

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of:)
)
Request for Waiver)
) CC Docket No. 02-6
by)
)
Diocese of Arlington E-rate Consortium)
Arlington, VA)

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

Diocese of Arlington E-rate Consortium (“Arlington”) respectfully requests that the Federal Communications Commission (“FCC”) grant it a Waiver for out-of-Window submissions of nine Item 21 Attachments relative to Funding Year 2012 Form 471 Application #868846. This Request for Waiver is made pursuant to 54.719 through 54.723 of the Commission’s rules.¹

Application Information

Billed Entity Number:	16063952
FCC Form 471 Application Numbers:	868846
Funding Request Numbers Appealed:	2368653, 2368892, 2369038, 2369058, 2369085, 2369119, 2369149, 2369167 and 2369183

Date of USAC Administrator’s Decision on Appeal Letter: January 29, 2013

¹ 47 C.F.R. §§ 54.719–54.723

Contact Information:

Kari O'Rourke
Educational Funding Group, Inc.
CRN 16043587
Consultant to Diocese of Arlington E-rate Consortium
26650 Renaissance Parkway, Suite 2
Cleveland, OH 44128
Tel. 216-831-2626
Fax: 216-831-2822
Email: kari@naa.com

USAC EXPLANATION FOR DENIAL

Diocese of Arlington E-rate Consortium is seeking a Waiver relative to a clerical/ministerial error that resulted in the out-of-Window submission of nine (9) Item 21 Attachments for Application #868846. The issue was appealed to USAC, which appeal was denied in an Administrator's Decision on Appeal Letter dated January 29, 2013. It is from USAC's denial that the Diocese of Arlington E-rate Consortium makes this Request for Waiver.

The Administrator's Decision on Appeal explanation of USAC's denial of the appeal was:

- USAC denied your funding requests because it was determined that your Item 21 Attachment was not received on or before the filing deadline of May 9, 2012. Program rules require that Forms 471, including the certification and the Item 21 Attachments must be received or postmarked by the close of the FCC Form 471 application filing window. On April 19, 2012, USAC informed you that your Item 21 Attachment was missing and allowed you until May 9, 2012 to submit the Item 21 Attachment. You have failed to demonstrate that your Item 21 Attachment was submitted within the time prescribed. Consequently, your appeal is denied.
- The FCC requires completed FCC Form 471 applications and certifications to be postmarked by the final date of the filing window for the relevant funding year for the application in order to be considered timely filed. See Request for Review by Alpine County Unified School District, et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File no. NEC.471.01-24-00.5400004, CC Docket Nos. 96-45 and 97-21, Order, DA02-75 paras. 2 and 4 (rel. Jan. 14, 2002). Further, the applicants must submit Item 21 Attachments to their

FCC Forms 471 before the filing window deadline or their applications will be considered out of window. See *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 11-88 pwa.4 (rel. Jan. 14, 2011). Beginning with funding year 2011, when USAC determines that an application lacks an Item 21 Attachment, USAC will treat the missing Attachment as it treats a missing certification. USAC will inform the applicant promptly in writing of the omission and give it 15 calendar days from receipt of that notice to submit the missing Item 21 Attachments. If applicants do not provide timely responses to USAC requests for omitted Item 21 Attachments, USAC should treat the associated applications as out of window for the purposes of meeting the filing window deadline. See *id.*, para.5.

STATEMENT IN SUPPORT OF REQUEST FOR WAIVER:

For FY2012 Diocese of Arlington E-rate Consortium (“Arlington”) 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 Arlington account, works autonomously from EFG’s Kansas location.

An initial review of EFG’s documentation indicated that Item 21 Attachments for all twenty-three FRNS in Application #868846 had been created and submitted to USAC on the 2012 Form 471 filing deadline date of March 20, 2012. However, after receiving funding denials, what EFG came to learn was that on March 20, 2012, due to a clerical/ministerial error by one of EFG’s Cleveland employees, only fourteen (14) of the twenty-three (23) Item 21 Attachments for Application #868846 were actually emailed to the SLD.

In accordance with EFG procedures, Ms. O’Rourke’s assistant, Elizabeth Casey Norburg, emailed the twenty-three Item 21s for Application #868846 to the home office. These were sent in two separate emails; the first contained ten Item 21s and the second contained thirteen. The clerical/ministerial error occurred when saving to EFG’s server the attachments that came in the second email. At first glance it appeared to contain only four Item 21s, but in fact it contained thirteen. The ‘missing’ nine could only be revealed by using the scroll bar, a fact that went

unnoticed on the hectic last day of the filing window. Although all twenty-three Item 21 Attachments were timely created, this clerical/ministerial error turned out to be the reason why nine of the twenty-three were not submitted to the SLD within the Window. See the screenshots from EFG's Microsoft Outlook email system which is attached as Exhibit A.

