

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

| | | |
|---|---|------------------------|
| In the matter of |) | |
| |) | |
| |) | |
| Request for Review of Decision of |) | CC Docket No. 02-6 |
| Universal Service Administrator |) | |
| And Petition for Waiver by |) | |
| |) | |
| KIPP Memphis Collegiate Schools |) | File No. SLD - 1047245 |
| |) | |
| Schools and Libraries Universal Service |) | |
| Mechanism |) | |
| |) | |

**KIPP MEMPHIS COLLEGIATE SCHOOLS
REQUEST FOR REVIEW AND PETITION FOR WAIVER**

KIPP Memphis Collegiate Schools (“KIPP”),¹ by its undersigned representative and pursuant to Section 54.719(b)² of the Federal Communications Commission’s (“FCC”) rules, hereby requests review of the action taken by the Universal Service Administrative Company (“USAC”) with respect to one Funding Request Number (“FRN”) in the above-captioned application.³

As discussed below, KIPP properly requested an invoice extension prior to the established filing deadline. As KIPP prepared to submit invoices, it discovered that the deadline had not been extended in USAC’s system. KIPP eventually learned that USAC had denied the request. Within the allowable 60-day period to appeal the decision, KIPP requested an explanation from USAC and documentation of its decision. USAC, though, failed to respond until after the appeal deadline and could provide neither.

KIPP filed the underlying appeal with the Administrator, explaining that it had timely submitted the invoice extension request. KIPP also explained that, because USAC failed to respond to KIPP

¹ Billed Entity Number 16058370.

² See 47 C.F.R. § 54.719(b) (permitting parties aggrieved by a decision of the Administrator, after seeking review from the Administrator, to seek review from the Commission).

³ The affected FRN is 2858151.

inquiries and/or provide the requested information within a reasonable period, the 60-day deadline to appeal the decision had passed. Nevertheless, upon an apparently terse review of the facts, USAC denied the appeal because it was postmarked more than 60 days after KIPP's invoice deadline request had been denied.

If USAC's decision stands, it will have a devastating effect on KIPP's already strained resources, as it will be unable to collect reimbursements totaling \$185,850.00 for services paid for and received. Such a result would be particularly unwarranted in this case, where USAC errors led to the potential loss in funding.

KIPP respectfully requests that the Commission expeditiously (1) review and reverse USAC's decision in the underlying appeal, (2) direct USAC to extend the Last Date to Invoice for the affected funding request, and (3) to the extent necessary, waive Section 54.720(b),⁴ Section 54.514(b),⁵ and any other of the Commission's rules as are necessary to grant the requested relief. Given the facts of this case and, specifically, USAC's mishandling of the invoice extension request and unresponsiveness, there are ample grounds to reverse USAC's decision and, if necessary, grant the requested waiver.

I. BACKGROUND

On April 15, 2015, KIPP filed an FCC Form 471, requesting E-rate program discounts for Category One services and equipment. The application included KIPP's internet access funding request, FRN 2585151. On October 28, 2015, USAC approved the application and funding request as submitted.

As it came time to invoice USAC for the requested services, KIPP realized it would require additional time submit reimbursement requests. On January 30, 2017, the original filing deadline, it requested an invoice deadline extension via USAC's "Submit a Question" tool.⁶ KIPP immediately received an email from USAC confirming its receipt of the request. Because KIPP timely submitted the

⁴ 47 C.F.R. § 54.720(b) (requiring parties requesting review of an Administrator decision to file such request within sixty days from the date the decision was issued).

⁵ 47 C.F.R. § 54.514(b) (permitting service providers or billed entities to request a one-time extension of the invoicing deadline if requested in advance of the invoice filing deadline).

⁶ SLD Inquiry Number 22-930755. A copy of the email confirming USAC's receipt of the extension request, dated January 30, 2017, is attached as Exhibit A.

request, received a confirmation email, and did not receive notification that the request had been denied, it assumed USAC had approved the request and extended the invoice deadline.

Several weeks later, as KIPP prepared to submit invoices, it discovered that the Last Date to Invoice had not been updated in USAC's system (i.e., USAC's system did not reflect that the original January 30, 2017 filing deadline had been extended 120 days). On April 7, 2017, KIPP opened a customer service case in USAC's E-rate Productivity Center ("EPC") portal and requested an update and explanation.⁷ A USAC representative responded on April 12, 2017, informing KIPP that its invoice extension request been denied. This was the first KIPP learned that USAC had not approved the request.

