

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Request for Review of the)
)
Decision of the) **CC Docket No. 02-6**
Universal Service Administrative Company)
) **File No. _____**
By)
)
Van Wert City School District)
Billed Entity #: 130172)
471 Application #: 849954)
Funding Request #: 2309810)

To: Office of the Secretary, FCC
Attention: Chief, Wireline Competition Bureau

REQUEST FOR REVIEW AND WAIVER

Pursuant to 47 C.F.R. §54.719(c), the Van Wert City School District (“Van Wert,” “Applicant,” or “District”) respectfully requests review of the September 18, 2012 Funding Commitment Decision Letter from the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC”) denying funding for the District’s 2012 funding request for Internet Access (the “Decision” or “FCDL”) and seeks waiver of Section 54.504(c) of the Commission’s rules.

The FCDL asserted that the funding was denied because a contract was not in place when the FCC Form 471 certification was filed. As will be shown herein, the Applicant believed that it had a contract in place at the time it submitted the Form 471, the Applicant’s oversight was a

mistake of the type routinely forgiven by the Commission; and the Applicant is entitled to E-Rate support as requested in the Form 471.

RELEVANT BACKGROUND

On January 25, 2012, John Butler, the Technology Director for the District, submitted a Form 470 requesting bids for Internet Access service in accordance with the Commission's rules.¹ The District only received a single bid from Northwest Ohio Area Computer Services Cooperative ("NOACSC") during the 28-day Form 470 window.² Mr. Butler evaluated the bid using price as the primary factor in accordance with the competitive bidding rules and decided that the District should contract with NOACSC for its services. He reviewed the bid with the Superintendent of the District on March 5, 2012 and the Superintendent called NOACSC on March 6, 2012 to verbally accept the contract.³ Knowing that the contract was in place, Mr. Butler filed the Form 471 on March 6, 2012, the same day that the Superintendent verbally accepted the offer.⁴ At the time of filing the Form 471 the bidding window had been left open for 40 days. Since the window for filing the Form 471 closed on March 20, 2012, Mr. Butler was fourteen (14) days early in filing the Form 471. Though Mr. Butler had planned to have the Superintendent sign the contract the same day that he filed the Form 471, due to a scheduling conflict the contract was not signed until the next day on March 7, 2012.⁵ Mr. Butler now concedes that it was a mistake on his part not to wait the additional day before filing the Form 471. Prior to receiving the FCDL, he had been under the impression that it was sufficient that the District had verbally entered into the contract.

¹ See Declaration of John Butler attached as Exhibit A at 1 ("*Butler Declaration*").

² See *Butler Declaration* at 4.

³ See *Butler Declaration* at 5 and 6.

⁴ See *Butler Declaration* at 8.

⁵ See *Butler Declaration* at 9.

DISCUSSION

The Commission has consistently granted waivers of Section 54.504(c) where a contract was not signed before an applicant filed its Form 471, where a binding agreement was in place at the time of filing. The *Barberton Order* provides the precedent for the Commission's leniency in matters involving Section 54.504(c). In *Barberton*, the Commission granted a waiver of the rule for schools that had: (1) submitted its Form 471 the evening before signing its contract; (2) submitted its Form 471 ten (10) days prior to signing its contract, but had a signed and dated acceptance letter in place; (3) signed a contract renewal on a multi-year contract three days after certifying its Form 471; and (4) signed its contract five days after the Form 471 was certified, but had a signature date and effective date prior to the submission of the Form 471.⁶ The Commission found that such mistakes "do not warrant the complete rejection" of the applicant's funding.⁷ Moreover, the Commission noted that the appeals did not involve a misuse of funds.⁸

More recent cases have followed the precedent originally established in *Barberton*. In the *Animas Order*, the Commission granted the appeals of 46 appellants that were denied funding for failure to have a contract in place when their Form 471 was filed.⁹ Some of the appellants claimed that they did not have a signed contract in place at the time of filing because

⁶ *Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District, et al., Schools and Libraries Universal Service Support Mechanism*, Order, 23 FC Rcd 15526 at ¶ 6 (Wireline Comp. Bur. 2008).

⁷ *Id.*

⁸ *Id.* at ¶7.

