



Department of Information Systems
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Claire Bailey
Director

Mike Beebe
Governor

October 19, 2007

The Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, SW Room 8-B115
Washington, DC 20554

VIA: FED EX DELIVERY:
8565 0059 9770

RE: Program Year 2005 Waiver

CC: 02-6

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Dear Mr. Copps:

It was a pleasure seeing you again during the Senate Commerce Hearing on Broadband held in Little Rock, Arkansas. I hope the presentations were informative and beneficial as the FCC discusses broadband in rural America.

Thank you for your offer to review the E-rate appeal that is before the FCC Wireline Competition Bureau. *See attachment.* As I mentioned previously there was a ministerial clerical error on the state of Arkansas' application for Program Year 2005/2006 that resulted in a loss of \$4,440,004.74 not being reviewed or approved. This funding is significant to the state of Arkansas' K-12 educational community because the requested funds partially reimburse expenses related Internet connectivity for all K-12 school districts in SBC ASI territory. The loss of this funding precludes the Arkansas Department of Education from providing technology services for the benefit and improvement of K-12 education in our state.

I appreciate your consideration in reviewing the waiver request; if you have any questions, please do not hesitate to call me at (501) 682-4003. I look forward to hearing from you soon.

Sincerely:

Becky Rains, PMP
AR State E-rate Coordinator
Strategic Funding Program Manager
AR Department of Information Systems

cc: Gina Spade
Anita Cheng
Phynaas Wilson
Jim Boardman
Bill Goff
Claire Bailey



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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Schools and Libraries Universal Service Support Mechanism
CC Docket No. 02-6
State of Arkansas Department of Information Systems
Request for Review of Decision of the Universal Service
Administrator and Petition for Waiver

**STATE OF ARKANSAS DEPARTMENT OF INFORMATION SYSTEMS'
REQUEST FOR INCLUSION OF BELATED FILING IN A PREVIOUSLY
APPROVED 2005 APPLICATION OR, IN THE ALTERNATIVE,
REVIEW OF DECISIONS OF
THE UNIVERSAL SERVICE ADMINISTRATOR AND
PETITION FOR WAIVER**

The State of Arkansas Department of Information Systems (DIS), on behalf of entities that participate in a consortium led by DIS, respectfully requests that the Commission include a belated filing request of \$4,440,004.74 in previously filed 2005 application Form 471 #446008 or, in the alternative, review the Universal Service Administrative Company ("USAC") decision denying application Form 471 #489075 for Funding Year 2005, waive certain filing deadlines, and remand the application to USAC for further consideration. USAC denied the application due to certification outside the filing window. The application, Form 471 #489075, was filed to correct clerical and ministerial errors relating to the filing of Form 471 #446008; errors substantially the same as, or similar to, those at issue in the *Bishop Perry* case (21 F. C. C. R. S316, May 19, 2006).

INTRODUCTION AND SUMMARY

As discussed below, DIS' request meets the established waiver standard – "good cause" and "special circumstances warrant deviation from the general rule and such deviation will serve the public interest." The special circumstances justifying DIS' request that the FCC grant the waivers requested here – (1) the exclusion of \$4,440,004.74 in the previously approved application, Form 471 #446008, and (2) submitting and certifying the application Form 471 #489075 after the close of the filing window – are virtually identical to those that justified the waivers in the *Bishop Perry* case. These are minor "ministerial, clerical or procedural errors" that "could not have resulted in an advantage for [the applicants] in the processing of their application" and cannot fairly "warrant the complete rejection of ... these applicants' E-rate applications." In light of the Commission's unexpected "departure from prior Commission precedent" in the *Bishop Perry* case, the waivers requested here would avoid the unfairness of applying one standard to the 196 applications covered by the *Bishop Perry* decision but a different standard to another applicant presenting virtually identical circumstances. The requested waiver would serve the public interest because it would help ensure that the affected

educational agencies can continue to provide access to the highest quality connectivity and learning resources to the approximately 450,000 students served by the applicant, while simultaneously preserving the integrity of the program.

