

In the Matter of)	
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	
Request for Waiver of a Decision of the Universal Service Administrator by the)	Application Nos. 1018071 and 161027532
)	
Clarity Telecom, LLC)	
Sikeston, Missouri)	
)	
)	

PETITION FOR WAIVER

Clarity Telecom, LLC
Sikeston, Missouri
June 12, 2018

Clarity Telecom, LLC (SPIN No. 143044044) (Clarity) respectfully requests a waiver of the Federal Communications Commission (FCC) rules regarding time limitations for making corrections to ministerial errors under extenuating conditions as well as to allow for an invoice deadline extension request under 47 CFR 54.514(b) to refile the invoices for the telecom and WAN services delivered. Clarity is the service provider to Rapid City Area School District 51-4 (BEN No. 134283) (Rapid City SD). The FRNs that are the subject of this appeal appear in the tables below for FY2015 and FY2016.

471 / FRN	Committed Request	Total Disbursed	Remaining
1018071 (FY 2015)			
2763601	\$42,458.00	\$0	\$42,458.00
2763653	\$3,635.64	\$2,053.17	\$1,582.47
2823165	\$64,080.00	\$0	\$64,080.00
Grand Total	\$110,173.64	\$2,053.17	\$108,120.47

471 / FRN	Committed Request	Total Disbursed	Remaining
161027532 (FY 2016)			
1699069902	\$40,994.30	\$61.15	\$40,933.15
1699069906	\$113,227.01	\$72,660.67	\$40,566.34
Grand Total	\$154,221.31	\$72,721.82	\$81,499.49

I. BACKGROUND

- 1) The Rapid City Area School District is located on the eastern foothills of the Black Hills and serves nearly 14,000 students and employs approximately 1,800 people. The District is the state's second largest district and is home to 15 elementary schools, 5 middle schools, two comprehensive high schools and one alternative high school. Twenty-one percent of the District's students are Native American. In Funding Year 2016, there were 13,393 students enrolled in the district school system with 7,645 eligible for the National School Lunch Program (NSLP). This is 57% of the total students participating in the NSLP resulting in an 80% discount allowable for this district.
- 2) The Rapid City Area School District filed FCC Form 471 number 1018071 in FY 2015 seeking reimbursement for voice and WAN services provided by Clarity Telecom, LLC. The application featured four separate FRN request to provide these services to all 23 schools in their district.
- 3) The Rapid City Area School District filed FCC Form 471 number 161027532 in FY 2016 seeking reimbursement for voice and WAN services provided by Clarity Telecom, LLC. The application featured two separate FRN requests for these services to all 23 schools in their district.
- 4) In June of 2014 Clarity Telecom acquired Knology of the Plains, Inc. d/b/a WOW! The merger of the two companies caused extenuating circumstances regarding the systems used to provide billing and discount calculations.
- 5) The implementation of the E-rate Modernization Order, FCC 14-99, modified the percentage rates upon which discounts were calculated to affect a phase-down of telecom services. This implementation reduced the discount rates that applied to certain telecom services.
- 6) In April of 2015, Clarity went through a system wide billing conversion. The conversion included transferring over 50,000 accounts from one billing platform (Ushacomm) to the new platform (Icoms Convergys version 8.2.4).
- 7) For FY2015 and FY2016 services were provided for all WAN and voice FRNs.
- 8) Invoices were timely submitted for the FRNs requested in the two FCC Form 471 applications approved by USAC for Rapid City School District for services delivered for to FRNs 2763601, 2763653, 2823165, 1699069906 and 1699069902. All of the invoices were not paid mainly due to discount calculation issues. Errors in the timely submitted invoices included information technology errors such as "Discount Amt. Billed Not Valid" noted as code 48 in the USAC Invoice system.

II. DISCUSSION

Clarity Telecom acquired Knology of the Plains, Inc. d/b/a WOW! in June of 2014. Clarity Telecom began incorporating the multitude of billing accounts from Knology of the Plains, Inc. into their billing systems. A successful billing conversion is complex with long implementation and testing cycles and must provide key performance mechanisms including:

- provide advanced features like interconnect data analysis;
- inter-operator call accounting, domestic and international services for wire line operators;
- reference data-building, call information validation;
- ability to build reference data based on multiple account agreements;
- calculate and charge for multiple rate plans, pricing, re-pricing;
- support multiple charge methods, generate consolidated billing for multiple account links; and
- prevent revenue losses due to wrong invoicing.

As a result of the 2015 billing conversion, Clarity was unable to successfully consolidate over 80 individual accounts that applied to Rapid City SD into one invoice which can be attributed to the company's inability to complete the funding requests. This process of necessary changes to the billing process, account structure, customer account management and related Information Technology systems contributed to the recently discovered ministerial and clerical errors in the billings to Rapid City School District.

