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Mark Nadel

Federal Communications Commission
Office of the Secretary

From: Ellen Retting <eretting@westviewschool.com>
Sent: Tuesday, August 20, 2013 6:07 PM
To: Mark Nadel
Subject: Westview School
Attachments: Petition for Reconsideration 8.19.pdf

CC Docket No.
02-61

Dear Mr. Nadel,
I have attached a letter I've written as a follow-up to our phone conversation last month. Thank you very much for all of your help and guidance.

Best regards,

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Re: Westview School Petition for Reconsideration

Dear Mr. Nadel:

Thank you very much for speaking with me on the phone on July 16 regarding the Westview School (“Westview”) Request for Review and Petition for Reconsideration regarding our 2013 E-Rate Funding Application. During our conversation we generally discussed the notion of distinguishing our request from those of other petitioners who claim they timely submitted a Funding Application. You also mentioned that in certain specific circumstances a waiver grant is justified, and that these circumstances include family illness.

In this letter I’d like to present information about how the FCC has in the past acted on situations where information submitted by a petitioner and information submitted by USAC were in conflict. In this letter I’d also like to share with you specific information about a family death and an unexpected life-threatening illness which my daughter had during the period when we filed our Form 470; this is relevant because I was the only person available to be a caregiver to my daughter and to her two children (ages 5 and 8 years old).

Westview should be given the “benefit of the doubt” on its Form 470 filing date; therefore a Form 471 waiver should be granted

In our Petition for Reconsideration, we explained that we are certain that we did file our Form 470 in late January, and there is no purpose served in repeating here the content of our earlier filings. However, I think it is relevant to review how the FCC has ruled previously in cases where there was conflicting information, in the hope that we will qualify for the same relief that was extended to these petitioners.

The *Bishop Perry Order*¹ addressed filings by nine petitioners who “maintain that they submitted the relevant information on time”; the petitioners are listed at footnote 35 of the Order. In at least three cases², USAC acknowledged that they received a filing from the applicant, but there was a dispute about whether a critical form was missing from each of the filings. (These cases included situations where a Funding Application was filed more than 14 days after the window close date.)

In each of these cases, the FCC found that “[g]iven that it is difficult to determine in these cases whether the error was the fault of the applicant, USAC or a third party, we give the applicants the benefit of the doubt.” I think the basic fact pattern of our case matches those in the *Bishop Perry Order*, and so, consistent with these precedents, we should also be given the benefit of the doubt.

¹ 21 FCC Rcd 5316, 5321-22, para. 12 (2006)

² Filing by Colonial Intermediate Unit 20 (3/13/2006); filing by Mel Blount Youth Home (10/13/2005); filing by Centerville School District 60-1 (6/14/2004).

During our phone conversation last month you suggested that I address what distinguishes our case from those of other petitioners who claim to have submitted their applications on time (but for whom USAC records don't show receipt of the form). I'd like to address this in two ways.

First, if the fact pattern of our case is basically the same as the nine cases in the *Bishop Perry Order*, I think there may be *nothing* that distinguishes our case from those cases... and therefore, Westview should be granted the same relief that was granted to those nine petitioners.

Now there may be some cases (other than the nine "benefit of the doubt" cases in *Bishop Perry*) where, in those specific cases, the evidence presented in support of the proposition of timely submittal of a required form is much weaker than the evidence supporting the opposite proposition. As a hypothetical example, consider a case where 1) a petitioner claims that six schools are listed on its Funding Application; 2) USAC retrieves the original signed form showing only four schools; 3) petitioner argues that USAC staff *must have erased two schools from the application*; but 4) a *careful examination of the original form* shows no evidence whatsoever of any alteration. This hypothetical case can be distinguished from the nine cases in *Bishop Perry* because a reasonable person could conclude that the petitioner's argument is intrinsically not credible.

However, the Westview case is very similar to the fact pattern in at least three of the *Bishop Perry Order* appeals, and our case is distinguishable from the hypothetical example because we make no intrinsically incredible claim.

Secondly, consider that in any request for review, the FCC staff will consider the evidence submitted (by the petitioner and perhaps by USAC) before applying the law. Obviously, evidence that is not available or known to the staff can't be considered. In some previous appeals of USAC decisions, USAC may have presented evidence from information systems which it represented to be reliable, and most likely no evidence to rebut the reliability of USAC's information systems was submitted. Therefore, in light of the evidence available, the FCC may have made a reasonable determination – *based on the evidence before it* – that USAC's evidence was much stronger than that of the petitioner.