BACKGROUND

DIS, headquartered in Little Rock, Arkansas is a state agency and as such operates as the Arkansas state telecommunications network (STN). In this capacity, DIS provides administrative support services, including support for telecommunications and Internet access operations, and a variety of other services, to all public schools, Educational Service Cooperatives, public libraries and state government agencies throughout the State of Arkansas

In Arkansas, DIS has provided support to school districts and public libraries since the creation of the Arkansas Public School Computer Network (APSCN) in 1996. Like most schools in Arkansas, DIS has been an active participant in the Universal Service Program for Schools and Libraries ("E-rate") since the program's inception. DIS and Arkansas Department of Education (ADE) have worked together to provide support and economies of scale and have made services available to all Arkansas public schools and public libraries as well as fifty-two state agencies, boards and commissions. Due to the E-rate program rules that state the billed entity must file the E-rate application and associated paperwork, DIS files E-rate applications on behalf of these educational entities as a consortium lead.

This waiver concerns one funding request number (FRN) 1342094 in one application Form 471 #446008 where the monthly amount in the funding request is incorrect. The error, for the amount of \$4,440,004.74, is such that the loss of funds will greatly impair the provision of services to Arkansas students.

Additional information about DIS is available at <http://www.dis.state.ar.us/>.

DIS poses two alternative solutions to the issue as follows:

1. Inclusion of Belated Filing in Previously Filed 2005 Application

DIS completed and submitted four (4) applications online on behalf of the Arkansas educational entities for the 2005 Fund Year, covering priority 1 telecommunications services from numerous service providers. The funding requests help support a variety of priority 1 service, including broadband, Internet Access and Distance Learning connectivity for thousands of students in 257 different school districts. One of the four (4) applications contained a clerical error in the data entry of the monthly amount. The application was completed, submitted and certified online in a timely manner. The \$4,440,004.74 error was not discovered until after the filing window closed. DIS notified SLD of the error and attempted to work with SLD to rectify the error. There is no precedent of an applicant being given the opportunity to increase a funding request after the close of the filing window. The initial funding request underwent the compliance review by Program Integrity Assurance. The review included an examination of the Item 21 Attachment which contained the correct monthly amount. The funding request was approved as submitted. Because there was no denial, DIS had no recourse for an appeal. As a result, DIS requests that the FCC allow the monthly amount to be corrected to

\$4,440,004.74. In the event the FCC determines this matter cannot be corrected in this manner, DIS proposes the following alternative.

2. Grant a Petition for Waiver of Late Filed Application

In an attempt to recover from the initial filing error, DIS filed a subsequent application Form 471 #489075 containing the revised funding request after the close of the filing window. The subsequent application contained a single funding request to address the inadvertent clerical error. This supplemental application, filed on behalf of the educational entities for the 2005 Fund Year, was denied by the SLD as late-filed. The supplemental application represents funding requests for \$4,440,004.74, which is a substantial sum for the entities involved. This funding request will help support priority 1 services, including broadband, Internet Access and Distance Learning connectivity for thousands of students in 257 different school districts.

DIS filed the supplemental application after the filing window had closed in an attempt to correct a clerical error that occurred during the filing of application Form 471 #446008. On May 17, 2005, application Form 471 #489075 was denied by SLD due to failure to file the complete Form 471 application (including the certification pages) prior to the close of the application window.

There is no precedent for an application filed outside the filing window being considered for funding. As a result, DIS did not appeal the denial to USAC nor did DIS request the FCC waive of the application deadline.

ARGUMENT

Inclusion of belated filing in a previously filed 2005 application or, alternatively, waivers of the applicable filing deadlines and a remand to USAC for further consideration, are warranted here for the same reasons as set forth in the *Bishop Perry* decision.

1. *Form 471 Errors.* The Commission should allow inclusion of the subsequent application funding request in the already approved application Form 471 #446008. “[A] clerical error does not constitute a substantive violation, but a ministerial one.” An applicant that made an entirely “ministerial” and “clerical” error such as failing to record the correct amount on a funding request should be allowed the ability to correct the error even in the event the funding request is increased.

2. *Late Filed Applications.* The Commission should grant a waiver and should direct USAC to conduct a substantive review of the funding application Form 471 #489075 that was denied on account of the submission of the Form 471 to USAC after the close of the filing window.

“Importantly,” in this case, as in the case of the applications addressed in the *Bishop Perry* decision, “applicants’ errors could not have resulted in an advantage for them in the processing of their application. That is, the applicant’s mistakes, if not caught by USAC, could not have resulted in the applicant receiving more funding than it was

entitled to. In addition, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements.”