A few weeks later Ms O'Rourke received a USAC Urgent Reminder (dated April 19, 2012) stating that Item 21 Attachments for Application #868846 had to be sent to the SLD by May 9, 2012. The Reminder was generic, only referenced Application #868846 as a whole, didn't reference any FRN numbers and never specifically stated that Item 21 Attachments for the application had not been received. The only thing the Urgent Reminder Notice said was that it was a reminder that Item 21 Attachments had to be received by USAC by May 9 2012; it appeared to be something that was sent out to all FY2012 applicants. Nonetheless, when Ms. O'Rourke received the Reminder for Application #868846, she looked at EFG's March 20th email to attachments@sl.universalservice.org and it looked as though all twenty-three had been sent so she took no further action.

In September 2011 Ms. O'Rourke's mother was diagnosed with Stage IV lung cancer and in November 2011 her stepfather was placed in hospice care. In December 2011 Ms. O'Rourke underwent knee replacement surgery. During the month of March 2012, in addition to her own physical therapy appointments and taking her mother for radiation treatments, her mother acquired a major infection that necessitated Ms. O'Rourke take her to the doctor's office every other day. During this time 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 Arlington's Form 471 application within the Window, however, given the enormous stress she was under, she

inadvertently failed to notice that nine of Arlington's Item 21 Attachments were not submitted by the March 20, 2012 deadline or by the May 9 extension date. Ms. O'Rourke's stepfather died June 2, 2012 and her mother on August 25, 2012. The enormous emotional stress she was under allowed some things to "fall between the cracks" ergo, she failed to count the number of Item 21 Attachments that had actually been sent to the SLD.

Only in September 2012, when she received PIA Reviewer Diana DiSilva's Question 3 stating: "You were previously informed that your Item 21 Attachment(s) for FY2012 FCC Form application #868846 , FRN(s) 2368653, 2368892, 2369038, 2369058, 2369085, 2369119, 2369149, 2369167 and 2369183 were not received." did Ms. O'Rourke first become aware of that nine of the Item 21 Attachments hadn't been submitted. However, it should be noted that contrary to the PIA Question, EFG/Arlington *never* received anything from USAC stating that those specific Item 21s "were not received" by the SLD. The only thing it had ever received was the generic USAC Urgent Reminder Letter.

In its *Bishop Perry*, and subsequent Orders, the Commission has repeatedly reiterated its authority under 47 C.F.R. §1.3 to waive rules for good cause shown and, in practice, 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. Further, in its recent Orders, DA 12-1482, DA 12-1998 and DA-2057, the Commission granted waivers to numerous applicants whose applications were submitted within the filing window and who, like Arlington, demonstrated good reasons why their Item 21 Attachments were not submitted until after the window closed.

CONCLUSION

Throughout its FY2012 application process Arlington demonstrated actual and/or attempted compliance with E-rate program rules and regulations. Its FCC Form 471 Application #8688463 was submitted within the filing window and Arlington always intended to have all the Item 21 Attachments for its application 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 EFG made a good faith effort to submit all twenty-three Item 21 Attachments for Arlington along with the hundreds of others it submitted that day. Up until the time she received the PIA in September 2012, Ms. O'Rourke believed that all the Item 21 Attachments for Application #868846 had been timely submitted. The failure to submit nine of the Attachments was an oversight which can in large part, be attributed to the enormous amount of personal stress Ms. O'Rourke 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 Diocese of Arlington schools, who will suffer hardship as a result of the funding denials, it is respectfully requested that the Commission:

1. Waive its requirement that the Item 21 Attachments for FY2012 FCC Form 471 Application #868846 FRNs 2368653, 2368892, 2369038, 2369058, 2369085, 2369119, 2369149, 2369167 and 2369183 be submitted by the Funding Year 2012 FCC Form 471 filing deadline;
2. Allow the Item 21 Attachment for FRNs 2368653, 2368892, 2369038, 2369058, 2369085, 2369119, 2369149, 2369167 and 2369183, which were submitted to PIA in September 2012, be accepted by USAC as though filed within the Window;

3. Direct USAC to issue funding commitments for FRNs 2368653, 2368892, 2369038, 2369058, 2369085, 2369119, 2369149, 2369167 and 2369183; and
4. Direct USAC to issue a Revised Funding Commitment Decision Letter awarding funding for the FRNs.

Thank you for your consideration.

