

**Before the  
Federal Communications Commission  
Washington, D.C.**

In the Matter of	)	
	)	
	)	
Schools and Libraries	)	CC Docket No. 02-6
Universal Service Support Mechanism	)	
	)	
Request for Review and/or Waiver	)	
By Ada Public Library <i>et al.</i>	)	Application No. 945219 <i>et al.</i>
of Funding Decisions by the	)	
Universal Service Administrative Company	)	

**CONSOLIDATED REQUEST FOR REVIEW AND/OR WAIVER  
BY ADA PUBLIC LIBRARY ET AL.  
OF FUNDING DECISIONS BY THE  
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

Pursuant to sections 54.719 and 54.722 of the Commission’s rules,<sup>1</sup> Ada Public Library, Area Coop Educational Services, Idabel School District 5, Kansas Public Library, Nobel Independent School District 40, Quest Academy, South San Antonio Independent School District, Bridgeport School District, and Hartford School System (collectively, the Appellants) hereby respectfully request a review of the Universal Service Administrative Company (USAC) decisions to deny Schools and Libraries Universal Service funding to the Appellants for Funding Year 2014.<sup>2</sup>

These school districts are appealing a decision by USAC to deny reimbursements for a failure to meet the Commission’s deadline for filing invoices after receipt of services. The Appellants, however, filed on time for an extension of the recurring services invoice deadline.

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<sup>1</sup> 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a).

<sup>2</sup> See Exhibit 1 for a list of the applications associated with the invoice denials appealed herein.

When USAC granted the extension request, however, it did not provide the 120 days provided for by the Commission in the *July 2014 Modernization Order*. Instead, in most cases, the Appellants received only around a month of the 120-day period to submit their invoices, and in one case, the Kansas Public Library received its approval from USAC after the entire 120-day extension time period had passed. USAC's procedures prohibited the Appellants from submitting their invoices until they had their extension deadline requests approved by USAC. They then were unable to complete the invoicing process in the shortened time provided after USAC approved their invoice requests. Furthermore, Appellants did everything within their control to provide all the requested documentation to USAC. When it appeared that funding had not yet been disbursed, they then sought another extension, which USAC denied. The Appellants respectfully request that the Wireline Competition Bureau (WCB) grant these appeals and remand the invoices back to USAC so that applicants may have the full 120-day period for processing of their invoice requests. If WCB believes that a waiver of the Commission's invoice deadline rule is necessary to remand the invoices back to USAC, the Appellants respectfully request that as well.

**I. WCB SHOULD REVERSE USAC'S DECISION AND DIRECT USAC TO PROVIDE THE BENEFICIARIES A 120-DAY EXTENSION, AS REQUIRED BY COMMISSION RULE.**

In the *July 2014 Modernization Order*, the Commission codified invoice deadline procedures for the E-rate program.<sup>3</sup> The Commission adopted a rule requiring applicants and service providers to submit invoicing forms for reimbursement to USAC no later than 120 days after the last day to receive service or 120 days after the date of the FCC Form 486 Notification

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<sup>3</sup> *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 at para. 239 (2014) (*July 2014 Modernization Order*).

Letter, whichever is later.<sup>4</sup> The Commission also adopted a rule to allow an applicant or a service provider to request and receive a single one-time 120-day extension of the invoice deadline for any reason.<sup>5</sup> The applicant or service provider must request the extension before the deadline by which invoices must be filed, which was October 28, 2015 for funding year 2014.<sup>6</sup> The Commission found that allowing the 120-day invoice extension requests without requiring a reason for the request would reduce the administrative burden on USAC, increase the efficiency of the invoicing process, and allow applicants and service providers additional time to submit their requests for reimbursement.<sup>7</sup>

The Appellants, following the rule as set forth in the *July 2014 Modernization Order*, all submitted invoicing extension requests to USAC before the funding year 2014 recurring services invoicing deadline of October 28, 2015. While USAC ultimately approved all of the requests for an extension, USAC did not provide any of the Appellants with the full 120 days as specified by the *July 2014 Modernization Order*.<sup>8</sup>

The *July 2014 Modernization Order* appears to contemplate USAC approving the invoice extension requests immediately after they are filed. The Commission allowed applicants to request an extension of the invoice deadline for any reason, instead of requiring applicants to meet certain criteria that USAC had previously established. As such, USAC does not have to review and make a determination as to the merits of the request.

