

MOUNTAINAIR PUBLIC SCHOOL DISTRICT

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April 27, 2015

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street SW  
Washington, DC 20554  
VIA FCC ELECTRONIC COMMENT FILING SYSTEM

Re **CC Docket No. 02-6**  
Petition for Reconsideration  
*March 2015 USF Appeals Disposition Notice*  
Applicant: Mountainair Public School District

Dear Ms. Dortch,

With this letter Mountainair Public School District (“Petitioner”) respectfully requests that the Federal Communications Commission (“Commission”) reconsider the decision of the Wireline Competition Bureau (“Bureau”) in the Bureau’s *March 2015 USF Appeals Disposition Notice*<sup>1</sup> (“Notice”) denying Petitioner’s Petition for Waiver<sup>2</sup> seeking relief (under very specific circumstances) from the requirement to completely file and certify an application for funding under the Schools and Libraries Universal Service Support Mechanism within the filing window<sup>3</sup>.

In the Notice the Bureau erred in its finding that Petitioner filed its Petition for Waiver on March 6, 2015; the filing was actually submitted in full compliance with Commission rules on March 5.

The Bureau subsequently erred in its finding that the Petition for Waiver was untimely filed, as on the March 5 filing date the Commission’s rules specified a filing deadline only for an appeal of a Universal Service Administrator’s decision; it is only on March 6 that a deadline for waiver petition submissions became effective.

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<sup>1</sup> See *March 2015 USF Appeals Disposition Notice*, DA 15-387, released 3/27/2015

<sup>2</sup> See Petitioner’s *Petition for Waiver* submitted electronically via ECFS on 3/5/2015 at 10:29 PM ET

<sup>3</sup> See 47 CFR §54.507

Petitioner therefore prays that the Commission apply its rules, precedent<sup>4</sup>, and policy as they existed on the filing date, and that the Commission grant the relief sought in the Petition for Waiver.

### **Background**

Prior to March 27, 2015, Commission and Bureau precedent for petitions seeking waivers of the funding application filing window rule or any other E-Rate rule have never applied a waiver petition filing deadline<sup>5</sup>. This is in contrast to appeals of Administrator decisions, for which the Commission's rules have specified a 60-day appeal deadline<sup>6</sup> and regarding which the Commission and Bureau have been fairly strict<sup>7</sup>.

In an order published in the Federal Register on February 4, 2015<sup>8</sup>, the Commission amended 47 CFR §54.720 to provide that a waiver petition must be filed not more than 60 days after the antecedent adverse action by the Administrator; pursuant to the language of the order and Commission rules<sup>9</sup>, the amended rule came into effect on March 6.

The Commission's ECFS Help Desk staff<sup>10</sup> have confirmed that the Petition for Waiver was submitted electronically via ECFS on March 5 at 10:29 PM<sup>11</sup>. The Commission's rules provide that documents are considered to be filed with the Commission upon receipt<sup>12</sup>, and the Commission's rules further provide that an electronic filing is deemed to be a proper filing "location"<sup>13</sup>. The Commission's rules specifically state that an electronic filing submitted before midnight is deemed to have been filed on the submission date<sup>14</sup>, and the rules do not provide for any adjustment to the received date in case of a "holiday"<sup>15</sup>.

We do note that Commission offices were closed on March 5 due to adverse weather. The rules at 47 CFR §1.4(j) do provide for a holiday adjustment to the *Terminal Date* (i.e., due date) when it exists for a particular filing; however, no Commission rule

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<sup>4</sup> E.g., see *A Special Place Order*, 29 FCC Rcd 5827 (2014)

<sup>5</sup> E.g., see *Academic Excellence Order*, 22 FCC Rcd 4747 (2007), in which the Commission granted a funding application late-filing waiver for Funding Application 467455 to Ewen-Trout Creek Consolidated School District, which received a 4/8/2005 Out-of-Window letter from USAC and filed its petition for waiver with the Commission on 7/17/2007.

<sup>6</sup> 47 CFR §54.720(a)

<sup>7</sup> E.g., see *Agra Public Schools Order*, 25 FCC Rcd 5684 (2010), Appendices B and C (denying appeals to the Commission due to untimely filings more than 60 days after the Administrator's decision).

<sup>8</sup> 80 FR 5961, published 2/4/2015

<sup>9</sup> 47 CFR §1.427(a)

<sup>10</sup> Contacted via telephone at 202-418-0193 today at 1:40 p.m. EDT

<sup>11</sup> Reference to appendix

<sup>12</sup> 47 CFR §1.7

<sup>13</sup> 47 CFR §0.401(a)(1)(iii)

<sup>14</sup> "Documents filed electronically pursuant to §1.49(f) must be received by the Commission's electronic filing system before midnight", 47 CFR §1.4(f)

<sup>15</sup> as that term is defined at 47 CFR §1.4(e)(1)

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provides that an electronically filed document is deemed to have been received on any date other than *the actual date it was submitted*. Simple ECFS queries reveal numerous examples of submissions marked as received on a holiday date<sup>16</sup>.

Nevertheless, as of today ECFS still shows a received date of 3/6/2015 for the Petition for Waiver.

Interestingly, the Report and Order which established ECFS<sup>17</sup> specifically discusses the issue of a cutoff time for filings, and concludes that:

*Electronic filing makes it technically possible for us to extend our filing deadline later in the day, and we wish to encourage electronic filing. We will therefore permit electronic comments filed via the ECFS to be made until midnight of the date due. Our rules will be amended accordingly.*

## **Discussion**

The Petition for Waiver was properly filed with the Commission upon its submission electronically on March 5, 2015. On the filing date no Commission rule in effect specified a deadline for requesting a waiver of a Part 54 rule. (A rule change to that effect did become effective *on March 6*, but that rule change is irrelevant for the March 5 filing.)

Commission and Bureau precedent and policy for the last several years have been to grant (or deny) Part 54 waiver petitions without distinguishing those petitions based on the passage of time between Administrator action and the waiver petition filing; we have found no exception.

It has been Commission and Bureau precedent and policy – with no exception found – to grant the specific rule waiver sought in the Petition for Waiver under the circumstances described in that filing.

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<sup>16</sup> E.g., see comment filed electronically by Purple Communications Inc. marked as received on New Years Day 2010; petition for reconsideration filed electronically by W. Lee McVey marked as received on Saturday, March 6, 2010

<sup>17</sup> *Report and Order* (GC Docket #97-113), 13 FCC Rcd 11322 (1998), 63 FR 24121 (1998).

Interestingly, in the same order we find: “Some parties encourage the Commission to include a time stamp mechanism so that the filing date of each comment can be confirmed. This function has already been built into the ECFS, along with automatic notification to the commenter of the official filing date and time.” Regrettably (and contrary to the public interest and convenience due to the risk of lack of clarity about actual filing dates and times), the current incarnation of ECFS *does not* provide automatic notification to the filing party of the official filing date and time.

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**Relief sought**

For the reasons stated in this letter, Petitioner therefore prays that the Commission apply its rules, precedent, and policy as they existed on the March 5 filing date, and grant the relief sought in the Petition for Waiver at the earliest possible date.

MOUNTAINAIR PUBLIC SCHOOL DISTRICT

*Ron Hendrix*

Ron Hendrix  
Superintendent