REQUEST FOR REVIEW
before the
FEDERAL COMMUNICATIONS COMMISSION

CC Docket No. 02-6

Re: Applicant Name: NORTHWEST ARCTIC BOROUGH SCHOOL DISTRICT
Billed Entity No: 145645
Funding Year: 2007-2008
Form 471 Application No.: 569600
Funding Request Number: 1572016

I. INTRODUCTION

Pursuant to 47 C.F.R. § 54.719(c), the Northwest Arctic Borough School District (the "District") appeals to the FCC from the Universal Service Administrative Company, Schools & Libraries Division ("SLD") Administrator's Decision on Appeal, dated April 9, 2012. This appeal is based on SLD's decision to maintain its denial of the District's Funding Year 2007-2008 Funding Request Number: 1572016. The District seeks remand to SLD for full funding of the FRN.

Enclosed for the Commission's consideration are the following documents:

Exhibit A: Northwest Arctic Borough School District Request for Proposals, Division 0, Noatak K-12 Replacement School Project.
Exhibit B: Northwest Arctic Borough School District Contract dated February 5, 2007, with UIC Construction, LLC, in the amount of $695,000.00 for the telecommunications portion of the Noatak K-12 Replacement School Project.
Exhibit C: Form 471 Application No.: 569600, dated February 6, 2007.
Exhibit D: June 4, 2007, letter from USAC to Northwest Arctic Borough School District regarding FRN: 1572016.
Exhibit E: Email dated June 4, 2007, from Northwest Arctic Borough School District to USAC accepting the reduced funding set forth in Exhibit D.
Exhibit F: Information downloaded from the USAC website demonstrating a funding commitment decision letter for FRN:

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1572016, dated July 26, 2007, in the amount of $611,807.40. The document further indicates a 471 Service Start Date of July 1, 2007.

Exhibit G: Form 486 dated April 30, 2009, relating to FRN: 1572016.

Exhibit H: Form 486 Notification Letter dated May 13, 2009, resetting the Service Start Date as December 31, 2008.

Exhibit I: Funding Commitment Decision letter for Funding Year 2007-2008, dated September 19, 2011, from USAC to UIC Construction, LLC, approving FRN: 1572016 in the amount of $611,807.40.

Exhibit J: Form 472 (BEAR) Notification Letter dated July 27, 2011 from USAC to UIC Construction, LLC, denying the reimbursement request for FRN: 1572016.

Exhibit K: Form 472 (BEAR) Notification Letter from USAC to UIC Construction, LLC and Northwest Arctic Borough School District dated September 23, 2011, denying reimbursement for FRN: 1572016 with the explanation "Ship Date Before 486 Service-Start Date."

Exhibit L: Form 472 (BEAR) Notification Letter dated January 6, 2012, from USAC to UIC Construction, LLC and Northwest Arctic Borough School District denying reimbursement for FRN: 1572016 with the explanation "Ship Date Before 486 Service-Start Date."

Exhibit M: Letter of Appeal dated March 27, 2012, from E-Rate Central on behalf of the Northwest Arctic Borough School District to USAC requesting an adjustment to the Form 486 Start Date for FRN: 1572016.

Exhibit N: Administrator's Decision on Appeal dated April 9, 2012, regarding FRN: 1572016.

Exhibit O: Resume of Judith Richards.

II. STATEMENT OF FACTS

A Form 486 should have been filed no later than 120 days after the Service Start Date, or 120 days after the July 26, 2007, Funding Commitment Decision Letter, whichever date was later. The Form 486 was not filed until April 30, 2009, obviously after the deadline.

Therefore, USAC reset the Service Start Date of the FRN: 1572016 to the date 120 days before the Form 486 was received or postmarked, i.e. December 31, 2008. Exhibit H. Because USAC will not pay discounts on services received before the Service Start Date,

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funding for the FRN was ultimately denied (see Exhibits J, K, and L), although initially approved in a Funding Commitment Decision Letter dated December 19, 2011. Exhibit I.

Four separate individuals were responsible for the District's E-Rate program during the pendency of this matter. Karl Kowalski, the Director of Instructional Technology, filed the Form 471 on February 26, 2007, setting forth a Service Start Date of July 1, 2007. That date was consistent with the District's Request for Proposals (Exhibit A), and the District's construction contract with UIC Construction dated February 5, 2007. Exhibit B. Mr. Kowalski's last day of employment with the District was June 30, 2007, prior to the funding commitment decision letter dated July 26, 2007. Exhibit F.

The next Director was David Reilly who started on July 1, 2007. His tenure with the District was short lived, and for the months of April, May and June, 2008, Robin Gage, the District's current Power School Administrator, became the Interim Director.

The current Director, Judith Richards, took over in the Fall of 2008, and ultimately recognized that a Form 486 had not been filed. She submitted one on April 30, 2009. Exhibit G. Although Ms. Richards' Resume demonstrates substantial technical experience, she had essentially no e-rate experience when she was hired by the District. Exhibit O.

