

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

In the Matter of:)	CC Docket No. 02-6
)	
Request for Review by Calhoun Falls)	
Charter School)	
)	

REQUEST FOR WAIVER

By way of background, Calhoun Falls Charter School (“CFCS”) (BEN 16050126), through its representative, respectfully requests that the Commission waive the 2016 FY FCC Form 471 filing window deadline for Application No. 161033484 (“Form 471 No. 161033484”).

I. FACTS

By way of background, CFCS is a South Carolina public charter school, and is a member of the South Carolina Public Charter School District (“SCPCSD”). On February 18, 2016, CFCS received the following information from the SCPCSD regarding E-rate applications:

Changes in the FCC/USAC filing process are going to force changes in the way the SC Department of Administration, formally the SC Chief Information Office, handles charter schools across the state in its filings of the state’s public schools. For the ERate application, each charter school will be considered an independent entity. This is being caused by the new filing process and its limitations in handling district entities as one entities (sic).

You will need to provide the appropriate BENS number, some schools have more than one, and then follow the instructions provided in the letter sent out Friday 2/12/2016.

...

3. Associate your school with the Division of Technology Consortia (145704).

(Attachment 1.)

The above-mentioned February 12, 2016 letter stated, in part:

The Charter School should disassociate themselves from the school district in which they are presently associated. You will then need to associate the Charter School with the Division of Technology (145704) Consortia.

...

If the Charter School/Special School does not complete the above tasks and are not associated with the Division of Technology Consortia, they will be billed directly as of July 1, 2016 for their internet service.

It is the responsibility of each school to ensure their data is accurate in EPC and that they are associated with the Division of Technology Consortia.

(Attachment 2.)

Relying on the above-referenced information, Angela Bourne (“Bourne”), CFCS Office Manager, filed CFCS’s 2016 FY Form 470 and Form 471 within the timeline as a consortia.¹

After several months of waiting for a Funding Commitment Decision Letter (“FCDL”), Bourne contacted Client Services Bureau (“CSB”), to inquire why CFCS’s application had not been funded. Bourne was told by a CSB representative that the delay in funding approval was due to delays in the Program Integrity Review (“PIA”) process and other EPC IT issues. The CSB representative never mentioned to Bourne that CFCS’s application was considered filed out of the filing window. Further, CFCS never received a note in the EPC News Feed that Form 471 No. 16103484 was outside of the filing window deadline. (See Statement from Bourne, Attachment 3.)

It has now come to CFCS’s attention that Form 471 No. 161033484 is considered outside

¹ During FY 2016 the FCC extended deadlines for E-rate filing in response to many applicants’ requests for more time because of difficulties filing with USAC’s new online tool, the EPC system. As such, filing deadline for the FCC Form 471 was May 26, 2016 (extended deadline from April 25, 2016) for Schools and Libraries. USAC also had a separate extension specifically for libraries and consortia. Since libraries and consortia have to wait for schools to file their paperwork before submitting their own applications, their Form 471 filing window closed on July 21, 2016. See <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=685>.

of the filing window because it was filed under the later consortia deadline instead of the Schools and Libraries deadline. To date, it is CFCS's understanding that Form 471 No. 161033484 appears in USAC's system as "certified."

II. DISCUSSION

In this case, a waiver of the filing deadline is appropriate because both the public interest and precedent warrant a waiver of the Form 471 filing deadline. Specifically, in the *Academy for Academic Excellence Order*,² the Commission granted 44 requests seeking waiver of the Commission's rule that denied funding for applications filed outside of the FCC Form 471 filing window.³ Citing the *Bishop Perry Order*,⁴ the Commission agreed with the petitioners' assertions that waiver was appropriate either because "(1) someone on the applicants' staff failed to file on time due to misunderstanding or personal emergencies, or (2) the delay in the filing or the receipt by USAC of the FCC Form 471 was due to circumstances out of the applicants' control."⁵ The Commission went on to detail a multitude of factors that caused the petitioners to miss the filing deadline in the 44 cases before it:⁶

[S]everal Petitioners state that they were unable to comply

² See *Request for Review of the Decision of the Universal Service Administrator Academy for Academic Excellence*, Apple Valley, CA, et al., Schools and Libraries Universal Service Support Mechanism, SLD File Nos. 539076, 539722, et al CC Docket No. 02-6 (2007)

³ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), affirmed by *WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). In sum, 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. *Northeast Cellular*, 897 F.2d at 1166.

