

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)	
)	
)	
Schools and Libraries)	WC Docket No. 02-6
Universal Service Support Mechanism)	
)	
Request for Waiver of the)	
Commission's Rules by)	Application No. 171003618
Peñitas Public Library, BEN 16068417)	FRNs: 1799006035, 1799006081
)	

**REQUEST FOR WAIVER OF
INVOICING DEADLINE
FOR FUNDING YEAR 2017**

Pursuant to section 54.719(c) of the Commission's rules, the Peñitas Public Library (Peñitas, Library) hereby respectfully requests a waiver of section 54.507 of the Commission's rules for the above-referenced application. For the reasons set forth below, we request that the Wireline Competition Bureau (Bureau) grant this waiver request, and any other waivers necessary, to allow Peñitas an additional 120 days to complete invoicing and to receive its committed E-rate funding.

I. BACKGROUND

Peñitas Public Library, upon the direction of their service provider, Time Warner Cable, submitted a Corrective SPIN Change #122549 to USAC on October 5, 2018¹. The service

¹ Attachment A-Corrective SPIN Change #125549 and RFCDL

provider identified the SPIN the Library listed on its Form 471 was for Time Warner Cable's sister SPIN, 143004562 (TWC Cable Partner d/b/a Staten Island Cable) rather than the SPIN the provider uses in the Texas area, 143048275 (Time Warner Cable Business LLC). The SPIN Change Request asked the Universal Service Administrative Company (USAC, Administrator) to correct the SPIN for Funding Year 2017 Funding Request Numbers (FRNs) (1799006035 & 1799006081), so the provider could submit an invoice via FCC Form 474.

The deadline to submit an invoice for these two FRNs was October 28, 2018 and was rapidly approaching. USAC directed the library to submit an invoice deadline extension request which was automatically granted. The new invoice deadline was February 26, 2019. The second invoice deadline came and went with no action from USAC regarding the corrective SPIN change.

Per FCC rules the library was only eligible to receive the one invoice deadline extension. On May 15, 2019, seven months after submission of the seemingly simple Corrective SPIN Change request, the Library received a Revised Funding Commitment Decision Letter approving the change for both FRNs. Unfortunately, the RFCDL did not extend the invoicing deadline. Therefore, the district received a corrected funding decision with no possible way of invoicing USAC.

Conclusion:

Peñitas requests the FCC to that the deadline to submit invoices for application 171003618, FRNs 1799006035 and 1799006081 be extended to allow re-submission of an invoice and the services may be paid.

II. A WAIVER OF THE COMMISSION'S SERVICE INSTALLATION DEADLINE IS IN THE PUBLIC INTEREST

Peñitas Public Library respectfully requests a waiver of the Commission's rules in order to invoice USAC for its Internet and voice services. First, Peñitas followed program rules by submitting a corrective SPIN Change and invoice deadline extension in a timely manner. Second, the Bureau has precedent in awarding an applicant an extension to invoice the Administrator in cases where USAC's slow processes have prevented the applicant from timely invoicing. Finally, granting this waiver will serve the public interest and will help to achieve the goals of the E-rate program by bringing affordable broadband to patrons in the City of Peñitas, Texas.

Any of the Commission's rules may be waived if good cause is shown.² The Commission may exercise its discretion to waive a rule where particular facts make strict compliance inconsistent with the public interest.³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴

In March 2017, the Wireline Competition Bureau adopted an order granting a waiver to the E-rate program's invoicing rules for applicants similarly situated to Peñitas.⁵ In the Ada Public Library Order, the Bureau granted a waiver for applicants unable to file a BEAR form because they were waiting for USAC to take action and provide an FCC Form 498 ID or a PIN

² 47 C.F.R. § 1.3.

³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

⁵ Ada Public Library Order, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, DA 17-256 (WCB 2017)

and were, therefore, unable to file the BEAR before the invoice filing deadline for recurring services.

Additionally, in DA 18-1100 dated October 31, 2018, the Bureau granted a waiver to the invoicing deadline to Camera Corner on behalf of Waupun School District for a nearly identical reason to Peñitas. Peñitas Public Library made every effort possible to complete the work, but the fact USAC took seven months to review and approve a simple corrective SPIN change left them with no available option to seek reimbursement for their E-rate funding.

Also, strict application of the rule in this instance would not be in the public interest. Denial of this waiver would significantly impact the Library's ability to provide adequate bandwidth, at a reasonable cost, to some of its patrons.

Peñitas believes that denying the waiver is ultimately denying E-rate funding and under these circumstances would be unjust. Waiving the rule to the extent necessary would be efficient and consistent with the public interest. As such, the Library respectfully argues that a waiver of the Commission rules is in the public interest.