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<sup>4</sup> 47 CFR § 54.514(a).

<sup>5</sup> *July 2014 Modernization Order* at para. 240.

<sup>6</sup> 47 CFR § 54.514(b).

<sup>7</sup> *July 2014 Modernization Order* at para. 240.

<sup>8</sup> See [Exhibit 1](#). This chart shows all of the Appellants and the dates they filed for an invoice extension request.

Unfortunately, the Appellants' experience with the timing of the approvals of their extension requests has been significantly different. None of the Appellants in this case received the benefit of the 120-day extension period granted by the Commission in the *July 2014 Modernization Order*. Instead, USAC did not approve the invoice requests until well into the 120-day time period.

While the invoice extension requests await USAC's approval, the applicants and service providers cannot move forward to process the invoices. USAC directs applicants and service providers to check the FRN Extension Table to see when the request is granted.<sup>9</sup> If the FRN Extension Table does not show that the invoice extension request has been granted, an applicant or service providers' invoice cannot be successfully processed. If Appellants had attempted to submit the invoice after the October 28, 2015, initial deadline but before the invoice extension request was granted, USAC would have rejected the invoice as untimely (by giving it a "zero" funded response).<sup>10</sup> As such, the schools, libraries and service providers must wait for the approval before attempting to submit the invoices.

Requesting funding – the final step in the quest for applicants to successfully navigate the E-rate application process – often takes substantial work, even after the invoice form itself is submitted. When using the BEAR process, the applicant must submit the FCC Form 472.<sup>11</sup> Then USAC sometimes replies with a request for additional information, including supporting bills, proof of applicant payments, and other documentation.<sup>12</sup> The applicant must then locate

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<sup>9</sup> See <http://usac.org/sl/applicants/step06/invoice-extensions.aspx>.

<sup>10</sup> See Exhibit 2. USAC directs applicants and service providers to wait until their extension requests are approved before filing their invoices.

<sup>11</sup> See <http://www.usac.org/sl/applicants/step06/form-472-filing.aspx>.

<sup>12</sup> Exhibit 3 (South San Antonio invoice submission and subsequent correspondence with USAC).

that information and submit it to USAC. Service providers have to affirmatively approve the BEAR form.<sup>13</sup> For the SPI process, after the service provider submits its invoicing requests, it may also receive requests for additional documentation. The applicant must then agree that the information provided to USAC by the service provider is accurate. Given this level of coordination required between all the applicant, the service provider and USAC, it is evident that, in many cases, the additional time to respond to USAC's questions to complete the invoicing process is required.

For example, the Ada Public Library submitted its invoice extension request on October 27, 2015.<sup>14</sup> USAC did not approve the request until January 27, 2016.<sup>15</sup> The deadline for the invoice request was set at February 25, 2016 – which is 120 days from October 28, 2016 – even though the approval was issued three months after the initial deadline.<sup>16</sup> The deadline left Ada Public Library with just 29 days to submit and complete the processing of the invoice after the extension was approved. In other words, USAC approved the invoice extension request in this case three months after the request was filed but gave Ada a deadline as if USAC had approved the request the day after it was submitted. When the invoice process was not completed within the 29 remaining days, it filed for another extension of the deadline, which USAC rejected.<sup>17</sup>

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<sup>13</sup> Because they have already been paid by the applicant, service providers do not have an incentive to approve the BEAR form in a timely manner.

<sup>14</sup> See Exhibit 4 (Ada requests for extensions and documentation of Good Samaritan requests in email from J. Kellogg.).

