

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of:

Request for Review and Waiver of Form 486 Deadline)	
Decision of the Universal Service Administrative)	
Schools and Libraries Division Company)	
)	
Pulaski County Special School District)	Form 486 Number 530099
Entity Number 139546)	
Form 486 Number 530099)	
Funding Request Numbers 1702060, 1702097,)	CC Docket No. 02-6 and
1702112, 1702176 and 1702234)	CC Docket No. 96-45
)	
Schools and Libraries Universal Service)	
Support Mechanism)	

I. INTRODUCTION

1. In accordance with Sections 54.719 through 54.721 of the Commission's rules, now comes Pulaski County Special School District before the Commission requesting Review and Waiver of Form 486 Deadline Decision of the Universal Service Administrative Schools and Libraries Division Company.

2. Due to extenuating circumstances caused by the unexpected, intermittent and extended illness of district personnel responsible for the filing E-rate program, the District asks for waiver of program rules and reinstatement of the July 1, 2008 Service Start Date as reflected in the Funding Commitment Decision Letter dated June 24, 2008.

II. BACKGROUND

3. On February 18, 2009, Schools and Libraries Division of the Universal Service Administrative Company (Administrator) issued a Form 486 Notification Letter to Pulaski County Special School District indicating the Form 486 Number 530099 was filed after the deadline and therefore adjusted the Service Start Date from July 1, 2008 to October 13, 2008 and reduced funding commitment.

4. On April 9, 2009 the District submitted to the Schools and Libraries Division of the Universal Service Administrative Company (Administrator) an appeal of Service Start Date and Funding Commitment Change Decision Form 486 Notification Letter for Funding Year 2008 for the above reference Funding Request Numbers.

5. On April 28, 2009, the Administrator issued correspondence notifying that Pulaski County Special School District of its' denial of the appeal and request of waiver of the Form 486 deadline.

6. Pulaski County Special School District is the second largest school district in Arkansas serving approximately 18,000 students in central Arkansas. Due to the current economic climate, the District has been forced to closely examine all expenditures and recommend reductions throughout. The USAC's denial of the District's Appeal of Service Start Date and Funding Commitment Change Decision Form 486 Notification Letter for Funding Year 2008, resulting in an additional reduction of over 25% in Funding Commitment from July 1st to October 13th, will be a contributing factor to cuts in academic programs and services, causing hardship to the District.

7. The delay in filing of the Form 486 was in fact due to circumstances beyond control. The Director of Instructional Technology was the sole personnel responsible for the District's E-Rate program and filing of all forms in connection therewith, however; the duties of the Director of Instructional Technology are numerous and varied.

8. The Director of Instructional Technology began what was to be a two month leave of absence for knee surgery April 28, 2008. Further medical complication developed from the surgery and the director was unable to return to work on a full-time basis. Although the director intended to return to work and made numerous efforts to do so, in the fall of 2008 he was diagnosed with further medical conditions and continued to have frequent medical absences for several days per week. During these periods of absence no individual was appointed to perform specific responsibilities of the director, nor were any forms of correspondence to him directed to be opened.

9. January 5, 2009 the director returned after winter break advising district administrators of the need for an undetermined amount of leave needed for medical reasons. The Deputy Superintendent for Learning Services issued a memo dated January 16, 2009 to all district administrators and staff that the Director of Instructional Technology would be out for an extended period of time, and that in his absence all instructional technology communication should be directed to Susan Fletcher, Technology Program Coordinator. It was not until after such time as an "Urgent Reminder: Your Form 486 May Be Late" from USAC dated November 25, 2008 was discovered in the director's office in a stack of unopened mail. Whereupon immediate action was taken to look into what was necessary to file the Form 486. It was filed electronically February 20, 2009.

10. As the Commission has noted in numerous decisions that the E-Rate program is relatively complex and responsible personnel are often assigned E-Rate duties on a part-time basis. In some cases, as the situation here before the Commission with this appeal, a personnel emergency precipitated the missed deadline.

In the FCC's Order, SLD-412028, et al., released September 14, 2006, the Commission stated:

The Commission may waive any provision of its rules on its own motion and for good cause shown.¹⁸ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁰ 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.²¹

In said Order, Section III. DISCUSSION, the Commission further stated:

These Petitioners, however, either claim that the filings were on time²⁴ 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

III. CONCLUSION

11. Pulaski County Special School District seeks Review and Waiver of Form 486 Deadline Decision of the Universal Service Administrative Schools and Libraries Division Company and asks for a waiver of program rules and reinstatement of the July 1, 2008 Service Start Date as the late filing was due to circumstances beyond our control. This funding is vital to the effective operation of the Pulaski County Special School District telecommunications and network.

12. Pulaski County Special School District has initiated steps to ensure ongoing compliance with program deadlines and program rules and realizes the importance of strict adherence to such rules.

Respectfully submitted this 26th day of June, 2009,

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SF/ds

¹⁸47 C.F.R. §1.3.

¹⁹*Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²⁰*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).

²¹*Northeast Cellular*, 897 F.2d at 1166.

²⁴*See, e.g.*, Request for Review by Fair Haven School District; Request for Review by Oldham County Public Library; Request for Review by Schuylkill Intermediate Unit No. 29; Request for Review by Bordentown Regional School District; Request for Review by Diocese of Gallup Catholic Schools.

²⁵*See, e.g.*, Request for Review by Quartzsite Elementary School District No. 4; Request for Review by Fort Plain Central School District; Request for Review by Good Shepard Center; Request for Review by Pueblo 60 School District; Request for Review by Lifeline Center for Child Development.

²⁶*See, e.g.*, Request for Review by Yukon Flats School District; Request for Review by School District U 46; Request for Review by North Wasco County School District No. 21; Request for Waiver by Bay County School District; Request for Review by Western Christian High School.