

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

In the Matter of)	
)	
Requests for Review or Waiver of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Carbondale School District 95)	SLD Nos. 810113 et al.
Carbondale, Illinois et al.)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Petition for Reconsideration of the Downingtown School District

The Downingtown School District (“Downingtown” or “District”) (SLD Entity # 126198) respectfully petitions for reconsideration of the Order released on February 19, 2013 at DA 13-326¹ which dismissed the District’s Request for Waiver and Appeal submitted on January 30, 2013.² The District appealed a November 8, 2012 Form 486 Notification Letter that adjusted the service start date to June 27, 2011 for three FY 2011 funding requests.³ The combined effect of the three 486 Notification Letters was to rescind \$92,488.00 of the originally approved \$100,896.00 funding. The District’s January 30, 2013 appeal also

¹ *Requests for Review or Waiver of Decisions of the Universal Service Administrator by Carbondale School District 95, et al.*, Order released February 19, 2013, DA 13-326 (“*Carbondale Appeal Order*”).

² The contact person for this appeal is Raymond Kase, rkase@dasd.org, telephone number 610 269 8460, Ext. 6115.

³ FRN 2201220, Form 471 # 810388; FRN 2216835, Form 471 # 815561; FRN 2217132, Form 471 # 815703.

sought a waiver of the 60 day deadline for submitting an appeal of a decision of the Universal Service Administrator (47 C.F.R. §54.720).

The Wireline Competition Bureau's *Carbondale Appeal Order* issued by the Telecommunications Access Policy Division found that the District had not demonstrated that special circumstances exist to justify waiver of the filing deadline. The merits of the underlying appeal were not reached.

I. Applicable Legal Standards

In order to successfully petition for reconsideration, the District must show there was a material error, omission, or reason warranting reconsideration and/or must rely on arguments which were not previously presented to the Commission because they meet the requirement of 47 C.F.R. §§ 1.106(b)(1) and/or (b)(2).⁴ If the District is successful convincing the Wireline Competition Bureau ("Bureau") that reconsideration is warranted, the District must show good cause to justify waiver of the filing deadline. Ultimately, then, the District must convince the Bureau that the appeal is meritorious.

II. Grounds for Reconsideration

Downingtown discovered the adjusted service start date problem or about January 26, 2013, when the District set out to prepare its BEAR forms. The District immediately filed the BEAR forms, and chose to appeal immediately to the FCC on the basis of the Form 486 Notification Letter rather than await receipt of the BEAR Notification letters. Two of the BEAR Notification Letters have since been issued on February 6, 2013 and are attached as Exhibit A. These documents were not available when the January 30, 2013 appeal and

⁴ 47 C.F.R. §1.106(p).

request for waiver was submitted by the District. The third BEAR is pending and has not yet been processed. Both of the BEAR notification letters authorized reduced funding in accordance with the 486 adjusted service start date.

Had the District waited to receive the BEAR Notification Letters before appealing, the net result would have been the same: the appeal would challenge the reduction of funding due to the adjusted service start date set forth on the Form 486 Notification Letter. The only difference is that had an appeal taken of the BEAR Notification Letters, there would have been no question that the appeal was submitted on time.

Clearly, therefore, the appeal taken from the Form 486 Notification Letter may be amended to now include a timely appeal of the BEAR Notification Letters for these FRNs. This Petition for Reconsideration may be considered, in the alternative, an appeal from the February 6, 2013 BEAR Notification Letters.

In some instances, the FCC measures appeal timeliness based on the date of the BEAR notification letter that reduces funding.⁵ In other instances, the FCC measures appeal timeliness on the basis of the date of the Form 486 Notification Letter in which the service

⁵ In *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Academy St. Benedict-Stewart, et al.*, DA 10-2352, Order released December 16, 2010, the Commission granted an appeal of the Buckingham County Public Schools in which the District appealed a reduced BEAR authorized disbursement that was due to an adjusted service start problem. The BEAR form was filed months after the District had received the Form 486 Notification Letter – certainly longer than 60 days – and the FCC appeal was filed within 60 days of the receipt of the BEAR notification letter. See <http://apps.fcc.gov/ecfs/document/view?id=6518192568>. The Form 486 Notification Letter was dated April 27, 2005 and the BEAR Form 472 Notification Letter was dated November 1, 2005. The appeal of the reduction in funding was filed on December 21, 2005. The FCC granted the waiver of the 60 day deadline for appealing the Form 486 Notification Letter, finding that the appeal had been timely filed.

