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| In the Matter of                        | ) |                        |
|   | ) |                        |
| Request for Waiver by                   | ) |                        |
| Ellensburg School District              | ) | File Nos. SLD- 1047795 |
| Ellensburg, WA                          | ) |                        |
|   | ) |                        |
| Schools and Libraries Universal Service | ) | CC Docket No. 02-6     |
| Support Mechanism                       | ) |                        |

### **REQUEST FOR WAIVER**

Pursuant to section 54.719(c) of the Commission’s rules, Ellensburg School District (“School District”), by its representative, hereby requests that the Commission waive its invoice deadline rules and grant to the School District an extension of time to submit the remainder of its E-rate reimbursement requests for the 2015 funding year.<sup>1</sup>

The School District, a small, rural school system in Washington, had a total enrollment in FY 2015 of about 3,100 students, 44.5% of which were NSLP-eligible.

The School District, like school districts everywhere, has a long history of receiving invoices for goods and services from their vendors and then paying them. Accounts receivable, on the other hand, is not a function that comes naturally to any school district, and certainly not to small ones with very limited resources, like the school district here. Invoicing the government (USAC) for E-rate eligible goods and services is far removed from what school districts normally do, which is why so many of them have missed the program’s deadlines for submitting invoices and requesting invoice extensions.

Applicants need time to establish sound, foolproof processes and procedures for billing USAC for the eligible goods and services their vendors have provided to them, especially those related to Internal Connections projects. Despite what the Commission

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<sup>1</sup> BEN No. 145418. Form 471 No. 1047795. FRNs: 2859918; 2859921; 2859925; 2859929; and 2859931.

may think, this is not all that simple, as schools are simply not in the business of doing business.

For large numbers of applicants, this school district included, Internal Connections funding is something entirely new. It is extremely exciting for schools and libraries to finally receive funding commitments for cabling, wireless access points, and so on, but addressing the myriad rules and regulations that apply to the ultimate receipt of that funding is not for the faint of heart, as USAC's appeals docket and the Commission's own appeals/waiver docket sadly prove.

While the School District has received Category One funding for many years, FY 2015 was the very first year that USAC awarded a funding commitment to the School District for Internal Connections, \$312,770 to be exact. Unfortunately, the School District was not nearly as prepared as it should have been for protecting its new, Internal Connections funding. At the time, it did not have the processes and procedures in place to ensure that the discounted portions of all of the invoices associated with a large Internal Connections project got invoiced to USAC. Thus it only wound up receiving \$55,310 in E-rate support from USAC.

The reason for this was heartbreakingly simple. For the secretary tasked with collecting vendor invoices for reimbursement billing, the number and type of bills associated with the School District's Internal Connections project was an entirely new animal. This led to her making the mistake of collecting only a portion of the vendor's invoices, the first ones the School District received and paid, unaware that there would be more to come. Thus USAC was billed on the basis of those invoices alone. The School District did not request an invoice deadline extension, because it had no idea it needed one. It was not until School District staff began discussing its Category 2 budget for FY 2018 that they realized that the School District had failed to submit all of its FY 2015 Internal Connections project invoices to USAC.

The circumstances under which the Commission will waive a rule are well established: A rule may be waived where the particular facts make strict

compliance inconsistent with the public interest.<sup>2</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>3</sup> 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.<sup>4</sup>

The mission of schools is to educate our nation's children. Sure, invoicing USAC for Internal Connections funding supports that mission, but it involves processes and procedures that are new and complex to most schools, time consuming and difficult, and unlike anything else with which schools are familiar. For the School District, which received Internal Connections funding in FY 2015 for the very first time, all of this is especially and painfully true.

Here, the School District stands to forfeit an incredibly large sum of badly needed funding because a staff person, who had no prior experience with the intricacies of Internal Connections billing and the E-rate program rules that apply to it, made a mistake. In these circumstances, the particular facts make strict compliance with the program's invoice deadline extension rules inconsistent with the public's interest in educating our nation's children.

In the *Bishop Perry Order*,<sup>5</sup> the Commission observed just how difficult it is for many applicants to comply with all of the E-rate program's complex procedural requirements, how often they make mistakes, and how they wind up losing funding for those reasons. Therefore, to ensure that applicants would be able to realize the intended

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

<sup>3</sup> *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).

<sup>4</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>5</sup> *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School* (rel. May 19, 2006).

benefits of the E-rate program, the Commission decided that it would be more forgiving when applicants made mistakes.

It is to the very particular facts in this case to which the rule and the spirit of the *Bishop Perry Order* should apply. This case involves an applicant's very first experience with Internal Connections funding, a fact that distinguishes it markedly from the facts in more recent cases where the Commission has taken a strict approach to invoice deadlines.

Should the Commission not grant the School District's waiver request, the results will be extremely harsh: forfeiture of virtually the entire benefit of the School District's first year of Internal Connections funding. If that happens, it will be because staff people in the School District did their best to tackle -- for the first time -- a complex and unfamiliar process, made a mistake, and lost. This will hurt the local community of course, and it will not do the Universal Service program generally, or the Commission's national broadband policy more specifically, one whit of good. Because the Commission may take into account considerations of hardship and more effective implementation of overall policy on an individual basis when deciding whether to grant a waiver, a waiver in these particular circumstances is certainly warranted.

For all of these reasons, in addition to all of the reasons listed in SECA's recent invoice deadline related petitions<sup>6</sup> and the comments submitted in strong support of SECA's position on invoice deadlines,<sup>7</sup> we respectfully request that the Commission grant the School District's request for waiver and instruct USAC to process the remainder of the School District's FY 2015 Internal Connections invoices.

Congress designed the E-rate program to benefit schools, students, libraries, and library patrons. In this case, a waiver will further what Congress designed the program to do. And because this case involves a rather narrow set of facts, facts that are unlikely to

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<sup>6</sup> SECA's Petitions for Reconsideration, Omnibus Waiver of Invoice deadline Regulation, and for Rulemaking to Revise Invoice Deadline Regulation, <https://ecfsapi.fcc.gov/file/60001841614.pdf> (May 12, 2016).

<sup>7</sup> See, e.g., Comments of E-Rate Management Professionals Association, <https://ecfsapi.fcc.gov/file/60001842126.pdf> (May 12, 2016).

be broadly replicated, it cannot possibly impede program administration, which, as the Commission has observed , is an important consideration where waiver requests like this one are concerned.

Respectfully submitted  
*on behalf of Ellensburg School District,*

*/s/ Catherine Cruzan*

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