

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

In the Matter of)	
)	
Application for Review of a)	
Decision of the)	
Wireline Competition Bureau by)	
)	
Yakutat School District)	File No. SLD-822062
Yakutat, Alaska)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: August 22, 2014

Released: August 25, 2014

By the Commission:

1. In this Order, we deny in part and dismiss in part an application for review filed by Yakutat School District, Yakutat, Alaska (Yakutat) seeking review of a decision issued by the Wireline Competition Bureau (Bureau) denying Yakutat's request for a waiver of the deadline for filing its funding year 2011 E-rate application, and of two subsequent Bureau orders denying Yakutat's petitions for reconsideration of its waiver request.¹ We are sympathetic to the challenges faced by applicants in complying with the administrative requirements of the E-rate program, and we have recently streamlined the application process in an effort to address these issues.² However, we recognize the importance to all applicants of effective and efficient administration of the E-rate program, and consistency in enforcing the deadline for filing E-rate applications is essential to the efficient operation of the program. Yakutat has not demonstrated that granting a waiver of the E-rate application deadline would be in the public interest. Therefore, for the reasons set forth in more detail below, we deny in part and dismiss in part Yakutat's Application for Review.

2. Once a school or library has complied with the Commission's competitive bidding requirements and has entered into an agreement for eligible services, it must file an FCC Form 471 application to notify USAC of the services that have been ordered, the service providers with which the applicant has entered into agreements, and an estimate of the funds needed to cover the discounts to be

¹ Letter from Allen F. Clendaniel, Counsel for Yakutat School District, to the Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 5, 2012) (Yakutat Application for Review). See *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Beaver Area Memorial Library et al., Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 10317 (Wireline Comp. Bur. 2011) (*Beaver Area Memorial Library Order*); *Petitions for Reconsideration by Rockwood School District and Yakutat School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Order, 26 FCC Rcd 13004 (Wireline Comp. Bur. 2011) (*First Order on Reconsideration*); *Petition for Reconsideration by Yakutat School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Order, 27 FCC Rcd 10868 (Wireline Comp. Bur. 2012) (*Second Order on Reconsideration*). The E-rate program is more formally known as the schools and libraries universal service support program.

² See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99, paras. 187-264 (rel. July 23, 2014).

given for eligible services.³ Section 54.407(c) of the Commission's rules provides that E-rate funds will be available on a first-come, first-served basis, but requires USAC to implement an initial funding window that treats all applicants filing within that window as if their applications were simultaneously received.⁴ The Commission capped annual funding for the E-rate program at \$2.25 billion (indexed for inflation since funding year 2010).⁵ With only one exception in the last 15 years, yearly requests filed within the window for E-rate funding have exceeded the amount of funding available.⁶ Therefore, USAC routinely denies funding requests filed after the close of the filing window.

3. The Commission has explained that the E-rate program's procedural rules, including the requirement that applicants file their FCC Forms 471 within the window, are vital to the efficient operation of the E-rate program.⁷ To ensure that applicants are fully aware of the filing deadline, the Commission instructed USAC to develop a targeted outreach program and educational efforts to inform and enlighten applicants on the various application requirements, including the application and certification deadlines.⁸ USAC publicizes the dates the filing window will open and close well in advance and features that information prominently in its newsletters and on its website.⁹

4. The Commission grants waivers of the FCC Form 471 filing deadline only in very limited circumstances. For example, in the *Academy of Math and Science Order*, the Commission found that waivers would be granted when applicants: (1) filed their FCC Form 471 applications within 14 days after the FCC Form 471 filing window deadline; (2) filed their FCC Form 471 applications late because of an illness of the E-rate staff person or the death of a member of his or her family; (3) filed their FCC Form 471 applications late due to delays caused by circumstances beyond their control; or (4) filed their FCC Form 471 applications on time or within 14 days of the filing window deadline but failed to file their FCC Forms 470 or 471 certifications on time.¹⁰ Acting on delegated authority, the Bureau has consistently

³ See 47 C.F.R. § 54.504(c).

⁴ See 47 C.F.R. § 54.507(c).

⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9054, para. 529 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 18762, 18781, para. 36 (2010) (*Sixth Report and Order*) (indexing the E-rate funding cap to inflation).