III. CONCLUSION

For the foregoing reasons, the Bureau should grant Peñitas' request for to allow Peñitas Public Library additional time to invoice and to utilize its funding commitment.

Respectfully submitted,

Yenni Espinoza

City of Peñitas, Library Director

Attachment A

Records / SPIN Changes

twcph-2016 - #125549

Summary Associated FRNs Review Inquiries News Related Actions

In-Review	Outreach	Wave Ready	Committed
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Request Details

View Status (+)

Funding Year 2017

Submitting Organization PENITAS PUBLIC LIBRARY (BEN: 16068417)

Created By Yenni Espinoza

Created On 10/5/2018 4:50 PM EDT

Main Contact

Name Yenni Espinoza

Email library@cityofpenitas.com

Phone Number 956-583-5656

SPIN Change Details

Please select the reason why you would like to change the service provider on the FRN(s) The service provider has consolidated multiple SPINs into a single SPIN

Based on the information that you have provided your SPIN change type is Corrective SPIN Change

Original Service Provider Information

Original Service Provider Information Number (SPIN) 143004562

Original Service Provider Name TWC Cable Partner d/b/a Staten Island Cable

New Service Provider Information

New Service Provider Information Number (SPIN) 143048275

New Service Provider Name Time Warner Cable Business LLC

View Supply Services (+)

Revised Funding Commitment Decision Letter

Funding Year 2017

Contact Information:

Yenni Espinoza
PENITAS PUBLIC LIBRARY
P. O. Box 204
Penitas, TX 78576
espinozay@penitaslibrary.com

BEN: 16068417**Post Commitment Wave:** 57

Totals

Original Commitment Amount	\$9,071.78
Revised Commitment Amount	\$9,071.78

What is in this letter?

Thank you for submitting your post-commitment request for **Funding Year 2017 Schools and Libraries Program (E-rate) funding**. Attached to this letter, you will find the revised funding statuses and/or post commitment changes to the original Funding Commitment Decision Letter (FCDL) you received. Below are the changes that were made:

- SPIN Change
- SPIN Change

The Universal Service Administrative Company (USAC) is providing this information to both the applicant(s) and the service provider(s) so that all parties are aware of the post-commitment changes related to their funding requests and can work together to complete the funding process for these requests.

Next Steps

1. **File the FCC Form 486**, Service Confirmation and Children's Internet Protection Act (CIPA) Certification Form, for any FRNs included in this RFCDL, if you have not already done so. Please review the CIPA requirements and file the form(s).



BEN Name: PENITAS PUBLIC LIBRARY

BEN: 16068417

Post Commitment Wave: 57

- o **If USAC approved funding on an FRN in your original FCDL**, the deadline to submit the FCC Form 486 is 120 days from the date of the original FCDL or from the service start date (whichever is later).
 - o **If a new FRN was created for this RFCDL or funding was not approved on an FRN in your original FCDL but is approved in this RFCDL**, the deadline to submit the FCC Form 486 is 120 days from the date of this RFCDL or from the service start date (whichever is later).
2. **Invoice USAC**, if you or your service provider have not already done so. Work with your service provider(s) to determine if your bills will be discounted or if you will request reimbursement from USAC after paying your bills in full.
- **If you (the applicant) are invoicing USAC:** You must pay your service provider(s) the full cost for the services you receive and file the [FCC Form 472](#), the Billed Entity Applicant Reimbursement (BEAR) Form, to invoice USAC for reimbursement of the discounted amount.
 - **If your service provider(s) is invoicing USAC:** The service provider(s) must provide services, bill the applicant for the non-discounted share, and file the [FCC Form 474](#), the Service Provider Invoice (SPI) form, to invoice USAC for reimbursement for the discounted portion of costs. Every funding year, service providers must file an [FCC Form 473](#), the Service Provider Annual Certification Form, to be able to submit invoices and to receive disbursements.
 - **To receive an invoice deadline extension, the applicant or service provider** must request an extension on or before the last date to invoice. **If you anticipate, for any reason, that invoices cannot be filed on time**, USAC will grant a one-time, 120-day invoice deadline extension if timely requested.

How to Appeal or Request a Waiver of a Decision

You can appeal or request a waiver of a decision in this letter **within 60 calendar days** of the date of this letter. Failure to meet this deadline will result in an automatic dismissal of your appeal or waiver request.

Note: The Federal Communications Commission (FCC) will not accept appeals of USAC decisions that have not first been appealed to USAC. However, if you are seeking a waiver of E-rate program rules, you must submit your request to the FCC and not to USAC. USAC is not able to waive the E-rate program rules.

