



Federal Communications Commission
Washington, D.C. 20554

September 8, 2016

Mr. Richard Bernstein
E-rate Consulting LLC
P.O. Box 527
Woodmere, NY 11598

DOCKET FILE COPY ORIGINAL

Re: Motion to Accept Filing as Timely Filed
WC Docket No. 02-6 FCC E-rate Appeal

Dear Mr. Bernstein:

The Office of the Secretary has received your request for acceptance of the document you filed in the above-referenced proceeding as timely filed, due to technical difficulties with the Commission's Electronic Comment Filing System.

I have reviewed your request and your assertions. After considering the relevant argument, it has been determined that this filing will be accepted as timely filed on Thursday, August 18, 2016.

If we can be of further assistance, please contact the Office of the Secretary.

Sincerely,

A handwritten signature in black ink that reads "Marlene H. Dortch".

Marlene H. Dortch
Secretary

MHD/gt

**Request For Waiver Letter Cheder Chabad BEN 16068065
CC Docket No. 02-6**

Request for Waiver

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

Re: Name: **Cheder Chabad**
BEN: **16068065**
Funding Year: **2016**
Applications: **161058637, 161058638, 161058640**
OW Notice: **06/19/2016**

August 18, 2016

Dear Sirs.

This is a letter for a request of a Waiver regarding the above captioned USAC Notification regarding the following Form 471's:

Application #: **161058637** "This is an acknowledgement that USAC has received CHEDER CHABAD INC.'s FCC Form 471 - 161058640 for Funding Year 2016 on 6/20/2016, which was submitted out-of-window. Therefore, your application will not be considered for funding."

Application #: **161058638** "This is an acknowledgement that USAC has received CHEDER CHABAD INC.'s FCC Form 471 - 161058640 for Funding Year 2016 on 6/20/2016, which was submitted out-of-window. Therefore, your application will not be considered for funding."

Application #: **161058640**. "This is an acknowledgement that USAC has received CHEDER CHABAD INC.'s FCC Form 471 - 161058640 for Funding Year 2016 on 6/20/2016, which was submitted out-of-window. Therefore, your application will not be considered for funding."

The Executive Director, due to extenuating circumstances, was forced to leave the organization mid-year before the filing deadline without informing the remaining staff of the lack of a Form 470 filing and without joining EPC. The new Executive Director upon ascending the position

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inquired about the status of the E-rate application and realized that the school was not part of EPC. However there were difficulties in establishing an EPC account and designating a consultant. Had this been done immediately the filed form 471's would have been filed in a more timely manner and probably within the 14 day grace period where the FCC has granted automatic waivers without special circumstances. We believe this constitutes a situation which was out of the applicant control, is a *special* circumstance and in addition the school will suffer extreme hardship by being prevented from receiving E-rate funding.

The FCC has already ruled in:

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

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Bishop Perry Middle School)	File Nos. SLD-487170, <i>et al.</i>
New Orleans, LA, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

The rest of the petitioners assert a waiver is appropriate for one of two reasons: either someone on the applicants' staff made a mistake or had a family emergency that prevented them from filing on time or the delay in the filing or receipt of the application was due to **circumstances out of the applicants' control**. Specifically, in the first group, some of these appeals involve applicants whose staff members inadvertently failed to file the application forms in a timely manner.¹ Another group

¹ Request for Waiver of Assabet Valley Regional Vocational School District; Request for Review of Barnwell County School District 45; Request for Review of Bath County School District; Request Waiver of Beavertown Community Library; Request for Review of Brown County School Corporation; Request for Review of Caruthers Unified School District; Request for Review of Central Catholic High School; Application for Review of Chawanakee Joint Elementary School District; Request for Review of Clearwater Memorial Library; Request for Waiver of Clinton County Board of Education; Request for Review of Coahoma County Public Schools; Requests for Review of Consorcio de Escuelas y Bibliotecas; Request for Review and Waiver of CPC Behavioral Healthcare; Request for Review of Delta County School District; Request for Review of Fairfax School District R3; Request for Review of Germantown School District; Request for Waiver of Hawaii State Public Library; Petitioner for Reconsideration of High Bridge Board of Education; Request for Waiver of Holmes District School Board; Request for Review of Hubbard Independent School District; Request for Waiver of Indian Oasis Baboquivari

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of petitioners state that they were unable to comply with the filing deadline due to **staff illness or relatives of staff members who were ill.**² Other petitioners claim that the rules and instructions for filing an FCC

