

METROPOLITAN SCHOOL DISTRICT OF MT. VERNON
1000 WEST FOURTH STREET • MT. VERNON, INDIANA 47620-1696
PHONE 812-838-4471 • FAX 812-833-2078

LOREN E. EVANS
Director of Business and Technology
evansle@mvschool.org

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Federal Communications commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Appeal of a USAC Funding Decision

CC Docket No 02-6 – In the Matter of Schools and Libraries Universal Service Support Mechanism

Billed Entity Name:	MSD Mount Vernon
Billed Entity Number:	130698
471 Number:	161044673
FRNs:	1699099814, 1699099887, 1699108527, and 1699108537

Dear Ms. Dortch:

We are appealing to the FCC a recent denial of a requested service delivery extension made by USAC staff about four FY 2016-2017 FRNs.

SUMMARY

The Metropolitan School District of Mount Vernon (the MSDMV) applied for E-Rate funding to cover Category Two eligible installation work necessary to upgrade the networks in their five instructional buildings. Due to delays in the receipt of the approval of this funding (FCDL attached), this work was not completed by the service delivery deadline (September 30, 2017).

The MSDMV filed an FCC Form 500 (attached) requesting that this service delivery deadline be extended. The Form 500 was filed before the service delivery deadline and cited a valid reason for the request—that the project was delayed for reasons beyond the service provider's control.

We respectfully request that the FCC overturn USAC's decision or grant a waiver of its rules so the MSDMV be allowed to receive funding for the few thousand dollars' worth of work completed after the September 30 deadline.

BACKGROUND

The MSD of Mount Vernon (MSDMV) planned a full network upgrade for their five instructional buildings for the 2016 funding year. The work was divided into three sections at each building and two vendors were selected via the competitive bidding process to complete the work. The original intent was that work would begin as soon as classes ended in these schools (June 2016), but budget constraints required that E-Rate commitments be approved prior to the commencement of work. The funding approval was not received until the end of October 2016, which meant that both service providers had lost five months of uninterrupted work, including the entire summer.

Because of the nature of the work, during the school year, work hours were restricted to hours after classes had ended for the day to avoid affecting students. This restricted service providers' efforts to make up the lost time and meet the original service delivery deadline of September 30, 2017. Once the E-Rate funding commitment was received, both service providers worked diligently to complete the project. Of the 12 FRNs approved for FY 2016, the service providers were able to complete the work under eight FRNs. But the late start, which led directly to restricted work hours, kept the service providers from matching the pace originally planned for unrestricted summer work and the four FRNs covered by this appeal were not completed by the original September 30, 2017 service delivery deadline. Of the nearly a quarter million dollar project, only a few thousand dollars' worth of work was not completed by September 30, 2017.

Because the project was not complete, the district requested a service delivery extension using the Form 500 on September 15, 2017—prior to the September 30 deadline as required by Commission rules.

The Form 500 service delivery extension request was denied February 7, 2018 with the following text: "Current deadline guidelines and procedures do not allow approval for the reason submitted."

The MSDMV appealed this denial (attached) within the required timeframe and clearly laid out how the timing of the E-Rate commitment made it impossible for the two service providers involved to maintain the project schedule and meet the September 30 deadline.

MSDMV's appeal was denied (RFCDL attached) with the following explanatory text: "FCC Rules related to the payment of support for discounted services establish deadlines for service providers to deliver services/products to the applicant. The FCC provides an extension of this deadline under certain conditions. Those conditions are documented in the USAC website at <http://www.usac.org/sl/applicants/before-youre-done/delivery-extension.aspx>. Your request did not provide information that satisfied those conditions. Your appeal has not brought forth clear information establishing that those conditions were met but not considered. Therefore, your appeal is denied."

DISCUSSION

FCC rules establish the four reasons for which USAC should approve a service delivery extension request. Only one of the options must be satisfied for the service delivery extension to be granted. The FCC's rule states that extensions shall be approved if "the service provider was unable to complete delivery and installation for reasons beyond the service provider's control."¹

Here, the service providers were unable to complete delivery for reasons beyond their control. The service providers prudently waited to begin the work until the district had received a funding commitment from USAC. As you are aware, a funding commitment in the E-Rate program is far from a guarantee. If a school district cannot afford the entire cost of the services absent E-Rate funding, then it makes sense to wait until a commitment is received. Otherwise, the district could end up with equipment that it cannot pay for.