Although KIPP requested an explanation for the denial and documentation of USAC's decision, the representative was either unable or unwilling to provide any additional information. The representative simply instructed KIPP to check for a decision sent via email on February 10, 2017 to the contact listed on its FCC Form 471. The KIPP contact thoroughly searched email and "spam" folders but was unable to locate a decision letter or any related email. KIPP again explained to the representative that it did not receive the email and asked that USAC, at the very least, provide a copy of the emailed decision. The representative, though, informed KIPP that "a copy of the email [was] not available."⁸ To date, KIPP has received neither a decision letter nor an explanation as to why its invoice extension request was denied.

On May 8, 2017, KIPP filed the underlying appeal with USAC. KIPP explained in the appeal that it had timely submitted the invoice request and had not received an explanation for the denial or documentation of USAC's decision. KIPP also explained that, because USAC failed to respond to KIPP inquiries and/or provide the requested information within a reasonable period, the 60-day deadline to appeal the decision had passed. It appears USAC considered only the submission date and denied the appeal without reviewing the facts provided.⁹

⁷ Client Service Bureau Customer Service Case 168480. A copy of the correspondence is attached as Exhibit B.

⁸ *Id.*

⁹ The Administrator's Decision on Appeal is attached as Exhibit C.

II. DISCUSSION

A. USAC improperly denied KIPP's invoice deadline extension request and failed to timely respond to KIPP's inquiries.

USAC denied KIPP's invoice extension request for reasons even it has been unable to ascertain. And because KIPP has yet to receive an explanation from USAC or a copy of its decision, it is still not clear why the request was not approved. From the time KIPP attempted to invoice USAC to the time it filed the appeal, the USAC Funding Request Data Retrieval Tool listed January 30, 2017 as the Last Date to Invoice, and KIPP requested the invoice deadline extension on that exact date.¹⁰ While KIPP, admittedly, submitted the extension request on the final day of the filing deadline, the request was sent via email at 1:32 PM on January 30, 2017, well within standard business hours. And neither USAC nor FCC rules specify a time by which such requests must be made. Moreover, KIPP received a confirmation email from USAC confirming its receipt of the correspondence.

These facts were provided in KIPP's appeal to USAC. KIPP also acknowledged that the 60-day appeal deadline had passed, but made clear that USAC's unresponsiveness delayed KIPP's ability to file the appeal. In fact, because prior to April 12, 2017 – when a USAC representative finally responded to KIPP's customer service case – KIPP was unaware the extension request had been denied, it was unaware that an appeal was even required.

It is apparent that USAC considered only the submission date in denying KIPP's appeal. Given USAC's omissions in this case, and because it failed to rule on the substantive issues raised in the underlying appeal, the Commission should review and reverse USAC's decision.

B. If deemed necessary, a waiver of Commission rules is appropriate

KIPP maintains that it complied with FCC rules, that it timely requested an invoice deadline extension, and that USAC's unresponsiveness caused it to miss the 60-day appeal deadline. Yet, if the

¹⁰ A table including the information generated from the Funding Request Data Retrieval Tool is attached as Exhibit D. The information was retrieved from the USAC website on May 1, 2017.

Commission deems it necessary to grant KIPP's requested relief, a waiver of Section 54.720(b), Section 54.514(b), and such other Commission rules as are necessary is appropriate.

Immediately upon noticing that the deadline had not been extended, on April 7, 2017, KIPP opened the customer service case in EPC and requested additional information from USAC. USAC responded on April 12, 2017 and informed KIPP that its extension request had been denied 61 days prior, on February 10, 2017 (i.e., one day *after* the deadline to appeal USAC's denial of the extension request). This was the first and only notification KIPP received informing it that the request had been denied. Had USAC either provided notification that the invoice extension request had been denied or timely responded to KIPP's inquiry, KIPP could have appealed USAC's decision. But because KIPP never received a decision letter or email, and because USAC waited five days to respond to the customer service case, KIPP could not possibly have submitted the appeal within 60 days, as required. Because KIPP was not afforded an opportunity to appeal USAC's original invoice deadline decision, the Commission should, if necessary, waive the 60-day appeal deadline in Section 54.520(b) of its rules.

Given USAC's mishandling of the invoice extension request in this case, whatever may have been the cause, a waiver of the Commission's invoicing rules is also warranted. Again, KIPP timely submitted the invoice extension request. USAC even confirmed via email its receipt of the request. It is concerning that such a request would be improperly denied. More alarming, though, is the fact that USAC cannot provide to applicants an explanation for the denial or a decision letter. In fact, as USAC's representative informed KIPP, it was not able to provide a *copy* of the emailed decision.

