

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
)  
Request for Review of the )  
Decision of the )  
Universal Service Administrator by )  
)  
Lancaster School District ) CC Docket No. 02-6  
)  
Schools and Libraries Universal Service )  
Support Mechanism )

**Request for Review of  
The Decision of the Universal Service Administrator  
Regarding Implementation Extension Request for  
FCC Form 471 483438, Funding Request Number 1339701  
And Petition for Waiver**

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**I. INTRODUCTION AND SUMMARY**

The Lancaster School District (“District”) submitted a service delivery/implementation deadline extension request to the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC”) on October 5, 2007 for an internal connections funding request (FRN), FRN 1339701. This FRN is for the communications wiring of two high school buildings. The original service implementation deadline was September 30, 2007. The request for the service implementation deadline extension was submitted online using the SLD’s “Submit a Question” feature, and the request was assigned Case No. 21-643133. A copy of this request is attached as Exhibit A.

The District did not receive any decision from the SLD regarding this request and thought the matter was pending. On March 13, 2008, the District was informed by the service provider associated with this FRN that the service provider's invoices to the SLD submitted pursuant to FCC Form 474 had been rejected for the reason that the service was performed after the service implementation deadline for this FRN.

On March 14, 2008, the District initiated a telephone inquiry to the SLD's Client Service Bureau to check on the status of the pending service implementation deadline extension request at Case No. 21-643133. The Client Service Bureau representative advised that the request for the extension had been denied by letter dated January 2, 2008. The representative, upon request, emailed a copy of the letter to the District on March 14, 2008. A copy of the letter and the SLD transmittal email dated March 14, 2008 is attached as Exhibit B.

The SLD's decision letter states that the request was denied because the extension was "received after the FCC deadline for Implementation Deadline Extension requests which was 9/30/07."

The District petitions the Federal Communications Commission ("FCC" or "Commission") first to waive the 60 day deadline for submission of appeals from adverse decisions of the fund Administrator, because the District did not receive notice of the adverse decision until March 14, 2008. The District also appeals the decision of the Administrator to deny the request for the extension of the service implementation deadline, or in the alternative, petitions the FCC to waive the rule that the request must have been submitted on or before the current service implementation deadline.

## **II. PETITION FOR WAIVER OF THE 60 DAY PERIOD FOR APPEALING ADVERSE DECISIONS OF THE FUND ADMINISTRATOR**

According to 47 C.F.R. §54.702(a), an appeal from adverse decisions of the Fund Administrator must be submitted within sixty (60) days of the issuance of the Fund Administrator's decision. In this situation, the issuance date of the decision letter denying the service delivery deadline extension is in doubt because although the decision letter is dated on January 2, 2008, the letter was not received until March 14, 2008 via email. A mailed copy of the letter has never been received to date.

Attached as Exhibit C is an affidavit of Debra M. Kriete, the District's E-rate consultant who is the contact person for the service delivery deadline extension request, and to whom the decision letter is addressed. Ms. Kriete's sworn affidavit, signed under penalty of perjury, states that she never received a mailed copy of the January 2, 2008 letter, and that March 14, 2008 was the date on which she first was notified that the service delivery deadline extension request was decided, and that the request was denied.

In addition, the District noticed that the SLD's denial letter of January 2, 2008 indicated that a representative of the service provider was also copied on the letter. The District has confirmed that the service provider never received a copy of the denial letter. Exhibit D to this Petition is an affidavit of Frank Snyder III, the person named on the SLD denial letter as a "cc" on the letter, signed under penalty of perjury. Mr. Snyder's affidavit confirms he never received a denial letter from SLD in the mail, and only became aware of the denial letter when Debra Kriete emailed the electronic copy of the letter she received when she contacted the Client Service on March 14, 2008.

The Commission has stated that absent a showing to the contrary, an item mailed is presumed to be received by the addressee.<sup>1</sup> But when evidence has been presented to rebut the presumption, the Commission has been willing to accept such evidence and conclude that the mailed item was not received by the intended recipient.<sup>2</sup> For example, in the *Hickory Public Schools Appeal*, the FCC accepted letters from a service provider that stated that the service providers did not receive notification of certain funding commitment decisions letters, to substantiate the Applicant's claim that the Applicant did not receive the disputed funding commitment decisions letters.

