

**2019**

EdTechnologyFunds, Inc,  
Beverly Sutherland

# STANISLAUS COUNTY LIBRARY

## - WAIVER

2019

November 1, 2019

Waiver Request  
Federal Communication Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

CC Docket No. 02-6

To whom it may concern:

Stanislaus County Library is respectfully requesting a review of USAC's decision to deny an Invoice Deadline Date Extension for Funding Year 2017 BEAR Submission.

Entity & BEN	<b>Stanislaus County Free Libraries (144394)</b>
Contact Mailing Address Phone Number Email	<b>Beverly Sutherland</b> <b>2400 N Lincoln Ave, Altadena, CA 91001</b> <b>(626) 296-6284</b> <a href="mailto:bsutherland@edtechnologyfunds.com">bsutherland@edtechnologyfunds.com</a>
Application Number	<b>Form 471- Application # 171030601</b>
Reason for Waiver Request	<b>Funding Year 2017 – Appealing USAC's decision to deny an invoice deadline extension request</b>
Funding Request No.	<b>1799066177 and 1799066153</b>
CC Docket No. 02-6	

### **I. SUMMARY:**

On February 21, 2019, the Universal Services Administrative Company ("USAC") issued a decision denying Stanislaus County Library's Invoice Deadline Extension requests<sup>1</sup>. Stanislaus County Library, respectfully requests a review of USAC's decision and waiver of the invoice deadline for two Funding Requests. As a result of USAC's decision,

<sup>1</sup> Revised Funding Commitment Decision Letter FY2017- Stanislaus County Library, September 17, 2019.

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Stanislaus County Library, a library system that services impoverished communities with a mixture of urban and rural branches, faces the denial of \$154,022 in funding between two Funding Requests.

For reasons detailed below and in the USAC appeal, the Commission should grant this appeal and extend the invoice deadline for 120 days in order to submit BEAR forms for both Funding Requests.

**II. BACKGROUND:**

Stanislaus County Library is a system of 13 libraries located in both urban and rural communities throughout Stanislaus County. The Library engages all members of the community and offers access to information, knowledge, and the tools for innovation and personal development that lessen the digital divide. The Library provides books, books on CD, magazines, newspapers, premium content databases, and a mobile app, as well as downloadable digital content, including language learning software. The library also offers a robust line-up of programs and presentations that enhance learning at all levels. They receive a 90% discount rate for the Category 1 internet access circuits filed with the E-rate Program. Stanislaus County Library relies on the connections to the internet through internet access circuits discounted by the E-rate program to help serve the community by offering online learning courses, online resources to assist the community in finding jobs, online tutoring, online language learning, online practice exams, digital library books, online ESL, online Literacy programs for Spanish speakers, Veteran resources, Health workshops, and much more. Stanislaus County Library has been receiving E-rate discounts on Category 1 Services since 1999. A decrease in the amount of funding received by E-rate would significantly impact the services being provided to over 550,000 residents.

**III. WAIVER REQUEST EXPLANATION:**

**FRN 179990066177:**

Stanislaus County Library has been a customer of Comcast since 2014 who had been filing E-rate invoices under the SPI method each year. For FY2017, Stanislaus completed and submitted SPI invoicing documentation

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in September 2018, and returned it to the service provider before the invoicing deadline and continuously followed up questioning the activation of 2017 funding. However, the service provider responded asking Stanislaus for FY2018 funding request updates and did not acknowledge the FY2017 questions in a back and forth email thread taking place in October of 2018. On 10/15/2018 Stanislaus County Library received a confirmation email from the vendor that "FRN 17990066177 is on our list for processing, please allow 1-2 bill cycles for the funding to be applied". It was understood that they had complied with the service provider's requirements and discounts would be applied appropriately. Stanislaus County Library then acted in good faith by extending the invoice deadline themselves to ensure enough time for the service provider to submit invoices to USAC for the 2017 reimbursements. Stanislaus County Library allowed 2 billing cycles to pass and followed up with the vendor on 1/22/2019 to see why they still had not received their funding. They did not receive a response from the service provider until 2/5/2019 in which the vendor pointed out an error on the Form 471 and stated they could not apply the discounts and suggested the library file a BEAR form with only 21 days to do so.

Having never done a BEAR form and not knowing the first thing about what to do to file one, the Library sought out a consultant for help with the knowledge that they did not have much time to submit the BEAR form as the due date was approaching. Stanislaus County Library's contracting procedure for bringing in a consultant was followed and once this lengthy process was completed, it was now 2/21/2019 and review of this issue was done by EdTechnologyFunds in order to file the BEAR form. Upon the consultant's review of all of the information with the vendor and Library, it was discovered that a service substitution would need to be filed to change the download speed and add line items to the funding request to ensure that each recipient of service was assigned the appropriate download speed on the funding request before the BEAR could be filed. Per USAC rules, the last date to invoice is the last date a service substitution could be filed, so in order to allow enough time for this service substitution to be filed and reviewed by USAC, an Invoice Deadline Date Extension was requested by EdTechnologyFunds on 2/21/2019, and it was immediately denied. An appeal of the deadline extension denial was then filed to USAC on 4/9/2019 and was denied on 09/17/2019.