I. Form 471 are vague and unclear and that the resulting misunderstandings led to forms being filed after the filing window.³

And in:

**Federal Communications Commission DA 12-27
Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of
Requests for Waiver and Review of
Decisions of the
Universal Service Administrator by
Bais Chaya Mushka)
Los Angeles, California, *et al.*)
Schools and Libraries Universal Service)
Support Mechanism)

File Nos. SLD-799949, *et al.*

CC Docket No. 02-6

ORDER

District 40; Request for Waiver of Island Trees Public Library; Request for Waiver of Jefferson School District; Request for Review of Los Alamitos Unified School District; Request for Review of Madera Unified School District; Request for Review of Malone Independent School District; Request for Waiver of McClure Community Library; Request for Waiver of Middleburg Community Library; Request for Waiver of Minnesota Transition School; Request for Waiver of Minnewaska Area Schools; Request for Review of Montfort & Allie B. Jones Memorial Library; Request for Waiver of Mount Ayr Community School District; Request for Waiver of Mount Saint John School; Request for Waiver of Mt. Carroll Township Public Library; Request for Review of Our Lady of Refuge; Request for Waiver of Pinon Dormitory; Request for Waiver of Queen of Apostles Catholic School; Request for Waiver of Richmond Public Library; Request for Review of Rylander Memorial School; Request for Waiver of Selinsgrove Community Library; Petitioner for Reconsideration of Siskiyou County Library; Request for Review of Southeast Delco School District; Request for Review of Southeastern Libraries Cooperating; Request for Review of St. Clement's Regional Catholic School; Request for Review of St. Elizabeth Interparochial School; Request for Waiver of St. Francis of Assisi School; Request for Waiver of SuperNet Consortium; Request for Waiver of Tiverton School Department; Request for Waiver Wabash Valley Educational Center; Request for Review of Wallington Public Schools; Request for Waiver of Walnut Community School District; Request for Waiver of Washington Local School District; Request for Waiver of Westside Holistic Family Services; Request for Review of Whitfield County School District; Request for Waiver of Wilkinson County School District; Request for Review of Wilson Memorial Library.

² Request for Waiver of Augusta County Library; Request for Review of Bonnie Brae Educational Center School; Request for Review of Garvey School District; Request for Waiver of Gaston County School District; Request for Waiver Millennium Community School; Request for Waiver of Northwest Institute for Contemporary Learning, Inc.; Request for Waiver of St. Mary's School; Petition for Reconsideration of Neches Independent School District; Request for Waiver of Unadilla Community School.

³ Request for Waiver of Blackwell Public Schools; Request for Waiver of Brooklyn Jesuit Prep; Request for Review of Cecil County Public Schools; Request for Review of Colleton County School District; Request for Review of Jefferson City School District; Request for Review of Laporte School District 306; Request for Waiver of Nativity Mission School; Request for Review of Pierce City School District R6; Request for Waiver of St. Ignatius Academy.

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CC Docket No. 02-6

Adopted: January 12, 2012

Released: January 12, 2012

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

1. In this order, we address 31 requests from petitioners seeking waivers of the FCC Form 471 application filing window deadline for funding years 2007, 2010 and 2011 under the E-rate program,¹ including two petitions for reconsideration of an earlier Wireline Competition Bureau decision.² Consistent with the Commission's *Academy of Math and Science Order*,³ and based on our review of the record, we find that 15 petitioners have demonstrated that special circumstances exist to justify a waiver of that filing window deadline.⁴

1 The requests for waiver and review are listed in appendices A, B, and C. Section 54.7 19(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.7 19(c). Section 54.407(c) of the Commission's rules maintains that E-rate funds shall be available on a first-come-first-served basis, but requires USAC to implement an initial funding window that treats all applicants filing within that window as if their applications were simultaneously received. 47 C.F.R. § 54.507(c). Although some petitioners did not explicitly request a waiver of the FCC Form 471 application filing window deadline, we treat their requests for review as requests for waiver because, in each case, USAC denied their funding requests because their FCC Form 471 applications were submitted after the relevant filing window deadline. The E-rate program is more formally known as the schools and libraries universal service support program.

2. The petitions for reconsideration are listed in appendix D. The Bureau has the authority to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority. 47 C.F.R. § 1.106(a)(1) (2011).