In *Requests for Review or Waiver of Decisions of the Universal Service Administrator by Bank Street School for Children, et al.*, Order released February 25, 2013, DA 13-237 which was released just a few days after the *Carbondale Appeal Order*, the FCC granted a 486 waiver based on an appeal of a BEAR notification letters that reduced funding due to a 486 adjusted service start date. Florence Independent School District appealed an adjusted service start date on January 10, 2013. Florence had received a BEAR notification letter dated November 8, 2012 that stated that the applicant had not filed a form 486. Then the district filed the form 486, received the adjusted service start date letter on November 29, 2012 and appealed that determination.

start date is adjusted. In yet other instances, the appeal timeliness is based on some other event such as denial of an invoice deadline extension request, when the denial is based on no form 486 having been filed.⁶ In all of these situations, however, the common denominator is that the applicant missed the 120 day deadline for submitting the Form 486. Sometimes the applicant realizes this problem upon reviewing the form 486 Notification Letter. More frequently the problem becomes obvious when the applicant tries to submit a Form 472 BEAR reimbursement and discovers that the Form 486 has not been filed or that the service start date was previously adjusted because the form 486 was submitted late.

Since Downingtown also has a right to appeal from the February 6, 2013 BEAR Notification Letters issued for two of the three funding requests, and will have a right to appeal the third BEAR Notification Letter once it is issued, the Bureau should grant reconsideration and consider this appeal to be timely and based on an appeal of the February 8, 2013 BEAR Notification Letters which reduced the authorized disbursements to funding for the period June 27, 2012 through June 30, 2012 in accordance with the adjusted service start dates of the three FRNs as set forth in the November 8, 2012 486 Notification Letters.

⁶ In *Requests for Review or Waiver of Decisions of the Universal Service Administrator by Bank Street School for Children, et al.*, Order released February 25, 2013, DA 13-237 the FCC approved two appeals that Morton High School 201 filed on December 10, 2012 seeking a waiver of the 486 deadline for a FY 1998 and a FY 2006 FRN. Both appeals were based on invoice deadline extension requests that were denied by letters dated October 11, 2012. Each letter stated that a form 486 had not been submitted for the FRNs in question. Because the appeal was filed within 60 days of the date of the denials of the invoice deadline – even though the deadline for submitting the form 486 applications had long since passed – the appeals were considered timely.

III. Request for Waiver of 60 Day Deadline

Downingtown's good cause and special circumstances justify the Commission's grant of a waiver of the 60 day deadline.⁷ In granting waivers of the 60 day appeal deadline, the FCC appears to be persuaded by two considerations: appeals filed soon after the deadline⁸ and appeals filed promptly after discovering there is an appealable problem⁹ will be considered on their merits. The Downingtown appeal meets both criteria.

First, the Form 486 Notification Letters were dated November 8, 2012. The 60 day appeal period tolled on January 8, 2013. The appeal was filed 15 business days after the deadline. Downingtown submits this is relatively close to the original deadline. Second, Downingtown only discovered that the letter needed to be appealed on January 26 when the District began preparing its BEAR forms and realized that the funding had been mostly rescinded. The District immediately prepared and filed the appeal just a few days later.¹⁰

⁷ "Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule 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. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166." *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Beebe Public Schools*.

⁸ *Requests for Waiver of Decisions of the Universal Service Administrator by Children of Peace School, et al.*, Order released May 20, 2010, DA 10-885 at ¶6. (Children of Peace filed the appeal 12 days late and other applicants filed appeals a few days late). See also *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aberdeen School District 5, et al.*, Order released March 5, 2010, DA 12-300 at n.9 (Bethlehem Center Head Start filed the appeal a few days late).