<sup>15</sup> See Exhibit 5 (USAC approval of Ada invoice extension request).

<sup>16</sup> *Id.*

<sup>17</sup> This process was followed by each of the Appellants. USAC's denial of their second extension requests is what each Appellant is appealing herein.

More egregiously, the Kansas Public Library also filed for an invoice extension on October 27, 2015.<sup>18</sup> It did not receive its approval until February 26, 2016 – one day after the new deadline established by USAC of February 25, 2016.<sup>19</sup> So, in effect, the Kansas Public Library received zero additional time to submit its invoice – even though it had filed timely for the extension request.

USAC does appear to allow some requestors at least some time after the February 25, 2016 deadline after it has completed processing of the extension requests. When the Kansas Public Library received its approval – the day after the deadline – two other entities, Paden Independent School District and Haskell Independent School District, on the same notification letter received an extension until May 27, which provided 92 days from the date of the approval. These entities still did not receive the full 120 days, but the new due date demonstrates that USAC is capable of extending the deadline beyond February 25, 2016 (120 days from the initial deadline of October 28, 2015).<sup>20</sup> In those approvals, USAC set the new invoice deadline 120 days after it approved the extension request.<sup>21</sup> It is not clear why USAC allowed some requestors additional time, not others. Because USAC has been able to adjust the deadline date for some, it would seem as if it could provide a 120-day period for all requestors.

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<sup>18</sup> See Exhibit 6 (Kansas Public Library request for extension).

<sup>19</sup> See Exhibit 7 (USAC approval of Kansas Public Library request in email from Debi Sovereign to USAC dated May 21, 2016).

<sup>20</sup> See *Id.*

<sup>21</sup> *Id.*

WCB recently released an order denying numerous invoice extension requests that were filed late.<sup>22</sup> In that Order, the Bureau pointed out that none of the petitioners availed themselves of the opportunity under the E-rate rules to seek a 120-day invoicing extension before their initial invoicing deadline.<sup>23</sup> Contrary to the petitioners in that Order, here all of the Appellants submitted their request for an invoice extension before the invoice deadline. Therefore, that Order should not govern the outcome of this request.

As a result of the process described above, these schools and libraries were deprived of the full 120 days to submit their invoices after timely requesting an extension – in conflict with the Commission’s *July 2014 Modernization Order*. For the above reasons, Appellants respectfully requests that WCB grant this appeal of decisions USAC made to deny E-rate funding. Appellants further respectfully request that the Commission remand the issue to USAC with the directive that USAC allow these Appellants the full 120 days to submit their invoices.

**II. IN THE ALTERNATIVE, THE FCC SHOULD GRANT WHATEVER WAIVERS IT DEEMS NECESSARY SO THAT THESE SCHOOLS CAN RECEIVE THE FUNDING COMMITTED FOR THEIR E-RATE ELIGIBLE SERVICES.**

As noted above, Appellants assert that they did not violate any E-rate requirements for the application invoices at issue, and that no waiver is necessary to provide the relief requested above. If the Commission disagrees, however, we respectfully request that the Commission grant whatever waiver it deems necessary to allow E-rate funding to be disbursed for these schools.

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<sup>22</sup> *Request for Waiver of Decisions of the Universal Service Administrator by Ada Public Schools, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 16-448 (WCB 2016).

<sup>23</sup> *Id.* at para. 1.

Granting the Appellants' appeals is in the public interest. Any of the Commission's rules may be waived if good cause is shown.<sup>24</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>25</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>26</sup> Further, the Commission has noted that , as long as there is no evidence of a misuse of funds, "rigid adherence to certain E-rate rules and requirements that are 'procedural' in nature does not promote the goals of section 254 of the [Telecommunications] Act . . . and therefore does not serve the public interest."<sup>27</sup>

Here, the Appellants meet the standard for a waiver of the invoice deadline, if the Commission believes a waiver of the rule is necessary. The Appellants followed the E-rate rules requiring beneficiaries to request an extension of the invoice deadline before the deadline. However, as described above, they were unable to meet the new deadline because they were not afforded the 120-day time period granted by the Commission in the *July 2014 Modernization Order*.

