

**REQUEST FOR REVIEW**  
before the  
**FEDERAL COMMUNICATIONS COMMISSION**

**CC Docket No. 02-6**

<b>Re:</b>	<b>Applicant Name:</b>	<b>NORTHPORT SCHOOL DISTRICT #211</b>
	<b>Billed Entity No:</b>	<b>145485</b>
	<b>Funding Year 2009:</b>	<b>Service Start Date 06/01/2010</b>
	<b>Form 471 Application No.:</b>	<b>693018</b>
	<b>Form 486 Application No.:</b>	<b>808508</b>
	<b>Funding Request Nos.:</b>	<b>1904599 and 1904676</b>

**I. INTRODUCTION**

Pursuant to 47 C.F.R. § 54.719(c), the Northport School District #211 (the “District”) seeks FCC review of USAC Administrator’s Decision on Appeal – Funding Year 2009-2010.<sup>1</sup> This request is based on USAC’s decision to reduce the District’s approved funding by eleven (11) months because of the District’s late filing of FCC Form 486. The District appealed that funding reduction by Letter of Appeal to USAC dated December 8, 2010.<sup>2</sup> The District seeks an order from the Commission, consistent with federal law, that USAC improperly denied full funding of the FRN’s. In the alternative, the District seeks a waiver of the 120-day deadline for filing the applicable Form 486. The matter should be remanded to USAC for reinstatement of those funding commitment amounts.

**II. STATEMENT OF FACTS**

The Northport School District is located in rural Washington state, 45 minutes driving time northeast of Colville, Washington. The District serves an average of 200 students on a

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<sup>1</sup> Exhibit A: USAC Administrator’s Decision on Appeal, dated February 18, 2011.

<sup>2</sup> Exhibit B: District’s Letter of Appeal to SLD dated December 8, 2010.

single P-12 campus. Clearly, Northport School District is what the FCC describes as a “particularly small entit[y].”<sup>3</sup>

The USAC decision being appealed was not based upon any assertion that the District committed fraud, abuse, waste, misuse of funds, or failure to adhere to core program requirements. In fact, funding for the District’s FRNs referenced above was previously approved by the USAC in its Funding Commitment Decision Letter dated December, 15, 2009.<sup>4</sup> In short, up to that point in time, the USAC recognized that the District had successfully and properly navigated the rules, regulations, and procedures governing the E-rate program.

Unfortunately, the District did not receive the USAC’s December 15, 2009, Funding Commitment Decision Letter. It was not sent to the District’s post office box address. Rather, it was sent to the District’s prior street address and was not delivered to the District. The District has been unable to locate any change of address notification sent to the USAC prior to December 15, 2009 -- an unintentional clerical or administrative error that has resulted in the hardship created by the 11 months of lost funding.

Lois Lambert, the Northport, Washington Postmaster for the United States Postal Service, has stated that USAC letters sent to the District’s wrong address would have been returned to USAC.<sup>5</sup> USAC, upon receiving the returned December 15th letter, made no effort to contact the District by phone or email to obtain a current mailing address. USAC did send a letter to the District dated April 20, 2010, reminding the District that it “may have missed the deadline for

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<sup>3</sup> *In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Archer Public Library*, CC Docket No. 02-6, SLD 140961 *et. al.* para. 7 (Rel. October 20, 2008).

<sup>4</sup> Exhibit C: USAC Funding Commitment Letter dated December 15, 2009.

<sup>5</sup> Exhibit D: Letter from Lois Lambert.

submitting and certifying your FCC Form 486...,” but that letter was also sent to the wrong address and was presumably returned to USAC.<sup>6</sup> Moreover, neither AT&T Mobility nor Qwest Corporation, the service providers, notified the District that it had failed to timely file the FCC Form 486.

Interestingly, in its denial of the District’s appeal, USAC mentions the April 20, 2010, letter sent by USAC to the District, but not received by the District due to the incorrect address. USAC states that “On April 20, 2010, USAC mailed an ‘Urgent Reminder’ letter providing you with additional time and a new deadline to submit and/or certify your FCC Form 486.”<sup>7</sup> USAC does not mention that the April 20, 2010, letter was returned to it by the Postal Service. Had USAC made efforts to contact the District upon receiving that undelivered letter, it would have undoubtedly asserted those efforts as an additional reason for its denial of the District’s appeal.

Apparently, USAC has now recognized an affirmative duty to make alternate efforts to contact school districts when a USAC letter is returned by the United States Postal Service. Remarkably, it happened between USAC and the Northport School District #211 when dealing with Funding Year 2010-2011 FRNs. USAC initially mailed its Funding Commitment Decision Letter for Funding Year 2010-2011 dated December 28, 2010, to the Northport School District #211 at the wrong address. It did not use the District’s post office box.<sup>8</sup> However, when that letter was returned to USAC as “un-deliverable” by the United States Postal Service, USAC emailed the district to attain the correct mailing address and then resent the letter with the 60-day appeal period running from the “new FCDL date.”<sup>9</sup>

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<sup>6</sup> Exhibit E: USAC letter dated April 20, 2010.

<sup>7</sup> Exhibit A, first bullet paragraph on p. 1.

<sup>8</sup> Exhibit F.

<sup>9</sup> Exhibit G. *See also* Exhibit F, p. 2.

Unfortunately, back in April 2010, when USAC's letter was returned by the United States Postal Service, it did not resend the letter, did not call the District to obtain the correct address, it did not even go online to the District's web site and email the District. Small efforts which, if made, would have allowed the District to file its Funding Year 2009 FCC Form 486 in a timely manner.

