

August 28, 2018

Appeals Administrator  
Federal Communications Commission

OSHEAN  
6946 Post Road, Suite 402  
North Kingstown, RI 02852

To Whom It May Concern:

OSHEAN is writing to appeal multiple issues concerning the referenced Forms 486 filed for the FRNs in the attached document, titled, **"List of Applicants Covered by the Appeal."** Please note that we have appealed to USAC, as per protocol, and were denied, which is addressed in the following paragraph.

The first issue is USAC denial of our appeal. There are five FRNs covered by the original appeal, and we have included screen shots, dated March 26, 2018, demonstrating that despite the certification date of the Forms 486 being in mid-September, 2017, the Forms 486 in question remain in an "In Review" status to this date. Because these Forms are in a review status, EPC has not generated a notice that they were completed, so OSHEAN never received any qualifying notification.

The FRNs in appeal cannot be invoiced until the FRN has completed the FCC Form 486 review. The inclusion of all FRNs on the Form 486 filed in the Notification Letter does not constitute a decision on the status of the FRN as the FRN still shows the FCC Form 486 "IN REVIEW". A subsequent FCC Form 486 Notification Letter should be issued but this has not been done nor has the Service Start Date for the FRNs been rendered in the FCC Form 486 Form Details within the EPC system.

USAC denied the appeal because they claimed that they were certified in September of 2017, so the appeal window had elapsed. OSHEAN considers that the "IN REVIEW" status prevents EPC from sending out a notification with the final Service Start Date and a Notification Letter for this specific event. The missing "Approved" FCC Form 486

Notification Letter would establish the date for the appealable event. Essentially, the FCC should agree to hear this case by granting the first part of this appeal, before the real issue can be addressed.

The underlying issue is that the applicant(s) admittedly filed their Forms 486 late. In all five cases, represented by the FRNs in the "List of Applicants" attachment, the 486s were filed late by the applicant, which seems to have resulted in the Service Start Date being moved back from July 1, 2016, to May 17<sup>th</sup>, 2017. This caused a dramatic reduction in the committed funding amount. Please note that the Form 486s were filed with the correct date of July 1<sup>st</sup>, 2016 as the Service Start Date as demonstrated in the FCC Form 486 Form Details for FCC Form 486 number 67938. [Item attached entitled: FY16-17 Internet - #67938] However, due to the date of filing the Form 486s, the Service Start Date was changed in EPC, the funds reduced but no Approved Service Start Date has been indicated.

OSHEAN is appealing that procedural change, and seeks a waiver to reset the Service Start Date back to July 1, 2016. The applicants had relied on a consultant to file the FCC Form 486s needed and these were missed due to a clerical error. The applicants did file the forms as soon as they discovered that these were missing from the forms which were filed by their consultant. The consultant has closed the business and thus these had to be filed by the applicant when reviewing the status of the FRNs.

OSHEAN has delivered services in good faith, starting on the original Service Start Date of July 1 as certified in the filed FCC Form 486. Due to this clerical and ministerial error by the consultant, who subsequently closed shop, OSHEAN is at risk of losing tens of thousands of dollars in E-Rate funding. OSHEAN committed no errors in this process; they delivered services and honored their contract to the betterment of the schoolchildren of Rhode Island. It was simply an error, committed by the consultant for the five applicants in question, but one that seriously jeopardizes OSHEAN's ability to remain profitable.

In sum, OSHEAN seeks to change the start dates of the listed FRNs back to July 1, 2016, and reverse the associated negative adjustment to the funding commitment amount. This

change would allow for the completion of the FCC Form 486 process, create a correct FCC Form 486 Notification Letter, and allow for the submission of invoices.

We request that under the Glendale Unified District Order and for the fact that “[a] rule may be waived where the particular facts make strict compliance inconsistent with the public interest. [\*] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[\*\*] 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.[\*\*\*]

OSHEAN respectfully submits that these factors have been met in this specific case and requests that the FCC affirms these requested actions.

As always, we appreciate your hard work on behalf of the greater E-Rate community.



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Melanie Turcotte  
Program Administrator, OSHEAN

\* Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

\*\* 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), cert. denied, 409 U.S. 1027 (1972).

\*\*\* Northeast Cellular, 897 F.2d at 1166.