

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Request for Review of a Decision of the	)	Administrator Correspondence Dated
Universal Service Administration Corp. for	)	February 27, 2013
Petersburg School District	)	
	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**Request for Review or Waiver**

**Form 471 Application Number:** 762164  
**FRN:** 2059111, 2059095, 2059215, 2059230, 2059249  
**Billed Entity Number:** 126542  
**FCC Registration Number:** 0012928081

In accordance with sections 54.719 through 54.721 of the Commission's rules, Petersburg City School District, Petersburg, Virginia (Petersburg) requests Federal Communications Commission (Commission) review of a decision of the Schools and Libraries Division of the Universal Service Administrative Company (Administrator).

On the Funding Year 2010 Form 471, Petersburg mistakenly selected “recurring” instead of “non-recurring” charges for a major Internal Connections project. This single mistake has followed these five FRNs through the entire review process, and has ultimately caused the district and their service providers to lose critically needed funding.

Consistent with precedent established in an essentially identical matter<sup>1</sup>, the FCC should reverse the Administrator's decision and allow Petersburg to amend their Form 471. In the alternative, the Commission should grant Petersburg a waiver of the Commission's rules. This appeal comes timely filed within 60 days of the Administrator's decision. Contrary to the Administrator's contention, Petersburg will show commission precedent that the appeal to the Administrator was indeed timely filed.

### **Overview**

Petersburg Virginia is an economically disadvantaged city, as reflected by their 80-90% discount rate. The Petersburg City School District had been struggling with inadequate bandwidth for several years. The bandwidth problem has become so severe that state mandated standardized testing had to take place in staggered shifts of students with all non-testing use of the network across the district strictly prohibited. Additionally, Petersburg needs their cabling replaced in order to comply with Virginia Department of Education (VDOE) mandates regarding '21<sup>st</sup> century learning skills'; as detailed in their Technology Plan.

For these reasons, and to improve network efficiency, Petersburg signed contracts with two service providers<sup>2</sup> to replace cabling and equipment at several schools. The terms of both contracts specified that payments were to be made in installments; a necessary provision for Petersburg who could not afford to pay the entire cost of the project upfront. Petersburg applied for E-Rate funding<sup>3</sup> for this project in the Internal Connections category for FY 2010. Funding was delayed for two years while the application was under review by the Administrator. A funding commitment was ultimately awarded in a FCDL dated March 21, 2012.

---

<sup>1</sup> Achieve Career Preparatory Academy DA 11-1208 released July 27, 2011—specifically the circumstances in this appeal mirror the appeal submitted by Kress Independent School District, one of the cases cited in this global order which as dated February 16, 2011.

<sup>2</sup> Originally Texcom and Dell, later DTI replaced Texcom

<sup>3</sup> FRNs 2059111, 2059095, 2059215, 2059230, 2059249

In a good faith effort to follow USAC's Form 471, Block 5, Item 23 instructions,<sup>4</sup> Petersburg's newly appointed E-Rate coordinator mistakenly selected "recurring" instead of "non-recurring" payments. In doing so, the E-Rate coordinator believed that she was representing the fact that, under their contracts, the district would be making installment payments rather than one upfront payment. She was unaware that selecting "recurring payments" on Form 471 would procedurally transform their Internal Connections re-cabling project into a "recurring service".

Petersburg first became aware of this problem in October 2012, when their service provider, Dell, questioned the invoice date and informed Petersburg that USAC had refused to pay their invoices. The Administrator would not pay Dell because as a "recurring service", Petersburg's service providers had only until the June 30, 2011 contract expiration date to complete their work, despite the fact that was nearly nine months before Petersburg's funding requests were even approved. Had Petersburg selected "non-recurring" in Block 5 on Form 471, they would have had until September 30, 2013 to complete their Internal Connections project, as the FCDL was issued after March 1, 2012.<sup>5</sup> It should be noted here that these five FRN were applied for in the Internal Connections category of service. They were reviewed as an Internal Connections project, and ultimately funded in the Internal Connections category of service.