⁶ See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, FCC 13-100, para. 62 (rel. July 23, 2013). For funding year 2011, USAC was able to fund priority two funding requests only for applicants entitled to discounts of 88% or more. *Id.* at para. 83; see also <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=440> (last visited Sept. 3, 2013).

⁷ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170 et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5320, para. 9 (2006) (*Bishop Perry Order*).

⁸ *Id.* at 5327, para. 24.

⁹ See, e.g., USAC, FY 2011 Window Dates Set, Dec. 9, 2010, <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=336> (Funding Year 2011 FCC Form 471 Window Dates); USAC, Schools and Libraries News Brief, Jan. 6, 2012, <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=403> (noting that the application filing window start and end dates).

¹⁰ *Request for Review of the Decision of the Universal Service Administrator by Academy of Math and Science, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487009, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9258, para. 4 (2010) (*Academy of Math and Science Order*).

granted or denied waiver requests seeking additional time to file an FCC Form 471 using the standards laid out by the Commission in the *Academy of Math and Science Order*.¹¹

5. The E-rate application filing window for funding year 2011 opened on January 9, 2011 and closed on March 24, 2011.¹² Yakutat filed its application on April 11, 2011, 18 days after the close of the filing window.¹³ Yakutat immediately sought a waiver of the filing deadline from the Commission,¹⁴ even before USAC formally denied Yakutat's application for filing its FCC Form 471 outside the funding window.¹⁵ In its waiver request, the only justification Yakutat offered for its late filing was that it had hired a new business manager in June 2010 who was unfamiliar with the E-rate filing requirements.¹⁶ On July 27, 2011, the Bureau, acting on delegated authority, denied Yakutat's request for waiver, finding that Yakutat did not meet the waiver standard previously set forth by the Commission because Yakutat filed its application more than 14 days after the close of the filing window and it did not present any special circumstances to justify a waiver.¹⁷

6. On September 4, 2011, Yakutat filed a petition for reconsideration.¹⁸ Under the Commission's rules, petitions for reconsideration must be filed within 30 days after the release of the Bureau's decision.¹⁹ Therefore, the Bureau dismissed Yakutat's petition for reconsideration on the basis that it was filed more than 30 days after the release of the order denying Yakutat's waiver request.²⁰

7. On October 6, 2011, Yakutat filed a second petition for reconsideration that was nearly identical to its previous filings.²¹ The Bureau has the authority to dismiss petitions for reconsideration that plainly do not warrant consideration by the Commission.²² The Bureau, acting on delegated

¹¹ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Allenstown Public Library et al., Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, DA 13-1701 (Wireline Comp. Bur. Aug. 2, 2013); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Accelerated Learning, Inc. et al., Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 6947 (Wireline Comp. Bur. 2013); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ashtabula Area City Schools et al., Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 4051 (Wireline Comp. Bur. 2013); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by A.C.E. Charter High School et al., Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 15907 (Wireline Comp. Bur. 2012) (all orders finding special circumstances to grant waiver requests that met the *Academy of Math and Science Order* standard and denying waiver requests that did not).

¹² Funding Year 2011 FCC Form 471 Window Dates.

¹³ See Letter from USAC, Schools and Libraries Division, to Ricardo Tejada, Yakutat School District (dated July 11, 2011) (FCC Form 471 Out of Window Letter).

¹⁴ Letter from Ricardo Tejada, Business Manager, Yakutat School District, to the Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed April 12, 2011) (Request for Waiver).

¹⁵ FCC Form 471 Out of Window Letter.

¹⁶ Request for Waiver at 1.

¹⁷ *Beaver Area Memorial Library Order*, 26 FCC Rcd at 10323, Appendix D.

¹⁸ Letter from Rod Schug, Superintendent, Yakutat School District, to the Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Sept. 4, 2011) (First Petition for Reconsideration).

¹⁹ 47 C.F.R. § 1.106(f).

²⁰ *First Order on Reconsideration*, 26 FCC Rcd at 13004, para. 2.

²¹ Letter from Rod Schug, Superintendent, Yakutat School District, to the Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Oct. 6, 2011) (Second Petition for Reconsideration).