⁴ *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*) (waiving the Commission's rules to, *inter alia*, allow applicants' to timely file their FCC Forms 471).

⁵ *Academy for Academic Excellence Order* at paras 4.

⁶ *Id.* at paras. 4-5.

with the filing deadline due to staff illness or relatives of staff members who were ill. Other Petitioners indicate that relevant members inadvertently failed to file the application forms in a timely manner. Still other Petitioners claim that the rules and instructions for filing the FCC Form 471 are vague and unclear and that the resulting misunderstandings led to forms being filed after the filing window. The remainder of Petitioners failed to file an FCC Form 471 in a timely manner due to circumstances beyond their control, such as school reorganizations or inclement weather. In particular, Petitioners state that technical problems, either with their own equipment or while interfacing with USAC's electronic filing mechanism, prevented their FCC Forms 471 from being timely filed.

The Commission explained that each one of the above reasons for missing the deadline constituted a legitimate basis for waiving section 54.507 of its rules as it pertains to the Form 471 deadline:

As the Commission found in the *Bishop Perry Order*, we find that the complete rejection of these applications is not warranted, given that the violation at issue is procedural, not substantive. Like the applicants in the *Bishop Perry Order*, the applicants at issue here have demonstrated that rigid adherence to filing procedures does not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.

Compared to the reasons offered in *Academy for Academics Excellence* for failing to meet the Form 471 filing deadline, CFCS's reason for missing it is just as, and in some instances considerably more, compelling. CFCS did not miss the deadline because it could not understand the rules. To the contrary, CFCS acted extremely responsibly and reasonably throughout the process, relying on its authorizer for instructions for filing, and following up with CSB for assistance.

Please note that CFCS relies on the approximate \$55,000 of Universal Service funds that it is eligible to receive. If Form 471 No. 161033484 is not remanded to USAC for processing, the

failure to receive the funds requested in that application will place an inordinate amount of economic hardship on the school. Loss of funding from the Universal Service Fund will adversely affect CFCS's technology resources, and CFCS will be forced to make very difficult decisions as to which programs it can no longer afford to continue.

The Commission has emphasized repeatedly that accomplishing the goals of the E-rate program requires working with schools and libraries to help them secure the Universal Service support they so urgently need. Penalizing schools and libraries financially for procedural missteps is obviously counterproductive. For these reasons, the Commission has routinely given applicants a second chance when they have made inadvertent procedural or clerical errors while attempting to abide by the program's so many varied and complex rules or missed the Form 471 filing deadline for reasons beyond their control. To do otherwise, the Commission has made clear, would not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.

Therefore, consistent with the Commission's findings and conclusions in both the *Bishop Perry Order* and the *Academy for Excellence Order*, it is evident that good cause exists in this case to grant CFCS's request to waive the Form 471 application deadline for Form 471 No. 161033484. In these circumstances, deviation from the general rule would much better serve the public interest.

III. CONCLUSION

For the reasons set forth above, CFCS respectfully requests that the Commission waive the Commission's rule (47 C.F.R. §54.507) that denies funding for FCC Form 471 applications filed outside of the FCC Form 471 filing window. Accordingly, CFCS requests that the Commission remand this matter to USAC with instructions to process Form 471 No. 161033484 and to issue an award or a denial based on a complete review and analysis of the underlying application.

Attachment 1

Angie Bourne

From: McCullough, Deirdre <dmccullough@cfpcs.org>
Sent: Thursday, February 18, 2016 12:27 PM
To: Angie Bourne
Subject: Fwd: USAC\FCC\ERATE FILING REQUIREMENT FOR ERATE 2016-2017
Attachments: NEW USAC FILING FOR ERATE INFORMATION.PDF; BENS List.xlsx; Tech2172016.pptx

----- Forwarded message -----

From: Robert Compton <RCompton@sccharter.org>
Date: Thu, Feb 18, 2016 at 9:53 AM
Subject: USAC\FCC\ERATE FILING REQUIREMENT FOR ERATE 2016-2017
To: Robert Compton <RCompton@sccharter.org>
Cc: "William P. James" <wjames@sccharter.org>, Zenobia Ealy <zealy@sccharter.org>, Olivia Stephenson <OStephenson@sccharter.org>, Kendall Stewart <kstewart@sccharter.org>

School Leaders,

Below is the information from William concerning ERATE. I forgot to include this information in the Operators' Notes on Tuesday. Attached are the list of school codes that you will need to use when registering. His ppt from yesterday is also attached. The other ppts from yesterday's meeting will go out on Tuesday.

