

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Review or Waiver of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Academia Avance)	SLD Nos. 818811 et al.
Los Angeles California et al.)	Rel. August 30, 2013
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Application for Review by Mifflin County Library

Mifflin County Library, Lewistown, PA (Mifflin) respectfully requests the full Commission (Commission) review and overturn a decision by the Wireline Competition Bureau (Bureau). This request comes timely filed in accordance with 47 C.F.R § 1.115(b)(1)(i) and/or (iii). Specifically, this Application for Review requests the Commission overturn the Bureau decision based on a conflict with case precedent. In the alternative Mifflin asks the Commission to review, clarify, or revise the “special circumstances” which warrant waiver of filing deadlines for appeals related to the Universal Service Support Mechanism.

Mifflin filed a Petition for Reconsideration with the Bureau arguing that it relied on facts or arguments unknown to Mifflin since the last opportunity to present them. The Bureau determined the argument presented by Mifflin in its Petition for Reconsideration did not rely on arguments that have been fully considered and rejected by the Bureau (Attachment A). Mifflin had argued in the Petition for Reconsideration that the Bureau applied the incorrect precedent in its decision which appeared to change Commission precedent. An apparent change in the way

the Bureau evaluated “special circumstances” was unknown to Mifflin at the time of its initial appeal.

Alternatively, and in the public interest, Mifflin asks the Commission to waive applicable rules and/or polices in this instance and restore funding to Mifflin.

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

Background

Mifflin applied for E-Rate discounted funding in Fund Year 2011 and was funded in a Funding Commitment Decision Letter dated January 31, 2012. The initial deadline for filing the Form 486 for the FRN here under appeal was the end of May, 2012. The Universal Service Administrative Company (Administrator) is required to issue a Form 486 reminder letter when the Form 486 deadline is missed. Mifflin has no record of receiving the reminder letter. Mifflin filed a BEAR form and received a “Zero Passed” BEAR notification letter Dated November 7, 2012. Mifflin filed a Form 486 and received a Form 486 Notification Letter on November 8, 2012 indicating the Service Start Date had been adjusted to July 1, 2012 – one day after the fund year for these FRN, effectively denying funding.

The then director contacted the Administrator on December 12, 2012 (Case Number 252-444621) requesting the reason for the zero passed BEAR. The Administrator indicated that the funding request had been reduced to zero dollars because the adjusted service start date was outside the fund year. Mifflin’s long-time director and exclusive manager of the E-Rate program retired on December 31, 2012. The director retired during the 60 day appeal window but took no

action. As noted in the initial appeal, the director was on medical leave during the period and retired suddenly at the end of the year.

Mifflin did not detail the nature of the medical leave or the reason for the director's sudden retirement in the initial appeal due to privacy concerns noted in the Discussion below.

Discussion

In its Global Order denying Mifflin and 13 others, the Commission cited the Agra Public Schools decision (Agra)¹ and Mt Olive Township² as precedent. The Mt Olive Township denial also cited Agra as precedent.

The Agra decision denied appeals where petitioners cited employee inattention, lack of awareness of Commission rules, lack of knowledge of a defective application, and applicants did not feel they had grounds for appeal and filed untimely appeals subsequent to Commission decisions with favorable precedent.³ Agra also cited a need for deadlines to provide finality in the decision making process as appeals filed "...significantly after the deadline" would make it difficult to estimate the amount of money the Administrator would need keep in reserve.⁴

The Bureau, in citing the Agra decision, conflicted with established case precedent for "special circumstances" that warrant waiver of the 60 day appeal deadline. Established precedent

¹ Agra Public Schools I-134, DA 10-020, Rel. May 26, 2010

² Mt. Olive Township School District, DA 13-15, Rel. January 7, 2013

³ Agra at 4

⁴ Agra at 6

for waiver include: the death of the E-Rate coordinator, the military deployment of the E-Rate coordinator, illness of the E-Rate coordinator or immediate family, and others.⁵

Mifflin specifically cited illness as the reason for missing the 60 day deadline in its initial appeal: “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.”⁶

Because the director retired and had no further contact with the library and did not authorize disclosure, Mifflin was prohibited from disclosing the nature of the medical leave or reason for retirement.⁷ Mifflin argued the Commission itself is cognizant of privacy issues and has seen fit to protect the identity of individuals cited for defrauding the Universal Service Lifeline program by receiving duplicate support.⁸

Since the Agra decision, numerous appeals have been granted on the grounds of key E-Rate personnel or immediate family illness. In some cases, the appeal simply cites “illness” is the cause of the missed deadline. In other cases the applicant provides doctor’s notes, insurance claims, and time sheets.⁹ Such extreme candidness is understandable with the E-Rate program as

⁵ Acorn Public Library, DA 08-2376, Rel. October 30, 2008; Bishop Perry, FCC 06-54, Rel. May 19,2006; Academy of Academic Excellence, DA 07-1180, Rel. March 9,2007; Greenfield Public School District, DA 06-487, Rel. February 28, 2006 (Deployment).

