

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	WC Docket No. 02-6
)	
Schools and Libraries Universal)	
Service Support Mechanism)	
)	
Request for Review by NextEra FiberNet, LLC)	
of the Universal Service Administrative Company)	
Administrator's Decision on Appeal)	

Request for Review and Petition for Waiver

Patrick D. Crocker
Crocker & Crocker
107 W Michigan Avenue, 4th Floor
Kalamazoo, MI 49007

October 21, 2016

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Request for Review and Petition for Waiver

Pursuant to Sections 1.3 and 54.719 of the Commission’s rules, NextEra FiberNet, LLC (“FN”), hereby requests review of and appeals the Administrator’s Decision on Appeal – Funding Year 2014-2015 of the Universal Service Administrative Company (“USAC”) denying the appeal by FN and funding to FN, and Harlandale Independent School District (“School”), and petitions for waiver of the Commission’s rule requiring an appeal of a USAC decision within 60 days of the date on the Decision Letter being appealed.

This Request for Review and Petition for Waiver involves straightforward, factual and procedural issues. Importantly, USAC denied the appeal submitted by FN August 16, 2016 stating that the appeal was postmarked more than 60 days after the decision letter being appealed. However, FN never received the Decision Letter dated November 12, 2015 identified in the Administrator’s Decision on Appeal. Indeed, FN submitted the appeal in August 2016 in response to receiving separate notice of the denial of the Invoice.

In this instance, USAC rejected invoices and denied \$149,090.00 in funding, without regard to FN's continued correspondence with the USAC staff requesting information, and USAC's failure to respond to FN submissions and inquiries. Importantly, USAC makes no allegations challenging whether FN delivered the services, and no allegations of any misuse of funds or violations of any core program. Further, USAC makes no allegations of wrongdoing by either FN or School.

The underlying issue arises due to minor ministerial and clerical errors. Specifically, FN included an incorrect FRN with the original invoice, and may have included more than one line item on the invoice. The Commission routinely allows applicants to correct these types of errors. The issue of appeal arises due to the fact FN did not receive the Decision Letter dated November 12, 2015.

In view of the circumstances, FN requests that the Commission allow FN an opportunity to fully respond to any applicable open USAC information requests, direct USAC to process the invoices FN submitted, allow FN to correct ministerial and clerical errors associated with the School invoices, and to the extent necessary, grant any waivers so that the funding for FN and the School may prove successful.

I. BACKGROUND

FN serves the School as part of the E-rate program. In Funding Year 2014, FN delivered over \$73,319.73 in services to the School. In September of 2015, FN filed for reimbursement for the 2014-2015 school year. Attached as Exhibit A, please find the Declaration of Lisette Mauri supporting this averment and other facts in this case.

On October 26, 2015, FN received email from Ankit.Majmudar@sl.universalservice.org for clarification on Invoice 2265960. Attached as Exhibit B please find a copy of the email received. In response to issues raised by Ankit Majmudar, on October 28, 2015, FN requested that Invoice 2265960 be cancelled, and provided notice that Invoice 2279320 had been submitted for processing. A copy of the email requesting cancellation and submission of Invoice 2279320 appears as Exhibit C hereto. FN received no response from USAC until November 30, 2015, when FN received emails of denial letters indicating that FN hadn't responded to the previous request. On November 30, 2015, FN called USAC and opened a

Case (#30229), and emailed Ankit requesting a response. A copy of this email including denial emails appears as Exhibit D hereto. FN received no response to this email from Ankit Majmudar.

On July 13, 2016, FN followed up with USAC for payment. According to USAC, FN failed to receive the other part of payment because USAC did not receive a response from FN after November 2, 2015.

Importantly, FN never received the Decision Letter dated November 12, 2015. On August 16, 2016, FN requested an appeal of rejected invoices. A copy of the Appeal appears as Exhibit E hereto.

On August 23, 2016, USAC issued the Administrator’s Decision on Appeal – Funding Year 2014-2015. A copy of the Administrator’s Decision on Appeal appears as Exhibit F hereto.

