



ERATE PROGRAM, LLC

CONSULTING & FILING

9666 OLIVE BLVD | SUITE 215 ST. LOUIS MO 63132 PHONE: 314-282-3676 FAX: 314-395-5882

September 20, 2019

SUBMITTED VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: Supplemental Request for Review and/or Waiver, CC Docket No. 02-6

Dear Ms. Dortch:

On behalf of St. Anthony Catholic School of Milwaukee (BEN 61046) (“Applicant” or School”), eRate Program, LLC, the consultant for the applicant, files this supplemental request for review and/or waiver of USAC’s denial of payment for services rendered for the School for FY2015 Application # 1040928. Specifically, the School requests that the Commission grant an extension of not more than 30 days to refile its FCC Form 472 (BEAR) invoice and, to the extent required, issue a waiver for any missed deadlines that resulted from the applicant not receiving timely notification of a letter sent by USAC approving the original appeal and granting 30 days to refile the BEAR invoice.

Background

On July 2, 2018, St. Anthony School of Milwaukee, through its newly hired consultant, filed a timely appeal to USAC’s denial of FRN 2837203, dated May 2, 2018. USAC based its reason for the denial of failure to meet the 120-day invoice deadline as explained more fully in the original appeal.¹ However, it is not that the School failed to meet the 120-day deadline requirement; but, instead, it did not meet the 30-day extension to file its invoice after USAC's

¹ Exhibit A, St. Anthony School of Milwaukee FCC Appeal and Request for Waiver filed on July 2, 2018 (without exhibits).



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approval of its original invoice denial.² The School filed the original BEAR invoices on a timely basis.

The unfortunate circumstance is that the School never received USAC's Letter of Approval, dated December 7, 2017, granting the additional 30 days to refile until January 8, 2018. It was not until the consultant inquired into the status of the appeal on February 13, 2018, that it discovered that USAC had sent a letter approving the invoice. Upon consultant's request, USAC transmitted a copy of the letter by e-mail on February 13, 2018³, and the School acted immediately by filing the invoice on that date. Upon receipt of the e-mail of the Administrator's Decision on Appeal Letter, the consultant and School noted that the service provider had also been copied. However, as stated in its earlier appeal to USAC, the service provider failed to cooperate with the School once it had delivered the services and received full payment from the School. In essence, had the service provider completed the service certification as required, the initial appeal by the School would never have been necessary, because the School filed a timely BEAR invoice.

Unfortunately, and to the School's surprise, USAC denied that invoice on February 15, 2018, because the BEAR was filed "Later Than FCC Extension Date." On February 22, 2018, the School promptly filed another appeal with USAC, which was denied on May 2, 2018. The School, through its consultant, filed a timely appeal to the FCC on July 2, 2018. That appeal and request for a waiver are still pending before the Commission.

A timeline of the issue follows:

DATE	ACTION	Invoice Deadline
4/26/2015	FRN PENDING FCDL	
5/4/2015	Invoice Deadline updated	1/28/2017
7/24/2015	FCDL issued	
7/27/2015	Customer Invoice # 25906	
8/14/2015	Customer Payment Received - Check # 32284 - PAID Invoice 25906	
12/17/2015	FCC Form 486 Filed SSD 07/01/2015	
2/8/2016	Customer Invoice # 160208-C	
2/12/2016	Customer Payment Received - Check # 33212 - PAID Invoice 160208-C	
3/11/2016	RFCDL - Commitment Request reduced	

² The original invoice denial was based upon a service certification issue because the service provider did not sign it.

³ Exhibit B, USAC Approval of Appeal Allowing Applicant to Resubmit Its Bear Invoice, dated December 7, 2017, and received on February 13, 2018.