In the current appeal, the person to whom the decision letter is addressed has submitted an affidavit, under penalty of perjury, to substantiate the District's assertion that the District was notified of the SLD's service delivery extension request until March 14, 2008. The service provider also has verified the non-receipt of the SLD's correspondence. The District respectfully submits that this evidence should be accepted by the FCC as persuasive to rebut the presumption that the SLD mailed the letter to the Applicant's contact person. Consequently, the 60 day deadline for this appeal should be waived.

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<sup>1</sup> See *Request for Waiver by Port Angeles School District 121, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-233361 and SLD-237708, CC Dockets No. 96-45 and 97-21, Order, 18 FCC Rcd 301, 304, para. 7 (Wireline Comp. Bur. 2003); *Request for Special Relief by Midwest Video Corp.*, Memorandum Opinion and Order, 43 FCC 2d 262, 263, para. 3 (1973).

<sup>2</sup> See *Request for Review of the Decision of the Universal Service Administrator by Hickory Public Schools*, File Nos. SLD-426895 *et seq.*, CC Docket No. 02-6 (Wireline Comp. Bur. June 20, 2007) ("Hickory Public Schools Appeal").

### **III. THE APPLICANT'S SERVICE IMPLEMENTATION DEADLINE REQUEST IS MERITORIOUS AND SHOULD BE GRANTED.**

The Applicant submitted the service implementation deadline request on October 5, 2007, five days after the service implementation deadline, when the Applicant first realized that the service provider was unable to complete the work and finish implementing the communications wiring services pursuant to the contract to which this FRN relates. The Applicant used the SLD's online "Submit a Question" feature to submit this request and the online feature did not provide an information field for the Applicant to explain the basis for the request. The basis for the request is that the service provider was unable to complete delivery and installation for reasons beyond the service provider's control.

The Funding Commitment Decisions Letter for this FRN was issued on January 17, 2007. The District determined, in consultation with the service provider, that the wiring work should be performed during summer vacation when students were not in class. The work involved pulling and installing cable and it would be impossible to perform this work while students were in class.

Although the work was started soon after summer vacation began, the service provider was unable to complete the work before school resumed at the end of August 2007. Consequently, the service provider had to perform the remaining work during weekends and/or after classes ended for the day. This restricted schedule made it impossible to finish the work by September 30, 2007. Clearly, therefore, the service provider could not be said to have had control over meeting the September 30, 2007 deadline.

The service provider completed all of the work by December 21, 2007 and has billed the District for the District's non-discount portion and the District has promptly paid this amount. If this service delivery/implementation deadline request is not granted, the District will be

responsible for paying the E-rate portion of these invoices for E-rate eligible services, amounting to \$115,000, all because the District did not file the service delivery deadline extension request by September 30, 2007. This extremely harsh result would not serve the public interest and would impose a significant financial burden on the District.

The District's failure to request the service delivery extension by September 30, 2007, the original service delivery deadline, was the only reason given for the SLD's denial. Although the FCC in its *Nonrecurring Services Order*<sup>3</sup> empowered the SLD to review and decide requests for service delivery extensions, the SLD has construed its authority to be limited to deciding only those requests for extensions due to circumstances beyond the service provider's control that are submitted on or before the original service delivery deadline. The only basis for this narrow interpretation is language from paragraph 15 of the *Nonrecurring Services Order* that states, "Similar to the requirements outlined in the November 2000 Extension Order, applicants who wish to satisfy criteria (3) should submit documentation to the Administrator requesting relief on these grounds *on or before the original non-recurring services deadline.*" (emphasis added). This directive should be viewed as prescriptive and not mandatory, since this timing requirement – to submit the deadline extension request on or before the original non-recurring services deadline – was *not* codified in the associated regulation. The regulation states:

(d) Annual filing requirement. Schools and libraries, and consortia of such eligible entities shall file new funding requests for each funding year no sooner than the July 1 prior to the start of that funding year. Schools, libraries, and eligible consortia must use recurring services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought. The deadline for implementation of non-recurring services will be September 30 following the close of the funding year. *An applicant may request and receive from the Administrator an extension of the implementation deadline for non-recurring services if it satisfies one of the following criteria:*

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<sup>3</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 01-495 (Order released June 29, 2001).