/s/ Steve Kaplan

Steve Kaplan
Vice President
Educational Funding Group, Inc.
E-rate Consultant to Diocese of Arlington E-rate Consortium



Diocese of Arlington

The Chancery

SUITE 503
200 NORTH GLEBE ROAD
ARLINGTON, VIRGINIA 22203
TEL: (703) 841-2519 FAX: (703) 524-8670

OFFICE OF CATHOLIC SCHOOLS

To: Schools and Libraries Division of the
Universal Service Administrative Company

Re: Letter of Agency for Funding Years 2011 - 2014

The undersigned, on behalf of Diocese of Arlington E-rate Consortium School/School District ("School"), hereby authorizes the personnel and authorized agents of Educational Funding Group, Inc., ("EFG") to act as our Agent(s) with the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) regarding all matters involving our School's E-rate funding application(s) for the Funding Years checked above.

This authorization relates to the filing of FCC Form 470, FCC Form 471 and all other E-rate forms necessary to complete each year's funding process. This authorization further extends to all other phases of the application process, including, but not limited to, responding to Program Integrity Review inquiries and the filing of appeals. EFG personnel and agents are expressly authorized to access and discuss with the SLD all matters pertaining to our School's application(s) and forms for the above-checked Funding Years.

This authorization shall remain in full force and effect until all work associated with the Funding Year(s) checked above has been completed.

Diocese of Arlington E-rate Consortium
School/District Name

Bernadette McManigal
Signature

Date: *Feb 23, 2011* 2011

Bernadette McManigal
Printed Name

Supt of Schools
Title

EXHIBIT A

Re: Arlington Item 21s - Message (HTML)

File Edit View Insert Format Tools Actions Help Efg Print

Reply Reply to All Forward

You forwarded this message on 10/1/2012 3:59 PM.

From: Casey Elizabeth Norburg [casey.norburg@gmail.com]
To: erate@naa.com
Cc: Kari O'Rourke
Subject: Re: Arlington Item 21s

Sent: Tue 3/20/2012 7:59 PM

Attachments: DIOCESE OF ARLINGTON ERATE CONSORTIUM FY2012 Item 21 Attachment App 868846 FRN 2368689.xls (63 KB);
DIOCESE OF ARLINGTON ERATE CONSORTIUM FY2012 Item 21 Attachment App 868846 FRN 2368707.xls (63 KB);
DIOCESE OF ARLINGTON ERATE CONSORTIUM FY2012 Item 21 Attachment App 868846 FRN 2368745.xls (63 KB);
DIOCESE OF ARLINGTON ERATE CONSORTIUM FY2012 Item 21 Attachment App 868846 FRN 2368878.xls (64 KB);

Remaining Item 21s.

On Tue, Mar 20, 2012 at 6:55 PM, Casey Elizabeth Norburg <casey.norburg@gmail.com> wrote:

----- Forwarded message -----

From: Casey Elizabeth Norburg <casey.norburg@gmail.com>
Date: Tue, Mar 20, 2012 at 6:54 PM
Subject: Re: Arlington Item 21s
To: Kari O'Rourke <erate.kari@gmail.com>

First 10 complete and attached. Data retrieval not yet submitted.

On Mon, Mar 19, 2012 at 3:18 PM, Kari O'Rourke <erate.kari@gmail.com> wrote:
these are routine

--
Kari L. O'Rourke
Educational Funding Group
816-803-8764 (direct)
913-441-0392 (fax)

The manager who was forwarding Item 21s to the SLD did not notice the scroll bar, consequently only 4 of the 13 Item 21s were forwarded.

FULLY OPENED EMAIL
-1

From: Casey Elizabeth Norburg [casey.norburg@gmail.com]
Sent: Tuesday, March 20, 2012 7:59 PM
To: erate@naa.com
Cc: Kari O'Rourke
Subject: Re: Arlington Item 21s

(same email as prior page)

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DIOCESE OF ARLINGTON ERATE CONSORTIUM FY2012 Item 21 Attachment App 868846 FRN 2368892.xls



DIOCESE OF ARLINGTON ERATE CONSORTIUM FY2012 Item 21 Attachment App 868846 FRN 2369038.xls



DIOCESE OF ARLINGTON ERATE CONSORTIUM FY2012 Item 21 Attachment App 868846 FRN 2369058.xls



DIOCESE OF ARLINGTON ERATE CONSORTIUM FY2012 Item 21 Attachment App 868846 FRN 2369085.xls



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DIOCESE OF ARLINGTON ERATE CONSORTIUM FY2012 Item 21 Attachment App 868846 FRN 2369183.xls



DIOCESE OF ARLINGTON ERATE CONSORTIUM FY2012 Item 21 Attachment App 868846FRN 2368653.xls



DIOCESE OF ARLINGTON ERATE CONSORTIUM FY2012 Item 21 Attachment App 868846vFRN 2369167.xls

Remaining Item

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