

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Request for Review of a Decision of the) Administrator Correspondence Dated
Universal Service Administration Corp. for) January 31, 2013
Mifflin County Library)
)
)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

Request for Review or Waiver

In accordance with sections 54.719 through 54.721 of the Commission's rules, Mifflin County Library, Lewistown, PA (Mifflin) requests Federal Communications Commission (Commission) review of a decision of the Schools and Libraries Division of the Universal Service Administrative Company (Administrator). Consistent with precedent, Mifflin asks the Commission to overturn this decision and restore badly needed funding to Mifflin.¹

Form 471 Application Number: 783102
FRN: 2127622, 2127649, 2127654, 2127667, and 2127678
Billed Entity Number: 125693
FCC Registration Number: 0013905179

Background

Mifflin County Library, located in rural central Pennsylvania, serves a community struggling with high unemployment and severely limited resources. Mifflin's geographic

¹ Annette Islands School District, DA 12-323, Rel. Mar 12, 2012 (Annette), Bishop Perry Middle School, FCC 06-54, Rel. May 19, 2006 (Bishop Perry), Alaska Gateway Decision, DA 06-1871, Rel. Sept. 14, 2006 (Alaska Gateway) and Arkansas Department of Information Systems, DA 08-1418, Rel. June 13, 2008 (Arkansas), CC Docket No 02-6

isolation makes broadband connectivity more costly than urban areas but also more critical to the community, as there are very few alternative sources of public Internet in the county.

Mifflin applied for E-Rate discounted funding for telecommunications service and Internet access for funding year 2011. Mifflin was funded for discounts in a Funding Commitment Decision Letter (FCDL) dated January 31, 2012, more than halfway through the fund year. This timeline pushed Mifflin's Form 486 deadline to the middle of May, the same time when the director was in the midst of applying for funding for 2012 and preparing for program review, making the missed Form 486 deadline an understandable oversight.

Mifflin filed a Form 472 (BEAR) for the FRN here under appeal. In correspondence dated November 7, 2012, the Administrator "zero passed" the BEAR and released no funds to Mifflin because of a "Form 486 violation."

Mifflin filed a Form 486 on October 29, 2012 for the FRN. The Administrator issued a Form 486 Notification Letter on November 8, 2012 indicating Because the Form 486 was filed more than 120 days after the Funding Commitment Letter and the Service Start Date, The Administrator adjusted the Service start date to 120 days before the postmark of the Form 486 – July 1, 2012 – one day after the close of the 2011 fund year.

The library director contacted the Administrator on December 12, 2012 (Case Number 252-444621) requesting the reason for the zero passed BEAR. The Administrator's response indicated that the funding requests had been canceled because the Service Start Date had been reset to July 1, 2012 because of the late filed Form 486. The response also indicated the library could appeal the adjusted service start date to the FCC in the form of a waiver request. The correspondence did not indicate a deadline for submitting the appeal but provided a link to the Administrator's Web site for appeal instructions. The document had a handwritten note to appeal

and explain why the Form 486 was filed late. There was no indication an appeal was filed. . The correspondence from the Administrator is included here as Attachment A.

Mifflin's long-time library director, the exclusive manager of the E-Rate program, was on full time medical leave from the end of October until November 18, and returned for a limited work routine from November 19 through December 3. She ultimately retired on December 31, 2012 – less than a month after the communication with the Administrator

After retiring on December 31, 2012, the former director has had no subsequent contact with the library or library staff, including her replacement, the new director, who arrived on January 14, 2013. The former director left no notice of the problems related to the late filed Form 486 for the new director. No other library employee had any E-Rate training, experience, or any familiarity with Mifflin's E-rate history or current status. The former director left her office in complete disarray, making it necessary for the new director to painstakingly piece together Mifflin's records and budget information. During this process, the new director discovered a significant budget shortfall. Further investigation identified this budget deficit as E-Rate discounts for Choice One Communications that had not been claimed for Fund Year 2011. After conducting a thorough search of the volumes of papers left in the previous director's office, the new director located the Administrator documentation for these FRN, and immediately filed an appeal with the Administrator.

The new director filed the appeal with the Administrator on January 29, 2013. The Administrator issued a Decision on Appeal dated January 31, 2013 denying the appeal because it was submitted more than 60 days past the Form 486 notification letter of November 8, 2012 – a mere three weeks late.

Mifflin timely files this appeal within 60 days of the Administrator's January 31 decision.