(1) The applicant's funding commitment decision letter is issued by the Administrator on or after March 1 of the funding year for which discounts are authorized;

(2) The applicant receives a service provider change authorization or service substitution authorization from the Administrator on or after March 1 of the funding year for which discounts are authorized;

(3) The applicant's service provider is unable to complete implementation for reasons beyond the service provider's control; or

(4) The applicant's service provider is unwilling to complete installation because funding disbursements are delayed while the Administrator investigates their application for program compliance.

47 C.F.R. §54.507(d). The regulation is silent as to a deadline for submitting the request for extension.

*In Request for Review of Decision of the Universal Service Administrator by Great Rivers Education Cooperative*, File No. SLD-371294, CC Docket No. 02-6, DA 06-2458 (Order released December 4, 2006), the FCC approved a service implementation deadline request that had been submitted after the original non-recurring services deadline. There, as here, the service provider already had completed the work and submitted an invoice that was rejected due to the fact that the service delivery date on the invoice was after the service implementation deadline. The service provider then sought to request the service implementation deadline and it was denied by SLD as having been untimely submitted. In the current case, the Applicant requested the service deadline implementation request as soon as the Applicant discovered that there was remaining work to be performed under this FRN—five days after the original non-recurring service deadline.

Granting this request for waiver and appeal would be consistent with the FCC's efforts to make the E-rate program more flexible and forgiving of deadlines as long as there is no compromise of the FCC's zealous efforts to guard against waste, fraud and abuse. For example,

in the *Bishop Perry* decision, the FCC has allowed applicants to cure missed deadlines associated with submitting Form 470 and Form 471 certifications, and in the *Alaska Gateway Order*, applicants are permitted to cure missed deadlines associated with filing Form 486. The District submits that its request for an extension of the original non-recurring service delivery deadline for FRN 1339701 should be granted.

The District also encourages the FCC to clarify to SLD that SLD may review and decide on merits of requests for service delivery deadlines that may be submitted after the original non-recurring service deadline.

Last, the FCC has set forth the circumstances under which a waiver of E-rate program rules may be appropriate:

Generally, the Commission's rules may be waived for good cause shown. The Commission may exercise its discretion to waive a rule 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. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.

*Request for Waiver of West Virginia Department of Education, Charleston, West Virginia, CC Docket No. 02-6, DA -5-2179 (Released July 27, 2005) at ¶ 8 (footnotes omitted).* The District has attempted to demonstrate its good faith efforts to comply with E-rate program rules and respectfully submits that any missed deadlines should be waived.

## II. CONCLUSION

The Lancaster School District respectfully requests that the FCC grant this appeal, extend the original non-recurring service deadline of FRN 1339701 to January 28, 2008 so that invoices can be submitted to obtain payment of the E-rate discounts associated with this E-rate eligible internal connections communications wiring project.

Respectfully submitted,

*Debra M. Kriete*

Debra M. Kriete, Esq.  
510 North Third Street  
Second Floor  
Harrisburg, PA 17101  
(717) 232 0222 (voice)  
(717) 232 3705 (fax)  
dmkriete@comcast.net

Dated: March 31, 2008

**EXHIBIT A**

**Request for Extension of Service Delivery Deadline**

**FRN 1339701**



**Debra M Kriete**

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**From:** sldnoreply@sl.universalservice.org  
**Sent:** Friday, October 05, 2007 12:42 PM  
**To:** dmkierte@comcast.net  
**Subject:** SLD Inquiry #: 21-643133 Received

Thank you for sending an email inquiry to the SLD. This message serves as a receipt confirmation.

Please note that you may also refer to the SLD website ([www.sl.universalservice.org](http://www.sl.universalservice.org)) for program information and view WebEx sessions regarding key E-rate topics, listed below.

***Your case number is 21-643133.***

Please refer to this number in subsequent contacts with the Client Service Bureau regarding this specific issue. Please do not resubmit this case number if your inquiry pertains to a different issue with respect to the same FRN.

We may need to request additional information from you in order to completely answer your question or fulfill your request.