Petersburg did not file Form 486 within 60 days of the original FCDL because work on the project had not started by that point. One of the original service providers, Texcom backed out of the project because of the scope of work required. Although Petersburg's change of

---

<sup>4</sup> USAC Form 471 Instructions, page 23 of 28  
[http://www.usac.org/\\_res/documents/sl/pdf/forms/471i\\_fy05.pdf](http://www.usac.org/_res/documents/sl/pdf/forms/471i_fy05.pdf)

<sup>5</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order (June 2001) (2001 Report and Order). This order established the rule that FCDL issued after March 1 of a funding year are entitled to an extended deadline of September 30 of the following year for Internal Connections projects.

service provider was properly approved before the FCDL was issued, the original FCDL incorrectly listed Texcom instead of DTI as the service provider for three FRNs<sup>6</sup>. This caused delay, in part, because Petersburg was hesitant to have DTI begin work at that time because they were not listed on the FCDL, an Administrator mistake which Petersburg attempted to have fixed. The correct service provider was listed on the revised FCDL which was issued on August 27, 2012. Work was also delayed because DTI, located in Delaware, was affected by Hurricane Sandy. Petersburg attempted to file a Form 486 in October 2012<sup>7</sup>, but was unable to submit it online because the online Form 486 did not allow submission when the online form is filed more than 120 days after the last date to receive services, which was June 30, 2011.

In response to these emerging complications, Petersburg reached out to the Administrator. The Administrator referred Petersburg to their Ombudsman.<sup>8</sup> In mid-December 2012 the Ombudsman advised Petersburg to re-file their Form 486. Petersburg did so on January 3, 2013, and received a Form 486 Notification Letter on January 16, 2013. On January 24, 2013, Petersburg timely filed an appeal with the Administrator based on the Form 486 Notification Letter of January 16, 2013. Petersburg's appeal was denied on February 27, 2013.

## **Discussion**

Petersburg's E-Rate coordinator was working with E-Rate for the first time for funding year 2010. The Administrator's instructions for filling out Form 471 are exceedingly lengthy and complex, posing special difficulty for those unfamiliar with the peculiar quirks of the process. Her mistaken selection of "recurring" instead of "non-recurring" was the result of a misunderstanding regarding USAC's interpretations of those terms. The Administrator uses the

---

<sup>6</sup> Attachment 1 – Original and Revised FCDLs.

<sup>7</sup> Attachment 2 – Petersburg's attempted 486.

<sup>8</sup> Attachment 3 – E-mail chain between Petersburg and the Administrator's Ombudsman.

terms “recurring service” and “recurring payment” interchangeably, despite the understandable confusion this causes for applicants making multiple payments for a single Internal Connections installation.

The Administrator’s instructions for filling out Form 471 are detailed in a daunting 28 page document full of dense and technical language. The paragraph specifically referring to section 23 is a prime example of this<sup>9</sup>:

If you expect to pay a non-recurring charge in multiple installments over the funding year, you should either amortize this charge in Items 23A-23E or include the full amount of this charge in Items 23F-23H. **DO NOT** include this amount under both recurring and non-recurring charges. **If you amortize this charge in items 23A-23E, you will not be eligible for discounts on any non-recurring services in this funding request provided after June 30 of the funding year.**

For a newly appointed E-Rate coordinator these are easy instructions to misinterpret. The Commission has acknowledged on many occasions that the E-Rate program is complicated and applicant personnel routinely have other responsibilities within the school district or library.<sup>10</sup>

Petersburg is one of many applicants to make this same mistake. The Commission granted a global appeal for several similarly situated appellants in *Achieve Career Preparatory Academy*.<sup>11</sup> As a part of that order, the FCC granted appeals from seven applicants.<sup>12</sup> The facts

---

<sup>9</sup> USAC Form 471 Instructions, page 23 of 28  
[http://www.usac.org/\\_res/documents/sl/pdf/forms/471i\\_fy05.pdf](http://www.usac.org/_res/documents/sl/pdf/forms/471i_fy05.pdf)

<sup>10</sup> Alaska Gateway Decision, DA 06-1871, Rel. Sept. 14, 2006 (Alaska Gateway), CC Docket No 02-6 at 7, Arkansas at 8: “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.”

