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October 5, 2012

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

Re: Application for Review
CC Docket No. 02-6

Commissioners:

Our firm represents the Yakutat School District ("District"). We hereby enter an appearance in the above referenced case.[1]

The District, pursuant to 47 C.F.R. § 1.115, files an application for review of the Bureau's decision to deny the District's request for a waiver of the FCC Form 471 application filing deadline for the E-rate program.[2] The District also seeks review of the denials of the District's subsequent petitions for reconsideration.[3] The District seeks review of the decision on the ground that the Bureau's denial "involves application of a precedent or policy which should be overturned or revised." 47 C.F.R. §1.115(b)(2)(iii). The special circumstances and fourteen day window rule adopted in the *Academy of Math Science Order*[4] must be revised to prevent the injustice that will result if the Yakutat School District loses its critical E-rate funding.

Yakutat School District

The Yakutat School District is located at the mouth of Yakutat Bay in an isolated portion of Southeast Alaska, along the Gulf of Alaska. It is 212 miles northwest of Juneau and is accessible only by boat or airplane. In terms of geographical area, Yakutat is the largest city in the United States and is six times as large as the state of Rhode Island. As

[1] In prior proceedings, the Yakutat School District represented itself.
[2] *In the Matter of Requests for Waiver and Review of Decisions of the Universal Service Administrator by Beaver Area Memorial Library, et al (DA 11-1223)*
[3] *In the Matter of Petitions for Reconsideration by Rockwood School District, Yakutat School District* (DA 11-1553); *In the Matter of Petition for Reconsideration by Yakutat School District* (DA 12-1440).
[4] *Request for Review of Decision of the Universal Service Administrator by Academy of Math and Science, et al, School and Libraries Universal Service Support Mechanism*, Files Nos. SLD-487009, *et al.*, CC Docket No. 02-6, Order, 25 FCC RCD 9256 (2010).

of the 2010 census, the City of Yakutat has 662 residents, 46% of which are Alaska Native.

The Yakutat School District currently has a total of 94 students in kindergarten through twelfth grade.[5] There is only one school site. There are eleven full time teachers and one part time teacher. The only administrator is the Superintendent. The Superintendent covers all administrative duties, including superintendent, principal (for all grade levels), and athletic director. The business manager is responsible for all of the financial duties of the District, including, but not limited to, accounts payable, payroll, state and federal reporting, and federal grants such as the E-rate program.

The District's budget for the 2012-13 year is $2,259,803. The E-rate funding at issue is $111,148. The E-rate funding constitutes five percent of the District's overall budget. The District uses the E-rate funding to pay for internet, email, and video conferencing. This is critical to a remote and isolated school district. It also allows Yakutat students to take online distance courses. With only eleven teachers, the Yakutat School District cannot offer many elective courses on-site such as French or Spanish. Nor can it offer high-level math and science classes without the option of distance instruction.

E-rate Application

The District's longtime business manager (ten years) retired at the end of the 2009-10 school year. In the past, the business manager prepared and filed the District's E-rate application. No other District personnel, including the Superintendent, had any involvement with the E-rate application process. The District hired a new business manager, Ricardo Tejeda, in June of 2010. Mr. Tejeda had no prior experience with the federal E-rate program. He received two days of training from the prior business manager, in which he only received training on budgeting and day-to-day financial administration. He received no training about the E-rate program or the E-rate application process.

In the spring of 2011, Mr. Tejeda did his best to get through the complicated E-rate application process. Despite his inexperience and heavy workload, he managed to file the Form 470. The deadline for filing the Form 471 was March 24, 2011. He filed the Form 471 on April 11, 2011, only eighteen days after the deadline.

Proceedings

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[5] This is a significant decline from the previous year (2011-12), when the District had 104 students. This decline in enrollment is causing palpable financial problems for the District because its state funding is based on the number of students enrolled.

On April 12, 2011, Mr. Tejeda submitted a request for a waiver of the Form 471 application deadline.[6] At this point, he had not informed the Superintendent about the missed deadline. His request was terse and did not explain in detail the reasons why the District has missed the deadline.