If you have any questions, please contact USAC ([1-888-203-8100](tel:1-888-203-8100)) or William.

-Robbie

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Changes in the FCC/USAC filing process are going to force changes in the way the SC Department of Administration, formally the SC Chief Information Office, handles charter schools across the state in its filings of the state's public schools. For the ERate application each charter school will be considered an independent entity. This is being caused by the new filing process and its limitations in handling district entities as one entities. Each school who has an internet circuit that is provided by the SC Admin office then the school needs to call USAC at [1-888-203-8100](tel:1-888-203-8100), the original email that the SC Admin office sent out had an incorrect contact number for USAC included. You will need to provide the appropriate BENS number, some schools have more than one, and then follow the instructions provided in the letter sent out Friday 2/12/2016.

Steps for completing the above tasks:

1. Contact USAC at 1-888-203-8100 to create an Account Administrator for your School.
2. If your school is associated with a School District/Special School, disassociate your school from that district. Set your school up as an independent School.
3. Associate your school with the Division of Technology Consortia (145704)
4. Enter your free and reduced lunch data for your school from the Department of Education's website

Schools who do not complete these steps will cause the school to be omitted from the SC Admins ERate filing and if the school is not included then the school will be responsible for paying for the schools internet circuit for the 2016-2017 school year. You might be asked for the district's BENS number listed below.

16050123 South Carolina Public Charter School District

Attachment 2

NEW USAC FILING REQUIREMENT FOR ERATE:

Each Charter School/Special School is required to register with **EPC (USAC)** and have an Account Administrator designated. The Charter School should disassociate themselves from the school district in which they are presently associated. You will then need to associate the Charter School with the **Division of Technology (145704) Consortia**.

Each Charter School/Special School is required to enter their free and reduced data which can be obtained from the Department of Education's website (<http://ed.sc.gov/districts-schools/nutrition/national-school-lunch-program/e-rate-free-and-reduced-meal-eligibility-data/>). This must be done **now** because the Division of Technology Consortia is working on our applications for Internet Service.

If a Charter School/Special School does not complete the above tasks and are not associated with the Division of Technology Consortia, they will be **billed directly as of July 1, 2016** for their internet service. The Consortia will not be able to procure funding for the school if it is not associated to the Division of Technology Consortia. The Consortia must be able to pull the Charter School into our application to obtain funding. Our target date to file for the consortia is **March 18, 2016**. Therefore, we need each school to complete these tasks before that date.

Steps for completing the above tasks:

1. **Contact USAC at 1-800-203-8100 to create an Account Administrator for your School.**
2. **If your school is associated with a School District/Special School, disassociate your school from that district. Set your school up as an independent School.**
3. **Associate your school with the Division of Technology Consortia (145704)**
4. **Enter your free and reduced lunch data for your school from the Department of Education's website**

Please let me know by **email or phone** that you have completed the above tasks so that I am sure to pull your location into our application.

The login page for the **EPC website** is <http://www.usac.org/sl/tools/e-rate-productivity-center/default.aspx>

It is the responsibility of each school to ensure their data is accurate in EPC and that they are associated with the Division of Technology Consortia. Failure to do so will result in the Division of Technology not being able to provide service to the school.

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Attachment 3

FCC Appeal Committee

AA Angela Bourne and State E-Rate Coordinator- Andrew Epting: I filed the FY 16 Form 470 and 471 and it was certified; however, we were given mislead information from the state. We are a charter school. I was placed as the AA under the Chartered District. I am a single charter school and I was missed lead to file the form under the Technology Consortium. I called several times to check the forms and was told that our schools forms were still pending. I then filed under my Independent School but it shows still Pending too. I need to file an appeal but in EPC it is not letting me. State E-Rate Coordinator- Andrew: I filed my school's Independent School in the Consortium window deadline and not the Schools and Libraries window deadline. We need to file an appeal in EPC. We called EPC and was told that we will need to file straight with the FCC. Therefore, I am asking to reevaluate my FY16 Form 470 and 471. I have attached documentation to show that I was given misleading information.

Angie Bourne