²² 47 C.F.R. § 1.106(p); see also *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, GC Docket No. 10-44, Report and Order, 26 FCC Rcd 1594, 1606-

authority, dismissed Yakutat's second petition for reconsideration on the basis that it relied on arguments that failed to identify any material error, omission, or reason warranting reconsideration and relied on arguments that had been fully considered and rejected by the Commission within the same proceeding.²³ On October 5, 2012, Yakutat filed the instant application for review, seeking full Commission review of the Bureau's previous decisions.²⁴

8. *Denial.* In its Application for Review, Yakutat acknowledges that it submitted its application for E-rate funding 18 days after the filing window closed.²⁵ Yakutat again explains missing the E-rate application deadline because eight months before the deadline for filing the funding year 2011 E-rate application, Yakutat hired a new business manager who had no prior experience with or training on the E-rate program and a heavy workload.²⁶ Yakutat also argues in its Application for Review that the E-rate application process is complicated and that the error in timely filing the FCC Form 471 is the type addressed by the Commission in the 2006 *Bishop Perry Order*.²⁷ Finally, Yakutat says that the denial of E-rate funding will have an adverse financial impact on the school district.²⁸ We find these arguments unpersuasive. Yakutat's explanation for why it failed to file its FCC Form 471 within the filing window does not present such special circumstances warranting a waiver of the FCC Form 471 filing window deadline.²⁹ Specifically, we find that Yakutat filed its FCC Forms 471 more than 14 days after the FCC Form 471 filing window deadline and did not miss the deadline due to staff illness or a death in the family, nor does it allege that the late filing was due to other circumstances beyond its control.³⁰ Instead, Yakutat's only justification for its late filing is that an inexperienced staff member was charged with E-rate responsibilities. As such, Yakutat's petition does not meet the waiver standards established by the Commission for late-filed FCC Forms 471. Indeed, if ordinary difficulties associated with filing an FCC Form 471 were grounds for a waiver, waiver could be warranted for every conceivable violation of the filing deadline.³¹ We also find that Yakutat's financial hardship argument fails to justify a waiver of our rules. We have consistently held that the assertion of financial need of the applicant and the detrimental impact a denial of support will have on the students who make use of the services does not meet the requirement of special circumstances that warrant a waiver of the Commission's rules.³² We therefore

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07, paras. 27-28 (2011) (authorizing bureaus to dismiss petitions for reconsideration of Commission action that are procedurally defective).

²³ See 47 C.F.R. § 1.106(p)(1), (3); *Second Order on Reconsideration*, 27 FCC Rcd at 10868-69, para. 1.

²⁴ Yakutat Application for Review.

²⁵ *Id.* at 2.

²⁶ *Id.* at 2-3.

²⁷ *Bishop Perry Order*, 21 FCC Rcd at 5316, para 1 (granting waivers to applicants who missed the FCC Form 471 filing window deadline due to various reasons).

²⁸ Yakutat Application for Review at 2.

²⁹ See *Academy of Math and Science Order*, 25 FCC Rcd at 9261-62, para.13.

³⁰ *Id.*

³¹ See *Bishop Perry Order*, 21 FCC Rcd at 5320, para. 9 (cautioning that waivers "should not be read to mean that applicants will not be required in the future to comply fully with our procedural rules, which are vital to the efficient operation of the E-rate program").

³² See, e.g., *Application for Review of a Decision of the Wireline Competition Bureau by Mescalero Apache School, Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 20 FCC Rcd 5848, 5850, para. 5 (2005); *Request for Review by Northern Waters Library Service, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 1756, para. 7 (Com. Car. Bur. 2002) (both orders noting that financial need does not meet the requirement of special circumstances that warrant a waiver of the Commission's rules).

deny in part Yakutat's Application for Review with respect to its arguments previously raised with and denied by the Bureau.

9. *Dismissal.* In its Application for Review, Yakutat also raises new arguments that it did not raise in its previous filings. Specifically, Yakutat now argues that the 14-day waiver window cutoff is arbitrary and unfairly harsh, especially to small rural school districts with limited resources.³³ Yakutat proposes that the Commission should grant waivers to small districts with less than 200 students which file their FCC Form 471 late up to 28 days past the FCC Form 471 deadline.³⁴ Also, while acknowledging that its First Petition for Reconsideration was late-filed, Yakutat notes that the Bureau waited to mail notice of the underlying decision until August 4, 2011, eight days after the decision was released.³⁵ The Commission's rules specify that "[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass."³⁶ We therefore conclude that, because Yakutat did not afford the Bureau an opportunity to address the arguments raised in its Application for Review, we will not consider those arguments at this stage of the process.³⁷ We therefore dismiss in part Yakutat's Application for Review with respect to its new arguments that it did not previously raise with the Bureau.