On July 27, 2011, the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, issued a decision denying the District request for a waiver.[7] In the Order, the Bureau found that the Yakutat School District had not established special circumstances that would justify a waiver of the Commission's rule. The Order relied upon the *Academy of Math and Science Order.* The Bureau did not mail its decision to the District until August 4, 2011.[8]

At this juncture, Superintendent Rod Schug was now aware of the problem with the E-rate application. On September 4, 2011, Superintendent Schug filed a letter, which the Bureau treated as a petition for reconsideration of the July 27, 2011, Order.[9] Superintendent Schug is not legally trained, but did his best to explain the circumstances surrounding the late application and the devastating effect the loss of the E-rate funds would have on the District. Unfortunately, Superintendent Schug did not realize that the deadline was based on the date of publication of the Order, which rendered his petition untimely. On September 14, 2011, the Bureau denied the petition for reconsideration.[10]

On October 6, 2011, Superintendent Schug submitted a second letter to the Bureau, which the Bureau treated as a second petition for reconsideration.[11] The Bureau denied this request on September 5, 2012, finding that it stated no new grounds for reconsideration.[12]

The District now seeks an application for review by the full Commission of the Bureau's denial of the District's request for a waiver and the Bureau's subsequent denials of the District's petitions for reconsideration.

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[6] Exhibit A.
[7] *In the Matter of Requests for Waiver and Review of Decisions of the Universal Service Administrator by Beaver Area Memorial Library, et al (DA 11-1223)*
[8] Exhibit B.
[9] Exhibit C.
[10] *In the Matter of Petitions for Reconsideration by Rockwood School District, Yakutat School District* (DA 11-1553).
[11] Exhibit D
[12] *In the Matter of Petition for Reconsideration by Yakutat School District* (DA 12-1440).

Argument

The full Commission must revise the standard for granting waivers from the Form 471 deadline, which is outlined in the *Academy of Math and Science Order.* If the Commission must revise this precedent so that small rural school districts like the Yakutat School District will not lose important and substantial funding because of once in a decade personnel turnover. The District's Form 471 was only filed 18 days late. Losing the E-rate funding will unfairly punish the children of Yakutat and inhibit their ability to learn.

The Bureau denied the District's request for a waiver because the District "had circumstances that would have failed to justify a waiver of our rules and would have been classified as denials in the *Academy of Math and Science Order.*" The Bureau refused to grant the District a waiver because the District filed Form 471 18 days late instead of 14 days late. The Bureau relied solely on the *Academy of Math and Science Order* to deny the District's request for a waiver.

In the *Academy of Math and Science Order,* the Commission allowed applicants that filed within 14 days to be granted extensions.[13] In footnote 26, the Commission noted that, going forward, future applicants who file late will have to file the Form 471 within 14 days.[14] In denying the District's request in this case, the Bureau relied upon footnote 26 in the *Academy of Math and Science Order* and stated that even in instances of special circumstances an applicant must file within 14 days of the deadline. The Bureau also determined that the District did not establish special circumstances under the *Academy of Math and Science Order.*[15]

The Commission must revise the precedent set in the *Academy of Math and Science Order.* The 14 day window is arbitrary and unfairly harsh to small rural school districts with bare bones administrative staff. The E-rate application process is complex.[16] In the Yakutat School District's case, a well-meaning, but undertrained, overworked, and inexperienced school business manager made a mistake in his first E-rate application. A

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[13] 25 FCC RCD 9256, 9259.

[14] *Id.* at 9259 n. 26.

[15] This was in error because of the District's small size and once-in-a-decade personnel change, the District missed the deadline "due to delays caused by circumstances beyond their control." *Academy of Math and Science Order*, 25 FCC RCD 9256, 9258.

[16] *See In the Matter of Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al,* 21 FCC RCD 5316, 5316-37 (2006) (stating that "[a]s we recently noted, 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, clinical or procedural errors.")

small, isolated and rural school district in Alaska cannot and should not be held to the same standards as a larger urban school district. Of course, the window for late filings cannot be extended indefinitely; however, extending the window to 28 days for small districts (those with less than 200 students) is a fair and just rule.

In order to prevent injustice in this case and in future cases, the Commission should amend the rule set in the *Academy of Math and Science Order* to allow small districts with less than 200 students to file their Form 471 late as long as it is within 28 days of the deadline. After amending this rule, the Commission then must reverse the Bureau's decision and grant the Yakutat School District a waiver to file its Form 471 for the 2011 fiscal year.

