Request For Waiver

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

Re: Name: **Yeshiva Rabbi Samson Raphael Hirsch**
BEN: **10175**
Funding Year: **2012**
Applications: **875350, 875359, 875360**
USAC POW: **10/02/2012**

November 26, 2012

Dear Sirs.

This is a letter for a request of a Waiver regarding the above captioned USAC Notification regarding the following Form 471's:

Application #: **875350. "** Your Form 471 application and or certifications was submitted online or postmarked AFTER the deadline for an application to be considered as filed within the window. "

Application #: **875359. "** Your Form 471 application and or certifications was submitted online or postmarked AFTER the deadline for an application to be considered as filed within the window."

Application #: **875360. "** Your Form 471 application and or certifications was submitted online or postmarked AFTER the deadline for an application to be considered as filed within the window."

The E-rate consultant had a family emergency in dealing with , first degree single relative (brother) who was hospitalized, terminally ill and ultimately was deceased close to the form 470 filing window. As a result many form 471 were filed near, on or within 24- 36 hours after the close of the filing window. The consultant experienced technical issues with the USAC online filing site and fax numbers within this period. The consultant reported these issues with case# 22-343279 on the last day of the filing period. Up until this time the consultant has never had any form filed outside the application window. The FCC can rely on precedent that due to a family emergency and the filings are within 14 days of the close of the window to grant this waiver. In addition the school's will suffer extreme hardship by being prevented from receiving E-rate funding.

See Attached FCC Appeal 11262012 Doc 1 – Death Certificate, FCC Appeal 11262012 Doc 2 – Fax Journal, FCC Appeal 11262012 Doc 3 – Example of USAC Online Systemic Errors

The FCC has already ruled in:

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Bishop Perry Middle School	)	File Nos. SLD-487170, *et al*.
New Orleans, LA, *et al*.	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

The rest of the petitioners assert a waiver is appropriate for one of two reasons: either someone on the applicants' staff made a mistake or had a family emergency that prevented them from filing on time or the delay in the filing or receipt of the application was due to **circumstances out of the applicants' control**. Specifically, in the first group, some of these appeals involve applicants whose staff members inadvertently failed to file the application forms in a timely manner.[1] Another group

[1] Request for Waiver of Assabet Valley Regional Vocational School District; Request for Review of Barnwell County School District 45; Request for Review of Bath County School District; Request Waiver of Beavertown

of petitioners state that they were unable to comply with the filing deadline due to **staff illness or relatives of staff members who were ill**.[2] Other petitioners claim that the rules and instructions for filing an FCC

1. Form 471 are vague and unclear and that the resulting misunderstandings led to forms being filed after the filing window.[3]

Community Library; Request for Review of Brown County School Corporation; Request for Review of Caruthers Unified School District; Request for Review of Central Catholic High School; Application for Review of Chawanakee Joint Elementary School District; Request for Review of Clearwater Memorial Library; Request for Waiver of Clinton County Board of Education; Request for Review of Coahoma County Public Schools; Requests for Review of Consorcio de Escuelas y Bibliotecas; Request for Review and Waiver of CPC Behavioral Healthcare; Request for Review of Delta County School District; Request for Review of Fairfax School District R3; Request for Review of Germantown School District; Request for Waiver of Hawaii State Public Library; Petitioner for Reconsideration of High Bridge Board of Education; Request for Waiver of Holmes District School Board; Request for Review of Hubbard Independent School District; Request for Waiver of Indian Oasis Baboquivari District 40; Request for Waiver of Island Trees Public Library; Request for Waiver of Jefferson School District; Request for Review of Los Alamitos Unified School District; Request for Review of Madera Unified School District; Request for Review of Malone Independent School District; Request for Waiver of McClure Community Library; Request for Waiver of Middleburg Community Library; Request for Waiver of Minnesota Transition School; Request for Waiver of Minnewaska Area Schools; Request for Review of Montfort & Allie B. Jones Memorial Library; Request for Waiver of Mount Ayr Community School District; Request for Waiver of Mount Saint John School; Request for Waiver of Mt. Carroll Township Public Library; Request for Review of Our Lady of Refuge; Request for Waiver of Pinon Dormitory; Request for Waiver of Queen of Apostles Catholic School; Request for Waiver of Richmond Public Library; Request for Review of Rylander Memorial School; Request for Waiver of Selinsgrove Community Library; Petitioner for Reconsideration of Siskiyou County Library; Request for Review of Southeast Delco School District; Request for Review of Southeastern Libraries Cooperating; Request for Review of St. Clement's Regional Catholic School; Request for Review of St. Elizabeth Interparochial School; Request for Waiver of St. Francis of Assisi School; Request for Waiver of SuperNet Consortium; Request for Waiver of Tiverton School Department; Request for Waiver Wabash Valley Educational Center; Request for Review of Wallington Public Schools; Request for Waiver of Walnut Community School District; Request for Waiver of Washington Local School District; Request for Waiver of Westside Holistic Family Services; Request for Review of Whitfield County School District; Request for Waiver of Wilkinson County School District; Request for Review of Wilson Memorial Library.