3. See *Request for Review of the Decision of the Universal Service Administrator by Academy of Math and Science, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487009, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 9256 (2010) (*Academy of Math and Science Order*); *infra* para. 2; see also *Request for Waivers and Review of the Decisions of the Universal Service Administrator by Argos Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-737946, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 16109 (Wireline Comp. Bur. 2010); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Al-Noor School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-768866, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 5792 (Wireline Comp. Bur. 2011); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Beaver Area Memorial Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-750009, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 10317 (Wireline Comp. Bur. 2011); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by All Saints Elementary School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-750009, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 10317 (Wireline Comp. Bur. 2011); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by All Saints Elementary School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-750009, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 10317 (Wireline Comp. Bur. 2011).

Therefore, we find that good cause exists to grant those requests for waiver and remand the underlying applications listed in appendices A and B to the Universal Service Administrative Company (USAC) for further action consistent with this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.⁵ We deny the remaining 14 requests for waiver because we find that those petitioners fail to present special circumstances to justify a waiver of the Commission's rules.⁶ Finally, we dismiss the two petitions for reconsideration because they fail to provide new facts or circumstances that would result in a waiver of our rules for late-filed FCC Forms 471.⁷

2. 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. § 15 1-154 and 254, and 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), the requests for review or requests for waiver filed by the petitioners listed in

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appendices A and B ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

3. IT IS FURTHER 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, and 54.722(a) of the Commission's rules, 47 C.F.R. § 0.91, 0.291, and 54.722(a), that the requests for review or requests for waiver filed by the petitioners listed in appendix C ARE DENIED.

4. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. § 15 1-154 and 254, and pursuant to authority in sections 0.91, 0.291, 1.3, 1.106, and 54.722(a) of the Commission's rules, 47 C.F.R. § 0.91, 0.291, 1.3, 1.106, and 54.722(a), that the petitions for reconsideration filed by the petitioners listed in appendix D ARE DISMISSED.

Libraries Universal Service Support Mechanism, File Nos. SLD-8 16848, et al., CC Docket No. 02-6, Order, 26 FCC Red 13107 (Wireline Comp. Bur. 2011) (All Saints Elementary Order).

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4. *See* appendices A and B. The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. 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. Cii. 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. *WAITRadio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cii. 1969). 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; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cii. 2008).

5. In performing a complete review and analysis of the underlying applications, USAC shall either grant the underlying applications before it, or, if denying an application, provide the applicant with all grounds for denial.

6. *See* appendix C; 47 C.F.R. § 1.3.

7. *See* appendix D; 47 C.F.R. § 1.106(b)(2) (2011).

5. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 15 1-154 and 254, and 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 section 54.507(c) of the Commission's rules, 47 C.F.R. § 54.507(c), IS WAIVED for the petitioners listed in appendices A and B to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade
Deputy Chief Telecommunications Access Policy Division
Wireline Competition Bureau

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Alaska Gateway School District)	File Nos. SLD-412028, <i>et al.</i>
Tok, AK, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: September 14, 2006

Released: September 14, 2006

2. Based on the facts and the circumstances of these specific cases, we find that good cause exists to waive the deadline for filing the FCC Form 486 for Petitioners.⁴ Under Bureau precedent deadlines have been strictly enforced for the E-rate program, including those pertaining to the FCC Form 486.⁵ As we recently noted in *Bishop Perry Middle School*, a departure from required filing deadlines may be warranted upon careful

review of the Petitioner's case and when doing so will serve the public interest.⁶ Generally, these applicants claim that staff mistakes or confusion, or circumstances beyond their control resulted in missing the FCC Form 486 deadline.⁷ We note that the primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to staff dedicated to pursuing federal grants, especially in small school districts. Even when a school official becomes adept at the application process, unforeseen events or emergencies

⁴Because we waive the FCC Form 486 deadline, applicants should receive funding from their actual service start date. We also direct USAC to waive any of its subsequent deadlines if related to the late-filed FCC Form 486, such as the FCC Form 472 deadline, if necessary for the processing of Petitioners' applications.

⁵See *Requests for Waiver by Lucia Mar Unified School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-249712, *et al.*, CC Docket No. 02-6, Order, 19 FCC Rcd. 20364, para. 3 (Wireline Competition Bur. Rel. May 28, 2004); *Request for Review by East Carroll Parish School Board, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-232946, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 24591, 24594, para. 7 (Wireline Comp. Bur. 2002).

⁶*Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, 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, para. 9 (rel. May 19, 2006) (*Bishop Perry Middle School*).

