Request For Waiver

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

Re: Name: **Cheder Menachem**
BEN: **16068856**
Funding Year: **2013**
Applications: **Form 471 896931**
Admin Decision: **09/14/2015**

November 13, 2015

Dear Sirs.

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

FRN 2437504 Your SPIN Change request was dated after the established deadline for the receipt of SPIN Change requests.

This is a corrective SPIN change, the previous SPIN is inactive since the new company acquired the old company the applicant made an M & C error since the corporate change was not evident in the school's bills. Only after a BEAR form was submitted to the Vendor was this information divulged. Failure to approve this change will result in an undue hardship to the school.

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, *et al*.
New Orleans, LA, *et al*.	)	
	)	
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 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.

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

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

from the E-rate program and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order.22 Petitioners' requests for funding were denied or reduced because USAC found that the FCC Form 486 was filed late or the form may not have been filed.23 These Petitioners, however, either claim that the filings were on time,24 that the late filings were the result of immaterial clerical, ministerial or procedural errors,25 or that the late filings were due to circumstances beyond their control.26

And in

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Review and Waiver	)	
of the Decision of the	)	
Universal Service Administrator by	)	
	)	
Alaska Gateway School District	)	File Nos. SLD-412028, *et al*.
Tok, AK, *et al.*	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

[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.

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

2.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 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

---

[4]Because 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.

[5]*See 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*).

[7]Some 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.

[8]For 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.

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.

4[31] *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 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

[9] *See* 47 U.S.C. § 254(h).

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 SPIN change be approved as filed and thus the school can file for refunds for this FRN.

Sincerely,

Richard I Bernstein
Consultant 16062128