Sincerely,

SEDOR, WENDLANDT & EVANS & FILIPPI, LLC

Allen F. Clendaniel

Yakutat School District

City & Borough of Yakutat
429 Forest Hwy. P.O. Box 429
Yakutat, Alaska 99689

District Office (907) 784-3317
High School (907) 784-3318
Fax (907) 784-3446

To:

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

From:

Ricardo Tejeda
Business Manager
Yakutat School District
907-784-3317 x225
907-784-3945 fax

Subject: Form 471 Waiver Request for time
Application #: 822062
Entity #: 145623
FCC reg #: 0013709019

Yakutat School District (YSD) would like to request an extension to file form 471. Unfortunately YSD was not able to file form 471 on a timely manner due to unforeseen circumstances. YSD recently had a change in the Business Manager position; the new business manager came into the job with minimum experience and no training from the previous business manager. Due to how this transition unfolded, the YSD believes that this was an unforeseen circumstance that will help to prepare for the future and will not repeat itself.

YSD would like share its appreciation on this matter as we are a relatively small school district and the loss or stoppage of these funding will severely have a negative effect on the daily operations of our school district and thus, would cripple our ability to provide the appropriate information and communications needs for the students and teachers.

Sincerely,

Ricardo Tejeda
ricardot@yakutatschools.org

Federal Communications Commission
Washington, D.C. 20554

Memo

To: Ricardo Tejeda
Yakutat City School District

From: Gina Spade, Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

Date: August 4, 2011

Re: DA 11-1223, released July 27, 2011

Please find accompanying this memo the Commission's decision on your request for review. The accompanying decision may be referenced in the future by its proceeding number and release date: DA 11-1223, July 27, 2011.

If the Commission has granted your request for review, please contact the Universal Service Administrative Company (USAC) at 888-203-8100 for more information regarding your application. In addition, once USAC has reviewed your application at issue in the attached order, you will receive a revised funding commitment decision letter.

YAKUTAT SCHOOL DISTRICT
CITY AND BOROUGH OF YAKUTAT
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FAX (907) 784-3945

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

September 4, 2011

Dear FCC E-Rate Funding Review Committee:

The Yakutat School District (BEN (145623) respectfully requests reconsideration of FCC decision DA 11-1223 with respect to our denial of appeal for funding of FY2011 # 145623. We recognize that our filing of the form 471 was 18 days beyond the FY2011 filing deadline. We also recognize that filings within 14 days and for good cause were remanded to USAC for funding in DA 11-1223. Yakutat School District's original appeal has failed to convince you that this delay in filing was ministerial and that Commission rules should be waived. We recognize that the Commission may waive any provisions of its rules for good cause and we strongly believe that there is good cause for you to do so in this situation. For these reasons we are filing this petition for reconsideration. In our original appeal we stated only that we missed the deadline due to unforeseen circumstances. We recognize now that it would be in our best interests to share with you what those circumstances were in the hope that you will reconsider your denial of our appeal.

The Yakutat School District is a one-site district of less than 110 students in grades K-12, with declining enrollment and has an administrative staff of only 4 people, with our business manager in his 2nd year of employment. The City and Borough of Yakutat, which includes the Yakutat School District is less than 800 people and yet geographically is larger than the state of Rhode Island. There are no road systems into Yakutat; access is by plane or boat. We explain this so that we may help for you to see how difficult it is to locate and retain individuals for district support positions. The Business Manager whose responsibility it was to handle the E-rate application was new to his position during the last funding year. He did not understand how the E-rate application process worked and did not comprehend the financial impact on the district of the required deadlines.

We believe that we have compelling reasons for you to waive your rules with respect to the Form 471 filing deadline. We believe that the error in timely filing here is of the type you addressed in the Bishop Perry Order of 2006 (FCC 06-54). We contend that you were speaking directly about districts such as ours when you stated in the Bishop Perry Order *that "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 errors"*. We are that small district, with the Superintendent who sometimes drives the van for the sports team and shovels

snow in the winter to keep the doors open. We do not have the luxury of management layers and each of our small staff must assume many duties in order to deliver quality education to our students.

We appreciate the importance of deadlines and recognize that our late filing was a grievous error that will never be repeated. But we beg your recognition that we in no way meant to abuse the program and that our students should not be punished for our ministerial error in this instance.

The Yakutat School District has an overall budget roughly over 2 million dollars, yet the e-rate funding amounts to over $100,000. This is a huge financial impact on our school district.

The Yakutat School District Superintendent has put calendar reminders in place to ensure that our business manager completes the required E-rate forms in a timely manner. Our new business manager is now aware of the required due dates and financial impact to our school district.