<sup>11</sup> Achieve DA 11-1208 Released July 27, 2011.

in *Kress Independent School district*<sup>13</sup> are fundamentally the same as those in Petersburg. In both cases, the districts applied for E-Rate funding for an Internal Connections project. Both mistakenly selected “recurring” instead of “non-recurring” for Item 23 of Block 5 of Form 471, resulting in a dramatically reduced time allowed for project completion. For both districts, the service providers’ invoices were rejected by the Administrator because the funding year – the relevant deadline for actual “recurring services” – had passed. In both districts the funding wasn’t even awarded until well after the end of the funding year in question making it *impossible* to use the E-Rate funds during the funding year.

The Commission’s *2001 Report and Order*<sup>14</sup> addressed the need for extended implementation deadlines for Internal Connections projects. Internal Connections projects involve the one-time installation of equipment, wiring, cable etc., and work must frequently be performed during the summer when students are not in attendance. Recognizing this, the Commission extended the deadline from June 1 to September 30. That deadline is extended by an additional year for applicants receiving funding commitments after March 1. Petersburg received a funding commitment for their Internal Connections re-cabling project on March 21, 2012. Therefore, according to the Commission’s rules set out in the *Order*, Petersburg has until September 30, 2013 to complete the project.

The Commission’s intent in the *Report and Order* was to differentiate Internal Connections from all other services. The intent was certainly not to penalize applicants paying for Internal Connections project in installments by refusing them the same deadline extension

---

<sup>12</sup> El Monte Union High School District, Fort Stockton Independent School District, Harlandale Independent School, Kress Independent School District, Quincy School District 144-101, Terlingua Common School District, and Wahluke School District #73.

<sup>13</sup>Kress Independent School District, as part of global order Achieve DA 11-1208 Released July 27, 2011.

<sup>14</sup>Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order (June 2001) (2001 Report and Order).

which the order created in the first place. Such an absurd practice would serve only to disadvantage applicants unable to pay for an entire project upfront, creating a disparate impact on the applicants most in need of E-Rate assistance.

Essentially, the Administrator has conflated the concepts of “recurring service” and “recurring payment,” presumably because they both contain the term “recurring”. Logically, anyone unfamiliar with this particular Administrator idiosyncrasy would assume that in the first instance the word “recurring” is describing the nature of the service, typically something like internet access that can only be meaningfully conveyed for specified durations of time. In the latter instance, “recurring” describes the nature of the payment plan established in a contract between an applicant and a service provider, typically so that the total cost is broken into smaller, more affordable monthly installments. Unfortunately, following this reasoning tends to leave applicants without enough (or any) time to utilize their funding; effectively forcing those applicants to forfeit their E-Rate funding entirely. This is an oddly punitive outcome for the Administrator to stand by when the error made was merely procedural. It was not caused by a violation of a substantive rule, an important distinction recognized in a long line of precedent.<sup>15</sup>

While the Administrator has failed to take any corrective action on this recurring problem, the Commission has routinely granted appeals and allowed applicants to amend their Form 471 in order to prevent the kinds of unjust and unintended consequences Petersburg now faces. This is consistent with the Commission’s holding in the landmark *Alaska Gateway* case that rules should be waived, where, as here, “the particular facts make strict compliance inconsistent with the public interest.”<sup>16</sup>

---

<sup>15</sup> Alaska Gateway Decision, DA 06-1871, Rel. Sept. 14, 2006 (Alaska Gateway), CC Docket No 02-6, Arkansas Department of Information Systems, DA 08-1418, Rel. June 13, 2008 (Arkansas), CC Docket No 02-6, Bishop Perry Middle School, FCC 06-54, Rel. May 19, 2006 (Bishop Perry).