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5/26/2016	Customer Invoice # 160526-A	
5/26/2016	Customer Invoice # 160526-B	
5/26/2016	Customer Invoice # 160526-C	
5/26/2016	Customer Invoice # 160526-D	
7/1/2016	Customer Payment Received - Check # 33833 - PAID Invoices 160526-A, B, C, and D	
10/27/2016	Last Date to Invoice updated	5/30/2017
10/28/2016	BEAR - SL Invoice 2462673	
11/1/2016	BEAR invoice mode set	
12/9/2016	BEAR - SL Invoice 2482834	
2/6/2017	USAC Disbursement 1 of 2 BEAR Line Items (not clear if payment is on 2462673 or 2482834)	
5/10/2017	BEAR - SL Invoice 2586631	
8/25/2017	Last Date to Invoice updated	9/24/2017
9/14/2017	BEAR - SL Invoice 2689186	
11/2/2017	USAC Appeal filed - failure of the vendor to comply to complete Service Certifications	
12/7/2017	USAC Appeal APPROVED (School did not receive the letter.)	
12/7/2017	Last Date to Invoice updated	1/6/2018
12/20/2017	Last Date to Invoice updated	1/8/2018
2/13/2018	School inquired about USAC Appeal Decision and was informed by e-mail that an appeal letter was sent on 12/7/2017.	
2/13/2018	The School filed BEAR - SL 2774564	
2/15/2018	USAC Denied BEAR payment due to missed 30-day extension.	
2/22/2018	The School filed a USAC Appeal – based upon not receiving an actual notice and, therefore, missed a 30-day extension.	
5/2/2018	USAC Appeal DENIED - Invoice filed untimely	
7/2/2018	FCC Appeal filed - appealed the USAC denial and requesting a 30-day extension to resubmit the BEAR invoice.	

Discussion

This supplement is being filed, because the Commission recently granted an appeal since our original filing for Riverside Unified School District (“Riverside USD”)⁴ the facts of which closely parallel the issue in this appeal. This was the first year in the Program where the applicant was allowed to file a BEAR instead of the service provider. In this case, this programmatic changed resulted as a direct result of the service provider, which proved to be land a fatal funding decision for the School, because the service provider abdicated all responsibility;

⁴ Exhibit C – Riverside Unified School District FCC Appeal, filed on January 10, 2018.



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thereby placing the burden on a small private school district that did not have a consultant to assist in FY 2015.

In the Riverside USD appeal, the applicant filed a USAC invoice appeal, which was granted on December 7, 2017 (the same day that the appeal, in this case, was also approved), and granted an additional 30 days; yet, the school did not receive the letter until after the 30-day deadline. Riverside USD then filed an appeal directly with the FCC requesting an additional 30 days to resubmit the invoice. The Commission granted the appeal on November 30, 2018.⁵

In granting the Riverside USD appeal, the Commission relied upon the *Canon-McMillan School District* Decision.⁶ In that Order, the Commission granted 20 appeals that USAC denied for untimely filing of invoice forms. Notably, in this appeal, the BEAR invoice was timely filed, but USAC denied for other procedural reasons, which it later approved. Specifically, 18 of the 20 appeals granted were a result of the BEAR invoice being late-filed. The Commission granted these appeals finding that the applicants demonstrated good faith to comply with programmatic rules.⁷

Furthermore, as is the case here, the Commission found that the applicants missed a procedural deadline and did not violate a substantive rule.⁸ St. Anthony School filed its BEAR invoice on a timely basis, and because it did not receive actual notice from USAC of the approval of its appeal until February 13, 2018, it was not able to meet the procedural deadline of 30 days.

The timeline above supports the School's efforts to comply with the USAC invoicing rules at every step. There is no evidence of waste, fraud, or abuse here. Rather, St. Anthony School was only trying to seek reimbursement for funds that it had paid for, for services that it had received, and but for the procedural errors, services that were eligible and should have been funded. Not funding St. Anthony School under these circumstances has created a significant and undue hardship on the School and its students, while not adversely impacting the E-rate Fund as a whole.⁹

⁵ *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, Public Notice, DA 18-1209 at 6 (WCB Nov. 30, 2018).

⁶ *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 15555, 15558, para. 6 (WCB 2008) (granting relief to petitioners demonstrating good faith in complying with the invoicing deadline).

⁷ *Id.* at para. 6.

⁸ *Id.* at para. 7.

⁹ *See id.* at para.8



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The School recognizes that USAC went through a problematic EPC transition in FY2016 and beyond, which may have led to delays and confusion. On one hand, the applicant was to understand that all information was to flow through the EPC that was in its nascent stages, while on the other hand, it was to understand, with little outreach and clear understanding that it was still to receive letters in the mail on other matters of critical decisions that were not posted in the EPC. It also recognizes that the USAC had many internal invoicing issues during this same time period related to changes in USAC personnel and the rollout of new invoicing processes.

