 2017. That date is well in advance of the ultimate deadline established in *Archdiocese of New Orleans*, which was 120 days after the last date to receive service (i.e., for FY 2016, 120 days after June 30, 2017).

The Library unquestionably faced extraordinary circumstances in this case, namely the confusion and complications due to the implementation of USAC's new IT system and wholesale switch to online-only notifications that caused the Library to unfortunately miss a

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<sup>8</sup> Attachment F, St. Louis County Library Appeal to USAC of Recovery of Improperly Disbursed Funds Letter, dated September 12, 2018.

<sup>9</sup> Attachment F-1, FY 2016 Revised Funding Commitment Decision Letter, dated October 24, 2018.

<sup>10</sup> Attachment G, St. Louis County Library Appeal to USAC of Revised Funding Commitment Decision Letter, dated October 25, 2018, and USAC Final Decision Letter, dated November 2, 2018.

<sup>11</sup> *Requests for Review and Waiver of the Decision of the Universal Service Administrator by Alaska Gateway School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 10182 (WCB 2006), at ¶ 8 (“*Alaska Gateway Order*”).

<sup>12</sup> *Archdiocese of New Orleans Order*, at ¶ 10.

USAC deadline, the very same difficulties that ultimately forced USAC to provide an extension for E-rate applicants during the application process for FY 2016. Thus, the Commission should consider the confusion created by the migration to a new application system as akin to circumstances in which it has previously waived E-rate deadlines. For example, the Commission granted a waiver of the Form 471 deadline where medical issues had prevented the timely filing of the form and the school had nevertheless filed it “close enough to the deadline so as not to impair the administration of the program.”<sup>13</sup> Here, in establishing the outer permissible boundary of the Form 486 late-filing period as 120 days after the last day to receive service, the Commission has already determined that such timing is consistent with orderly administration of the E-rate mechanism.<sup>14</sup>

Nor is it consistent with precedent to require the Library to maintain on staff a fully-trained backup employee who is ready to step in on a moment’s notice in the event of the delay of the primarily responsible employee in performance of his or her duties. By migrating to online-only notifications related to the Form 486 deadline, USAC essentially narrowed the scope of personnel who received these important notifications to the single employee who was listed as the Library’s contact on the EPC portal in 2016. As the Commission explained in the *Acorn Public Library Order*, for example, “it would be an undue hardship to expect small applicants to train multiple staff members to handle E-rate filings in anticipation of unexpected absences due

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<sup>13</sup> *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, FCC 10-122, 25 FCC Rcd 9256 (2010), at ¶ 9 (“*Academy of Math and Science Order*”) (granting a waiver of the Form 471 deadline where medical issues had prevented the timely filing of the form and the school had nevertheless filed it “close enough to the deadline so as not to impair the administration of the program”).

<sup>14</sup> *Archdiocese of New Orleans Order*, at ¶ 10 (finding that this deadline does not “frustrate the timely submission and payment of invoices,” but rather “ensures that the invoicing process is not delayed by tardy FCC Forms 486”).

to illness and death, unless such absences should have been foreseeable.”<sup>15</sup> The unexpected mistake of an entrusted employee, even if not due to illness or death, is similarly impactful, in that it abruptly denies the applicant the benefit of assistance from the sole individual with E-rate expertise who is also knowledgeable regarding the status and posture of the applicant’s funding requests and filing requirements and deadlines.

### **III. Conclusion**

For the foregoing reasons, the Library respectfully requests the Commission to direct USAC to accept the applicant’s late-filed FY 2016 Form 486 and reinstate its initial funding commitments, in accordance with the standard the Commission articulated in its *Archdiocese of New Orleans Order*.

Should you require any additional information, please contact Kristopher Mooney, Assistant Director of Administration of the St. Louis County Library District.

Address: 1640 S. Lindbergh Blvd.  
St. Louis, MO 63131  
Phone: (314) 994-3300  
Email: kmooney@slcl.org

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<sup>15</sup> *Requests for Waiver and Review of the Decisions of the Universal Service Administrator by Acorn Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 08-2376, 23 FCC Rcd 15474 (WCB 2008), at ¶ 5 (“*Acorn Public Library Order*”).