When that Form 486 was accepted by the USAC, the Notification Letter made no specific statement that the reset Service Start Date of December 31, 2008, was outside the Funding Year July 1, 2007-June 30, 2008. Exhibit H. And most critically the Notification Letter did not state the consequences of that reset starting date. See Exhibit H, page 3. No mention was made that funding for services rendered prior to the new start date would be reduced for the funding request. In this case, with the E-Rate construction project already completed by UIC Contracting, LLC, no funding would be approved.

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While the Form 486 General Instructions do contain the statement that "UIC will not provide discounts for the services rendered prior to the new start and will reduce the funding commitment for the relevant FRN as appropriate", the more significant document, the actual Form 486 Notification Letter, did not contain that admonition regarding the reset Service Start Date. In essence, notifying an applicant of a 60-day right to appeal without notification of the adverse consequences of the appealable action, is unfair, unhelpful, and not designed to avoid confusion, and educate, so as to prevent the adverse consequences that occurred here.

Incredibly, UIC Construction, LLC then received a Funding Decision Commitment Letter dated September 19, 2011 (Exhibit I), stating that the FRN: 1572016 was approved for the $611,807.40. Although subsequent Form 472 (BEAR) Notification Letters dated September 23, 2011 (Exhibit K) and January 6, 2012 (Exhibit L), reduced funding to $0.00, neither UIC Construction, LLC nor the Northwest Arctic Borough School District were advised in those letters of any rights to appeal those funding denials to either USAC or the FCC. Yet, appeal rights, which the District had no reason to exercise, were stated in the FCDL dated September 19, 2011 (Exhibit I) which granted funding in the amount $611,807.40.

III. DISCUSSION

As the FCC has routinely recognized, "many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical or procedural

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errors."[1] In such instances, the FCC has found that denials of the underlying applications are not warranted when "due to unintentional administrative or clerical errors, and the records...do not reveal more fundamental problems, such as misuse of funds or a failure to adhere to program requirements."[2] As the FCC has recognized:

> "...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."[3]

The FCC has also discussed factors which do give rise to a violation of the competitive bidding process. Those factors include not seeking competitive bids, or failing to disclose the types of services sought by the district, thereby preventing service providers from properly bidding on a request.[4]

The FCC's determination to distinguish between the types of error involved is not surprising in light of the dictates of The Communications Act of 1934. This Act directs the FCC to "enhance ... access to advanced telecommunications and information services for all

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1 In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Archer Public Library, CC Docket No. 02-6, SLD 140961 et. al. para. 7 (Rel. October 30, 2008).

2 *Id.*

3 In the Matter of Requests for Review of the Decision of the Universal Service Administrator by Alaska Gateway School District, CC Docket No. 02-6, SLD 412028, et al., para. 7 (Rel. September 14, 2006).

4 In the Matter of Requests for Review of the Decisions of the Universal Administrator, by Albert Lea Schools, et al., CC Docket No. 02-6, SLD-517274, et al., at para. 15 (Rel. April 14, 2009).

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public and non-profit elementary and secondary school classrooms."[5] Denials of funding based on clerical or procedural errors "inflicts undue hardship on the applicants."[6]

As stated above, on numerous occasions, the FCC has granted waivers of its rules and procedures to ensure both that the spirit of the law is served and that needy school districts receive access to telecommunications:

> Moreover, we find that denying petitioner's requests would create undue hardship and prevent these otherwise eligible schools and libraries from receiving funding that they need to bring advanced telecommunications and information services to their students and patrons. By contrast, waiving . . . our rules to the limited extent necessary . . . will further the goal of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore serve the public interest.[7]

Failure to receive the funds at issue in this matter has had a significant, detrimental impact on the District and its mostly Alaska Native students. The District straddles the Arctic Circle in Northwestern Alaska. The District encompasses approximately 36,000 square miles of land, the same size as the entire state of Indiana. There are no roads connecting the 11 communities within the District. Travel is possible only by air, boat or snow machine. Telecommunications service to and from those communities are solely through satellite facilities. There are no terrestrial or microwave services. All voice, video, data and Internet services are delivered via satellite by a very few telecommunications providers who maintain facilities in this remote region of our Nation. With no choice but to use other funds to replace denied E-rate funding, other educational needs of the District have been adversely affected.

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5 *Id.* at para. 8.

6 *Id.*

7 In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Academy of Excellence, et al., CC Docket No. 02-6, SLD-261209, et. al., at para. 9 (Rel. May 8, 2007).

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V. CONCLUSION

The FCC has recognized that "waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general."[8]

The District has demonstrated that a denial of funding works an undeniable and substantial hardship on the District and its students. The factual circumstances of this case warrant the FCC granting the appropriate rule waivers so that the matter can be remanded to the USAC with a direction that full funding for FRN: 1572016 Funding Year 2007 be approved.

DATED at Anchorage, Alaska, this 7th day of June, 2012.

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8 Alaska Gateway School District Order, FLD 412028 at para. 5.