Request for Waiver

St. Anthony School respectfully requests that this waiver for a 30-day additional extension to resubmit its invoice (already approved by USAC) be granted. The School made a good faith effort immediately upon actual receipt of notice that its appeal had been approved to resubmit the invoice to USAC. The facts and timeline above and in the original appeal demonstrate that the School worked hard to comply with USAC's rules and procedures at every step and met the original invoice deadlines.

The Commission has often waived its rules for such ministerial, clerical, and procedural errors and may do so on a motion for good cause.¹⁰ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.¹¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹² In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹³

Both the facts and circumstances set forth above indicate that a waiver of the 30-day procedural invoice deadline extension granted by USAC is in the interest of fairness and equity. The School followed the rules and deadlines and made great efforts to clearly understand why this FRN was being denied. But for the fact that the School did not receive actual notice from USAC of the approval of its appeal, this invoice should have been processed as timely.

¹⁰ 47 C.F.R. §1.3.

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹² *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).

¹³ *Northeast Cellular*, 897 F.2d at 1166.



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Conclusion

In sum, St. Anthony School of Milwaukee respectfully requests the FCC to grant this waiver request and grant the School a 30-day extension to resubmit its FCC Form 472 BEAR invoice for processing.

Respectfully,

A handwritten signature in black ink that reads 'Richard H. Senturia'. The signature is written in a cursive, flowing style.

Richard H. Senturia
CEO | eRate Program, LLC

EXHIBIT A

LETTER of APPEAL

July 2, 2018

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Applicant/Appellant Name:	Richard Senturia, Consultant for Applicant/Appellant
Applicant/Appellant:	St. Anthony School of Milwaukee
FCC Registration Number:	0011854791
Billed Entity Number (BEN)	61046
Form 471 Application Number:	1040928
Funding Request Number(s):	2837203
Funding Year:	2015
USAC Appeal Denial Date:	5-2-2018

To whom it may concern:

We hereby appeal the decision of the Universal Service Administrative Company (“USAC”) dated May 2, 2018, denying FRN 2837203 on the basis that USAC considered the filing of the relevant Billed Entity Applicant Reimbursement Form (“BEAR”), and the invoices attached thereto, untimely. USAC’s May 2, 2018, denial stated:

Invoices must be postmarked no later than 120 days after the last date to receive service, or 120 days after the date of the Form 486 Notification Letter, whichever is later. You did not demonstrate otherwise in your appeal. Therefore, your appeal is denied.

However, USAC itself caused this problem by failing timely to notify consultant Richard Senturia (the “Consultant”) of the approval of the previous USAC appeal, which Consultant filed on November 2, 2017, and which USAC approved on December 7, 2017.

USAC did not provide the December 7, 2017, Administrator’s Decision on Appeal, which approved Consultant’s request for an extension to file a BEAR, until USAC responded to an inquiry submitted by Consultant on February 13, 2018, inquiring about the status of the November 2, 2017, USAC appeal. On February 13, 2018, in response to Consultant’s inquiry, USAC finally notified Consultant that USAC previously approved the November 2, 2017, USAC appeal on December 7, 2017, and finally provided Consultant a copy of the December 7, 2017, Administrator’s Decision on Appeal.

Because USAC did not properly notify Consultant until February 13, 2018, of the approval dated December 7, 2017, Consultant could not file the relevant BEAR within the ordinary deadline

computed from the December 7, 2017, approval date. Consultant hereby requests that the FCC grant, for good cause shown, Consultant/Applicant's request for extension of time of 30 days from the date of the FCC decision on the appeal herein, to file a BEAR for FRN 2837203.

Please also consider that the vendor for FRN 2837203 hindered and continues to hinder the filing of the applicant's BEAR by refusing to communicate in any responsive way regarding the Service Certification for SLD Invoices forms requested by the applicant and the consultant from the vendor. Consultant prepared the relevant Service Certification for SLD Invoices himself, as the vendor refuses to comply. Such failure by the vendor partly formed the basis for the previous BEAR extension request(s), which USAC approved in the December 7, 2017, Administrator's Decision on Appeal that USAC failed to provide Consultant in a timely manner.

Following USAC's belated transmission on February 13, 2018, of the December 7, 2017, approval of Consultant's appeal for a BEAR extension, Consultant filed BEAR Invoice 2774564 on February 13, 2018. On February 15, 2018, USAC denied that BEAR on the basis that the BEAR filing date of February 13, 2018, occurred "Later Than FCC Extension Date [01/08/2018]." Consultant could not file the BEAR by January 8, 2018, due to USAC's failure properly to notify consultant of the December 7, 2017, decision approving the BEAR extension.

