

Request For Waiver

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

Re: Name: **Landow Yeshiva Lubavitch CTR**
BEN: **36714**
Funding Year: **2012**
Applications: **873517 FRN 2383308**
ADA: **09/19/2013**

November 18, 2013

Dear Sirs.

This is a letter for a request For a Waiver regarding the above captioned ADA Notification & FCDL regarding the following FRN's:

FRN #: 2383308 – Ormond Beach Digital Solutions – FUNDING REDUCED – See Attached FCC Appeal 11/18/2013 Doc 1. & ADA Letter FCC Appeal 11/18/2013 Doc 2.

The underlying issue of why the Form 486 was given a Service Start Date of January 1, 2013 instead of July 1, 2012 was due to an M & C error when filing the Form 486. The applicant entered in error the wrong start date. There was no USAC letter stating a reduction due to a late filing.

Failure to file the appeal regarding this error was due to a family emergency by the person responsible to administer the E-rate paper work. This employee was caring for a terminally ill individual who eventually succumbed to their illness. The school will suffer a considerable hardship by being prevented from receiving E-rate funding for the first half of the program year and the FCC has in the past granted this waiver.

See:

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

In the Matter of)	
)	
Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by)	
)	
Audubon Regional Library Clinton, Louisiana, <i>et al.</i>)	File Nos. SLD-808396, <i>et al.</i>
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

ORDER

Adopted: October 23, 2012

Released: October 23, 2012

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

Consistent with precedent,¹ we grant four requests from petitioners² seeking review of decisions made by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program).³ In each case, USAC denied or reduced funding based on the service start date information provided on the FCC Form 486 submitted by the applicants. The applicants affected by the USAC decisions state that they inadvertently

¹ *Request for Review and/or Waiver of the Decision of the Universal Service Administrator by Glendale Unified School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-143548, CC Docket No. 02-6, Order, 21 FCC Rcd 1040 (Wireline Comp. Bur. 2006); *Request for Review and/or Waiver of Decisions of the Universal Service Administrator by Barrow County School District, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-681012, CC Docket No. 02-6, Order, 26 FCC Rcd 4028 (Wireline Comp. Bur. 2011) (both orders grant requests for review from applicants who inadvertently listed the wrong service start date on their FCC Forms 486).

² The requests for review and/or waiver are listed in the appendix.

³ Section 54.719(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. § 54.719(c).

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CC Docket No. 02-6 CC Docket 96-45

submitted the incorrect service start date when filing FCC Form 486.⁴ Based on our review of the record, we find that good cause exists to grant these requests.⁵

On our own motion, we also waive section 54.507(d) of the Commission's rules and direct USAC to waive any procedural deadlines, such as the invoicing deadline, that might be necessary to effectuate our ruling.⁶ We find good cause to waive section 54.507(d) because filing an appeal of a denial of funding is likely to cause petitioners to miss the program's subsequent procedural deadlines in that funding year. Consistent with precedent,⁷ we also waive section 54.720 of the Commission's rules, which requires applicants to seek review of a USAC decision within 60 days, for Audubon because we find that Audubon submitted its appeal to the Commission only two days late.⁸

We therefore remand the underlying applications listed in the appendix to USAC for further action consistent with this order. To ensure that those underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the appendix and issue a funding commitment or denial based on a complete review and analysis no later than 90 calendar days from the release date of this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

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. §§ 151-154 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 the requests for review or request for waiver filed by the petitioners as listed in the appendix ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

⁴ Audubon Regional Library (Audubon) Request for Waiver at 1, Jefferson Parish School District Request for Review at 2, Nashua School District Request for Review at 2, and St. Mary's High School Request for Waiver at 2.

⁵ 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. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

⁶ 47 C.F.R. § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

⁷ *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-584091, Order, 26 FCC Rcd 11019, 11019, para. 2 (Wireline Comp. Bur. 2011) (granting a waiver of filing deadline for an appeal because it was submitted to the Commission only a few days late).

⁸ See 47 C.F.R. § 54.720.

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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, 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 sections 54.507(d) and 54.720 of the Commission’s rules, 47 C.F.R. §§ 54.507(d) and 54.720, ARE WAIVED for the petitioners listed in the appendix to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
 Chief
 Telecommunications Access Policy Division
 Wireline Competition Bureau

APPENDIX

Applicant	Application Number	Funding Year	Date Appeal Filed
Audubon Regional Library Clinton, Louisiana	808396	2011	Aug. 21, 2012
Jefferson Parish School District Marrero, Louisiana	737965	2010	Dec. 19, 2011
Nashua School District Nashua, New Hampshire	523501	2006	Mar. 20, 2009
St. Mary’s High School Phoenix, Arizona	748102	2010	Jul. 9, 2012

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, <i>et al.</i>
New Orleans, LA, <i>et al.</i>)	
)	
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.⁹ Another group

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**.¹⁰ 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.¹¹

⁹ 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 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.

¹⁰ 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.

¹¹ 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

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)
Tok, AK, *et al.*)
)
Schools and Libraries Universal Service)
Support Mechanism)

File Nos. SLD-412028, *et al.*

CC Docket No. 02-6

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.¹² Under Bureau precedent deadlines have been strictly enforced for the E-rate program, including those pertaining to the FCC Form 486.¹³ As we recently noted in *Bishop Perry Middle School*, a departure from required filing deadlines may be warranted upon careful

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.

¹²Because 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.

¹³*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.

2. review of the Petitioner's case and when doing so will serve the public interest.¹⁴ Generally, these applicants claim that staff mistakes or confusion, or circumstances beyond their control resulted in missing the FCC Form 486 deadline.¹⁵ 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.¹⁶ 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.¹⁷ We therefore grant these appeals and remand them to USAC for further processing consistent with this Order.

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

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).

SLD-232946, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 24591, 24594, para. 7 (Wireline Comp. Bur. 2002).

¹⁴*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*).

¹⁵Some 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.

¹⁶For 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.

¹⁷*See* 47 U.S.C. § 254(h).

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

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Therefore we submit that the school should receive a waiver on the late filing of the appeal and the substantive issue raised in the appeal be accepted and thus the above cited FRN have its Service Start Date moved back to July 1, 2012 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