Furthermore, these Appellants have been working diligently – in many cases for months – to provide the information requested by USAC so that payment can be received. For example,

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<sup>24</sup> 47 C.F.R. § 1.3.

<sup>25</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

<sup>26</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>27</sup> *Request for Review of the Decision of the Universal Service Administrator by Adams County School District 14, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, FCC 07-35, para. 10 (2007); *see also Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5316-17, 5319-20, paras. 2, 9 (2006) (*Bishop Perry Middle School*).

AT&T submitted its invoice request for South San Antonio in a timely fashion.<sup>28</sup> AT&T received a request for additional information (service certifications) from USAC beginning on February 5, 2016.<sup>29</sup> Both the service provider, AT&T, and South San Antonio, responded to the inquiries made by USAC.<sup>30</sup> It is unclear whether there is still some additional information USAC had requested or if USAC has not yet made a decision on the invoice. Kellogg and Sovereign, out of an abundance of caution because the FRN Extension Table did not show that the invoice had been paid, then filed a second invoice extension request. USAC then denied the second extension request.<sup>31</sup>

Another example is that of Ada Public Library, which has been conscientiously trying to get its invoice paid for months. Kellogg and Sovereign had submitted the BEAR forms requesting payment four times, but each time USAC has rejected the submission.<sup>32</sup> In addition, Ada Public Library has received multiple requests for additional information (a service certification) from USAC, which it has timely responded to.<sup>33</sup> Ada Public Library has done everything in its power, including requesting the Good Samaritan process for its reimbursement, to attempt to receive the payment it is due.<sup>34</sup> USAC should not be able to simply dismiss the

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<sup>28</sup> See Exhibit 8 (South San Antonio invoice extension request).

<sup>29</sup> See Exhibit 9 (Correspondence between USAC and Kellogg and Sovereign re: invoice request).

<sup>30</sup> *Id.*

<sup>31</sup> Exhibit 10 (dismissal of second South San Antonio invoice extension request).

<sup>32</sup> This may be because Ada Public Library's service provider, TouchTone Communications, owes a debt to USAC. Kellogg and Sovereign has requested that USAC use the Good Samaritan process but has never heard a response. See Exhibit 11 (Correspondence between USAC, Kellogg and Sovereign, and TouchTone Communications).

<sup>33</sup> See Exhibit 11.

<sup>34</sup> If USAC cannot reimburse Ada Public Library through TouchTone, we request that the Commission direct USAC to use the Good Samaritan process so that Ada Public Library can receive its funding.

request for reimbursement due to an issue with the district's service provider, as appears to be happening.

Similarly, Idabel School District and Noble Independent School District have been trying to get their service providers to submit the proper paperwork. It is unclear if their service provider simply has not done so or if USAC is awaiting further information.<sup>35</sup> On the other hand, Southern New England Telephone Company - Frontier Communications (Frontier) – the service provider for Hartford and Bridgeport – has demonstrated to USAC that it had filed the required information by the invoice deadline and was actively working with USAC reviewers to complete service certification requests.<sup>36</sup>

It would be an effective implementation of Commission policy to allow these Appellants the opportunity to submit their invoices and finalize whatever remaining paperwork USAC believes is not complete. These Appellants have made it all the way through the application process with no errors and all that remains is for them to finalize their invoices to receive funding. They followed the Commission rules in requesting an invoice extension request in a timely fashion. It is likely that if they receive the full amount of time the Commission granted in the *July 2014 Modernization Order*, they will be able to successfully do so. Further, the invoicing rule is procedural in nature, and there are no allegations of waste, fraud or abuse or a misuse of E-rate funds. The Commission has said in such cases that waivers are appropriate.<sup>37</sup>

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<sup>35</sup> See appeals on file with USAC. Appellants are ready and willing to provide this information to WCB if it is necessary to WCB's analysis of this appeal. During the funding year, AT&T changed the districts' accounts numbers such that the districts were not receiving the correct discount amounts. AT&T was attempting to correct its billing but the district is unclear whether AT&T filed the SPI forms.