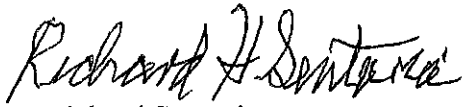
On February 22, 2018, Consultant filed its appeal with USAC of the February 15, 2018, BEAR denial, on the basis that USAC did not properly notify Consultant of the December 7, 2017, approval of extension, which prevented Consultant from proper awareness of the new/extended BEAR filing deadline. On May 2, 2018, USAC denied such appeal, as described above, and Consultant hereby appeals such denial.

Given the evidence presented, and in light of USAC's failure properly to notify Consultant of the December 7, 2017, approval of BEAR extension or properly to notify Consultant of the resultant BEAR filing deadline, we request additional time to file a BEAR for FRN 2837203. Please find attached the relevant Service Certification for SLD Invoices. Please also find attached the numerous BEAR filings on this FRN, dating as far back as October 28, 2016, providing the relevant invoices for reimbursement. These include:

- BEAR Invoice 2462673 dated October 28, 2016
- BEAR Invoice 2482834 dated December 9, 2016
- BEAR Invoice 2586631 dated May 10, 2017
- BEAR Invoice 2689186 dated September 14, 2017
- BEAR Invoice 2774564 dated February 13, 2018

Thank you for your consideration of this matter. Please let us know if you require any additional documentation or materials.

Respectfully,

A handwritten signature in cursive script, reading "Richard H. Senturia". The signature is written in dark ink and is positioned above the printed contact information.

Richard Senturia

eRate Program, LLC

9666 Olive Blvd., Suite 215

(314) 282-3676

rsenturia@erateprogram.com

Consultant for Applicant/Appellant

EXHIBIT B

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

December 07, 2017

Richard Senturia
Erate Program, LLC
9666 Olive Blvd., Suite 215
Olivette, MO 63132

Re: Applicant Name: ST. ANTHONY SCHOOL OF
MILWAUKEE
Billed Entity Number: 61046
Form 471 Application Number: 1040928
Funding Request Number(s): 2837203
Your Correspondence Dated: November 02, 2017

After review of the information and documentation provided, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2015 FCC Form 472 (BEAR) Notification Letter for the FCC Form 471 Application and funding request number(s) (FRN(s)) referenced above. This letter provides an explanation for USAC's decision. The date of this letter also begins the sixty (60) day time period for appealing this decision. If your Letter of Appeal included more than one FCC Form 471 Application Number, please note that you will receive a separate decision for each funding application.

Funding Request Number(s): 2837203
Decision on Appeal: **Approved**
Explanation:

- Based on your appeal letter and the relevant documentation, your appeal is approved and you have 30 days from the date of this letter to submit an invoice.

Since your appeal is approved, you may continue to invoice USAC for a portion of the commitment that is still available, if any.

We thank you for your continued support, patience and cooperation during the appeal

process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Steven Greenfield

EXHIBIT C

January 10, 2018

Applicant BEN: 143748

Contact Information:

Riverside Unified School District
Laura A. Egan
P.O. Box 2800
Riverside, CA 92516
951-788-1110 or 951-788-7135 x81004
legan@rusd.k12.ca.us

Form 471 Application Number: 874213

FRN: 2385592

FCC Docket No. 02-6

Riverside Unified School District (RUSD) filed an appeal on November 1, 2017 requesting that the decision to deny Form 472 (BEAR), Invoice Number 2668735 dated September 8, 2017 be reconsidered. In an Administrator's Decision on Appeal – Funding Year 2012-2013 dated December 7, 2017 Universal Service Administrative Company (USAC) approved our request and stated that a new invoice would need to be filed within 30 days of the date the decision letter was issued. Due to the winter holiday scheduled break, this communication was not received by me until today, January 10, 2018, four days after the allowed 30 day window to respond. It is our request that the Federal Communications Commission (FCC) grant RUSD an extension of not more than 30 days to refile an FCC Form 472 (BEAR) Invoice through the Schools and Libraries Division of USAC now that we have returned to a regular work schedule.

Your consideration of this request is greatly appreciated. If any additional information is needed, please contact me via email or by telephone at 951-788-7135 x81004.