

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	
Request for Waiver of Decision of USAC and the)	
Wireline Competition Bureau)	
)	
by)	CC Docket No 02-6
)	
Tim Ron Enterprises, LLC d/b/a Network)	
Communications Telecom)	
)	
Schools and Libraries Universal Service)	
Support Mechanism)	
)	

Application For Review

Comes now, Network Operator Services, Inc., Tony Cason, Ron Martin, Tim Martin, and Ron Hutchison (together the Requesting Parties) to request the Commission review the action taken by the Wireline Competition Bureau (Bureau) in denying Tim Ron Enterprises, LLC, dba Network Communications Telecom's (Network) request for a waiver of the Commission's invoice extension rule. Specifically the Requesting Parties request that the Commission grant a waiver of its invoice extension rule so that Network may re-submit invoices for 2017 funding year for the following FRNs:

School	Application Number	FRN
Marshall ISD	171001936	1799002873
Marshall ISD	171001936	1799002859
Leveretts Chapel School District	171011781	1799022285
Kilgore ISD	171045138	1799103046
Kilgore ISD	171045138	1799103065

The Request for Waiver was filed on or about November 28, 2018, by Juanita Cook of Network and was denied in DA 19-482 on May 31, 2019.

Statement Regarding Requesting Parties Interest in this Matter

The Requesting Parties were the owners of all of the membership interest in Network during the 2017 funding year and until August 31, 2018, on which date it was purchased in its entirety by Conterra Ultra Broadband Holdings, Inc. (Conterra) (see DA 18-781 dated July 27, 2018, for the Wireline Contribution Bureau's grant to transfer the Domestic 214 of Network Enterprises to Conterra). The Requesting Parties have been harmed by the Bureau's decision because the amount of the invoices which were rejected, a total of \$85,229.27, has been withheld from the Requesting Parties in accordance with the purchase agreement with Conterra. Requesting Parties were not able to participate in the Request for Waiver because they no longer owned Network. Additionally, due to the timing of the sale and timing of the filing of the invoices, Requesting Parties were unaware that the funds had not been paid by USAC until January 2019.

Facts

The following invoices were originally timely submitted by Network via its regulatory consultant, Ron Munn of Morning Star:

School	Application Number	FRN	BEN	Funding Year	Service Date	Invoice Amount	Service Start Date	Invoice Rejection Date
Marshall ISD	171001936	1799002873	140699	2017	7/1/17	\$23,514.26	7/19/12	6/1/18
Marshall ISD	171001936	1799002859	140699	2017	7/1/17	\$5,661.81	7/19/12	8/16/18
Leverett's Chapel School District	171011781	1799022285	140703	2017	7/1/17	\$22,770.00	8/16/17	8/16/18
Kilgore ISD	171045138	1799103046	140695	2017	7/1/17	\$31,200.00	8/8/13	7/23/18
Kilgore ISD	171045138	1799103065	140695	2017	7/1/17	\$2,083.20	8/8/13	7/12/18

The invoices were rejected by USAC for various reasons, including incorrect invoice dates outside the funding year and an incorrect FRN. The invoice amounts and schools matched the amounts approved and allocated by USAC for the funding year. The invoices were rejected on the dates noted above with a final deadline for submission of October 30, 2018.

During the time the Requesting Parties owned Network, Ron Munn was its primary regulatory consultant and the only person with the requisite knowledge to navigate the complex E-rate process. He was the only person who had access to the USAC system (the E-rate Productivity Center). To their knowledge, the Requesting Parties know of no other time when an extension of time or request for waiver was filed on behalf of Network.

The Requesting Parties signed a purchase agreement with Conterra on or about June 1, 2018. Regulatory approval from the FCC was sought and approved on July 27, 2018. The sale was finalized on or about August 31, 2018, after state regulatory approval was granted.

On July 24, 2018, the Accounts Payable Manager (AP Manager) for Network noticed that some of the payments she had been expecting from USAC had not been received. She e-mailed Ron Munn that day, but did not receive a response from him until August 12, where he informed

her that the remaining invoices had been submitted and that he had re-submitted the ones that had been rejected.