⁹ *Requests for Review and/or Waiver of Decisions of Decisions of the Universal Service Administrator by ABC Unified School District, et al.*, Order released August 4, 2011 at ¶2; See also *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Bancroft Neurohealth, et al.*, Order released August 3, 2011 at ¶2; See also *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Annunciation Elementary School, et al.*, Order released June 18, 2012 at ¶1.

¹⁰ This is certainly not a situation like that described and addressed in the *Agra Public Schools I-134, et al* decision where the appeals were filed so long after the deadline that considering it on its merits would make it difficult for USAC and the FCC to estimate how much money should be included in the appeals reserve fund.

Moreover, the District's BEAR Notifications Letters of February 6, 2013 now provide a basis for a timely appeal.

The District experienced a transition in personnel who are responsible for E-rate filings and compliance. During that transition, the District made every effort to ensure that all required forms were submitted on a timely basis and that all SLD correspondence was promptly routed to the newly responsible personnel. Unfortunately, despite these best of intentions, the District does not have a record of having received the 486 Urgent Reminder Letter even though all SLD correspondence was routed to the new person in charge of E-rate.

In the absence of having received the reminder letter and having been assured that all forms had been timely filed, the District did not become aware of the form 486 filing oversight until October of 2012 when it began to work on its BEAR calculations. On October 15, 2012, the Pennsylvania State E-rate Coordinator sent a list serve message to remind applicants about the upcoming BEAR deadline of October 28, 2012 for FY 2011 recurring services.¹¹ Attached to the message was a spreadsheet of FRNs for which it appeared that no invoices had yet been submitted. The spreadsheet noted that a form 486 had not yet been submitted for the District's three FY 2011 FRNs. The District immediately filed the form 486 for the three FRNs and received the Form 486 Notification Letters on November 8, 2012.

Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-134, et al., Order released May 26, 2010.

¹¹ http://eratepa.org/Listserve-Archive/2012/10-15-12_2.html

Unfortunately, the District did not understand the significance of the Form 486 Notification Letters. The only indication there was a financial impact arising from the letter was as follows:

TO APPEAL THE SERVICE START DATE/FUNDING COMMITMENT CHANGE DECISION

If you wish to appeal the Service Start Date change(s) and/or funding commitment adjustment(s) indicated in this letter, your appeal must be received by USAC or postmarked within 60 days of the above date on this letter.

The actual explanation of the funding commitment adjustment was cryptically explained as follows. This explanation is virtually identical for all three FRNs:

Funding Request Number: 2217132
Form 4 71 Application Number: 815703
Service Provider Name: Chester County Community Net. Inc.
Service Provider Identification Number: 143004423
Billing Account Number: 610-269-8460
Service Start Date: 06/27 /2012*
Service Start Date Change Explanation: 120-DAY 486 DEADLINE
Adjusted Funding Commitment: \$1, 246. 00

Although this information may be self-explanatory to E-rate experts, the District's E-rate responsible person did not comprehend on its face that this information meant that all of the funding except for \$1,246.00 had been rescinded. The word "rescission" or "reduction" did not appear anywhere in the letter.

Having thought that the District had complied with E-rate rules and had exercised its due diligence, the District did not realize it had been aggrieved by the November 8, 2012 Form 486 Notification Letters until after the 60 day deadline for an appeal had been passed. Only when the District began preparing its BEAR forms for FY 2011 did it realize that the FY 2011 funding had been mostly rescinded.

The District has timely taken steps to comply with E-rate whenever it became aware that it had missed a procedural deadline. Prompt submission of an appeal upon discovering the E-rate problem have been found to constitute just cause and special circumstances in other situations to justify waiving the appeal deadline.¹² Downingtown submits that its situation is analogous and a waiver of the 60 day appeal deadline is in the public interest.

IV. Merits of Appeal

Recognizing that the Form 486 deadline is a procedural, not substantive rule, the FCC routinely has approved waivers of the filing deadline for Form 486 based on similar circumstances experienced by Downingtown.¹³ In particular, the *Children of Peace* appeal decision makes clear that common reasons accepted in support of 486 waiver request include staff turnover and confusion about program rules.¹⁴ Most recently, less than one week after issuing the *Carbondale Appeal Order*, the Commission granted 16 requests for

¹² *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District, et al.*, Order released August 4, 2011, DA 11-1332, n.4. Canutillo Independent School District experienced staff turnover and weather related problems and missed the BEAR deadline and the appeal filing deadline. Preble Shawnee Local School District explained that its appeal was filed late because of staff illness, personnel changes and confusion regarding the E-rate application rules.

