



# E-Rate Support Services

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October 30, 2017

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street SW  
Washington, DC 20554  
ELECTRONICALLY FILED VIA ECFS

**Re CC Docket No. 02-6  
APPLICATION FOR REVIEW**

**Streamlined Resolution of Requests Related to Actions by the Universal  
Service Administrative Company for September, 2017**

**with respect to Petitioner's 8/30/2017 Petition for Reconsideration  
of Streamlined Resolution of Requests Related to Actions by the Universal  
Service Administrative Company for July, 2017**

**with respect to Petitioner's 2/1/2017 letter requesting that the  
Commission's Wireline Competition Bureau set the Service Start Date to  
the first date of the funding year for specific E-Rate funding requests:**

Funding App #553171 FRN 1526656 cited on FCC Form 486 #1201687  
Funding App #863619 FRN 2353086 cited on FCC Form 486 #1201707  
Funding App #863619 FRN 2352947 cited on FCC Form 486 #1201707  
Funding App #925993 FRN 2527485 cited on FCC Form 486 #1201727  
Funding App #988781 FRN 2698058 cited on FCC Form 486 #1201747  
Funding App #988781 FRN 2698010 cited on FCC Form 486 #1201747  
Funding App #988781 FRN 2697900 cited on FCC Form 486 #1201747  
Funding App #1049661 FRN 2866469 cited on FCC Form 486 #1201748

Dear Secretary Dortch,

With this letter New Glarus School District ("NGSD" or "Petitioner") prays that the Commission will review and reverse the Wireline Competition Bureau ("Bureau") decision of September 29, 2017 to deny on reconsideration NGSD's request for a waiver of the late-filed FCC Form 486 appeal deadline set in the *Archdiocese of New*

*Orleans Order*<sup>1</sup>, and that the Commission set the funding Service Start Date to the first day of the funding year for each captioned Funding Request.

### **Background**

USAC procedures provide that FCC Form 486 must be received or postmarked no later than 120 days after the Service Start Date shown on the FCC Form 486 or 120 days after the date of the Funding Commitment Decision Letter, whichever is later<sup>2</sup>.

In the 2006 *Alaska Gateway Order*<sup>3</sup> the Bureau found that where special circumstances are present and an FCC Form 486 was not filed on a timely basis, good cause exists to grant a waiver of the filing deadline and direct USAC to process the applicant's FCC Form 472 reimbursement application without a postponement of the funding start date. The Bureau consistently applied that standard to subsequent appeals submitted thereafter.

On October 20, 2016, the Bureau released the *Archdiocese of New Orleans Order*. Among other things, that order set an appeal deadline of January 29, 2017 for E-Rate applicants who filed an untimely FCC Form 486 and who desired to appeal the USAC procedural adjustment of the service start date for underlying funding requests.

On February 1, 2017, NGSD filed untimely FCC Forms 486 for the eight captioned funding requests. On the same day – just three days after the appeal deadline set in *Archdiocese of New Orleans* – NGSD filed an appeal with USAC requesting that the service start date for the underlying funding requests be set to the first day of the respective funding years.

On May 4, 2017, USAC denied the relief requested<sup>4</sup>.

On July 3, 2017, NGSD appealed USAC's decision and petitioned the Bureau for relief from reduction of funding, and explicitly requested that consistent with precedent for appeals just a few days late, the Bureau waive application of the appeals deadline.

On July 31, 2017, the Bureau denied NGSD's appeal and waiver request<sup>5</sup> without any explanation of why it declined to apply its consistent precedent of waiving an appeal deadline missed by just a few days.

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<sup>1</sup> See *Archdiocese of New Orleans et al*, 31 FCC Rcd 11747 (2016).

<sup>2</sup> See USAC procedures posted at <http://usac.org/sl/applicants/step05/form-486.aspx>

<sup>3</sup> *Alaska Gateway School District et al*, 21 FCC Rcd 10182 (2006)

<sup>4</sup> Although USAC only named Funding Application #1049661 in its 5/4/2017 appeal decision letter, our 2/1/2017 appeal letter to USAC cited the eight funding requests and five funding applications listed in the caption. Since the identical circumstances are present in all of the funding requests cited here and in our 2/1/2017 appeal letter, we believed that it is only due to a USAC clerical or ministerial error that USAC's decision letter did not cite all five funding applications. In the subsequent appeal to the Bureau we therefore requested relief with respect to all eight funding requests.

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On August 30, 2017, NGSD submitted to the Bureau a Petition for Reconsideration of its July 31 decision. NGSD asserted that the Bureau erred in failing to apply the consistent precedent of waiving an appeal deadline missed by just a few days.

On September 29, 2017, the Bureau denied NGSD's Petition for Reconsideration without explanation of why it declined to apply its consistent precedent of waiving an appeal deadline missed by just a few days.

Today NGSD's asks that the Commission review and reverse the Bureau's decision, and set the service start date for each captioned funding request to the first day of the respective funding year.

### **Analysis**

In numerous precedent orders and as long-standing policy<sup>6</sup> the Bureau has waived appeal deadlines missed by just a few days. In each case the Bureau found that submitting an appeal just a few days late is a special circumstance which warrants a deviation from the general rule, and that such a deviation will serve the public interest<sup>7</sup>.

Petitioner NGSD had missed an appeal deadline by just a few days. Although the introductory paragraph of each of the Bureau's monthly Streamlined Resolution orders states that the matters cited within the order are resolved consistently with precedent decisions, the Bureau in fact acted *inconsistently* with the numerous precedent decisions and with well-established Commission and Bureau policy with respect to appeal deadlines. The Bureau erred in failing to apply such precedent to NGSD's waiver petition.

### **Relief requested**

NGSD therefore prays that the Commission grant the waiver sought for the appeal deadline. NGSD further prays that the Commission either adjudicate NGSD's appeal (requesting that the Service Start Dates be set to the first day of each respective funding year) on its merits, or remand to the Bureau with instructions to grant NGSD's petition on its merits (with a waiver of the missed appeal deadline).

Respectfully,



David A. Behar  
Consultant to New Glarus School District

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<sup>5</sup> *Streamlined Resolution of Requests Related To Actions by the Universal Service Administrative Company*, Public Notice DA 17-712 (released 7/31/2017). The Bureau issued a decision with respect to the funding applications for all eight funding requests.

<sup>6</sup> E.g., see *ABC Unified School District Order, et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (WCB 2011) (waiving the filing deadline for petitioners that submitted their appeals to the Commission or USAC only a few days late)

<sup>7</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).