Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Petition for Waiver of Commission Rules by	)	CC Docket No. 02-6
KIPP Tulsa Academy	)	File No. FCC Application Number 1043369
Schools and Libraries Universal Service Support Mechanism	)	

To: Federal Communications Commission

KIPP TULSA ACADEMY
PETITION FOR WAIVER

KIPP Tulsa Academy ("KIPP")[1], pursuant to Section 54.719(c) of the Federal Communications Commission's ("FCC") rules,[2] hereby submits this petition for waiver of Commission rules so that KIPP may receive E-rate program funds for services paid for and received.

I. INTRODUCTION

As discussed more fully below, KIPP requested and the Universal Service Administrative Company ("USAC") committed program support for E-rate-eligible equipment. The service provider delivered the equipment, and KIPP issued payment for its non-discount portion. But as KIPP prepared to invoice USAC, it discovered the vendor had not filed the required FCC Form 473 – Service Provider Annual Certification ("Form 473" or "SPAC"). KIPP repeatedly requested that the service provider file the certification, yet the vendor failed to file the form before the invoice deadline. KIPP's reimbursement request was ultimately denied because, according to USAC, it is prohibited from issuing payment unless

[1] Billed Entity Number 16037392.
[2] 47 C.F.R. § 54.719(c) (permitting parties seeking waivers of the Commission's rules to seek relief directly from the Commission).

the service provider listed on the FCC Form 472 (“Form 472” or “BEAR”) has filed the annual certification form.

The underlying application and BEAR form in this case were filed in funding year 2015, before USAC was authorized to issue reimbursement payments directly to applicants. Service provider involvement was consequently required to pass BEAR payments to the applicant. But, as USAC has made clear, it cannot issue reimbursement payments if the service provider has not filed its annual certification. This is the predicament in which KIPP – through no fault of its own – now finds itself.

Under USAC’s “Good Samaritan” procedure, it could assist applicants in such situations obtain BEAR payments through a “Good Samaritan” provider. It is unclear, however, whether the Good Samaritan procedure remains in effect and available to applicants. In any event, it does not appear the procedure has been revised to reflect recent changes to E-rate invoicing procedures. Because USAC may not issue payment to an applicant if the service provider fails to submit the required SPAC, and because USAC appears to have eliminated the Good Samaritan procedure, applicants in certain instances are effectively barred from collecting reimbursement for products and service paid for and received, as demonstrated by the facts and circumstances of this case.

KIPP now respectfully requests that the Commission (1) direct USAC to issue reimbursement to KIPP in the amount of $7,998.08, using any procedure or means available, (2) instruct USAC to revise or replace its Good Samaritan procedure or implement new safeguards, and (3) to the extent necessary, waive Section 54.504(f)[3] and any other of the Commission’s rules as are necessary to grant the requested relief. Given the uncertainty surrounding the Good Samaritan procedure, KIPP also requests that the Commission provide guidance on the issue and advise of any administrative remedies available for applicants moving forward.

[3] 47 C.F.R. § 54.504(f) (requiring all service providers eligible to provide telecommunications and other supported services under Subpart I of the Commission’s rules to submit annually a completed FCC Form 473 to the Administrator).

II. BACKGROUND

On April 2, 2015, KIPP entered into an agreement with Integrated Business Technologies, LLC ("IBT")[4] for the provision of wireless local area network ("LAN") components (access points, controllers, and related components).

KIPP filed its FCC Form 471 on April 14, 2015, requesting E-rate program discounts for the LAN equipment. At the time of filing, USAC had assigned IBT a service provider identification number ("SPIN"), and IBT was in good standing with the Administrator. The funding commitment request totaled $7,998.08, and, on July 6, 2015, USAC approved the application as submitted.

IBT delivered the LAN components, as agreed, and KIPP issued payment to the service provider. As KIPP prepared to submit invoices to USAC, however, it discovered that IBT had not filed its annual certification for funding year 2015. KIPP requested an invoice deadline extension to allow IBT to submit the SPAC, and USAC granted the request, extending the Last Date to Invoice to December 11, 2017.

In November 2017, KIPP began asking the service provider to file the certification form. KIPP emailed IBT on November 15, 2017, and then again on November 27, 2017, urging it to file the SPAC. KIPP even provided directions and the USAC link for filing. From mid-November to mid-December 2017, KIPP also called the vendor multiple times insisting that it file the form. Still, IBT did not file the SPAC.

In effort to meet the December 11, 2017 deadline, KIPP filed a Form 472 on the last date to invoice, though it was aware IBT had yet to file the certification form. On December 20, 2017, KIPP received a Form 472 (BEAR) Notification Letter informing it that USAC denied the reimbursement request. USAC provided the following explanation for the denial: "Service Provider Not Certified."

To date, IBT has not filed its annual certification form. Because USAC committed the funds, KIPP paid for the requested equipment, and the vendor no longer participates in the E-rate program, there is no indication the service provider will at any point file the requisite certification.