⁷Some Petitioners claim that they postmarked the FCC Form 486 on time. Given that we are waiving USAC's deadline for these applicants who mistakenly or knowingly filed late, we give these Petitioners the benefit of the doubt and, to the extent necessary, waive the FCC Form 486 filing deadline for them as well.

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may delay filings in the event there is no other person proficient enough to complete the forms.⁸ Furthermore, some of the errors were caused by third parties or unforeseen events and therefore were not the fault of the applicants. **Given that the applicants missed a USAC procedural deadline** and did not violate a Commission rule, we find that the complete rejection of each of these applications is not warranted. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applicants. In these cases, the applicants have demonstrated that rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest.⁹ We therefore grant these appeals and remand them to USAC for further processing consistent with this Order.

³¹ 4 *Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14.

³² Dickens Public Library, for instance, states that it is a one-staff library open less than 20 hours a week in a town with a population of 202. Request for Review of Dickens Public Library at 1. Similarly, Socorro Consolidated Schools notes that it is located in the second poorest county in the second poorest state in the country. Request for Review of Socorro Consolidated Schools at 2.

³³ 47 U.S.C. § 254(b).

³⁴ We estimate that these requests for review involve applications for approximately \$2,703,000 in funding for Funding Years 2001-2006. We note that USAC has already reserved sufficient funds to address outstanding appeals. *See, e.g.*, Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2007 (Jan. 31, 2007). Thus, we determine that the action we take today should have minimal effect on the Universal Service Fund as a whole.

³⁵ With respect to SEED Public Charter School, we note that USAC cancelled funding because SEED Public Charter School did not use an SLD-certified approver and did not provide a Letter of Approval signed by the SLD-certified approver. However, SEED Public Charter School has demonstrated that it provided the signed Letter of Approval to USAC in a timely manner. *See* Request for Review of SEED Public Charter School at Exhibit 7. In addition, SEED Public Charter School has demonstrated that the entity that approved its technology plan, DC Public Charter School Board, has been an SLD-certified technology plan approver for public charter schools including SEED Public Charter School since December 12, 2000. *Id.* at Exhibit 5.

³⁶ Petitioners will be presumed to have received notice five days after such notice is postmarked by USAC. USAC shall, however, continue to work beyond the 15 days with Petitioners attempting in good faith to provide such additional information.

As the Commission previously noted, many E-rate applications are prepared by school administrators, technology coordinators, teachers and librarians—workers whose primary role in the school or library may be unrelated to applying for federal universal service funds, especially in small school districts or libraries.³¹

10. We also find that denying Petitioners' requests would create undue hardship and prevent these otherwise eligible schools and libraries from potentially receiving funding that they truly need to bring advanced telecommunications and information services their students and

⁸For example, Western Christian High School's sole Universal Service Fund official suffered a debilitating stroke and was unable to meet the Form 486 deadline. Request for Review by Western Christian High School at 1.

⁹*See* 47 U.S.C. § 254(h).

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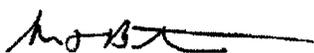
patrons.³² By contrast, waiving the applicable technology plan rules for these Petitioners and granting these requests will serve the public interest by preserving and advancing universal service.³³ Although the technology plan requirements are necessary to guard against the waste of program funds, there is no evidence in the record that Petitioners engaged in activity to defraud or abuse the E-rate program. We further note that granting these requests should have minimal effect on the Fund as a whole.³⁴ Therefore, we remand the appeals to USAC for further consideration consistent with this Order.³⁵

11. To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications listed in the Appendix and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this Order. If, on remand, USAC determines that it needs additional information to process the applications, such as a technology plan or approval letter, USAC shall permit Petitioners to provide the information within 15 calendar days of receiving notice in writing from USAC that additional information is required.³⁶

12. *Additional Processing Directives for USAC.* Beginning with applications for Funding Year 2007, if an applicant responds to a request by USAC to provide technology plan documentation and the documentation provided by the applicant is deficient (e.g., is outdated or will expire before the end of the relevant funding year), USAC shall: (1) inform the applicant promptly in writing of any and all deficiencies, along with a clear and specific explanation of how the applicant can remedy those deficiencies; and (2) permit the applicant to submit correct documentation, if any, within 15 calendar days

Therefore we submit that the school's form 471's be designated as Certified Within Window so as not to create undue hardship for an eligible institution that would prevent them from potentially receiving funding that they truly need to bring advanced telecommunications and information services their students and patrons .

Sincerely,



Richard I Bernstein
Consultant 16062128