



Monday, July 23, 2018

Marlene H. Dortch, Secretary  
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:	ADI Schools, Inc. n/k/a Notre Dame ACE Academies
Billed Entity Number:	16062792
471 Number:	931237
FRN:	2544935

Dear Ms. Dortch:

We are appealing to the FCC a recent denial of a requested service delivery extension made by USAC staff for a 2013 FRN.

BACKGROUND

ADI Schools, Inc. (n/k/a Notre Dame ACE Academies) received approval for funding for Bright House Networks Internet access on Form 471 931237, FRN 2544935 on May 29, 2013. The deadline to invoice for this FRN was April 22, 2015, after deadline extension requests were approved. Reimbursement for this FRN was requested on April 21, 2015 for the full amount of the FRN, \$4,966.92 on invoice 2172681. The form was acknowledged by the service provider on May 7, 2015. Those funds were not approved for payment. The reason listed was, "Invoice Received Date [05/07/2015] Later Than FCC Extension Date [04/22/2015]."

The funds approved under this FRN are associated with a BEN (Billed Entity Number) that is no longer active. In FY2015, ADI Schools, Inc. merged with Mother Theodore Catholic Academies and we applied for funding for the schools under the new BEN 16049645. In FY2018 the school changed its name to Notre Dame ACE Academies using the same BEN. The current BEN for the entity is 16049645.

We received a letter dated November 22, 2017 entitled “Administrator’s Decision on FCC Remand – Funding Year 2013.” This letter indicated that the FCC directed USAC to allow applicants to resubmit invoices which had been timely filed between August 2014 and July 2016 and that were rejected “based on a lack of timely service provider certification before the invoice filing deadline.” The letter went on to identify our invoice 2172681 as one that met the above criteria and directed us to file another invoice to request the approved funds.

On December 11, 2017 we attempted to file an invoice to request the reimbursement for this old FRN. Due to a change in the invoicing procedures, an additional form (Form 498) is required in order to certify or even save an invoice. There is not a Form 498 associated with ADI Schools, Inc. (BEN 16062792) because the form was not required until FY2017 and ADI Schools, Inc. was inactive as of FY2015.

We attempted to add the outdated entity (16062792) to our current Form 498 (for BEN 16049645) to resolve this issue. The Form 498 is filed in the new EPC portal. We were unable to add BEN 16062792 to our Form 498 because the number was not migrated into EPC from the legacy system.

We immediately contacted USAC Customer Service and they opened Case #210572.

After providing technical guidance for EPC that didn’t work, they indicated that the case was escalated on December 19, 2017. On January 25, 2018, concerned because the February 1, 2018 invoice deadline was approaching, we contacted USAC customer service for guidance on how to proceed requesting the approved funds. On February 13, 2018 USAC responded with guidance to request a deadline extension while they worked on the EPC issue. The deadline extension was requested and it was denied immediately. The reason for the denial was, “This request does not qualify for a deadline extension under the invoice deadline extension rules because you have previously requested an extension and USAC may approve only one 120-day extension.”

A new customer service case (Case #239199) was opened in order to get a resolution and USAC advised the school to file an appeal to the deadline extension denial while they continue to work on the technical issues with EPC.

## DISCUSSION

In the Report and Order and Further Notice of Proposed Rulemaking adopted July 11, 2014 (FCC 14-99, commonly known as the First Modernization Order), the FCC modified the FCC Form 472 (BEAR) process, allowing applicants to directly invoice USAC for reimbursement of supported services. This change required that disbursements be made by electronic funds transfer (EFT) which led directly to a requirement that applicants choosing the BEAR process have the information necessary to provide this EFT on file with USAC. Due to the necessity to build a method of collecting the necessary information from applicants and integrating this data with their new IT platform (EPC), USAC did not implement this change in the BEAR process until July 1, 2016. At this point applicants were required to file an FCC Form 498 to provide the information necessary to process an EFT. At that time we filed a Form 498 under BEN 16049645, the only active BEN for our school in the EPC system.