USAC asserts that "It is the responsibility of the applicant to ensure that all forms are submitted to USAC in a correct and timely manner."<sup>10</sup> Sadly, USAC fails to accept its responsibility to serve the public interest and to avoid inflicting undue hardship on school districts when there has been no waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements.

It is also important to note that during the 2009-2010 school year, Northport School District was undergoing major organizational changes. The District was operating with an interim superintendent/principal, school board members had resigned, several key office staff had left the district, and the only technology staff member was assigned significant additional non E-rate duties. He was the only district personnel with any real knowledge of the E-rate program. No transitional procedures were in place and/or implemented to ensure continuity with the E-rate process. This unforeseen organizational disarray was unintentional and beyond the District's control. It clearly impacted the District's ability and need to follow USAC procedures in a timely fashion. The failure to timely file the FCC Form 486 was first noted when preparation was being done to file the 2009-2010 Form 472s. The FCC Form 486 was then filed.

Northport School District has taken the following steps to assure that future deadlines will not be missed:

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<sup>10</sup> See fn. 7, *supra*.

1. Northport SD has hired an outside consultant for its E-rate process; thus making the effort to avoid future ministerial and clerical errors.
2. The newly hired office staff has been trained to direct all USAC correspondence to the E-rate contact person, regardless of the name on the letter.
3. Training of staff also included instructions to send copies of all USAC letters upon receipt to consultant.
4. Address changes for all forms were submitted to USAC on October 4, 2010.<sup>11</sup>

### III. DISCUSSION

The Northport School District (“District”) first chose to appeal this matter to the USAC instead of filing an immediate appeal to the Federal Communications Commission. The District believed that decisions of the FCC compelled USAC to reconsider its Funding Commitment Change Decision and grant the 11 months of funding that have been denied. USAC did not agree with the District. This appeal thus became necessary.

In 2006, the FCC addressed “decisions by the Universal Service Administrative Company (USAC) reducing or denying funding...on the grounds that [schools and libraries] failed to timely submit an FCC Form 486.”<sup>12</sup> It granted the appeals of 128 schools and libraries throughout the nation. The FCC stated:

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....As we recently noted in *Bishop Perry Middle School*, a departure from required filing deadlines may be warranted upon careful review of the Petitioner’s case and when doing so will serve the public interest. Generally, these applicants claim that staff mistakes or confusion, or circumstances beyond their control resulted in missing the FCC Form 486 deadline....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,

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<sup>11</sup> USAC still sent its funding year 2011 FCDL to the wrong address. Exhibit F.

<sup>12</sup> *In the Matter of Requests for Review and Waiver of the Decision of the Universal Service Administrator by Alaska Gateway School District, et. al*, CC Docket No. 02-6, SLD-412028 *et. al*, para. I. 1. (Rel. September 14, 2006).

misuse of funds, or a failure to adhere 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 public interest.<sup>13</sup>

Subsequent to the *Alaska Gateway* decision, the FCC has routinely recognized that “many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a significant number of applicants for E-rate support being denied for ministerial, clerical or procedural errors.”<sup>14</sup> In such instances, the FCC has found that denials of the underlying applications are not warranted when “due to unintentional administrative or clerical errors, and the records...do not reveal more fundamental problems, such as misuse of funds or a failure to adhere to program requirements.”<sup>15</sup>

The FCC’s determination to distinguish between the types of error involved is not surprising in light of the dictates of The Communications Act of 1934. This Act directs the FCC to “enhance...access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms.”<sup>16</sup> Denials of funding based on the errors described above, “inflict undue hardship on the applicants.”<sup>17</sup> In essence, the FCC has granted waivers of its rules and procedures to ensure both that the spirit of the law is served and that needy school districts receive access to telecommunications:

Moreover, we find that denying petitioner’s requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need...By contrast, waiving...our rules to the limited extent necessary...will further the goal of section 254 of the Act – ensuring access to

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<sup>13</sup> *Alaska Gateway* at para. III. 7.

<sup>14</sup> *In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Archer Public Library*, CC Docket No. 02-6, SLD 140961 *et. al.* para. 7 (Rel. October 20, 2008).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at para. 8.

<sup>17</sup> *Id.*

discounted telecommunications and information services to schools and libraries  
– and therefore serve the public interest.<sup>18</sup>

#### IV. CONCLUSION

USAC's decision to deny 11 months of previously approved funding to the District is contrary to the FCC rulings set forth above, and does an injustice to the intent of The Communications Act of 1934. The loss of funding works a substantial hardship on the District and its students. The District is the exact type of "particularly small entity" that needs understanding and assistance when procedural deadlines are missed under the circumstances explained above. The punitive penalty of loss of funding is excessive and inappropriate. The District respectfully requests that its appeal be granted and that full funding for the funding requests set forth above be approved.

DATED this 14<sup>th</sup> day of April, 2011.

*Eric Middlesworth by S.B.*

Eric Middlesworth  
Northport School District #211  
P.O. Box 1280  
Northport, WA 99157-1280  
Telephone: 509-732-4251 ext 117  
FAX: 509-732-6606  
Email:  
emiddlesworth@northportschools.org

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<sup>18</sup> *In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Academy of Excellence, et.al.*, CC Docket No. 02-6, SLD-261209, *et. al.*, at para. 9 (Rel. May 8, 2007).