

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Waiver)	
)	
by)	WC Docket No. 02-6
)	
Contact Network, LLC)	

Request for Waiver

Contact Network, LLC (“Contact Network”), pursuant to Section 1.3 of the Commission’s rules, requests that the Wireline Competition Bureau (“Bureau”) waive Section 54.514(a) of the Commission’s rules to permit Contact Network to re-submit its invoices for services provided to Homewood City School District (“Homewood”) in Funding Year 2017 (“FY 2017”) (FRN 1799090576).

I. Background

Contact Network is one of several wholly-owned indirect subsidiaries of Uniti Group Inc. (“Uniti Group”). Along with its affiliates, including Uniti Fiber, LLC (“Uniti Fiber”), Contact Network primarily provides Dark Fiber, Private Line, Ethernet, Wavelength, Dedicated Internet Access and Collocation services to wholesale (*e.g.*, other carriers), and customers in government, health care, education, financial services, and other large enterprises. Contact Network has a long history of participation as a provider in the Universal Service Fund Schools and Libraries (“E-rate”) program.

Contact Network provided 1000 Mbps fiber circuits to Homewood during FY 2017, invoicing its services on a quarterly basis. On October 12, 2018, Contact Network submitted approximately 192 invoice deadline extension requests for over five different SPINs in connection with E-rate services provided by Contact Network in FY 2017. Pursuant to Section

54.514(a) of the Commission’s rules, USAC automatically granted Contact Network’s extension requests for the vast majority of FRNs submitted and extended the invoice deadline to February 26, 2019. However, the extension request for FRN 1799090576 services provided to Homewood was denied because the request inadvertently included an extra “1” in the FRN. Given the volume of extension requests made by Contact Network on October 12, it did not immediately notice that the invoice deadline extension request for FRN 1799090576 was denied.

On November 11, 2018, thinking that it had requested and received an invoice extension, Contact Network submitted four (4) Service Provider Invoice Forms 474 associated with FRN 1799090576 (the “Homewood Invoices”). USAC denied payment for the Homewood Invoices on November 27, 2018, because they were submitted outside the filing window.¹ Contact Network timely submitted an appeal to USAC on January 25, 2019, seeking an extension of the deadline to submit the Homewood Invoices.² USAC denied Contact Network’s appeal on May 20, 2019 and directed Contact Network to seek a waiver from the Commission.

Contact Network, in coordination with its affiliates recently acquired by Uniti Group, has taken steps to ensure that this type of error is not repeated in future invoice deadline extension requests and other E-rate submissions. For example, E-rate compliance efforts have been consolidated with internal controls to validate processed extension requests in a timely and accurate manner.

II. Good Cause Exists for Waiver of Section 54.514(a) of the Commission’s Rules.

Contact Network requests a waiver of the invoice filing deadline and asks the Bureau to direct USAC to process the Homewood Invoices. The Commission’s rules may be waived for

¹ One invoice submitted on November 19, 2018 contained a typographical error and was not processed by USAC. Contact Network subsequently resubmitted the invoice which was then processed by USAC and denied on January 25, 2019.

² USAC Appeal No. 132448.

good cause.³ A rule may be waived where the particular facts make strict compliance with the rule inconsistent with the public interest.⁴ A waiver is appropriate “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”⁵ The Commission may exercise its discretion to waive a rule where “particular facts make strict compliance inconsistent with the public interest . . . and when the relief requested would not undermine the policy objective of the rule in question.”⁶ Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.⁷ The Commission considers hardship, equity and effective implementation of policy in reviewing a request for a waiver.⁸

Contact Network seeks waiver of a procedural, rather than substantive, E-rate program rule. Good cause exists to grant of a one-time waiver of the invoice deadline because it would permit Contact Network to correct an inadvertent clerical error that resulted in adverse consequences.⁹ Because of the extra “1” in the FRN, Contact Networks has not been reimbursed approximately \$47,055.96 for broadband services provided to Homewood through the E-rate program. The Bureau has waived filing deadlines and directed USAC to accept corrected forms

³ 47 C.F.R. § 1.3. The Bureau may act on requests for waiver of the Commission’s rules on delegated authority. *See* 47 C.F.R. § 0.91(b).

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

⁵ *Id.*

⁶ *See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, Order on Reconsideration, Order on Reconsideration*, 20 FCC Rcd. 11221, 11243, n.158 (2005) (citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990)).

⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁸ *See 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) *cert. denied*, 409 U.S. 1027 (1972) (holding that the Commission consider hardship, equity, or more effective implementation of overall policy on an individual basis).

⁹ Contact Network does not believe that the “extraordinary circumstances” standard should apply in this Case because Contact Network’s timely submitted request for an automatic extension of the invoice filing deadline was rejected solely due to an inadvertent yet consequential clerical error. *See Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8967, para. 242 (2014) (“*E-Rate Modernization Order*”) (finding that “it is generally not in the public interest to waive” the invoicing rules).

submitted outside of filing windows to permit participants to correct clerical errors.¹⁰ Absent a similar waiver here, an inadvertent clerical error would result in an unwarranted complete denial of payment to Contact Network. Contact Network demonstrated good faith in complying with the invoicing deadline by timely submitting an extension request.¹¹ Had the invoice deadline extension request for FRN 1799090576 included a correctly typed FRN, the Homewood Invoices would have been timely submitted. Contact Network has taken steps to reduce the likelihood of clerical errors occurring again by implementing internal controls and validation measures. There is no evidence of waste, fraud or abuse in this case. Therefore, good cause exists to grant the waiver.

