

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

In the Matter of)
)
Application for Review of a)
Decision of the)
Wireline Competition Bureau of the)
Federal Communications Commission)
)
Stafford County Public Schools) File No. DA 13-1701
Stafford, VA)
)
Schools and Libraries Universal Service) CC Docket No. 02-6 Universal Service
) Support Mechanism
)
)

Motion for Leave and Application for Review by Stafford County Public Schools

Background

Stafford County Public Schools, Stafford, Virginia (Stafford) respectfully requests the full Commission (Commission) review and overturn a decision by the Wireline Competition Bureau (Bureau). This request comes filed in accordance with 47 C.F.R § 1.115(b)(2)(i) and/or (iii). Specifically, this Application for Review requests the Commission overturn the Bureau’s decision based on a conflict with established precedent and Commission policy.

Stafford’s Form 471 Application for Funding Year 2013 was filed by their consultant, Dr. Jim Earle, one day after the 14 day extension window. Established Commission precedent routinely grants Form 471 waiver requests filed within 14 days of the Form 471 filing window close. The consultant filed an appeal on behalf of Stafford on May 15, 2013. In that appeal the

consultant explained that despite his good faith efforts, medical and personal emergencies prevented him from filing Stafford's application on time.

The appeal was denied on August 2, 2013 on the basis that Stafford, "...failed to present special circumstances justifying waivers of the Commission's rules."¹ In the present request, Stafford asks the Commission to grant this Motion for Leave and consider this Application for Review on the merits.

Form 471 Application Number: 903029

FRN: 2533654, 2533657, 2533660, 2533670, 2536671, 2533686, 2533691, 2633696, 2533698, 2533703, 2533706, 2533708, 2533726

Billed Entity Number: 126450

FCC Registration Number: 0009780370

DISCUSSION

Motion for Leave

Stafford asks the Commission to consider this Application for Review despite the fact that more than 30 days have elapsed since the original appeal was denied. Despite Stafford's repeated attempts for status of the consultant's FCC appeal, the consultant's erroneous reply was simply "waiting on FCC." Stafford's consultant claims he was not aware that the initial appeal had been denied, and as such did not notify Stafford. The consultant was listed as the sole contact on the initial appeal and primary contact for all correspondence from the Administrator. Stafford was reasonably relying on their consultant, they had no meaningful notice that the clock was running for future motions. Stafford became aware of the Commission denial only after requesting quotes for service from other E-Rate consultants. Stafford now files this Application within a reasonable time of receiving actual notice that their appeal has been denied. Stafford

¹ Allenstown Public Library, DA 13-1701, Rel. August 2, 2013, CC Docket 02-6 at 2.

has since terminated the contract with the consultant and now asks the Commission to allow this late filed Application for Review.

Application for Review

In the order denying Stafford's appeal, the Bureau granted similar appeals for as many as six applicants who filed their applications "...within a reasonable period from the close of the window despite the person responsible for submitting the form or a close family member of that person suffering an unexpected serious illness or death."²

In this instance, Stafford's consultant submitted the district's Form 471 only one day after the close of the extended window, undoubtedly within the required "reasonable period." Furthermore, as stated in the original appeal, Stafford's consultant had, "2 operations and over six (6) emergency room visits"³ which left him unable to fulfill his E-Rate consulting obligations. Based on these facts, it is clear that the consultant in this case was seriously ill enough to warrant one day of leeway in the filing of Stafford's Form 471 Application.

Of the six applicants for which waivers were granted, one missed the filing deadline because the responsible employee was caring for a sick parent⁴, one was overwhelmed by a bankruptcy filing⁵, one had an illness and health issues,⁶ and one had a technical glitch⁷. At least two of the waivers (Hamlin-Lincoln and Bucklin R-2) were for Form 471 applications filed well beyond the 14 day grace period and after Stafford's Form 471 was filed. Stafford's consultant

² Allenstown Public Library, DA 13-1701, Rel. August 2, 2013, CC Docket 02-6 at 2

³ Appeal filed by Dr. Jim Earle on behalf of Stafford County Public Schools, Filed May 15, 2013.

⁴ Hamlin-Lincoln County Public Library, Inc. Filed May 7, 2013.

⁵ East Valley High School. Filed May 6, 2013.

⁶ Bucklin R-2 School Petition for Reconsideration, Filed June 4, 2013

⁷ Deerfield Valley Elementary School. Filed May 6, 2013.

took full personal responsibility for the late filing in the initial appeal. He stated that “My illness/emergencies contributed significantly to this application being filed late. It was not due to the fault of the school district.”⁸ The Bureau has not articulated any standard nor offered any explanation for determining how the illnesses of individuals responsible for E-Rate are analyzed. As such, the determination made in the Order that similarly situated applicants met this standard, but Stafford’s consultant was not sufficiently ill to warrant a waiver is an arbitrary decision which should be overturned.

In the Order, the Bureau cites *Northeast Cellular Telephone Co.* as the basis for the long held policy that, “Waiver of the Commission’s rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.”⁹. In this case, Stafford has clearly met both of these requirements. Stafford has shown that there were special circumstances surrounding this late application, namely that an ill consultant filed and Form 471 only one day late and failed to keep the district informed of their application status. Penalizing a district with the total loss of an entire year’s worth of E-Rate funding based on the mistake of a sick consultant does nothing to further the goals of the program. Restoring the almost \$500,000 in lost funding for an application, filed only a single day after the extended window would however serve the public interest.

CONCLUSION

Stafford hired and reasonably relied upon an E-Rate consultant to handle all aspects of filing their FY 2013 application. Based on this reliance, Stafford was not aware that their May

⁸ Appeal filed by Dr. Jim Earle on behalf of Stafford County Public Schools, Filed May 15, 2013.

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

2013 appeal had been denied until shortly before this Application for Review was filed. Stafford now asks the Commission to consider this Application on the merits.

Due to medical and personal emergencies, Stafford's consultant filed the Form 471 Application one day after the 14 day window had closed. The consultant filed an appeal, explaining the special circumstances of the out of window filing. The Bureau erred in denying this appeal because Stafford met the articulated criteria for receiving a waiver; filing near the close of the window (one day late), and the occurrence of a serious illness of the individual responsible for the filings. In the same order denying Stafford's appeal, the Bureau granted appeals for similarly situated applicants who also filed their Form 471 Applications after the close of the 14 day window.

Stafford has brought up no new arguments or facts in this Application and now asks the Commission to review the record and grant a waiver consistent with the precedent confirmed even within the Order at issue. At all times, Stafford has acted in good faith and now seeks the Commission's review in order to restore badly needed funding to the district.

Respectfully submitted this 22nd day of November, 2013,

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