⁹ *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Animas School District 6, et al., Schools and Libraries Universal Service Support Mechanism*, Order, 26 FCC Rcd 16903 (Wireline Comp. Bur. 2011).

their employee erred or misunderstood the rules.¹⁰ In one case a contract was signed three days late because the Superintendent could not sign due to a death in the family.¹¹

Most recently, this past July, the Commission released the *Al Noor Order*, which consistent with *Barberton* and *Animas* granted the requests for review of 16 petitioners. The Commission found that although some of the petitioners had contracts that were not signed by both parties prior to the filing of their Form 471 applications; all of the applicants had “some form of an agreement in place prior to the filing” of the Form 471.¹²

Consistent with precedential cases granting waivers for applicants that had failed to have a signed contract in place prior to filing their Form 471, in the present case the District service contract was signed one day after filing the Form 471, because the Technology Director mistakenly believed that it was sufficient to have a verbally agreed upon contract in place at the time he filed the Form 471. Since NOACSC was the sole service provider to bid on the contract, no other service provider was affected by the error. Moreover, even though the contract was signed the day after the Form 471 was filed, it still was signed significantly prior to the deadline for filing the Form 471. In the end, the only party that would be hurt by the school’s mistake would be the school itself as it would lose access to the USAC funding.

CONCLUSION

Consistent with Commission precedent, the District requests that the Commission grant a waiver of its rule requiring that a signed contract be in place at the time a Form 471 is filed and reverse USAC’s funding denial.

¹⁰ *Id.* at ¶2.

¹¹ *Id.* at ¶2.

¹² *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Al Noor High School, Brooklyn, New York, et. al., Schools and Libraries Universal Service Support Mechanism, Order, DA 12-1172 at ¶2 (Wireline Comp. Bur. 2012).*

Respectfully submitted,

VAN WERT CITY SCHOOL DISTRICT

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CC: Universal Service Administrator

November 14, 2012

EXHIBIT A

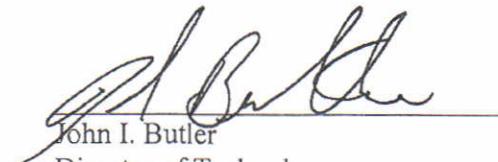
DECLARATION OF JOHN I. BUTLER

I, John I. Butler, declare the following:

1. I am the Director of Technology for Van Wert City School District ("Van Wert," or "District"). My responsibilities include budgeting for technology purposes and maintenance, technology integration and seeking E-rate funding support.
2. My E-rate responsibilities consist of about 2% of my duties with the District.
3. On January 25, 2012, I filed a Form 470 for Internet Access services.
4. We received a single bid in response to our Form 470 from Northwest Ohio Area Computer Services Cooperative (NOACSC).
5. On March 5, 2012, I presented the Superintendent with the bid from NOACSC.
6. On March 6, 2012 the Superintendent verbally entered into the contract with NOACSC.
7. I believed the verbal acceptance of the contract by the Superintendent was sufficient for me to file the Form 471.
8. Accordingly, on March 6, 2012, after being notified that the Superintendent had verbally entered into the contract, I filed the Form 471.
9. Due to a scheduling conflict on March 6, 2012, the Superintendent could not sign the contract until March 7, 2012, one day after I had filed the Form 471.

To the best of my knowledge, I state under penalty of perjury that the Appeal and the foregoing are true and correct.

November 14, 2012

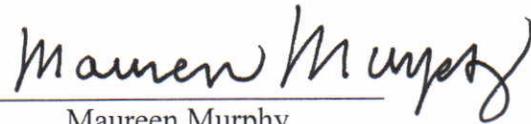


John I. Butler
Director of Technology
Van Wert City School District

CERTIFICATE OF SERVICE

I, Maureen Murphy, hereby declare that a copy of the foregoing request for review and waiver was sent via U.S. mail, this day, November 14, 2012, to the following, as required by section 54.721(c) of the Commission's rules:

Letter of Appeal
Schools and Libraries Division – Correspondence Unit
30 Lanidex Plaza West
P.O. Box 685
Parsippany, NJ 07054



Maureen Murphy