10. *Alternative Arguments Denial.* As noted above, Yakutat makes two additional arguments. As an alternative and independent basis for rejecting Yakutat's request for waiver of the Commission's rules via dismissal of its Application for Review, we deny the request on the merits. Yakutat argues that the Commission should grant waivers to small districts with fewer than 200 students that file their FCC Form 471 late up to 28 days past the FCC Form 471 deadline.³⁸ As the Commission has observed, E-rate program procedural rules, including deadlines for form submissions, are vital to the efficient operation of the E-rate program.³⁹ Indeed, the Commission noted in *Bishop Perry Order* that its decision to waive the FCC Form 471 deadline in certain cases was of a "limited nature."⁴⁰ Furthermore, the Commission's current waiver standard takes into consideration the hardships that small school districts face.⁴¹ We find that the fact that a school district has fewer than 200 students, without other special circumstances justifying a waiver, does not warrant extending FCC Form 471 waiver deadline to 28 days. We therefore decline to extend waivers of the FCC Form 471 deadline to school districts with less than 200 students which file their forms up to 28 days past the FCC Form 471 deadline.

³³ Application for Review at 4-5.

³⁴ *Id.*

³⁵ *Id.* at 3.

³⁶ 47 C.F.R. § 1.115(c). The note to section 1.115(c) states that "new questions of fact or law may be presented to the designated authority in a petition for reconsideration." *Id.*

³⁷ *Id.*

³⁸ *Id.* Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. 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. *Northeast Cellular*, 897 F.2d at 1166.

³⁹ *Bishop Perry Order*, 21 FCC Rcd at 5320, 5327, para 9, 26.

⁴⁰ *Id.* at 5327, para. 26.

⁴¹ *Id.* at 5323, para. 14 (finding good cause to waive the deadline for filing the FCC Form 471 in specific cases because, among other things, the limited staffing resources "especially in small school districts").

11. Yakutat also argues, in the alternative, that its First Petition for Reconsideration should have been considered timely because the Bureau waited eight days after the decision was released to mail personal notice of the underlying decision.⁴² We find this argument unavailing. Under the Communications Act of 1934, as amended (“Act”) and the Commission’s rules, any petition for reconsideration must be filed within 30 days from the date upon which public notice is given of an action or decision for which reconsideration is sought.⁴³ The Commission’s rules provide that the date of public notice of a non-rulemaking document is the date of the document’s release.⁴⁴ Section 405 of the Communications Act contains no requirement of personal notice and no provision for the delay of the 30-day deadline. Thus, Section 405(a) “is entirely clear that the 30-day filing period runs ‘... from the date upon which public notice is given.’”⁴⁵ In the case at hand, public notice occurred when the Bureau released its order to the public on July 27, 2011.⁴⁶ Yakutat was required to file its petition for reconsideration no later than August 26, 2011. Yakutat, however, filed its First Petition for Reconsideration on September 4, 2011. Thus, Yakutat’s petition was filed after the filing deadline established by statute and was properly dismissed by the Bureau.

12. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.115 of the Commission’s rules, 47 C.F.R. § 1.115, that the Application for Review filed by Yakutat School District, Yakutat, Alaska, on October 5, 2012, as to the arguments previously presented to the Bureau, IS DENIED, and, as to arguments not previously presented to the Bureau, IS DISMISSED and, as an alternative and independent basis, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴² Application for Review at 3.

⁴³ 47 U.S.C. § 405(a) provides that a “petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.” Section 1.106(f) of the Commission’s rules implements section 405(a) and provides that the “petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action.” 47 C.F.R. § 1.106(f).

⁴⁴ 47 C.F.R. § 1.4(b)(2).

⁴⁵ *Gardner v. FCC*, 530 F.2d 1086, 1091 (D.C. Cir. 1976) (quoting 47 U.S.C. § 405(a)); see also 47 C.F.R. § 1.106(f).

⁴⁶ Copies of the order were placed on the press table at Commission headquarters and publicized the next day in the Daily Digest. See Federal Communications Commission Daily Digest, Texts, available at http://transition.fcc.gov/Daily_Releases/Daily_Digest/2011/dd110728.html (last visited Dec. 11, 2013). Commission rules provide that the date of public notice of a non-rulemaking document is the date of the document’s release. 47 C.F.R. § 1.4(b)(2).