The Commission made clear in its *Seventh Report and Order*¹¹ that, although it is generally not in the public interest to waive its invoicing rules, waivers should be granted in extraordinary circumstances. Because USAC inexplicably denied KIPP's invoice request, in violation of Section 54.514(b) of the Commission's rules,¹² and is unable to provide documentation of the decision, this case is unfortunately

¹¹ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 at para. 240 (2014).

¹² See 47 C.F.R. § 54.514(b) (requiring that the Administrator grant a one-time, 120-day extension of the invoice filing deadline, if it is timely requested).

an extraordinary one. The invoice filing deadline is undoubtedly important to the efficient administration of the E-rate program. But applicants cannot be expected to meet program deadlines and comply with E-rate rules when USAC fails to notify the applicant of an adverse decision and cannot provide documentation of such a decision, even upon request. Waiver of the Commission's invoicing filing deadline is therefore appropriate and will allow KIPP to resubmit invoices to USAC for services paid for and received.

III. CONCLUSION

For the foregoing reasons, KIPP Memphis respectfully requests that the Commission (1) reverse USAC's decision on appeal, (2) direct USAC to extend the Last Date to Invoice for the affected funding request, and (3) to the extent necessary, waive Section 54.720(b), Section 54.514(b), and any other of the Commission's rules as are necessary to grant the requested relief.

Respectfully submitted,

KIPP Memphis Collegiate Schools

By: Curtis A. Johnson
IT Network Systems Administrator

(901) 452-2753

KIPP Memphis Collegiate Schools
2670 Union Avenue Extended
Suite 1100
Memphis, TN 38112

August 4, 2017

Exhibit A

From: sldcaseattachments@sl.universalservice.org [<mailto:sldcaseattachments@sl.universalservice.org>]
Sent: Monday, January 30, 2017 1:32 PM
To: Nick Shipley <nshipley@fundsforlearning.com>
Subject: SLD Inquiry #: 22-930755 Received

Thank you for using Submit a Question. This message serves as a receipt confirmation of your submission.

The case number for your submission is 22-930755.

Please refer to this case number in subsequent contacts regarding this issue. Note that we may need to ask you for additional information to completely answer your question or fulfill your request.

You indicated in your submission that you wish to send us an attachment. To submit an attachment, please reply to this message and attach your attachment to the reply. Any additional information you wish to provide should be included in the attachment, not added to the text of this email.

If you still have questions about this issue after you review our response, please call us at 1-888-203-8100. Please do not reply to this message or to our response, as replies go to an unattended mailbox.

If you have a new question or issue, please submit another question and we will create a new case number to address it.

If you need program information, you can visit the SLD web site at www.usac.org/sl.

Thank you.

Here is the information you submitted:

*[FirstName]=Nicholas [LastName]=Shipley [JobTitle]=Compliance Manager
[EmailAddress]=nshipley@fundsforlearning.com [WorkPhone]=4054710974
[FaxPhone]=4054710904 [PreviousCaseNumber]=0 [FormType]=Invoice Extension
[Owner]=DEADLINEEXTENSIONS [DateSubmitted]=1/30/2017 2:28:43 PM
[AttachmentFlag]=Y[Question2]=KIPP MEMPHIS (BEN 16058370) requests an invoice
deadline extension on the following: FRNs: 2868395, 2868400, 2868401, 2868407, and 2868410
Form 471: 1050360 Service provider (SPIN): SmartWave Technologies, LLC (143008653) and
FRN: 2858151 Form 471: 1047245 Service provider (SPIN): AT&T Corp. (143001192) Letter of
agency to follow.*

Exhibit B

#168480 - MK15-Extension Request [Follow](#)[Update Case](#)

Case Details

Topic Online Navigation Help - Other
Status Pending USAC
Priority Medium
Inquiry Type Phone

Created By USAC
Created On 4/7/2017 4:00 PM EDT
Organization KIPP MEMPHIS

Case Description

Description Caller is wanting to know the status of case # 22-930755

Case Artifacts

Documents

| Name | Uploaded By | Upload Date |
|------------------|---------------|-----------------|
| MK15 - 22-930755 | Zach McLemore | 4/13/17 4:42 PM |

Attachments

| Attachment | Attachment Type |
|--------------------|-----------------|
| No items available | |