[2] Request for Waiver of Augusta County Library; Request for Review of Bonnie Brae Educational Center School; Request for Review of Garvey School District; Request for Waiver of Gaston County School District; Request for Waiver Millennium Community School; Request for Waiver of Northwest Institute for Contemporary Learning, Inc.; Request for Waiver of St. Mary's School; Petition for Reconsideration of Neches Independent School District; Request for Waiver of Unadilla Community School.

[3] Request for Waiver of Blackwell Public Schools; Request for Waiver of Brooklyn Jesuit Prep; Request for Review of Cecil County Public Schools; Request for Review of Colleton County School District; Request for Review of Jefferson City School District; Request for Review of Laporte School District 306; Request for Waiver of Nativity Mission School; Request for Review of Pierce City School District R6; Request for Waiver of St. Ignatius Academy.

And in:

Federal Communications Commission DA 12-27
Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Waiver and Review of
Decisions of the
Universal Service Administrator by
Bais Chaya Mushka) File Nos. SLD-799949, *et al.*
Los Angeles, California, *et a!.*)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

ORDER

Adopted: January 12, 2012 **Released: January 12, 2012**

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this order, we address 31 requests from petitioners seeking waivers of the FCC Form 471 application filing window deadline for funding years 2007, 2010 and 2011 under the E-rate program,[1] including two petitions for reconsideration of an earlier Wireline Competition Bureau decision. [2] Consistent with the Commission's *Academy of Math and Science Order*,*3* and based on our review of the record, we find that 15 petitioners have demonstrated that special circumstances exist to justify a waiver of that filing window deadline.[4]

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1 The requests for waiver and review are listed in appendices A, B, and C. Section *54.7* 19(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.7 19(c). Section 54.407(c) of the Commission's rules maintains that E-rate funds shall be available on a first-come-first-served basis, but requires USAC to implement an initial funding window that treats all applicants filing within that window as if their applications were simultaneously received. 47 C.F.R. § *54.507(c).* Although some petitioners did not explicitly request a waiver of the FCC Form 471 application filing window deadline, we treat their requests for review as requests for waiver because, in each case, USAC denied their funding requests because their FCC Form 471 applications were submitted after the relevant filing window deadline. The E - rate program is more formally known as the schools and libraries universal service support program.
2. The petitions for reconsideration are listed in appendix D. The Bureau has the authority to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority. 47 C.F.R. § 1 .106(a)(l) (2011).
3.*See Request for Review of the Decision of the Universal Service Administrator by Academy of Math and Science, etal., Schools and Libraries Universal Service Support Mechanism,* File Nos. SLD-487009, *et*

al., CC Docket No. 02-*6, Order, 25 FCC Rcd 9256* (2010) *(Academy of Math and Science Order); infra* para. 2; *see also Request for Waivers and Review of the Decisions of the Universal Service Administrator by Argos Public Library, et al., Schools and Libraries Universal Service Support Mechanism,* File Nos. SLD-737946, *et al.,* CC Docket No. 02-6, Order, 25*FCC Rcd 16109* (Wireline Comp. Bur. 2010); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Al-Noor School, et al., Schools and Libraries Universal Service Support Mechanism,* File Nos. SLD-768866, *etal.,* CC Docket No. 02-6, Order, 26 FCC Rcd 5792 (Wireline Comp. Bur. 2011); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by Beaver Area Memorial Library, etal., Schools and Libraries Universal Service Support Mechanism,* File Nos. SLD-750009, *et al.,* CC Docket No. 02-*6,* Order, 26 FCC Rcd 10317 (Wireline Comp. Bur. 2011); *Requests for Waivers and Review of the Decisions of the Universal Service Administrator by All Saints Elementary School, et al., Schools and* Therefore, we find that good cause exists to grant those requests for waiver and remand the underlying applications listed in appendices A and B to the Universal Service Administrative Company (USAC) for further action consistent with this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.[5] We deny the remaining 14 requests for waiver because we find that those petitioners fail to present special circumstances to justify a waiver of the Commission's rules.[6] Finally, we dismiss the two petitions for reconsideration because they fail to provide new facts or circumstances that would result in a waiver of our rules for late-filed FCC Forms 47l. [7]

2. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and *254* of the Communications Act of 1934, as amended, 47 U.S.C. § 15 1-154 and *254,* and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. § 0.91, 0.291, 1.3 and 54.722(a), the requests for review or requests for waiver filed by the petitioners listed in appendices A and B ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

3. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and *254* of the Communications Act of 1934, as amended, 47 U.S.C. § 151-154 and 254, and sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. § 0.91, 0.291, and 54.722(a), that the requests for review or requests for waiver filed by the petitioners listed in appendix C ARE DENIED.

4. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. § 15 1-154 and 254, and pursuant to authority in sections 0.91, 0.291, 1.3, 1.106, and 54.722(a) of the Commission's rules, 47 C.F.R. § 0.91, 0.291, 1.3,1.106, and 54.722(a), that the petitions for reconsideration filed by the petitioners listed in appendix D ARE DISMISSED.

Libraries Universal Service Support Mechanism, File Nos. SLD-8 16848, *et al.,* CC Docket No. 02-6, Order, 26 FCC Rcd 13107 (Wireline *Comp. Bur. 2011) (All Saints Elementary Order).*

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4. *See* appendices A and B. The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. **§** 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC,* 897 F.2d 1164, 1166 (D.C. Cii. 1990) *(Northeast Cellular).* In addition, the Commission may take into account considerations of hardship, equity, ormore effective

implementation of overall policy on an individual basis. *WAITRadio v. FCC,* 418 F.2d *1153, 1157,*(D.C. Cii. 1969). 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. *Northeast* Cellular, 897 F.2d at 1166; *accord NetworklP, LLCv. FCC, 548* F.3d 116, 127 (D.C. Cii. 2008).
5. In performing a complete review and analysis of the underlying applications, USAC shall either grant theunderlying applications before it, or, if denying an application, provide the applicant with all grounds for denial.
6. *See* appendix C; 47 C.F.R. § 1.3.
7.See appendixD; 47 C.F.R. **§** 1.106(b)(2) (2011).

5. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and *254* of the Communications Act of 1934, as amended, 47 U.S.C. § *15 1-154* and *254,* and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 c.F.R. § 0.91, 0.291, 1.3 and 54.722(a), that section *54.507(c)* of the Commission's rules, 47 C.F.R. § *54.507(c),* IS WAIVED for the petitioners listed in appendices A and B to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade
Deputy ChiefTelecommunications Access Policy Division
Wireline Competition Bureau

Federal Communications Commission DA 12-27

APPENDIX A
Requests Granted
(FCC Form 471 Applications Filed Within 14 Days of the Close of the Filing Window)

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Cedar Valley Catholic Schools Waterloo, IA	821378	2011	Oct. 11,2011
Genesee Intermediate School District Flint, MI	821308	2011	Sept. 12, 2011
Hebron Academy Hebron, ME	821928	2011	Nov. 18, 2011
Martin County West Public Schools Welcome, MN	821312	2011	July 13, 2011
Menominee Tribal School Neopit, WI	821724	2011	Sept. 19, 2011

St. Amelia School Tonawanda, NY	821942	2011	Dec. 27, 2011
Sunnyside School District Sunnyside, WA	818239	2011	Dec. 12, 2011
Willamette Education Service District Salem, OR	821943	2011	Oct. 7, 2011

And in

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Requests for Review and Waiver	)	
of the Decision of the	)	
Universal Service Administrator by	)	
	)	
Alaska Gateway School District	)	File Nos. SLD-412028, *et al*.
Tok, AK, *et al.*	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

ORDER

Adopted: September 14, 2006 **Released: September 14, 2006**

2. 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.[4] Under Bureau precedent deadlines have been strictly enforced for

[4]Because we waive the FCC Form 486 deadline, applicants should receive funding from their actual service start date. We also direct USAC to waive any of its subsequent deadlines if related to the late-filed FCC Form 486, such as the FCC Form 472 deadline, if necessary for the processing of Petitioners' applications.

the E-rate program, including those pertaining to the FCC Form 486.[5] As we recently noted in *Bishop Perry Middle School*, a departure from required filing deadlines may be warranted upon careful

2.review of the Petitioner's case and when doing so will serve the public interest.[6] Generally, these applicants claim that staff mistakes or confusion, or circumstances beyond their control resulted in missing the FCC Form 486 deadline.[7] We note that the primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to staff dedicated to pursuing federal grants, especially in small school districts. Even when a school official becomes adept at the application process, unforeseen events or emergencies may delay filings in the event there is no other person proficient enough to complete the forms.[8] Furthermore, some of the errors were caused by third parties or unforeseen events and therefore were not the fault of the applicants. **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, misuse of funds, or a failure to adhere to 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 the public interest.[9] We therefore grant these appeals and remand them to USAC for further processing consistent with this Order.

