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May 18, 2018

Marlene H. Dortch
Secretary Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

CC Docket No. 02-6

Subject: Kentucky Department of Education Request for Waiver of 60 Day Appeal Deadline

Billed Entity Number: 128821
Applicant: Kentucky Department of Education
Funding Year: 2016
Form 471: 161058891
FRN: 1699139228
Appeal #: 44531

Ms. Dortch,

Request:

The Kentucky Department of Education hereby requests a waiver of the 60 day appeal deadline to appeal the USAC decision made on Appeal # 44531. The USAC decision date is 10/14/17.

Background:

The Kentucky Department of Education (KDE) annually files a statewide consortium application for the state's high-speed broadband network which connects all 173 school districts in the state. With the advent of the Erate Productivity Center (EPC) new challenges emerged with the preparation and presentation of these applications.

During the Funding Year 2016 application window KDE discovered what USAC later agreed is a design flaw. The problem occurs because EPC automatically assumes 12 months of service for all recurring services. This is likely helpful for applicants seeking a full 12 months of service at the same service level. However, for numerous reasons – including consulting with USAC officials about this approach – KDE files separate funding requests for each month of service rather than for all 12 months in a single funding request.

For KDE, entering the **actual** contract expiration date in the EPC Form 471 for the FRN resulted in artificially inflated funding request amounts (from 2 to 12 times the intended funding request) for all but two of the FRNs on the application. This is because the system automatically computes the number of months of service based on the contract expiration date and does not provide an option to identify the number of months associated with the funding request. As a result, in order to force EPC to accurately calculate the total cost of an FRN filed for a single month of service it is necessary to enter the last day of the month of service into the field marked “What is the date your contract expires for the current term of the contract” on the page where applicants are required to associate a contract with the FRN. (The referenced page is shown below.)

Pricing Confidentiality

There is no rule, statute, or other restriction which prohibits publication of the specific pricing information for this contract.

Contract Information (Additional)

What is the service start date? ⓘ *

Enter the date when services will start for this Funding Year

What is the date your contract expires for the current term of the contract? ⓘ *

FCC Form 471 Help

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Therefore, in order to request the correct amount of funding, KDE was forced to enter the last day of the month of service in that field rather than the contract expiration date for each FRN. Only then would EPC correctly calculate the amount of funding actually being requested. Being aware that this was not an accurate contract expiration date, upon the close of the application window KDE filed a set of RAL corrections to reset that field for each of the FRNs on the application. USAC processed all but two of the requested RAL corrections. As a result, it became necessary for KDE to file an appeal in order to get the final two corrections made. This was appeal #44531. Most of this process took place after Application #161058891 was issued a funding commitment on June 10, 2017. When this appeal was granted, KDE was unaware of and was not notified that any other part of the application had been altered. Importantly, the appeal notification letter did not indicate any other changes in the funding request that had been made. Apparently, however, when the appeal was processed, unbeknownst to KDE, the service start date on FRN 1699139228 for this FRN had been changed from the original service start date of 5/1/2017 to 6/1/2017. Being that this FRN was for the May 2017 service period, this change caused downstream problems.

On 12/8/17, when KDE attempted to file a Billed Entity Applicant Reimbursement (BEAR) Form with USAC for reimbursement on FRN 1699139228, the invoice request was denied. The reason provided for the denial was that the service start date on the BEAR did not match the service start date on the associated Form 486. KDE reviewed its documentation and found no such mismatch. The BEAR, the originally filed Form 471, and the Form 486 all showed the service start date of 5/1/17. KDE then reached out to USAC’s Client Services Bureau (CSB) for assistance in determining why the reimbursement was denied. CSB replied only with the

same information that was provided in the explanation of the BEAR denial letter, that the service start date on the BEAR did not match that of the Form 486. After continued discussions with and at the behest of CSB, KDE filed a second BEAR form on 2/12/18 for the same FRN, which with the same results. Throughout the process on no fewer than three different occasions, KDE reached out to CSB for assistance in determining the reason for the continued denials. CSB could not figure out why this kept occurring and provided no substantive resolution to the issue.

By this time the (already extended) invoicing deadline (2/22/18) was drawing near, so KDE directly reached out to high-level USAC personnel for help in determining the cause of the problem. USAC personnel were able to view the comments of the original reviewer for Appeal #44531 which were not accessible to KDE nor, apparently, to any of the CSB personnel with whom we spoke and corresponded. Through these comments it was determined that the original appeal reviewer made an unrequested change to the service start date of FRN 1699139228 from the originally filed and approved service start date of May 1, 2017 to June 1, 2017, thereby creating the mismatch of the service start dates of the 471, the 486, and the BEARs KDE had attempted to file. At no time did KDE ever request changes to service start dates on the 471. The only changes requested through the original appeal were to the contract expiration dates. Upon determining the cause of the problem, KDE has been in discussions with USAC regarding how this issue can be suitably resolved. KDE suggested it could file an appeal of one of the BEAR filings. It was also suggested that USAC could file an internal appeal, a method which has been used to correct other issues not directly related to this matter. These methods were ultimately rejected because in a May 7, 2018 discussion with USAC officials, USAC confirmed that the only way to correct this problem is to appeal the original decision on Appeal #44531, which was handed down on 10/14/17. By the time the problem was identified in late it was too late to file an appeal directly with USAC due to the passing of the 60 day deadline for appealing USAC decisions. Therefore, as advised by USAC, KDE seeks a waiver of the FCC rule limiting the time to appeal USAC decisions to 60 days so that KDE can file an appeal with USAC in order to correct the unrequested change.

KDE personnel are available to provide any clarifications or answer any questions in the consideration of this request.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Mike Leadingham". The signature is fluid and cursive, with the first name "Mike" and last name "Leadingham" clearly distinguishable.

Mike Leadingham
Director, Office of Education Technology
Kentucky Department of Education
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