

**Before the  
Federal Communications Commission  
Washington DC 20554**

**In the Matter of:**

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Request for Review of a decision	)	
by the Schools and Libraries Division	)	Administrator Correspondence Dated
for Tiferes Bnos & Tiferes Bnos Yeshiva	)	April 22, 2010
Brooklyn, New York	)	
	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**Request for Review or Waiver**

Tiferes Bnos & Tiferes Bnos Yeshiva  
BEN: 16039322 and 16020173  
Form 471 Numbers: 602155, 602147, 602139  
FRN: 1659639, 1659641, 1659642, 1659632, 1659624

Tiferes Bnos & Tiferes Bnos Yeshiva (Tiferes) hereby appeals the decision of the Universal Service Administrative Company (Administrator) to adjust the start date of this service to 12/10/2009 because of a late filed Form 486. We ask that the service start date be reset to July 1, 2008. The facts in this Request warrant a timely Commission decision to overturn the decision of the SLD and allow funding to proceed.

**Background**

Tiferes filed three Forms 471 for Fund Year 2008. A funding commitment letter was issued for all requests in June and July, 2008. Tiferes filed an Operational SPIN Change Request with the Administrator immediately after receiving the funding commitment. Based on language in the Form 486 instructions, Tiferes did not file a Form 486 because no services from the original vendor would be delivered. The SPIN Change Request resulted in a protracted review by

the Administrator and delays for approval. Once the Operational SPIN Change was granted by the Administrator, Tiferes timely filed the Form 486 for the new vendor within 120 days of the SPIN Change approval and start of service.

The SLD processed the form and reset the start date to December 10, 2009, essentially denying funding for the entire year. Tiferes called the Administrator Client Service Bureau (CSB) and was told the service start date was adjusted because Administrator policy dictates that the Form 486 must be filed within 120 days of the start of service or 120 days from the date of the Funding Commitment Letter, whichever is later.

Tiferes filed appeals with the Administrator which were denied on April 22, 2010 and included here as Attachment 1.

## **Discussion**

When Tiferes was funded for the E-Rate eligible services here under appeal, a decision had been made to change service providers. Tiferes relied on the Form 486 instructions when making the decision not to immediately file a Form 486. Specifically, the Form 486 instructions include the following statement:

The FCC Form 486 *Receipt of Service Confirmation Form* is used by the Billed Entity who filed an FCC Form 471, Services Ordered and Certification Form, on behalf of an eligible school, school district, library (outlet/branch, system), or a consortium of those entities. The Form 486 informs USAC when the Billed Entity and/or the eligible entities that it represents is receiving, is scheduled to receive, or has received service in the relevant Funding Year **from the named service provider(s)**. Receipt of a properly completed Form 486 by USAC triggers the process for USAC to receive and process invoices. (emphasis added)<sup>1</sup>

The Form 486 instructions also provide a link to the Administrator Web site for “Assistance in Completing this Form: [www.usac.org/sl/tools/reference-area.aspx](http://www.usac.org/sl/tools/reference-area.aspx). This link directs users to the “Reference Area” of the Administrator Web site. The Reference Area has alphabetical listings of for various E-Rate program policies. Under “F” is a link to “Form 486 Filing Information.”

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<sup>1</sup> Form 486 Instructions, April 2007, Introduction.

Following this link applicants are directed to another section of the Administrator Web site “Step 10: Form 486 Filing Information” which includes the following statement:

**Purpose of Form:** Form 486 notifies USAC that the Billed Entity and/or the eligible entities that it represents is receiving, or has received, service in the relevant funding year from the named service provider(s). Receipt by USAC of a properly-completed Form 486 triggers the process for USAC to receive Service Providers Invoice (SPI) Forms or Billed Entity Applicant Reimbursement (BEAR) Forms.<sup>2</sup>

Further the Web site provides additional clarification: Form 486 must be filed to: Authorize the payment of invoices from the service provider(s), and later: “*In general*, Form 486 must be postmarked or received no later than 120 days after the Service Start Date shown on the Form 486 or no later than 120 after the date of the FCDL, whichever is later...” (emphasis added).

Because Tiferes had no intention of utilizing services from the service provider named in the Funding Commitment Letter, a Form 486 was not filed. Tiferes feared that by filing a Form 486, according to published instructions, the original service provider would be able to submit invoices to the Administrator and be paid for services not rendered. There have been numerous cases where unauthorized entities have submitted fraudulent invoices to the Administrator and have been paid by the Administrator. Tiferes had an Operational SPIN Change Request filed with the Administrator and, as such, the Administrator was on notice that the service providers listed in the original Funding Commitment Letter would not provide any service to Tiferes and therefore a Form 486 should not be filed until the Operational SPIN Change was approved. Tiferes believed that this was an approved exception to the 120 day Form 486 filing deadline, hence the Administrator language that “In general the Form 486 must be postmarked...”

According to the Administrator denial letters, Tiferes received an “Urgent Reminder” letter dated November 25, 2008 providing additional time to file the Form 486. A sample Urgent Reminder letter is included here as Attachment 2. The Urgent Reminder letter included a statement that if the Form 486 was not filed, the Administrator *may* adjust the Service Start Date

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<sup>2</sup> Administrator Web site at: <http://www.usac.org/sl/applicants/step10/form486-filing-information.aspx>

and *may* reduce funding (emphasis added). Again, because an Operational SPIN Change was pending with the Administrator, Tiferes had no reason to believe the Service Start Date would be adjusted because a pending Operational SPIN Change would generate an exception to the Administrator's deadline policy. This was reinforced with language in the Urgent Reminder that the Service Start Date "may" be changed.

In a number of cases the Commission has overturned Administrator policies regarding the Form 486 – Alaska Gateway, Bishop Perry, Arkansas and most recently, Children of Peace School on May 20, 2010. Alaska Gateway specifically requires the Administrator to initiate an outreach effort to assist applicants with the Form 486: "...USAC shall develop a targeted outreach program designed to identify schools and libraries that have not filed their FCC Form 486 120 days from the date of their funding commitment decision letter or service start date, whichever is later."<sup>3</sup> The Commission required the Administrator to make contact with applicants and give them 15 days to submit a timely Form 486.

In practice, the Form 486 outreach program is nothing more than the Urgent Reminder letter mailed to an applicant contact in the Administrator database. Language in the Urgent Reminder letter is not decisive and leaves room for interpretation and possibility for exception to the 120 day deadline, such as a pending Operational SPIN change.

The Commission has also noted that the Form 486 deadline is a procedural one and not set by Commission regulation. For procedural deadlines, the Commission may grant waivers of policy deadlines.

## **Conclusion**

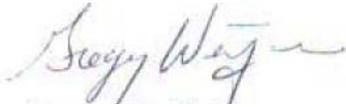
In accordance with Alaska Gateway, Bishop Perry, Arkansas, and Children of Peace Decisions and considering ambiguous language in Form 486 instructions, the Administrator Web

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<sup>3</sup> Alaska Gateway Order, DA 06-1871, Rel. September 14, 2006 at 8.

site, and the Urgent Reminder letter, Tiferes asks that the service start date for these FRN be adjusted to July 1, 2008.

Respectfully submitted this twenty 11th day of June, 2010,

A handwritten signature in cursive script, appearing to read "Greg Weisiger", written in dark ink on a light-colored background.

Greg Weisiger

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