The AP Manager continued to reach out to Ron Munn during the transition and after the sale to inquire as to the status of the invoices and payments. At some point prior to the final submissions in July and August, Ron Munn informed the AP Manager that he was dealing with personal health issues and would not be as responsive as he had in the past. Throughout July, August, and September, Ron Munn did respond, albeit belatedly, to the AP Manager's requests for information on the various Network filings with USAC.

On September 21, 2018, the AP Manager e-mailed to inform Ron Munn that Network would no longer require his services and requested copies of all invoices submitted for the 2017/2018 funding year that were still outstanding, as well as an update on his contacts with USAC regarding the rejected invoices. She also requested that the contact information be updated on the USAC website to reflect the new ownership, which he did not do.

Despite numerous attempts to request information, Ron Munn had not responded to e-mails or phone calls from the AP manager since September 20, 2018. It was not until October 31, 2018, the day after the submission deadline, that Ron Munn gave access information to the E-rate Productivity Center to the AP Manager. Network never had the opportunity to request an extension because it did not have access to the EPC until the day after the deadline.

The Request for Waiver was filed on or about November 28, 2018, and the decision denying it was issued six months later, leaving Network, Conterra, and Requesting Parties in limbo regarding their options for recovery.

Arguments and Authorities.

The Commission may grant a waiver if good cause is shown. 47 CFR §1.3. A waiver is appropriate where the Petitioner can show both (i) that there are special circumstances allowing for a deviation from the general rule; and (ii) that the deviation will serve the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

Employee confusion, a lack of understanding of the program rules, and staff turnover have been found to be insufficient justification for a waiver. *Hancock County Library Order*, 30 FCC Rcd at 4726, para. 9.

Discussion.

Requesting Parties believe the circumstances leading to its request for a waiver were extraordinary for Network. This is not a case where the invoices were simply not filed. This is not a case where Network sat idly by. The invoices were filed timely, prior to the sale of Network, but were rejected. They were re-submitted, timely. During the transition of ownership Network continued to reach out to its regulatory consultant, who had always timely submitted and re-submitted invoices, to inquire as to the status of the rejected invoices. Despite responding to other requests for information he never provided a status update on the rejected invoices or a response to the AP Manager's request for access to the EPC. Without the approval of a person who has access to the EPC getting a new user added is, to say the least, difficult.

When it became clear something was amiss Network repeatedly requested information from its consultant only to be met with silence. Without access to the EPC portal and without any update as to the efforts made by the consultant, Network was unable to request an extension. The sale of the company, the regulatory transition, and the health issues of the consultant and his family may independently not amount to special circumstances, but together created a situation

where Network, an entity which historically filed invoices timely, was not able to request an extension of time.

Network provided services to Marshall ISD, Leveretts Chapel School District, and Kilgore ISD during the 2017 – 2018 funding year. These services had been approved for funding by USAC and the money was allocated to the fund. It is in the best interest of the public that schools are provided with quality telecommunications and internet service, which is the purpose of USAC and the E-rate program. Withholding approved funds for services provided due to minor errors in the invoices is detrimental to both the companies who provide those services and the schools who receive them. A system with such rigidity as the E-rate filing system will prevent schools from requesting services and will prevent service providers from offering to provide them. It creates an atmosphere where local schools and providers *must* use consultants to assist them in requesting services and getting paid for services. Granting a waiver to extend the deadline to resubmit the invoices where a provider relied on its consultant is in the public interest.

The Requesting Parties recognize that significant time has passed since October 30, 2018. However, Conterra did what was required of it in a timely fashion: it filed a Request for a Waiver. The Requesting Parties now timely file this Application for Review. While they appreciate the need of the Commission to have strict rules they also recognize the ability of the Commission to waive those rules under certain conditions on a case by case basis. A company with a history of compliance, such as Network, should not have to show some sort of force majeure event to justify leniency. If the standard is “special” or “extraordinary” circumstances then the plain meaning of those words should be applied. For Network, these circumstances were special and extraordinary. The sale of Network consummated during the invoice period was

unusual. The failure of its consultant to get the invoices correct was out of the norm. The combination of these two events made it impossible for another employee of Network, under the new ownership, to request the extension.

Request for Relief.

The Requesting Parties respectfully request that the Commission grant this Application for Review and allow Network a waiver of the Commission's invoice extension rule to re-submit the invoices for the 2017-2018 funding year.

Respectfully submitted,

/s/ Amanda Harris

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