¹³ See, e.g., *Requests for Waiver of Decisions of the Universal Service Administrator by Children of Peace School, et al.*, Order released May 20, 2010, DA 10-885; *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Academy St. Benedect-Stewart, et al.*, Order Released December 16, 2010, DA 10-2352; *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Bancroft Health, et al.*, Order released August 3, 2011, DA 11-1239; *Request for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District, et al.*, Order released August 4, 2011, DA 11-1332, *Request for Waiver or Review of Decisions of the Universal Service Administrator by Aberdeen School District, et al.*, Order released March 5, 2012, DA 12-300; *Request for Review or Waiver of Decisions of the Universal Service Administrator by Beebe Public Schools, et al.*, Order released April 12, 2012; *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Annunciation Elementary School, et al.*, Order released June 18, 2012, DA 12-957; *Requests for Review or Waiver of Decisions of the Universal Service Administrator by Bastrop Independent School District, et al.*, Order released December 26, 2012, DA 12-2049; *Requests for Review or Waiver of Decisions of the Universal Service Administrator by Bank Street School for Children, et al.*, Order released February 25, 2013, DA 13-237

¹⁴ *Requests for Waiver of Decisions of the Universal Service Administrator by Children of Peace School, et al.*, Order released May 20, 2010, DA 10-885, n. 17.

waiver of the form 486 deadline in the *Bank Street for the Children* appeal decision consistent with its precedents.

In granting numerous appeals and requests for waiver of filing deadlines in the 2006 *Arkansas DIS Appeal*, the Commission explained:

As the Bureau found in the *Alaska Gateway Order*, 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. 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 or libraries. Thus, even when a school or library 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. Furthermore, some of the errors may have been caused by third parties or unforeseen events and therefore were not the fault of these applicants. 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.¹⁵

The Downingtown School District's technology director is responsible for a myriad of responsibilities only one of which is E-rate compliance. He began his employment with the District in October of 2011, right around the time that the FY 2011 Form 486 was due for the three funding commitment decisions letters that were dated June 23, 2011. He took over the E-rate responsibility from a consultant who was temporarily hired to serve in the technology director role. He has since left the District and was responsible for ensuring that the FY 2011 Form 486 was submitted.

The new technology director, while familiar with E-rate, is not an E-rate expert and did not know anything was amiss until October of 2012 when he discovered for the first time that the Form 486 for FY 2011 had not been submitted. All throughout FY 2011 and

¹⁵ *Requests for Review and Waiver of Decisions of the Universal Service Administrator by the State of Arkansas, Department of Information Systems, et al.*, Order released June 13, 2008, DA 08-1418 at ¶8 (footnotes omitted).

continuing into the present the District has been CIPA compliant. Since the FY 2011 Form 486 mishap, the District has taken steps to ensure that it is compliant with all E-rate deadlines for FY 2012 and FY 2013.

V. Conclusion

For the reasons stated above, the Downingtown School District respectfully requests the FCC to grant reconsideration of its decision to deny the District's January 30, 2013 request for waiver and appeal; approve the waiver of the 60 day appeal deadline and the Form 486 filing deadline; restore the District's Form 486 service start date to July 1, 2011 for FRNs 2201220, 2216835 and 2217132; waive the invoice deadline for the three Funding Requests at issue; and, permit the District to submit Form 472 reimbursement forms to recoup the E-rate discount amount for the period July 1, 2011 through June 26, 2012 for the three funding requests that are the subject of this appeal.

Respectfully submitted,



Lawrence J. Mussoline, Jr., Ph.D.
Superintendent
Downingtown Area School District
540 Trestle Place
Downingtown, PA 19335
(610) 269 8460 (office)
(855) 329 3273 (fax)
lmussoline@dasd.org

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