Precisely the same special circumstances and precisely the same public interest factors apply to these applications here as to those in the *Bishop Perry* decision. The public interest would be harmed by “denial of funding in these cases [because it] would inflict undue hardship on the applicants.”

Thus, the alternatives; inclusion of funding or waivers requested here “will better ensure that universal service support is distributed first to the applicants who are determined by our rules to be most in need, and thus, further the goals of section 254.”

3. *60-Day Appeal Deadline.* With respect to the application that was late-filed, the Commission should waive the rule requiring parties to file appeals of USAC decisions within 60 days of the issuance of those decisions. Here, such a waiver is warranted for several reasons.

First, a waiver of the 60-day appeal deadline is warranted here because, there was no denial of funding on the original funding request containing the clerical error of \$4,440,004.74.

Second, under the FCC’s established precedent prior to the issuance of the *Bishop Perry* Decision, it appeared to be clear that DIS would have virtually no chance of success had it appealed the USAC denial. In the past, the FCC consistently rejected appeals and waiver requests of this nature, *see Bishop Perry*, and in this case, DIS had every reason to believe that preparing such an appeal likely would be ineffectual and a waste of time and money. However, in *Bishop Perry*, the FCC granted waivers in a major “depart[ure] from prior Commission precedent.” Prior to the release of the *Bishop Perry* decision, DIS had no reason to make any effort to meet the 60-day deadline because it had no basis for expecting the Commission to modify its precedent to such an extent. Accordingly, special circumstances in this case justify a waiver of the 60-day appeal deadline.

Third, In this case the Commission should not apply its processing guideline that “Applicants shall have 15 calendar days from the date of receipt of notice in writing by USAC to amend or re-file their FCC Form 470, FCC Form 471 or associated certifications. USAC shall apply this directive to all pending applications and appeals even if such applications or appeals are no longer within the filing window.” Given the completion of USAC’s efforts on this application, this case does not involve a “pending” application. Moreover, this 15-day “minimum processing standard” provision appears not to apply here because DIS did not receive any notice in writing from USAC regarding the need to re-file its 2005 applications following the issuance of the *Bishop Perry* order. At a minimum, to the extent that such a 15- day processing guideline could be construed to apply here, the confusing nature of the guideline 12 itself and the ambiguity of whether it applies in a situation like this one would justify the Commission’s waiving such a guideline in this case.

Fourth, waiving the 60-day filing deadline would be in the public interest. No fraud, waste, or abuse is at issue in this case. Instead, this application covers eligible services, being delivered to eligible entities that will be used to provide educational benefits to students in the affected districts. If the Commission does not waive the 60 day filing deadline, it will simply result in fewer resources being available to the students in the affected districts as funds are diverted from other programs to make up for the denied discounts and/or the level of telecommunications and Internet services is reduced to meet the budgetary constraints imposed by the denial of discounts. In either case, the reduction of services to schoolchildren in the affected districts is contrary to the public interest and the 60-day filing deadline should be waived.

CONCLUSION

In sum, for the reasons discussed above, the Commission should grant inclusion of the \$4,440,004.74 in the approved 2005 application #446008 or, alternatively, grant the waiver requested here because such waivers would advance the public interest. Given that the errors were entirely ministerial in nature, the failure to process this application will simply inflict undue hardship on the applicants and, most importantly, the students and communities they serve. By contrast, directing USAC to review this application further would give DIS and the other educational agencies affected by these denials the opportunity to continue providing the best educational services available to the approximately 450,000 students they serve and will preserve these students' access to the highest quality connectivity and learning available, while simultaneously preserving the integrity of the E-rate program.

Appendix I: Approved Application with Clerical Error

Applicant: DIS State of Arkansas

Billed Entity Number: 157107

Form 471 Application Number: 446008

Funding Request Number: 1342094

Funding Commitment Requested in Error: \$269,226.00

Appendix II: Item 21 Attachment

Appendix III: Approval Letter for Application with Clerical Error

Appendix IV: Supplemental Late Filed Application

Applicant: DIS State of Arkansas

Billed Entity Number: 157107

Form 471 Application Number: 489075

Correct Funding Commitment Request: \$4,440,004.74

Appendix V: Item 21 Attachment

Appendix VI: Denial Letter of Subsequent Application