[4] Service Provider Identification Number 143035138.

III. DISCUSSION

A. Good Cause Exists for the Commission to Grant the Requested Waiver.

KIPP maintains that it complied with program requirements and Commission rules in every respect. Yet, if the Commission deems it necessary to grant KIPP's requested relief, a waiver of Section 54.504(f) and any other Commission rules as are necessary is appropriate given the facts and circumstances of this case.

At the time the Form 471 was filed, IBT had been issued a SPIN and was in good standing with USAC. KIPP confirmed as much even before selecting IBT as its service provider. KIPP timely filed the Form 471. It issued payment to IBT upon delivery of the equipment. It even complied with program deadlines by invoicing USAC for the requested equipment before the last date to invoice (although it was aware that IBT failed to file the SPAC).

The service provider in this case, however, violated and intentionally disregarded program rules by failing to file the SPAC, despite KIPP repeatedly urging it to submit the certification. Unfortunately, when KIPP discovered that IBT had not filed the form, USAC had committed the funds, IBT had delivered the equipment, and KIPP had issued payment for the equipment. Because the service provider no longer desired to participate in the E-rate program, neither KIPP nor the prospect of being in violation of program rules could compel IBT to file the form. Beyond requesting, then insisting, that the service provider file the SPAC, and complying independently with program requirements, it is difficult to imagine what more KIPP might have done in this case.

B. The Commission should provide guidance on the Good Samaritan procedure and instruct USAC to replace or revise the procedure.

USAC implemented the Good Samaritan procedure to address specific situations in which a funding commitment has been approved, services have been rendered and paid for by the applicant, but the service provider is unable to receive BEAR payments. KIPP now finds itself in one of these very situations: USAC issued a funding commitment, the LAN equipment was delivered and paid for by KIPP, but IBT is unable (or in this case, *unwilling*) to receive BEAR payments. It remains unclear whether applicants may still avail themselves of the Good Samaritan procedure, given the removal of related information on USAC's web site and the approaching obsolescence of the procedure with recent changes to invoicing rules. What is certain, however, is that instances remain where either the Good Samaritan procedure or a similar safeguard is necessary to protect schools and libraries.

Within the last year, USAC removed all mention of the Good Samaritan procedure from its web site, and it appears applicants no longer have the option to request that USAC designate a Good Samaritan provider. If the Good Samaritan procedure is no longer in effect, USAC and/or the Commission should make that clear. As this case demonstrates, though, instances remain where applicants have not yet received reimbursement from funding years preceding the Commission's *Modernization Order*.[5] Therefore, the Commission should also direct USAC to implement a new procedure in order to reimburse applicants in KIPP's situation – i.e., schools or libraries who through no fault of their own are unable to receive reimbursement payments because of actions attributable to the service provider. Although such safeguards may not be necessitated often, the consequences are far too significant for applicants whose original service providers are unable to process reimbursement payments.

If the Good Samaritan option does remain in effect, the Commission and/or USAC should also make that clear. The Commission should also direct USAC to revise existing procedures to agree with recent changes to its invoicing procedures. Under former E-rate invoicing procedures, once an applicant submitted a request for reimbursement, USAC would issue payment to the service provider, and the service provider would in turn pass the funds to the applicant. USAC has since streamlined the invoicing process, allowing applicants to receive payment from USAC directly to a designated bank account.[6] Because funds are now deposited directly, there is no reason to require a Good Samaritan provider when the original provider has delivered services and the applicant is simply awaiting payment from USAC.

[5] *See Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014) (revising sections 54.504 and 54.514 of the Commission's rules to allow applicants paying the full cost of E-rate supported services to a service provider to receive direct reimbursement from USAC, beginning with funding year 2016) ("*Modernization Order").*
[6] See *Modernization Order* at para. 232.

Under these circumstances, USAC in effect takes the place of the Good Samaritan provider and may issue payment to the applicant without passing the funds through a substitute provider. While USAC updated and streamlined its invoicing methods to include direct payment to applicants, it appears to have failed to update or replace its Good Samaritan procedure. For this reason, it is imperative that the Commission instruct USAC to promptly revise or replace the procedure.

IV. RELIEF SOUGHT

For the foregoing reasons, KIPP respectfully requests that the Commission (1) direct USAC to issue reimbursement to KIPP in the amount of $7,998.08, using any procedure or means available, (2) instruct USAC to revise or replace its Good Samaritan procedure or implement new safeguards, and (3) to the extent necessary, waive Section 54.504(f) and any other of the Commission's rules as are necessary to grant the requested relief.

Respectfully submitted *on behalf of*
KIPP Tulsa Academy

By: Andrea Murrell
Director of School Operations

KIPP Tulsa Academy
1661 E. Virgin Street
Tulsa, OK 74106

amurrell@kipptulsa.org
(918) 794-8652

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