4[31] *Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14.

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[5]*See Requests for Waiver by Lucia Mar Unified School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-249712, *et al*., CC Docket No. 02-6, Order, 19 FCC Rcd. 20364, para. 3 (Wireline Competition Bur. Rel. May 28, 2004); *Request for Review by East Carroll Parish School Board, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc*., File No. SLD-232946, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 24591, 24594, para. 7 (Wireline Comp. Bur. 2002).

[6]*Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, para. 9 (rel. May 19, 2006) (*Bishop Perry Middle School*).

[7]Some Petitioners claim that they postmarked the FCC Form 486 on time. Given that we are waiving USAC's deadline for these applicants who mistakenly or knowingly filed late, we give these Petitioners the benefit of the doubt and, to the extent necessary, waive the FCC Form 486 filing deadline for them as well.

[8]For example, Western Christian High School's sole Universal Service Fund official suffered a debilitating stroke and was unable to meet the Form 486 deadline. Request for Review by Western Christian High School at 1.

[9]*See* 47 U.S.C. § 254(h).

[32] Dickens Public Library, for instance, states that it is a one-staff library open less than 20 hours a week in a town with a population of 202. Request for Review of Dickens Public Library at 1. Similarly, Socorro Consolidated Schools notes that it is located in the second poorest county in the second poorest state in the country. Request for Review of Socorro Consolidated Schools at 2.

[33] 47 U.S.C. § 254(b).

[34] We estimate that these requests for review involve applications for approximately $2,703,000 in funding for Funding Years 2001-2006. We note that USAC has already reserved sufficient funds to address outstanding appeals. *See, e.g.*, Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2007 (Jan. 31, 2007). Thus, we determine that the action we take today should have minimal effect on the Universal Service Fund as a whole.

[35] With respect to SEED Public Charter School, we note that USAC cancelled funding because SEED Public Charter School did not use an SLD-certified approver and did not provide a Letter of Approval signed by the SLD-certified approver. However, SEED Public Charter School has demonstrated that it provided the signed Letter of Approval to USAC in a timely manner. *See* Request for Review of SEED Public Charter School at Exhibit 7. In addition, SEED Public Charter School has demonstrated that the entity that approved its technology plan, DC Public Charter School Board, has been an SLD-certified technology plan approver for public charter schools including SEED Public Charter School since December 12, 2000. *Id.* at Exhibit 5.

[36] Petitioners will be presumed to have received notice five days after such notice is postmarked by USAC. USAC shall, however, continue to work beyond the 15 days with Petitioners attempting in good faith to provide such additional information.

As the Commission previously noted, many E-rate applications are prepared by school administrators, technology coordinators, teachers and librarians—workers whose primary role in the school or library may be unrelated to applying for federal universal service funds, especially in small school districts or libraries.[31]

10. **We also find that denying Petitioners' requests would create undue hardship and prevent these otherwise eligible schools and libraries from potentially receiving funding that they truly need to bring advanced telecommunications and information services their students and patrons.[32] By contrast, waiving the applicable technology plan rules for these Petitioners and granting these requests will serve the public interest by preserving and advancing universal service.[33]** Although the technology plan requirements are necessary to guard against the waste of program funds, there is no evidence in the record that Petitioners engaged in activity to defraud or abuse the E-rate program. We further note that granting these requests should have minimal effect on the Fund as a whole.[34] Therefore, we remand the appeals to USAC for further consideration consistent with this Order.[35]

11. To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications listed in the Appendix and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from release of this Order. If, on remand, USAC determines that it needs additional information to process the applications, such as a technology plan or approval letter, USAC shall permit Petitioners to provide the information within 15 calendar days of receiving notice in writing from USAC that additional information is required.[36]

12. *Additional Processing Directives for USAC*. Beginning with applications for Funding Year 2007, if an applicant responds to a request by USAC to provide technology plan documentation and the documentation provided by the applicant is deficient (*e.g.*, is outdated or will expire before the end of the relevant funding year), USAC shall: (1) inform the applicant promptly in writing of any and all

deficiencies, along with a clear and specific explanation of how the applicant can remedy those deficiencies; and (2) permit the applicant to submit correct documentation, if any, within 15 calendar days

Therefore we submit that the school's form 471's be designated as Certified Within Window so as not to create undue hardship for an eligible institution that would prevent them from potentially receiving funding that they truly need to bring advanced telecommunications and information services their students and patrons .

Sincerely,

Richard I Bernstein
Consultant 16062128