Case Thread

| User | Note | Date |
|---------------|---|------------------------|
| USAC | <p>Zach,</p> <p>Since the case 22-930755 for the invoice deadline extension has been resolved (denied) the only recourse you have is to file a appeal on the denial letter or file an FCC deadline waiver. FCC rules allow for a single, one-time 120-day extension of the deadline to submit an invoice – FCC Form 472 (BEAR Form) or FCC Form 474 (SPI Form).</p> <p>If you missed your extended invoicing deadline, you may file a waiver request with the FCC and the FCC must grant your waiver request in order for USAC to grant any further extensions. To file a waiver request, please follow the instructions for submitting an FCC appeal on the Schools and Libraries website: http://www.usac.org/about/about/program-integrity/appeals.aspx</p> | 4/14/2017 11:10 AM EDT |
| Zach McLemore | <p>Please find attached, the confirmation for case 22-930755 confirming that FRN 2858151 was included within the request. For ease of review, the line has been highlighted on page 2 of the attached.</p> | 4/13/2017 4:42 PM EDT |
| USAC | <p>Zach,</p> <p>A copy of the Email is not available. You should check with the Form 471 Contact who was sent the email.</p> <p>If you have any additional questions or concerns, please reopen this case, create a new case, or contact the Client Service Bureau at 888-203-8100.</p> | 4/13/2017 2:33 PM EDT |
| Zach McLemore | <p>Can you please provide a copy of the letter for the District's reference and records.</p> | 4/12/2017 3:40 PM EDT |
| USAC | <p>Zach,</p> <p>This Siebel case 22-930755 was processed and email notification was sent on 2/10/17 to the 471 contacts.</p> | 4/12/2017 3:18 PM EDT |

Case Contact

Case Contact Zach McLemore

Exhibit C

Curtis A. Johnson
Kipp Memphis
2670 Union Avenue Extended
Memphis, TN 38112

Billed Entity Number: 16058370
Form 471 Application Number: 1047245
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2015-2016

June 08, 2017

Curtis A. Johnson
Kipp Memphis
2670 Union Avenue Extended
Memphis, TN 38112

| | |
|------------------------------|-------------------|
| Re: Applicant Name: | KIPP MEMPHIS |
| Billed Entity Number: | 16058370 |
| Form 471 Application Number: | 1047245 |
| Funding Request Number(s): | 2858151 |
| Decision Letter Date: | February 10, 2017 |
| Date Appeal Postmarked: | June 02, 2017 |
| Your Correspondence Dated: | June 02, 2017 |

Our records show that your appeal was postmarked more than sixty (60) days after the date the Universal Service Administrative Company's (USAC's) Administrator's Decision was issued for your invoice deadline extension request as shown above. Federal Communications Commission (FCC) rules require applicants to postmark appeals within 60 days of the date of the USAC decision or action that is being appealed. Your appeal, as noted above, was postmarked after the appeal deadline. FCC rules do not permit USAC to consider your appeal.

If you wish to appeal this decision, you may file an appeal pursuant to 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:
<http://www.usac.org/sl/about/program-integrity/appeals.aspx>.

Schools and Libraries Division
Universal Service Administrative Company

Exhibit D

| | | | | | | | |
|--------------------------|------------------------|-------------------------|-------------------------------|-----------------------|---------------------|-------------------------|-------------------------|
| Service Provider Name | Commitment Status | 486 SSD | Funding Year | FCDL Date | Contract Exp Date | Last Date to Invoice | Orig FRN Service Type |
| AT&T Corp. | FUNDED | 7/1/2015 | 2015 | 10/29/2015 | 6/30/2016 | 1/30/2017 | INTERNET ACCESS |
| | | | | | | | |
| Orig R Monthly Cost | Orig R Ineligible Cost | Orig R Eligible Cost | Orig R Months of Service | Orig R Annual Cost | Orig NR Cost | Orig NR Ineligible Cost | Orig NR Eligible Cost |
| \$15,800.00 | \$0.00 | \$15,800.00 | 12 | \$189,600.00 | \$16,900.00 | \$0.00 | \$16,900.00 |
| | | | | | | | |
| Orig Total Cost | Orig Discount | Orig Commitment Request | Cmtd FRN Service Type | Committed Amount | Cmtd R Monthly Cost | Cmtd R Ineligible Cost | Cmtd R Eligible Cost |
| \$206,500.00 | 90 | \$185,850.00 | INTERNET ACCESS | \$185,850.00 | \$15,800.00 | \$0.00 | \$15,800.00 |
| | | | | | | | |
| Cmtd R Months of Service | Cmtd R Annual Cost | Cmtd NR Cost | Cmtd NR Ineligible Cost | Cmtd NR Eligible Cost | Cmtd Total Cost | Cmtd Discount | Cmtd Commitment Request |
| 12 | \$189,600.00 | \$16,900.00 | \$0.00 | \$16,900.00 | \$206,500.00 | 90 | \$185,850.00 |
| | | | | | | | |
| Orig 471 SSD | Cmtd 471 SSD | Invoicing Mode | Total Authorized Disbursement | | | | |
| 7/1/2015 | 7/1/2015 | NOT SET | | | | | |