



**Contact Information:**

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**REASONS FOR REQUEST FOR WAIVER:**

Our Lady-Mt Carmel West School is seeking a Waiver relative to a funding denial based on an out-of-Window Item 21 Attachment for Application #875013 Funding Request 2388706. USAC's Funding Commitment Decision Explanation states:

This FRN is denied because the Item 21 Attachment was not received on or before the filing deadline. The Item 21 Attachment is an FCC Form 471 Window filing requirement. Your Item 21 Attachment was received after the filing deadline. FCC Forms 471 with Item 21 Attachments that met the FCC Form 471 Window requirements have funding priority over applications received after the filing deadline. Given that funding demand for FCC Forms 471 filed within the window exceeds the amount available for commitment, we cannot consider this FRN for funding."

**Summary:**

For FY2012 Our Lady-Mt Carmel employed Educational Funding Group, Inc. ("EFG") as its E-rate consultant. EFG's home office is in Cleveland, Ohio; Kari

O'Rourke, the EFG account manager assigned to the Our Lady-Mt Carmel account, works autonomously from EFG's Kansas location.

In addition to her school district accounts, Ms. O'Rourke is the EFG account manager for several Catholic Dioceses' schools consortium applications, each of which contains numerous individual parochial schools. On March 20, 2012, while finalizing Form 471 applications and multitudes of Item 21 Attachments for all of her accounts, Ms. O'Rourke inadvertently omitted preparing and submitting the Item 21 Attachment for Our Lady-Mt Carmel West School FRN 2388706. Out of several hundred Item 21 Attachments that Ms O'Rourke had timely submitted by the March 20, 2012 filing window deadline, including two other Item 21 Attachments for Our Lady-Mt Carmel Application #860246 FRNs 2341632 and 2341640, this Item 21 was the only one that she failed to prepare.

### **Background**

Ms. O'Rourke is an only child. In September 2011 Ms. O'Rourke's mother was diagnosed with Stage IV lung cancer and two months later her stepfather was deemed terminally ill and placed in hospice care. In December 2011 Ms. O'Rourke underwent knee replacement surgery. Due to her parents' frail health conditions, in addition to tending to her own medical needs she took on the responsibility of managing her parents' healthcare, affairs and finances. Post-surgery Ms. O'Rourke required physical therapy three times per weeks for several months. During early March 2012 her mother acquired a major infection

that necessitated Ms. O'Rourke take her to the doctor's office every other day for treatment, in addition to going to her own therapy appointments and her mother's radiation treatments. Adding to the time commitment was the fact that her mother and stepfather lived approximately a half hour away. It is understandable that she was completely overwhelmed by the demands of caring for herself, her children, both parents and managing her work duties during the frenetic pace of the close of the FY2012 filing Window. Ms. O'Rourke filed Our Lady-Mt Carmel's FY2012 FCC Form 471 application # 875013 within the Window, however, given the enormous stress she was under because of the state of her health, her parents' health and her work responsibilities, she inadvertently failed to prepare and submit the Item 21 Attachment for FRN 2388706 by the March 20, 2012 deadline.

Ms. O'Rourke's stepfather died June 2, 2012 and her mother on August 25, 2012. The months of continuing stress and grieving took its toll on Ms. O'Rourke and since she received no communications from USAC regarding the Item 21 Attachment for FRN 2388706, she remained unaware of her omission until PIA Reviewer Robert Cooper's inquiry of November 28, 2012. The PIA stated: "You were previously informed that your Item 21 Attachment for FY2012 FCC Form 471 application # 875013, FRN 2388706 was not received. We requested a copy of the Item 21 Attachment and proof of timely submission. To date, we have not received a response." On December 2, 2012 Ms. O'Rourke responded to Mr. Cooper with a copy of the email sent from EFG on March 20,

2012 to [attachments@sl.universalservice.org](mailto:attachments@sl.universalservice.org) and highlighted the Our Lady-Mt Carmel Item 21 Attachments included in the email. It should be noted that prior to the PIA, neither Ms. O'Rourke nor EFG ever received communications from USAC regarding the Item 21 Attachment for FRN 2388706. So, until the USAC Funding Commitment Decision Letter dated December 11, 2012 was received, Ms. O'Rourke remained unaware that only two out of the three Item 21 Attachments for Our Lady-Mt. Carmel's applications had been submitted on March 20, 2012; the one for FRN 2388706 had never been submitted despite Ms. O'Rourke's mistaken belief that it had.

The Commission has repeatedly reiterated its authority under 47 C.F.R. §1.3 to waive rules for good cause shown and has routinely waived compliance for violations when the record contains no evidence of intent to defraud or abuse the E-rate program and where the public interest is better serviced by granting a waiver:

The Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. 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. (footnotes omitted)<sup>2</sup>

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<sup>2</sup> See *Request For Review of Decision of the Universal Service Administrator by Bishop Perry Middle School*, , DA No. 06-54; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

Further, in its recent Orders, DA 12-1482, DA 12-1998 and DA-2057, Waivers were granted to applicants whose applications were submitted within the filing window and who, like Our Lady-Mt Carmel, demonstrated good reasons why their Item 21 Attachments were not submitted until after the window closed.

## **CONCLUSION**

Throughout its FY2012 application process Our Lady-Mt Carmel demonstrated actual and/or attempted compliance with E-rate program rules and regulations. It submitted its FCC Form 471 Application #875013 within the filing window and always intended to have the Item 21 Attachment for FRN 2388706 submitted in a timely manner. All core E-rate program requirements were followed and there was no fraud, abuse or waste of E-rate funds.

On March 20, 2012 Ms. O'Rourke made a good faith effort to submit all of her Item 21 Attachments for Our Lady-Mt Carmel along with the many others she submitted that day. Even after receiving the November 2012 PIA she believed that the 'missing' Item 21 Attachment for FRN 2388706 had been timely submitted. Ms. O'Rourke's omission was an oversight which can be attributed to the enormous amount of personal stress she had endured between September 2011 and September 2012.

Therefore, for good cause shown, and to better serve the public interest and the interests of the students of Our Lady-Mt Carmel West School, it is respectfully requested that the Commission:

1. Waive its requirement that the Item 21 Attachment for FY2012 FCC Form 471 Application # 875013, FRN 2388706 be submitted by the Funding Year 2012 FCC Form 471 filing deadline;
2. Allow the Item 21 Attachment for FRN 2388706 to be submitted to USAC as though filed within the Window;
3. Direct USAC to issue a funding commitment for FRN 2388706; and
4. Direct USAC to issue a Revised Funding Commitment Decision Letter awarding funding for the FRN.

Thank you for your consideration.

/s/ Steve Kaplan

Steve Kaplan  
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Educational Funding Group, Inc.  
E-rate Consultant to Our Lady-Mt Carmel West School