Here is the information you submitted:

*[FirstName]=Debra [LastName]=Kriete [JobTitle]= [EmailAddress]=dmkierte@comcast.net [WorkPhone]=7172320222 [FaxPhone]=7172323705 [PreviousCaseNumber]=0 [FormType]=Inv Impl Ext Req [Owner]=DEADLINEEXTENSIONS [DateSubmitted]=10/5/2007 12:39:21 PM [AttachmentFlag]=N[FRN]=1339701 [ApplicationNumber]=483438*

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PLEASE DO NOT REPLY TO THIS MESSAGE.

IF YOU WISH TO SUBMIT ADDITIONAL INFORMATION, PLEASE DO SO USING THE ASK A QUESTION FORM AVAILABLE ON THE SLD WEBSITE.

**SLD TRAINING PRESENTATIONS**

SLD Training Presentations are available on the topics listed below at <http://www.sl.universalservice.org/reference/Presentations2004.asp>.

**WEBEX RECORDINGS/LIVE SLD TRAINING SESSIONS**

Recorded sessions on key SLD topics are now available on the SLD's WebEx site at [universalservice.webex.com](http://universalservice.webex.com). Click on the Recorded Sessions tab under the Attend a Session link to view the available recordings. To view a session, you must register by providing certain information. This information will assist the SLD to better understand how the site is being accessed and to design new training sessions that will be helpful to users.

In addition, you may also register for live WebEx recordings by going to [universalservice.webex.com](http://universalservice.webex.com) and clicking on Live Sessions under the Attend a Session Tab and then clicking on the Upcoming tab. Please see instructions below for registering for a live session.

**The following topics are currently available:**

General Updates/New Initiatives  
Technology Planning  
Form 470 Changes  
Competitive Bidding  
Program Compliance  
Service Provider Perspective  
Form 471 Changes  
Eligible Services  
Miscellaneous PIA Updates  
Audits  
Invoicing  
Appeals  
Commitment Adjustments

[Follow this link to learn how to register to view a recording.](#) [PDF, 714kb]

[Follow this link to learn how to register to log into a live Training Session.](#) [PDF, 312kb]

[Follow this link to the SLD's WebEx site](#)

**EXHIBIT B**

**Letter from SLD Denying Extension of Service Delivery Deadline and  
Transmittal Email from SLD**

**Debra M Kriete**

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**From:** SLD Problem Resolution [SLD-Problem-Resolution@prod.vangent.com]  
**Sent:** Friday, March 14, 2008 9:19 AM  
**To:** dmkkriete@comcast.net  
**Subject:** CASE 21-643133  
**Attachments:** 483438\_FRN\_1339701\_Imp\_Denial\_(110607\_SH).doc

Here is a copy of the extension letter.

Thank you,  
Cathy Carley  
Technical Client Service Bureau/Problem Resolution  
Schools and Libraries Division  
Help Line: (888) 203-8100  
Fax: (888) 276-8736  
E-Mail[mailto:SLD-Problem-Resolution@prod.vangent.com]



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**Administrator's Decision on Implementation Extension Request**

January 2, 2008

Debra Kriete  
1421 Round Hill Road  
Harrisburg, PA 17110

Re: Lancaster School District

471 Application Number: 483438  
Funding Request Number(s): 1339701  
Your Correspondence Dated: October 5, 2007

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your implementation extension request. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your request included more than one 471 Application, please note that for each application you will receive a separate determination letter.

FRN(s): 1339701

Decision on Appeal: Denied

Request received after the FCC deadline for Implementation Deadline Extension requests which was 9/30/07.

In accordance with the FCC Report and Order (FCC 01-195) released on June 29, 2001, the Administrator may grant an extension of time for the implementation of non-recurring services if the implementation is delayed for circumstances beyond the named service provider's control. You have been unable to establish such circumstances.