⁶ Mifflin Appeal Page 3.

⁷ The Health Insurance Portability and Accountability Act/Health Information Technology for Economic and Clinical Health Act Omnibus Rule, published in the Federal Register Jan. 25, 2013; and the Pennsylvania Personnel Files Act prohibiting access to employees’ personnel files.

⁸ In the Matter of JXXX Back, DA 13-915, Rel. May 2, 2013: The name of the recipient of this Citation and Order has been redacted in part to protect the recipient’s personal privacy interests. See 5 U.S.C. § 552(a); see also 47 C.F.R. § 0.455(g) (“To the extent required to prevent a clearly unwarranted invasion of personal privacy . . . the Commission may delete identifying details or confidential information when it makes available or publishes any document described in this section.”).

⁹ Academy St Benedict, et al. DA 10-2352, Rel. Dec 16, 2010: Derry Schools, Newmarket School District, 486 waiver granted because of staff turnover; Philadelphia Schools, maternity leave; ABC Unified, et al.

E-Rate coordinators are frequently fired when losing large sums of E-Rate funding because a form is filled out incorrectly, a deadline is missed, or an appeal is filed in the incorrect format. While Mifflin is prohibited from going into detail about the specific issues involved, the fact remains that the key person responsible for over \$23,000 in E-Rate funding was not able to file the forms or appeal an adverse decision in a timely manner. The instant the new director became aware of the complex issues related to the 2011 funding, she took immediate action by filing an appeal with the Administrator on January 29, 2013. The Administrator denied the appeal for failing to meet the 60 day filing deadline. As noted in the original appeal, the appeal to the Administrator was filed "...a mere three weeks late." Considering the condition of the office the new director inherited, and the fact the new director did not even begin her duties until the 60 day appeal window had already expired, three weeks to file an appeal is reasonable.¹⁰

The Agra decision also cited the need to reclaim funds from previous funding commitments in order to roll over funds to subsequent years. That reasoning is a moot issue in this case as the last date to submit invoices for these FRN is March 8, 2013, according to the Administrator's Data Retrieval Tool. At the time of appeal, there would be absolutely no expectation that the funds reserved for Mifflin would be recovered for subsequent years.

Due in part to the loss of the 2011 E-Rate support, the Mifflin was forced to close two branches and "...the library is in jeopardy of closing all operations..."¹¹ Without question, the loss of E-Rate funding has caused a financial hardship on the library.

Conclusion

Da 11-1332 Rel. August 4, 2011: Preble Shawnee Local, staff illness, personnel change and confusion; and others.

¹⁰ Mifflin Appeal page 3.

¹¹ <http://www.lewistownsentinel.com/page/content.detail/id/539018/Library-in-jeopardy.html?nav=5010>

Mifflin filed E-Rate applications in good faith and was funded after the applications were reviewed. Filing deadlines were missed because the key person responsible for all E-Rate filing was unable to file the forms and was not employed by the library at the conclusion of the 60 day appeal window. In denying the initial appeal, the Bureau cited Agra as precedent in direct conflict with precedent granting deadline waivers where “special circumstances” prevented timely filing. Indeed, the facts as presented by Mifflin do not fall into the limited exceptions noted in Agra, the precedent cited in denying appeals for these 14 applicants. The facts align precisely with Commission precedent cited in the original Mifflin appeal and long after the Agra decision was released.

Mifflin reiterates language in Bishop Perry that in cases of such minor procedural violations, where there is no evidence of waste, fraud, or abuse, “rigid compliance with USAC’s procedures does not further the purposes of section 254(h) or serve the public interest...”

Mifflin asks the Commission to review the Bureau decision and restore badly needed funding to the library. As noted above, two branches have closed and the entire system is in danger of closing. These funds could literally save the Mifflin library from extinction.

Alternatively, Mifflin asks the Commission to review precedent for “special circumstances” warranting waiver of the 60 day appeal deadline. Currently precedent includes illness, deployment or death of the E-Rate coordinator. Mifflin asks the Commission to revise such precedent to include massive applicant reorganization, E-Rate coordinator termination, resignation, or retirement in addition to the current limited qualifications. The Commission has opportunity to revise precedent with this review.

Respectfully submitted this 23rd day of September, 2013,

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Dr. Molly S. Kinney

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