Obviously, service providers have no control of any of the E-Rate funding application process, and no one but USAC has control of the approval process. The commitments for these FRNs were issued after the summer had ended and students were back in school. The funding approval date of this FY 2016 work directly led to unrecoverable scheduling delays for the work included in the four FRNs included in this appeal.

As the Commission has acknowledged, it is difficult for schools to install significant upgrades to their Category 2 internal connections while school is in session. The Commission set the Category Two service delivery deadline on September 30th following the funding year to help account for this issue.² Work hours unimpeded by the need to not disturb the student learning environment or interrupt the school network during class time can be vital to the successful completion of a network upgrade project. While it is possible for installation work to take place during the regular school year, this work must be done after normal work hours or during the weekend – raising the cost of a project with shift premium or differential time pay. Summer work hours therefore are the most cost-effective time for any work on an instructional building and any summer hours lost can be an unrecoverable scheduling loss to a project with a fixed budget.

MSDMV's project needed two summers to complete, but because of the delay of the funding commitment, it only had one summer to perform the work. The service providers did their best to complete the work and indeed, the vast majority of the work was finished by the September 30 deadline.

REQUESTED ACTION

Because MSDMV's service implementation extension request satisfied one of the options identified by the Commission as justifications for an extension of service delivery deadline, the Commission should grant its appeal. The MSDMV asks that the FCC reconsider the USAC denial

¹ 47 C.F.R. § 54.507(d)(4)(iii).

² 47 C.F.R. § 54.507(d)(4)(i).

of a service delivery deadline extension for FRNs 1699099814, 1699099887, 1699108527, and 1699108537.

If the Commission believes that MSDMV did not satisfy the criteria, we respectfully ask that the Commission grant a waiver. The Commission may grant a waiver for good cause shown and if it is in the public interest. Nearly all of the work was completed by the September 30th deadline. The issue here is that the work time frame exceeded the deadline for installation by just a short amount of time. In comparison to situations where the applicant failed to adhere to “core program requirements” or misused funds, the Commission has stated that E-Rate funding should not be denied for procedural errors.³ Even where the deadline missed was a Commission rule, the Commission has found that non-substantive errors do not warrant denial of funding.⁴

The Commission has further noted that decisions should be made with the “big picture” in mind: “[a]lthough deadlines are necessary for the efficient administration of the program, in these cases, the applicants have demonstrated that rigid adherence to such procedures does not further the purposes of section 254(h) of the Telecommunications Act of 1996 or serve the public interest.”

There is no question here that eligible services were delivered to eligible schools, as required by Congress. There is not waste, fraud, or abuse. All of the Commission’s application and competitive bidding rules were followed. A waiver of this rule, if necessary, would simply allow service providers to be paid for work they have already done.

Further, a strict application of this rule would encourage service providers to charge more to account for overtime and after-hours work during the school year, which would increase costs for both applicants and the E-Rate program.

As such, denial of funding in this case would not further Congressional purpose for the program, the Commission’s own program goals, or serve the public interest.

We also request any other procedural waivers necessary for the MSDMV to receive its approved funding, including but not limited to, an invoice deadline waiver for these FRNs. For the reasons described above, it would be in the public interest to allow the MSDMV a little more time for the installation of these services.

³ See, for example, *Requests for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School District et al.*, File Nos. SLD-523576, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 6035 (2007) (*Alpaugh Unified School District Order*); *See 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. 026, Order, FCC 10-122 (released July 8, 2010) (*Academy of Math and Science Order*).

⁴ *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5319, para. 9 (rel. May 19, 2006) (*Bishop Perry Middle School*);

Thank you for your time and consideration. You are hereby authorized to contact our E-Rate Contact, Darsey Carnal, at 317-581-0169 or darsey@adtecerate.com if there is any additional information necessary for your review of our appeal of the service delivery extension denial for FRNs 1699099814, 1699099887, 1699108527, and 1699108537.

Respectfully,

A handwritten signature in black ink, appearing to read "Loren E. Evans". The signature is fluid and cursive, with the first name "Loren" being more prominent.

Loren E. Evans

Director of Business and Technology

MSD of Mount Vernon

Attached:

- Original FCDL – “FCC Form 471 – 161044673 – MSD Mount Vernon
- FCC Form 500 requesting service delivery extension – “Form 500 – 67816 C2 extension”
- RFCDL from Form 500
- USAC Appeal #90628