**TO APPEAL THIS DECISION:**

If you wish to appeal a decision in this letter, your appeal must be received by the SLD or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the decision letter and the decision you are appealing:
  - appellant name,
  - applicant or service provider name,
  - BEN and/or SPIN,
  - Form 471 and FRN
  - invoice number as assigned by the SLD,
  - “Administrator’s Decision on Invoice Deadline Extension Request” dated 11/15/2007, **AND**
  - the exact text or the decision that you are appealing.
3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by the SLD’s decision. If you are a service provider, please provide a copy of your appeal to the applicant affected by the SLD’s decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to the SLD by e-mail, use the “Submit a Question” feature on the web site at [www.usac.org/sl/](http://www.usac.org/sl/). Click “Continue,” choose “Appeals” from the Topics Inquiry on the lower portion of your screen, and click “Go” to begin your appeal submission. The system will prompt you through the process. The SLD will automatically reply to incoming e-mails to confirm receipt.

To submit your appeal to the SLD by fax, fax your appeal to (973) 599-6542.

To submit your appeal to the SLD on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division  
100 South Jefferson Road  
P.O. Box 902  
Whippany, NJ 07981

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted in the Reference Area of our web site. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

Schools and Libraries Division  
Universal Service Administrative Company

cc: Frank Snyder III, Gettle Incorporated

Frank Snyder III  
Gettle Incorporated  
2745 Blackbridge Road  
York, PA 17402

**EXHIBIT C**

**Affidavit of Debra M. Kriete, Esq.**

AFFIDAVIT

State of Pennsylvania )  
 )  
County of Dauphin )

I, **Debra M. Kriete**, being duly sworn, hereby affirm under penalty of perjury, that:

1. I am an independent contractor to the School District of Lancaster ("District") and provide E-rate consulting services to the District.
2. I submitted a service delivery deadline extension request for Form 471 # 483348, FRN 1339701 on October 5, 2007 on behalf of the District via the Schools and Libraries Division's ("SLD") web site's "Submit a Question" feature. This request was assigned Case No. 21-643133.
3. I was first notified of the disposition of this request on March 14, 2008, when I proactively telephoned the SLD's Client Service Bureau to request a status on the pending service delivery deadline extension request. When I spoke to a Client Service Bureau representative, I was informed for the first time today that the request for the service delivery deadline extension had been denied.
4. The SLD Client Service Bureau representative emailed me a copy of a letter dated January 2, 2008 in which the Administrator's Decision to deny the request was memorialized. The Client Service Bureau representative with whom I spoke informed me that the letter had been previously mailed to me.
5. I asked the Client Service Bureau representative whether she had access to any records to confirm proof of mailing and she advised that she did not have access to and was not aware of the method of mailing the letter to me.
6. Prior to today, March 14, 2008, I did not receive a letter or any other correspondence or communication from SLD regarding the disposition of the service delivery deadline extension request, Case No. 21-643133.

Debra M Kriete  
(Signature)

Debra M. Kriete  
Printed Name

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 14<sup>th</sup> DAY  
OF ~~JANUARY~~, 2008  
MARCH

Karen D. Rafferty  
Notary Public

My Commission Expires \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Karen D. Rafferty, Notary Public  
City of Harrisburg, Dauphin County  
My Commission Expires Feb. 13, 2010

**EXHIBIT D**

**Affidavit of Frank Snyder III  
Gettle Incorporated**

AFFIDAVIT

State of Pennsylvania )  
County of York )

I, **Frank Snyder III**, being duly sworn, hereby affirm under penalty of perjury, that:

1. I work for Gettle, Incorporated.
2. On or about March 18, I was asked whether I received a copy of a letter from the E-rate Administrator dated January 2, 2008 concerning a request to extend the deadline for implementing service for an E-rate funding request.
3. I did not receive any mailed letter from the E-rate Administrator concerning this matter and was not aware of the existence of such a letter until recently.
4. The first time I became aware of the existence of the January 2, 2008 letter from the E-rate Administrator was when an electronic copy was forwarded to me that was sent first to Debra Kriete, and then to Tammy Eckenrode of Gettle.

  
\_\_\_\_\_  
(Signature)

Frank Snyder III  
\_\_\_\_\_  
Printed Name

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 25 DAY  
OF MARCH, 2008

  
\_\_\_\_\_  
Notary Public

My Commission Expires Sept 25, 2011

**NOTARIAL SEAL**  
Cathy S Schmidt, Notary Public  
York, York County, PA  
My Commission Expires Sept 25, 2011