<sup>16</sup> Alaska Gateway Decision, DA 06-1871, Rel. Sept. 14, 2006 (Alaska Gateway), CC Docket No 02-6.

The difficulty for Petersburg was compounded when the Administrator erroneously held that Petersburg's January 24, 2013 appeal was not timely filed. The Administrator incorrectly based the 60 day appeal deadline on the date of the initial FCDL, March 21, 2012. The Commission has recognized the use of various events as the relevant trigger to start the 60 day appeal clock.<sup>17</sup> Specifically, the Commission has held that the Form 486 Notification Letter is an acceptable trigger.<sup>18</sup> As was the case in *Kress*, Petersburg is not actually appealing their funded FCDL, rather they are appealing the Administrator's 486 Notification Letter, which effectively rejected their effort to amend their 471 and have their funding reinstated. Furthermore, it would be especially unwarranted to use Petersburg's initial FCDL as the start of the appeal window, because at that point they had no reason to suspect anything was wrong since their Internal Connections project had just been funded and work had not even begun. Petersburg timely filed the appeal with the Administrator within eight days of the Form 486 Notification Letter, well within the actual 60 day window. In the alternative, the Commission should waive the 60 day appeal deadline as they routinely have for good cause shown as determined in *Arkansas*.<sup>19</sup>

Petersburg made a good faith effort to comply with program requirements and there has been no evidence of any fraud, waste or misuse of funds. A mere clerical error made on a

---

<sup>17</sup> Carbondale Petition for Reconsideration March 20, 2013, in reference to 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.

<sup>18</sup> Carbondale Petition for Reconsideration discusses various 60 day appeal window triggers which the FCC has used, *Kress Independent School District*, as part of global order Achieve DA 11-1208 Released July 27, 2011.

<sup>19</sup> *Arkansas* at 8 "...good cause exists to waive the deadline for filing the FCC forms 486 and any subsequent deadlines such as the deadline for submitting FCC Forms 472, for the processing of the underlying applications associated with this request."

complex form by a newly appointed E-Rate coordinator should not result in a total loss of funding for a school district desperately in need of E-Rate assistance.<sup>20</sup>

## **Conclusion**

The Administrator's sole basis for revoking Petersburg's funding was an accidental indication on one part of one subsection of one unnecessarily confusing form that they would pay for a "non-recurring service" with "recurring payments". Only when the Administrator refused to pay the service provider's invoices, months after receiving their FCDL, did Petersburg discover that there was anything amiss with their funding. When Petersburg discovered and sought to **resolve** the problem by filing a Form 486, the deadline had passed and the initial Form 486 could not be submitted. The Administrator was able to assist with a second filing and a Form 486 notification letter was issued. Unfortunately, because of a fundamental flaw with the Commission's *Permanent Extension Order*, and the inability of the Administrator to internally correct simple errors, the Service Start Date could not be adjusted to a date within the fund year, effectively denying all funding. On appeal, the Administrator mistakenly cited the start of the appeal clock as the date of the Funding Commitment Decision Letter, rather than the Form 486 notification letter, which should be the proper appeal trigger.

These mistakes led to the revocation of Petersburg's funding, which has already put enormous strain on the district's resources and reputation. The purpose of the E-Rate program is to assist disadvantaged schools in providing access to technology for their students, not catch

---

<sup>20</sup> Arkansas at 8 "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."

well-meaning districts on procedural technicalities, leaving them in a worse position than before they applied for E-Rate funding in the first place.

In accordance with the precedent discussed above, Petersburg respectfully requests that the Commission grant their Request for Review or Waiver and remand this matter to USAC with instructions to allow Petersburg to change the entries made on Form 471 from “recurring” to “non-recurring” payments for these five FRNs. In the alternative, Petersburg asks the Commission to waive any minor procedural violations to further the purpose of section 254(h) and serve the public interest.

Respectfully submitted this 15th day of April, 2013

A handwritten signature in cursive script, appearing to read "Leslie A. Saar".

Leslie A. Saar, Esq.

Attorney for Petersburg