

# NEW MEXICO SCHOOL FOR THE DEAF

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May 27, 2011

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

Re **CC Docket No. 02-6**  
Petition for Waiver  
FCC Form 471 No. 822109, 822110  
Applicant: New Mexico School for the Deaf, BEN 99286

Dear Ms. Dortch,

With this letter New Mexico School for the Deaf ("NMSD") requests a waiver of the FCC Form 471 filing window deadline for Funding Year 2011 under the schools and libraries universal service support mechanism (E-Rate).

## **Background**

NMSD is a school dedicated to serving the special educational needs of about 150 New Mexico deaf and hearing-impaired students.

Due to budget constraints, NMSD's IT operations staff consists of only one person, even though the position should be staffed by at least 2.5 FTEs (full-time equivalents). This person, who is responsible for all technology at two campuses, is also responsible for NMSD's E-Rate filings.

Although NMSD staff began E-Rate planning two months before the end of the filing window, and NMSD did post Form 470 on a timely basis, some significant technology issues came up right at the time when NMSD needed to finish its Form 471 submissions. As a result, NMSD was not able to complete its Form 471 filings by the window-close date, but it was successful in submitting correct and compliant Form 471s 14 days later, on April 7.

Since all of NMSD's students are deaf or hearing-impaired and have special educational needs, NMSD is absolutely dependent on the E-Rate discount in order to prepare its students for successful and productive lives and careers.

### **Analysis**

NMSD filed its FCC Form 471s on 3/7/2011, within 14 days of the filing window deadline. To the best of our knowledge, our E-rate funding application is otherwise in full compliance with all FCC rules and USAC requirements.

In *Academy for Academic Excellence*<sup>1</sup>, the Wireline Competitions Bureau (“Bureau”) found that in cases where a delayed Form 471 filing came as a result of circumstances beyond the control of the applicant, the complete rejection of these applications was not warranted, given that the violation at issue was procedural, not substantive. The Bureau found further that rigid adherence to filing procedures would not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.

In *Acorn Public Library District*<sup>2</sup>, the Bureau found that a delayed Form 471 filing of not more than 14 days after the filing window deadline was not likely to impede USAC’s ability to administer the E-rate program. The Bureau found that the violation at issue was procedural, not substantive, and the Bureau found further that complete rejection of each of these applications is not warranted. The Bureau also found that (in the absence of any evidence of waste, fraud, or abuse, misuse of funds, or a failure to adhere to core program requirements and) because the FCC Form 471 was filed within 14 days after the filing window deadline, it was in the public interest to waive the FCC Form 471 deadline.

And in *Academy of Math and Science*<sup>3</sup>, the Federal Communications Commission reiterated that filing of Form 471 late but within 14 days of the filing window deadline is a special circumstance which justifies the grant of a waiver.

Finally, we note that denial of our funding request would impose severe hardship upon NMSD, and the effect of such denial would be a profound adverse impact upon the educational services we provide for our students. The consequences of a denial of funding would not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.

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<sup>1</sup> FCC Order DA 07-1180

<sup>2</sup> FCC Order DA 08-2376

<sup>3</sup> FCC Order 10-122

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**Request for Waiver**

For the reasons stated in this letter, NMSD respectfully requests that the Federal Communications Commission grant a waiver of the FCC Form 471 filing window deadline for NMSD's Funding Year 2011 E-Rate funding application.

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A handwritten signature in black ink, appearing to read "Sam" followed by a stylized flourish.

Sam Montoya  
IT Manager

A handwritten date in black ink, written as "5/27/11".