- **To submit your appeal to USAC**, visit the Appeals section in the [E-rate Productivity Center \(EPC\)](#) and provide the required information. USAC will reply to your appeal submissions to confirm receipt. Visit USAC's [website](#) for additional information on submitting an appeal to USAC, including step-by-step instructions.
- **To request a waiver of the FCC's rules or appeal USAC's appeal decision**, please submit it to the FCC in proceeding number CC Docket No. 02-6 using the [Electronic Comment Filing System](#) (ECFS). Include your contact information, a statement that your filing is a waiver request,



BEN Name: PENITAS PUBLIC LIBRARY

BEN: 16068417

Post Commitment Wave: 57

identifying information, the FCC rule(s) for which you are seeking a waiver, a full description of the relevant facts that you believe support your waiver request and any related relief, and any supporting documentation.

For appeals to USAC or to the FCC, be sure to keep a copy of your entire appeal, including any correspondence and documentation, and provide a copy to the affected service provider(s).

Obligation to Pay Non-Discount Portion

Applicants are required to pay the non-discount portion of the cost of the eligible products and/or services to their service providers. Service providers are required to bill applicants for the non-discount portion of costs for the eligible products and/or services. The FCC stated that requiring applicants to pay the non-discounted share of costs ensures efficiency and accountability in the program. If using the BEAR invoicing method, the applicant must pay the service provider in full (the non-discount plus discount portion) **before** seeking reimbursement from USAC. If using the SPI invoicing method, the service provider must first bill the applicant **before** invoicing USAC.

Notice on Rules and Funds Availability

The applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program and the FCC's rules. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds.



BEN Name: PENITAS PUBLIC LIBRARY

BEN: 16068417

Post Commitment Wave: 57

Revised Funding Commitment Decision Overview

Funding Year 2017

Funding Request Number (FRN)	Service Provider Name	Request Type	Revised Committed	Review Status
1799006081	Time Warner Cable Business LLC	SPIN Change	\$431.78	Approved
1799006035	Time Warner Cable Business LLC	SPIN Change	\$8,640.00	Approved



BEN Name: PENITAS PUBLIC LIBRARY

BEN: 16068417

Post Commitment Wave: 57

Post Commitment Request Number: 125549	Post Commitment Request Type: SPIN Change	Post Commitment Decision: Approved
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FRN: 1799006081	Service Type: Voice	Original Status: Funded	Revised Status: Funded
FCC Form 471: 171003618			

Dollars Committed			
Monthly Cost		One-Time Cost	
Months of Service	12		
Total Eligible Recurring Charges	\$1,439.28	Total Eligible One Time Charges	\$0.00
Total Pre-Discount Charges		\$1,439.28	
Discount Rate		30.00%	
Revised Committed Amount		\$431.78	

Dates	
Service Start Date	7/1/2017
Contract Expiration Date	6/30/2019
Contract Award Date	5/2/2016
Service Delivery Deadline	6/30/2018
Expiration Date (All Extensions)	

Service Provider and Contract Information	
Service Provider	Time Warner Cable Business LLC
SPIN (498ID)	143048275
Contract Number	
Account Number	9565835656
Establishing FCC Form 470	737050001299973

Consultant Information	
Consultant Name	
Consultant's Employer	
CRN	

Revised Funding Commitment Decision Comments:

Post Commitment Rationale:

Your SPIN change is approved. The service provider has been changed to 143048275, Time Warner Cable Business LLC.



BEN Name: PENITAS PUBLIC LIBRARY

BEN: 16068417

Post Commitment Wave: 57

Post Commitment Request Number: 125549	Post Commitment Request Type: SPIN Change	Post Commitment Decision: Approved
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FRN: 1799006035	Service Type: Data Transmission and/or Internet Access	Original Status: Funded	Revised Status: Funded
FCC Form 471: 171003618			

Dollars Committed			
Monthly Cost		One-Time Cost	
Months of Service	12		
Total Eligible Recurring Charges	\$9,600.00	Total Eligible One Time Charges	\$0.00
Total Pre-Discount Charges		\$9,600.00	
Discount Rate		90.00%	
Revised Committed Amount		\$8,640.00	

Dates	
Service Start Date	7/1/2017
Contract Expiration Date	6/30/2019
Contract Award Date	5/2/2016
Service Delivery Deadline	6/30/2018
Expiration Date (All Extensions)	

Service Provider and Contract Information	
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Consultant Information	
Consultant Name	
Consultant's Employer	
CRN	

Revised Funding Commitment Decision Comments:
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Post Commitment Rationale:

Your SPIN change is approved. The service provider has been changed to 143048275, Time Warner Cable Business LLC.