The relevant information concerning the unpaid invoices follows:

SPIN	143036269
Billed Entity Number	141545
Form 471 Application Number	957585
FRN	2769470
FUNDING YEAR	2015-2016
School and Libraries Division (“SLD”) Invoices	2279320, 2265960

II. ARGUMENT AND LAW

a. COMMISSION ROUTINELY ALLOWS CARRIERS OPPORTUNITY TO RESPOND TO USAC REQUESTS FOR INFORMATION

It is well settled that FN and the School should have an opportunity to correct any issues and delays in providing some documents in response to a USAC request for information, particularly when the Applicant remains in continued communication, has provided documentation, and is seeking in good faith to provide all requested documentation.¹ As the Commission explained, this type of appeal “involve(s) a procedural error,... not a failure to adhere to a core program requirement or a misuse of funds.”² Because “any violations that occurred were procedural, not substantive,” the Commission found “that the complete

¹ See *Alpaugh Unified*.

² See *Alpaugh Unified*.

rejection of these applications (wa)s not warranted.³ The Commission found that rejecting funding because of a “processing deadline, not a program rule, unnecessarily deprived schools of funding and does not serve the public interest.”⁴

Indeed, the Commission instructed USAC to continue working with applicants after the targeted deadline and to develop better procedures to address problems similar to the case at bar. In particular, where, as here, an applicant is working with USAC and continuously in contact to submit requested paperwork, the Commission explained that “USAC shall continue... to work beyond the 15 days with applicants.”⁵ Anticipating the problem in this instance, stemming from lack of direct communication—the Commission directed “USAC to develop outreach procedures designed to better inform applicants of the additional information that may be needed and to provide applicants with a 15-day opportunity to respond to such request.”⁶

The Commission repeatedly reaffirmed these principles and allowed parties another opportunity to respond.⁷

In this instance, the record demonstrates that FN continued working to address deficiencies with the submitted invoice without regard to USAC’s lack of response, and without knowledge of the November 12, 2015 Decision Letter. Action by FN during this period demonstrates that FN was unaware of this November 12, 2015 Decision Letter. FN worked continuously acting in good faith to provide documentation. As such, rejection of the invoices and funding is not warranted.

³ See *Alpaugh Unified*.

⁴ See *Alpaugh Unified*.

⁵ See *Alpaugh Unified*, paragraph 6, n.14.

⁶ See *Alpaugh Unified* at paragraph 1.

⁷ See, eg. *Requests for Review of Decisions of the Universal Service Administrator by Ben Gamla Palm Beach Boyton Beach, Florida et al.*, Order, 29 FCC Rcd 1876 (2014)

b. COMMISSION ROUTINELY ALLOWS CARRIERS OPPORTUNITY TO CORRECT CLERICAL AND MINISTERIAL ERRORS

The Commission rejected the original Invoice as FN included the incorrect FRN. Thereafter, FN discovered that USAC rejected the Invoice stating that the “Service Provider did not respond” and “more than one line item on Invoice.” At no time during this exchange was FN aware of the November 12, 2015 Decision Letter. The Commission routinely allow applicants to correct such ministerial and clerical errors. For example, in the Commission’s *Ann Arbor Order*, the Commission allowed an applicant to correct a simple calculation error.⁸ And the Commission will waive filing deadlines for good cause shown if applicant appeal within a reasonable period of time after actual notice of the error.⁹ As indicated in the Statement of Ms. Mauri, USAC’s failure to respond precluded FN from having an opportunity to correct the errors in the Invoice.

c. FN REQUESTS A WAIVER OF THE 60 DAY DEADLINE TO APPEAL USAC DECISIONS

The Commission may waive its rules for “good cause shown.”¹⁰ A waiver is appropriate “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹¹ In considering waiver requests, the Commission may “take into account considerations of hardship, equity, or more effective implementation of overall policy.”¹² Waivers may be granted where, “[i]n view of unique

⁸ See *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools et al.*, Order, 25 FCC Rcd 1731 paragraph 2 and n. 11 (WCB 2010)(“Ann Arbor Order”).