The Bureau has found good cause to grant waivers of filing deadlines due to similar clerical errors. For example, in *Peerless Networks* the Bureau granted a waiver of the 499-Q revision deadline after an inadvertent clerical error that was not discovered until after the revision deadline had passed resulted in an oversized universal service contribution liability.¹² In *Peak Communications*, the Bureau granted a waiver of the 45-day Form 499-Q revision deadline

¹⁰ *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (waiving the Commission's rules to allow applicants additional time to file their FCC Forms 471 where applicants committed ministerial or clerical errors); *See also Request for Review and Waiver of Decision of the Universal Service Administrator by State of Arkansas Department of Information Systems Little Rock, Arkansas, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 9373 (WCB 2008) (granting a waiver of the Form 471 filing deadline to allow the Arkansas Department of Information Systems to submit a corrected FCC Form 471 outside of the filing window where the initial Form 471 contained only a ministerial and clerical error and the DIS took steps to correct its error).

¹¹ *See Requests for Review of the Decisions of the Universal Service Administrator by Canon-McMillan School District et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd at 15555, 15558, para. 6 (WCB 2008) (granting relief to petitioners demonstrating good faith in complying with the invoicing deadline); *Request for Waiver and Review of Decisions of the Universal Service Administrator by Erie I BOCES et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13381 (WCB 2013) (granting appeals and petitions for reconsideration from petitioners seeking a waiver of the Commission's E-rate rules in order to correct ministerial or clerical errors on petitioners' E-rate applications or associated forms).

¹² *See In the Matter of Universal Service Contribution Methodology; Emergency Request for Review of Decision of the Universal Service Administrator and Request for Waiver of Deadline by Peerless Network, Inc.*, WC Docket No. 06-122, Order, 29 FCC Rcd. 7546, ¶ 2 (WCB 2014) ("*Peerless Order*").

when a clerical error resulted in a contribution invoice amount substantially more than what Peak Communications would typically pay.¹³

Strict compliance with the invoice deadline is inconsistent with the public interest when inadvertent typographical errors result in complete rejection of E-rate support.¹⁴ Strict adherence to the rule in this circumstance would result in unwarranted financial harm to Contact Network arising solely out of an inadvertent clerical error that cannot be corrected through any other means. Absent a waiver of the revision deadline, Contact Networks would not receive reimbursement from the E-rate program for services rendered to Homewood in FY 2017. Contact Network would lose approximately \$47,055.96 in revenues that it otherwise would have received, leaving Contact Network with fewer resources for network deployment and improving services to Contact Network's E-rate and other customers.

Granting a limited waiver as requested herein would not undermine the policy objective of the invoicing extension rules, which is to standardize extension requests to make invoice processing efficient. Where Contact Network thought it had submitted a timely extension request, waiver of the invoice deadline in this instance will not disserve the rule's underlying purpose and would better serve the public interest than requiring strict compliance. But for the inadvertent clerical error in the FRN contained in the October 12, 2018 extension request, Contact Network's extension would have been granted and its submission of the Homewood Invoices would have been timely. The Bureau has previously waived the invoice deadline rule to enable a provider to refile its invoice that was otherwise filed timely.¹⁵

¹³ See *In the Matter of Emergency Request for Review by Peak Communications, Inc. of a Decision of the Universal Service Administrator and Request for Waiver of Deadline for Filing Revisions to FCC Form 499-Q*, WC Docket No. 06-122, Order, 29 FCC Rcd. 9668, ¶ 2 (WCB 2014) ("*Peak Communications Order*").

¹⁴ See note 11, *infra*.

¹⁵ See *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 06-122, DA 19-116, n.11 (WCB 2019).

Finally, USAC accounts for appeals in determining the de-obligation date for funds against which an invoice has not been received for a particular funding year.¹⁶ In this case, USAC received an invoice, denied it, Contact Network filed an appeal, and is filing this waiver within 60 days of USAC's denial of its appeal. Funds committed for FRN 1799090576 should not have been de-obligated as this time and distributing those funds therefore will not adversely affect other E-rate applicants.

III. Conclusion

Contact Network requests that the Bureau (1) waive Section 54.514(a) of the Commission's rules to permit Contact Network to resubmit the Homewood Invoices and (2) direct USAC to process the Homewood Invoices for payment.

Respectfully submitted,

/s/ Tamar E. Finn

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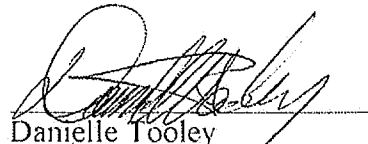
July 19, 2019

(waiving the invoice deadline where North Carolina Library System's service provider timely filed FCC Form 474 calculated from the correct date of the extension granted by USAC).

¹⁶ See *E-rate Modernization Order* at 8967, ¶ 241.

Verification of Danielle Tooley

I, Danielle Tooley, am the USAC Account Manager of Uniti Fiber. I verify under penalty of perjury that the foregoing was prepared under my supervision and that the facts contained herein are true, complete, and correct to the best of my knowledge, information and belief.


Danielle Tooley
USAC Account Manager
Uniti Fiber

Executed on July 19, 2019