In July 2014, the Federal Communications Commission issued the Modernization Order, which called for the phase out of telecommunications services over a five year period with a 20% reduction each year. Given the acquisition of other companies and changes to billing systems, Clarity's billing system continued to bill at the 60% level, instead of 40% level for FY2015 and 60% level instead of 80% for WAN and 60% level instead of 40% level for telecom for FY2016. The single billing account for one FRN consists of 80 individual billing account numbers.

In each of the three past years the function for processing the complex billing effort to enable E-Rate discounts to be billed, and recovered by submitting USAC invoices, has been handled by three different offices in different locations responsible for the billing system conversion. It was only recently that ministerial and clerical errors that had been made in these multiple locations by several staff were discovered. Several lines on the invoices submitted for these FRNs were not paid, due to billing system and IT issues and, thus, were not properly modified in the system to account for the change in Modernization Order. The time to correct these errors has exceeded the deadline for invoice submission.

The *Bishop Perry Order*¹ granted a waiver to many applicants in the program for ministerial, clerical and procedural errors, including allowing for the correction of incorrect discount levels. The Commission found that denial of the funding requests and requests for waivers would inflict undue hardship on the applicant, especially given that there was no evidence of waste, fraud or abuse, misuse of funds or a failure to adhere to core program requirements. Under the *Ann Arbor Public Schools Order*² (DA 10-2354) ministerial and clerical errors can be corrected by applicants “seeking to correct ministerial or clerical errors on their FCC Forms 470 and 471 and other related forms for funding under the E-rate program.” That Order recognized that, “Ministerial and clerical errors are those that would, for example, be made when *entering data from one list to another*, such as mistyping a number, using the wrong name or phone number, failing to enter an item from the source list onto the application or *making an arithmetical error* (emphasis added).”

Furthermore, as in the FCC Orders cited above, a waiver is appropriate here.³ The Commission has long recognized that a rule may be waived where the particular facts make strict compliance inconsistent with the public interest.⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁶ It is in the public interest to grant the waivers, because the services were provided per the contract and filed with USAC on a timely basis. There is no waste, fraud, or abuse; but rather a billing system conversion error on Rapid City SD’s account and discount level. Not granting the waivers shifts the onerous financial burden to Rapid City SD, an 80% school district in much need of E-Rate funding.

¹ Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al., CC Docket N. 02-6, Order, FCC 06-54, 21 FCC Rcd 5316, para. 22 (2006) (“Bishop Perry”) (allowing applicant to make changes to the discount percentage).

² *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17319, 17319-20, para. 2, n.5 and n.15 (WCB 2010) (permitting applicants to correct clerical errors like failing to enter an item from the source list onto the application or entering the discounted price rather than the pre-discounted price or indicating the wrong service category or term of service on FCC Form 471 and allowing for the correction of miscalculation of the discount rate); *see also* *Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15518 (WCB 2008).

³ 47 C.F.R. § 1.3.

⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“Northeast Cellular”).

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

⁶ *Northeast Cellular*, 897 F.2d at 1166.

III. REQUEST

The Commission has stated frequently in Orders that the E-Rate program can be complicated and errors may occur that create an undue hardship on the applicant. In this case, Rapid City School District prepared the FCC Form 471 and received the FCDLs granting funding. Clarity provided the services and continues to do so under contract in good faith. Clarity filed the invoices on a timely basis and, unfortunately, made the a clerical error in using the wrong discount percentage as a result of the adjustments made to the 2014 Modernization Order, which are errors that are clearly correctable under the *Bishop Perry Order*. This ministerial and clerical error emanating from company billing systems prevented Clarity from using the correct discounts as modified by FCC 14-99 and would cause an undue hardship on Rapid City SD to pay the remaining 60% and 80% for the services already delivered by Clarity and denied by USAC.

The Commission has long recognized that ministerial and clerical errors are often made by applicants, as well as service providers in participating in the E-rate Program. As is the case in the *Ann Arbor Public Schools Order*, the Commission recognized that applicants should not be penalized for such ministerial and clerical errors, such as the ones made by Clarity here.⁷ This was not a case of the Clarity failing to invoice during the invoicing period, which it did, but rather simply making an error with respect to the discount percentages due to a billing system conversion and being denied.

Information Technology issues as demonstrated in this situation do not always present themselves in a timely manner. The complexity of the billing changes within a telecom company are adequately demonstrated in the normal business world and exacerbated by the additional challenges of properly providing discounts of the nature approved by the E-Rate program. Clarity provided these voice and WAN services with the understanding that they had billed all schools properly. The services were delivered within the funding year and original attempts to request discount reimbursements were made in a timely manner. But for the fact that Clarity used the wrong discount levels, these invoices would have been funded.

⁷ *Ann Arbor Public Schools Order* (granting Cybertek's request for waiver for an invoicing deadline to correct an error made on the FCC Form 471).

For all of the reasons discussed above, Clarity respectfully requests a waiver of the deadlines for making the ministerial corrections to the discount amounts approved and an invoice deadline extension for FCC Form 471 Application Numbers 1018071 and 161027532.



Keith Davidson, CFO
Clarity Telecom, LLC
912 S. Main Street
Suite 106
Sikeston, MO 63801

June 12, 2018