<sup>36</sup> Exhibit 12 (Appeals to USAC for Bridgeport and Hartford filed by Southern New England Telephone Company-Frontier Communications). It is our understanding that Frontier is separately appealing USAC's decision not to pay these invoices.

<sup>37</sup> See note 27.

The Commission should waive the invoicing deadline rule, if necessary, to allow them to receive the committed funding.

**III. THE COMMISSION SHOULD WORK WITH USAC TO ENSURE EACH BENEFICIARY OR SERVICE PROVIDER THAT TIMELY FILES AN INVOICE EXTENSION REQUEST RECEIVES 120 DAYS TO SUBMIT ITS INVOICES.**

At the E-rate service provider training in Atlanta, held June 30, 2016 USAC staff told stakeholders who raised this issue that they needed to submit their invoice extension requests as early as possible in advance of this year's October 2016 deadline for invoices, if they wanted to ensure they received USAC's approval so that they could use the full 120 days for the extension. USAC staff explained that they thought this year's extensions (invoices due October 2016) would work more smoothly than last year but they were unable to guarantee an immediate approval since manual steps are required on their end to complete a FRN extension. This "work-around" places a significant unnecessary burden upon applicants and service providers in that they would be submitting their extension requests far in advance of knowing whether they were even needed. It also creates additional work for USAC in that USAC would be manually reviewing the invoice extension requests – many of which would never be required because the invoices would be submitted timely in October. This additional work seems to be a waste of limited USF resources. Appellants respectfully suggest that better approaches would be (1) for USAC to create a program in the system by which these one-time invoice extension requests of the initial deadline were automatically granted within a day of their submission; or (2) for USAC to allow 120 days of time to submit the invoices to each requestor, starting from the date USAC approved the extension. Revising the process for the funding year 2015 invoices may help to avoid the situations that are the subject of this appeal.

#### **IV. CONCLUSION**

For the foregoing reasons, the Commission should grant Appellants' requests for appeal, or, in the alternative, their requests for waiver. In addition, Appellants request that the Commission allow them the full 120 days to submit their invoices to USAC for payment, consistent with the relief requested in this appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jane Kellogg", with a large, stylized flourish at the end.

Jane Kellogg  
Kellogg and Sovereign Consulting, LLC  
1101 Stadium Drive  
Ada, OK 74820

August 5, 2016

**CERTIFICATE OF SERVICE**

This is to certify that on this 5th day of August, a true and correct copy of the foregoing

Request for Review was sent via email to:

Schools and Libraries Division, Universal Service Administrative Company,  
Appeals@sl.universalservice.org

/s/ Gina Spade

## EXHIBIT LIST

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|------------|--|
| Exhibit 1  | List of applications associated with the invoices  |
| Exhibit 2  | USAC response to invoice submission question   |
| Exhibit 3  | South San Antonio invoice submission and subsequent correspondence with USAC   |
| Exhibit 4  | Ada request for extension  |
| Exhibit 5  | USAC approval of Ada invoice extension request   |
| Exhibit 6  | Kansas Public Library request for extension  |
| Exhibit 7  | Email from Debi Sovereign to USAC dated May 21, 2016 with USAC February 26, 3016 approval of Kansas Public Library request |
| Exhibit 8  | South San Antonio invoice extension request  |
| Exhibit 9  | Correspondence between USAC and Kellogg and Sovereign re: South San Antonio invoice request                                |
| Exhibit 10 | Dismissal of second San Antonio invoice extension request  |
| Exhibit 11 | Correspondence from Kellogg and Sovereign re :TouchTone Communications   |
| Exhibit 12 | Appeals to USAC for Bridgeport and Hartford filed by Southern New England Telephone Company-Frontier Communications        |