Despite months of exchanges with USAC through the Customer Service Bureau (CSB) we know of no way to file a Form 498 for the inactive BEN this funding is assigned to and we believe this presents a unique special circumstance which justifies this invoice deadline waiver. As USAC's November 22, 2017 letter states, FCC Order DA 17-526 (the Jefferson-Madison Order) instructed USAC to allow applicants to resubmit invoices under special circumstances. The circumstances were that a BEAR form had been timely filed between August 2014 and July 2016 and that the BEAR was then rejected based on a lack of timely service provider certification before the invoice filing deadline. Both of these conditions were met by our BEAR invoice 2172681. We were unable to even save a new invoice due to the new field that requires a Form 498 number. The Jefferson-Madison order requires that USAC process the resubmitted BEARs within 90 days of the adoption of the Jefferson-Madison Order. Unfortunately, the inability to process a Form 498 for BEN 16062792 makes it impossible for USAC to process our invoice.

It is our understanding that the Commission may grant a waiver of its rules for good cause shown and if it is in the public interest.<sup>1</sup> Paragraph 8 of the Jefferson-Madison Order details the FCC's own reasonings regarding the public's interest in allowing for correction of the denial of BEARs filed in a timely manner but lacking service provider certification at the time of the BEAR processing changeover. We believe that an inability on USAC's part to process our BEAR due to issues with EPC meets the standard of good cause shown. In his letter to USAC on April 18, 2017, Chairman Pai outlined his concerns and disappointment with the EPC system and its implementation. He laid out three directives for USAC, the third of which was that USAC "identify alternative options to assist applicants even in the event of IT failures". We strongly believe that an inability to process approved funding due to an inability to link that funding to its eligible billed entity is an IT failure. USAC has directed us in writing (see CSB Cases 210572 and 239199) to seek this waiver of the invoice deadline for the FRN. We seek this waiver in order to give them the time they need to correct their IT issue. Strict adherence to the rules of the program and the 90 day processing deadline set by the Jefferson-Madison Order would mean that this approved funding would be inaccessible to the applicant, which is not in the interest of the public in general or the 965 students served by this applicant. We believe this is good cause to grant this waiver.

#### REQUESTED ACTION

We respectfully request a waiver of the invoice deadline for 471 #931237, FRN 2544935. We also request any other procedural waivers necessary for ADI Schools, Inc. (n/k/a Notre Dame ACE Academies) to receive its approved funding. We believe that the unique circumstances of our issue within EPC necessitates a unique solution. The First Modernization Order sets the standard for invoice deadline extensions at 120 days. We would point out that had we had the option to request such an extension to the 90 day processing time granted by the Jefferson-Madison Order, we would have already exhausted it while waiting for a fix to EPC that would allow USAC to payout the approved funding. USAC does not share information about the timing of the resolution of EPC issues like ours and so there is no way for us

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<sup>1</sup> The Commission may waive any provision of its rules on its own motion and for good cause shown. See 47 CFR § 1.3. In general, the Commission may grant a waiver if: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation would better serve the public interest than strict adherence to the general rule. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

to estimate an appropriate amount of time to request to give them the time they need to resolve our issue. Thus we respectfully request either an open ended waiver or that the FCC consult with USAC prior to granting a waiver with a set deadline to avoid the need to reapply should this issue persist within the EPC system.

There is no intent to or evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements in our request. For the reasons described above, it would be in the public interest to allow the school to receive their E-Rate funding of \$4,966.92.

Thank you for your time and consideration. You are hereby authorized to contact our E-Rate Contact, Karen Rutledge, at 317-701-6751 or karenr@adtecerate.com if there is any additional information necessary for your review of our waiver request for FRN 2544935.

Thank you,

A handwritten signature in black ink, appearing to read "Chris Brunson".

Chris Brunson

Director of Finance

Notre Dame ACE Academies, formerly ADI Schools, Inc.

Attached:

- Administrator's Decision on FCC Remand – Funding Year 2013
- BEAR Invoice 2172681 and summary
- BEN History (4 pages)
- USAC Customer Case #210572 Summary
- Invoice Deadline Extension Request Denial for 2544935
- USAC Customer Case #239199 Summary