The Westview appeal is distinguishable from these kinds of cases because we have submitted clear and convincing evidence that *USAC's information systems are not reliable*. In our Petition for Reconsideration we submitted specific examples of errors in the functionality of USAC's information systems, and we submitted a letter from a qualified expert software engineer explaining the implications of the errors as to the reliability of the system as a whole. Based on these facts, any evidence based on the assumption that USAC's information systems are reliable should not be considered in making a decision on Westview's appeal, because USAC's information systems have been demonstrated to not be reliable. Therefore, Westview exceeds the standard in *Bishop Perry*, and – consistent with *Bishop Perry* – Westview should also be given "the benefit of the doubt" and should be granted the relief it seeks.

The person responsible for filing Westview's Form 470 (and Form 471) experienced the death of her mother and the life-threatening illness of her daughter during the FY2013 filing period; therefore, a Form 471 waiver should be granted

I am the person who is responsible for Westview's E-Rate filings (including Form 470 and Form 471).

My mother passed away in 2012, and in early 2013 I was still grieving deeply. The fact that I was the person responsible for settling her estate made it impossible for me to emotionally “move on” while I was still dealing with estate matters.

In December 2012, my daughter started experiencing a variety of symptoms (including soaring blood pressure, and severe pain); further complications developed including shingles and meningitis (which is an infection of the protective membranes covering the brain and spinal cord). I was very much involved in caring for my daughter, and I was also caring for her young children (since no other caregiver was available for them). My daughter’s illnesses continued through March, 2013. During this period I was often required to be away from work, and even when I was at work my thoughts were on my daughter’s illness and the challenges of caring for my grandchildren.

If not for these three complications – the passing of my mother, my daughter’s serious illness, and the requirement to care for my daughter’s children – I would have likely managed the E-Rate application process more closely and I would have detected (and effectively addressed) the Form 470 filing problem.

In the *Academy of Math and Science Order*³, the FCC granted Form 471 filing date waivers to three applicants⁴ affected by death or illness, and who filed Form 471 within 30 days of the window-close date. Capital District Library Council’s filing dealt with the same issue that Westview has; i.e., a Form 471 filing filed late in order to meet the 28-day Form 470 posting period. That petitioner stated “At the time that the original Form 470 was filed and the error of omission committed I was dealing with critical medical problems, but I was still trying to submit the proper Erate forms as I was the only one who could.”

In the LeMars Community School District filing, the responsible person was facing a family death and two family illnesses; she stated that “[b]ecause of everything that has happened through the months of September through December I completed [sic] forgot to file papers for Erate for our school district.”

The City of Santa Monica filing also dealt with a late Form 471 as a result of a late-filed Form 470. Their filing stated that “[d]ue to an unexpected illness in late December 2008 and early January 2009, I was out of the office for a few weeks going through therapy. As a result, I missed the filing deadline for Form 470 (Application Number 942880000728355). The late submittal of Form 470 caused Form 471 to be late as well because we cannot submit Form 471 until after the filing window date was closed.”

The Westview situation is sufficiently similar to those of these three petitioners (and many similar petitions addressed favorably by subsequent orders) that we should also qualify for the waiver grant for a late Form 471 filing coming as the result of illness and/or death.

A waiver grant to Westview would serve the public interest

Westview is a supportive and nurturing environment where students can find success in learning. Westview is a private, non-profit middle and high school in Los Angeles serving high-potential special-needs students in grades six through twelve, including students with Autism Spectrum Disorders, emotional disturbance, ADHD, and other learning disorders. Our ability to prepare these students for productive lives is critically dependant on E-Rate funding. Since the public interest will be served by preparing these students to lead productive lives, and the ability of the school to educate these students is

³ 25 FCC Rcd 9256, 9259-60, para. 8 (2010)

⁴ Filing by Capital District Library Council (6/19/2009); filing by LeMars Community School District (6/23/2009); filing by City of Santa Monica (6/19/2009).

dependent on E-Rate funding, it is in the public interest to grant a Form 471 late-filing waiver.

Two special conditions are present, both of which – consistent with the two cited precedent orders (and other subsequent orders) – justify the waiver grant Westview seeks. Westview therefore respectfully asks that the FCC grant Westview a waiver of the 2013 Form 471 deadline.

Sincerely,

Ellen Retting

Ellen Retting

Director of Development