Discussion

Given the disruption in library operations caused by the former director's extended sick leave and subsequent retirement at the end of 2012, the 5 month deadline lapse wasn't discovered by Mifflin until the new director took over in mid-January 2013. Because of the budget shortfall, Mifflin has been forced to indefinitely close one of the five library branches. The new director reports that if funding is not restored, all four remaining branches will be shut down on September 1, 2013, which would have a devastating impact on the community. The Commission has recognized that factors such as hardship, equity, and the public interest may properly be taken into consideration when determining whether to grant a waiver for missed deadlines.²

On January 14, 2012, the new library director assumed library responsibilities, including the daunting task of learning how to navigate the entire E-Rate program. She diligently worked to identify the library's E-Rate funding status and upon discovering several deficiencies reached out to the Administrator. The new director's immediate actions reflect a good faith effort to comply with the program's requirements.³ The Commission has recognized a meaningful distinction between substantive and procedural deficiencies on the part of applicants, and in this case, the library's missed deadlines reflect only the latter. In *Bishop Perry*, the Commission specifically held that staff illness⁴ and the corresponding unavailability of E-Rate trained staff constituted special circumstances sufficient to justify granting a waiver. Additionally, the

² Annette Island School District, FCC DA 12-1666, Rel. October 17, 2012 (Annette). The FCC granted 14 appeals, effectively granting waivers of the Form 486 deadline.

³ Bishop Perry Middle School, FCC 06-54, Rel. May 19, 2006 (Bishop Perry)

⁴ Bishop Perry Middle School, FCC 06-54, Rel. May 19, 2006 (Bishop Perry) At 14, the Commission discussed at length what circumstances warrant granting an appeal and waiver.

Commission has held that a complete rejection of payment is unwarranted where, as here, the missed deadline was a USAC procedural deadline and not a violation of a Commission rule⁵.

Particularly in these kinds of cases, where there is a special circumstance and no evidence of any fraud, waste or abuse, the Commission has acknowledged that, “rigid compliance...does not further the purposes of section 254(h) or serve the public interest.”⁶

The Commission has granted waivers for the Form 486 deadline for numerous applicants based on precedent in the *Alaska Gateway Decision*.⁷ In that landmark decision, the Commission found good cause to waive the Form 486 procedural deadline, noting that the missed deadline does not involve violation of a FCC rule or regulation. Additionally, the Commission has granted such waivers where, “staff mistakes of confusion result[ed] in ... untimely filing the FCC Form 486”.⁸

Furthermore, the Commission has granted waivers of the appeal filing deadlines for appeals submitted, “within a reasonable period of time after receiving actual notice of USAC’s adverse decision.”⁹ The Commission recognized in *Marconi*¹⁰, as it should in the instant case, that a good faith effort to comply with procedural requirements in conjunction with prompt outreach to the Administrator upon actual discovery of missed procedural deadlines merits favorable consideration by the Commission. In this case, the new director filed an appeal on January 29, 2013, a mere 15 days after assuming her position on January 14, 2013. In *Marconi*, the Commission held that filing an appeal within 21 days of actual notice constituted a reasonable period of time.

⁵ *Alton Order*, 25 FCC Rcd at 7093, para. 6.

⁶ *Alaska Gateway Decision*, DA 06-1871, Rel. Sept. 14, 2006 (Alaska Gateway), CC Docket No 02-6

⁷ Request for Review of Decision of the Universal Service Administrator by the Alaska Gateway School District, DA 06-1871, File Nos. SLD-412028, *et al.*, CC Docket No. 02-6 (Order released September 14, 2006)

⁸ *Arkansas Department of Information Systems*, DA 08-1418, Rel. June 13, 2008 (Arkansas), CC Docket No 02-6

⁹ *ABC Unified School District*, DA 11-1332, Rel. August 4, 2011, CC Docket No 02-6

¹⁰ *Marconi Communications*, DA, 12-915, Rel. June 12, 2012 (Marconi), CC Docket No 02-6

Finally, the Commission recently granted an appeal filed by *Audubon Regional Library* granting a waiver of the 60 day appeal deadline related to Form 486 issues.¹¹ In this case Audubon filed an appeal with the Commission six months after the Form 486 notification letter.

Conclusion

Mifflin respectfully requests that the FCC waive the filing deadline for the Form 486 based on numerous Commission decisions and waive the 60 day appeal deadline for the Form 486 notification letter based on *Marconi*, *Audubon* and *ABC Unified*. Special circumstances affected Mifflin's ability to timely file an appeal with the Administrator as the former director was on extended sick leave. We ask the Commission to instruct the Administrator to reset the service start date for these FRN to July 1, 2011 and restore critically needed funding for the Mifflin County Library.

Respectfully submitted this 21st day of February, 2013,

Leslie A. Saar, Esq.
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Your submission has been accepted

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Name	Subject
02-6	In the Matter of Schools and Libraries Universal Service Support Mechanism

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¹¹ Audubon Regional Library, DA 12-1669, Rel. October 23, 2012, CC Docket 02-6

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Details

Small Business Impact: NO

Type of Filing: REQUEST

Document(s)

File Name	Custom Description	Size
FCC Appeal Final.doc	Appeal	49 KB
Attachment A.pdf	Attachment A	1 MB

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