For these reasons we urge you to reconsider our funding denial for FY2011 and hope that you will see that in our case there is good cause to reverse your previous DA 11-1223. We believe that the Commission recognized in the Bishop Perry Order that there are circumstances where small applicants such as ourselves find that program rules are occasionally obstacles to our application success. We contend that our failure to meet the deadline by 18 days does not represent program waste, fraud or abuse and that there is good cause to waive program rules in this isolated instance with the understanding that the Yakutat School District now has mechanisms in place to ensure that this application delay will never happen again.

Thank you for your time and reconsideration of our request for E-rate funding for FY2011. We look forward to a favorable decision in the near future.

Respectfully,

Rod Schug

Rod Schug, Superintendent

rschug@yakutatschools.org

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

October 6, 2011

Dear FCC E-Rate Funding Review Committee:

The Yakutat School District (BEN (145623) respectfully requests reconsideration of FCC decision DA 11-1553, CC Docket No. 02-6, Released September 14, 2011, with respect to your denial of the Petition for Reconsideration for funding of FY2011 # 145623. We recognize that our filing of the form 471 was 18 days beyond the FY2011 filing deadline. We also recognize that filings within 14 days and for good cause were remanded to USAC for funding in DA 11-1223. Yakutat School District's original appeal has failed to convince you that this delay in filing was ministerial and that Commission rules should be waived. We recognize that the Commission may waive any provisions of its rules for good cause and we strongly believe that there is good cause for you to do so in this situation. For these reasons we are filing this petition for reconsideration under Application for Review Title 47: Telecommunication 1.115. In our original appeal we stated only that we missed the deadline due to unforeseen circumstances. We recognize now that it would be in our best interests to share with you what those circumstances were in the hope that you will reconsider your denial of our appeal.

The Business Manager was hired in June 2010, following a long time Business Manager of 10+ years that worked closely with our Technology Coordinator on the E-rate application. Our Technology Coordinator retired in 2011 after 25 + years with the district. Due to declining enrollment we haven't hired an onsite Technology Coordinator. It is clear that there was a transition and a steep learning curve for the new Business Manager. The process of filing the E-rate application was left to the new Business Manager with no prior experience or training in this vital E-rate funding stream. Training opportunities for our new Business Manager to learn the E-rate application process and required deadlines were beyond his limited knowledge. He did not understand how the E-rate application process worked and did not comprehend the financial impact on the district of the required deadlines.

The Yakutat School District is a one-site district located in southeast Alaska with a student enrollment of less than 110 students in grades K-12. We are located off the road system with access only by boat or plane.

We believe that we have compelling reason for you to waive your rules with respect to the Form 471 filing deadline. We believe that the error in timely filing here is of the type you addressed in the Bishop Perry Order of 2006 (FCC 06-54). We contend that you were speaking directly about districts such as ours when you stated in the Bishop Perry Order *that "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 errors"*. We are that small district, with the Superintendent who also serves as Principal, Special Education Director, Title I Coordinator and Grant Writer. We do not have the luxury of management layers and each of our small staff must assume many duties in order to deliver quality education to our students. We appreciate the importance of deadlines and recognize that our late filing was a grievous error that will never be repeated. But we beg your recognition that we in no way meant to abuse the program and that our students should not be punished for our ministerial error in this instance.

The Yakutat School District Superintendent has put calendar reminders in place to ensure that our Business Manager completes the required E-rate forms in a timely manner. Our new Business Manager is now aware of the required due dates and financial impact on our school district.

The loss of this E-rate funding will drive future budget decisions that will have a direct impact on the quality of education that our staff can deliver to our students. The Yakutat School District has an overall budget roughly over 2 million dollars, yet the E-rate funding amounts to over $100,000. This is a huge financial impact on our small school district.

For these reasons we urge you to reconsider our funding denial for FY2011 and hope that you will see that in our case there is good cause to reverse your previous DA 11-1553, CC Docket No. 02-6 denial of our E-Rate funding. We believe that the Commission recognized in the Bishop Perry Order that there are circumstances where small applicants such as ourselves find that program rules are occasionally obstacles to our application success. We contend that our failure to meet the deadline by 18 days does not represent program waste, fraud or abuse and that there is good cause to waive program rules in this isolated instance with the understanding that the Yakutat School District now has mechanisms in place to ensure that this application delay will never happen again.

Thank you for your time and reconsideration of our request for E-rate funding for FY2011. We look forward to a favorable decision, with the beneficiaries being our students of today and those that enter our schoolhouse doors in the years ahead.

Respectfully,

Rod Schug

Rod Schug, Superintendent
rschug@yakutatschools.org