⁹ See e.g. *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Assabet Valley Regional Vocational District*, Order 27 FCC Rcd 1924 Paragraph 1 and n. 4 (WCB 2012).

¹⁰ 47 C.F.R. §§ 1.3; see also 47 C.F.R. § 1.925(b)(3).

¹¹ *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). See also 47 C.F.R. § 1.925(b)(3)(i).

¹² See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (“*WAIT Radio*”). See also *Request for Review of the Decision of the Universal Service Administrator by Tekoa Academy of Accelerated Studies*, Order, 23 FCC Rcd 15456, 15458 ¶ 5 (WCB 2008).

or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”¹³

Good cause exists to grant FN a waiver of the 60 day rule in this case. FN was unaware of the issuance of the November 12, 2015 Decision Letter and continued dialogue in good faith in an effort to correct deficiencies with the invoice obtaining funding. As a result of the USAC’s denial to consider the FN appeal, FN will not be able to recover \$149,090.00 in reimbursement. The end result is financial hardship for FN and the School.

The Wireline Competition Bureau has “found that there is good cause” to waive universal service filing deadlines where “the missed deadlines were the result of minor ministerial, clerical, or procedural errors,”¹³ as was the case here. In particular, some of these grants specifically involved filing deadlines that were missed as a result of errors or misunderstandings on the part of the personnel responsible for making the filing, or handling the filing with USAC. Because FN has made a showing of good cause equivalent to the petitioners’ showings in Hargray, it too should be granted a waiver.

The Commission also has found good cause to waive universal service filing deadlines where the missed filing deadline would cause the filer financial hardship.¹⁴ As noted above, the denial of this appeal by USAC will result in loss of \$149,090.00 in funding and thereby cause FN and the School financial hardship. Consistent with precedent, the Commission should find that this represents good cause justifying a waiver.

¹³ 47 C.F.R. § 1.925(b)(3)(ii).

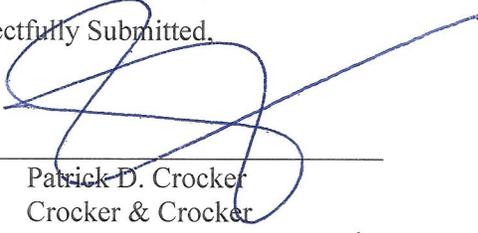
¹⁴ See, e.g., Hargray Petition at 3-4; Cross Wireless Petition at 2; Windstream Petition at 3; Twin Valley Telephone Petition for Waiver, WC Docket No. 08-71 (filed Aug. 9, 2010) at 2, *granted in Jan. 11 Waiver PN*.

III. CONCLUSION

For the foregoing reasons, FN requests: (1) an opportunity to fully respond to all USAC requests for information so that FN and the School can receive the funding owed; (2) the Commission to direct USAC to process the School invoices submitted by FN; (3) an opportunity to correct ministerial and clerical errors associated with the School invoices; and (4) a waiver of the Commission's rule requiring an appeal of a USAC decision within 60 days.¹⁵

Respectfully Submitted,

By: _____


Patrick D. Crocker
Crocker & Crocker
107 W Michigan Avenue, 4th Floor
Kalamazoo, MI 49007

October 21, 2016

¹⁵ See 47 C.F.R. 54.720.

Before the
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In the Matter of) WC Docket No. 02-06
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Schools and Libraries Universal)
Service Support Mechanism)
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Request for Review and/or Waiver by NextEra)
FiberNet, LLC of Funding Decision of the)
Universal Service Administrative Company)

DECLARATION OF MELISSA CORREA

I, Melissa Correa, declare under penalty of perjury under the laws of the United States of America as follows:

1. My name is Melissa Correa. My business address is 9250 W Flagler Street, Room 5050, Miami Florida 33174.
2. I am employed as a Senior Customer Accounting Representative at NextEra FiberNet, LLC.
3. My office handles E-Rate invoicing and correspondence with the Universal Service Administrative Company ("USAC") with regard to invoicing issues.
4. I have reviewed the foregoing Request for Review and Petition for Waiver and confirm that it is a true and correct version of the relevant events to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed: October 21, 2016



Melissa Correa