**FRN 1799066153:**

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Stanislaus County Library has been using services from Pacific Bell Telephone Company since 2005. Every funding year for which an FRN was filed for this service, it was invoiced by the SPI method. FY2017 should not have been any different; however, the SPI form was never submitted. The contracting procedure as described above to bring EdTechnologyFunds on as a consultant was completed on 2/21/2019. Since there was only five days remaining to file a BEAR form, there was not enough time to investigate why this had not been done by the vendor, receive all invoices for 12 months from the Library, review them, ensure that the appropriate amounts were billed and matched the funding request, and a BEAR form submitted for reimbursement, so an extension was requested by EdTechnologyFunds on 2/21/2019. The extension was immediately denied because Pacific Bell Telephone Company had already filed the first extension, but never followed through with filing a reimbursement. An appeal of this decision was filed with USAC on 4/9/2019 and denied on 9/17/2019. EdTechnologyFunds contacted Pacific Bell Telephone Company to find out why the SPI was never filed, and it was discovered that Pacific Bell believed the Stanislaus County Library would be submitting a BEAR form. Pacific Bell stated that they tried to reach out to the library via email to instruct them to file a BEAR form, but they had received no response from the library. The library never received any communication from Pacific Bell Telephone Company to indicate that they needed to file the BEAR form. The library was completely unaware that a BEAR would be required, and they were under the impression the SPI form would be submitted, and therefore, no invoice was submitted to reimburse the funding request.

**IV. RELIEF SOUGHT THROUGH THIS WAIVER REQUEST:**

Stanislaus County Library failed to file a BEAR form for FY2017 funding on 2 funding requests due to circumstances beyond their control, and they have demonstrated above that they took necessary steps throughout the process to comply with the deadline. Stanislaus County Library attempted to work with the service provider to file the SPI for FRN 17990066177, but due to lack of service provider response and a last-minute determination that a BEAR form needed to be filed, Stanislaus was unable to comply with USAC's administrative deadline. A miscommunication between the service provider and the library in which each

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thought the other would be filing the reimbursement led to neither a Form 472 nor a Form 474 being filed for FRN 1799066153. The FCC has established Invoicing Deadline precedent in the *Alton Order*<sup>2</sup>, where several appeals to the FCC for waiving the Invoice Deadline Date were granted for similar circumstances experienced by Stanislaus County Library; i.e., Request for Waiver of Alton Community Unit School District 11 (claiming misunderstanding with the vendor on the filing requirements and on issues dealing with the billing format and accuracy of the bills), Request for Review of Carlson Valley School (claiming that this was the first year it sought reimbursements and did not fully understand the BEAR process); Request for Review of Cherokee Central School (claiming Cherokee thought the service provider was going to file a Form 474 and the service provider thought Cherokee was going to file the Form 472, but neither form was filed), and Request for Review of Carlson Valley School (claiming that this was the first year it sought reimbursements and did not fully understand the BEAR process).<sup>3</sup>

Based on the facts and circumstances listed in the Reviews of USAC's Decisions above, we believe that Stanislaus County Library's appeal falls within the precedent consistently followed by the FCC in the *Alton* and *Bishop Perry Orders*. Stanislaus demonstrated they acted in good faith to comply with the deadline, and when they were unable to proceed any further on their own (due to lack of understanding of the invoicing process), they continued to act in good faith by seeking out the help of a consultant to try to resolve the issues in time. As the Commission states in the *Alton Order*, the Bureau's decision in *Alton* is consistent with the *Canon-McMillan Order* that complete rejection of the invoices was not warranted, "given that the applicants missed a USAC procedural deadline and did not violate a Commission rule".<sup>4</sup> As the Commission noted in the *Bishop*

<sup>2</sup> *Request for Review of the Decision of the Universal Service Administrator by Alton Community Unit School District 11, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-518052, *et al.*, CC Docket No. 02-6, 25 FCC Rcd 7089 (Wireline Comp. Bur. 2010) (*Alton Order*) (granting 49 appeals after finding good cause to waive USAC's deadline for filing FCC Forms 472 or 474).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Canon-McMillan Order*, 23 FCC Rcd at 15558, para. 7.

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*Perry Order*, “a departure from required filing deadlines may be warranted upon careful review of the petitioner’s case and when doing so will serve the public interest”.<sup>5</sup> The *Bishop Perry Order* also noted that the Commission understands that those tasked with filing for E-rate within a school or library are typically school administrators, technology coordinators, teachers, and librarians who may have little experience with the invoice requirements for the E-rate program. Additionally, they noted the petitioners in *Bishop Perry* acted in good faith to comply with the rules of the program as Stanislaus County Library has done.

The FCC ruling in *Ben Gamla Palm Beach*<sup>6</sup>, granted a request for review that had been denied for not responding within the 60-day window for an appeal due to a clerical error in not getting the letter into the mail on time. Findings in *Ben Gamla Palm Beach* are consistent with the FCC ruling in *ABC Unified School District*<sup>7</sup>, where the FCC ruled that good cause exists to waive sections 54.720(a) and (b) of the Commission’s rules, which require that petitioners file their appeals within 60 days of an adverse USAC decision. Per *Bishop Perry*<sup>8</sup>, the E-rate Process is complicated and results in applications being denied on clerical and procedural errors. The ruling in *Bishop Perry* states that the actions taken “here to provide relief from these types of errors in the application process will promote the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the Act), by helping to ensure that eligible schools and libraries actually obtain access to discounted telecommunications and information services. In particular, we believe that by directing USAC to modify certain application processing procedures and granting a limited waiver of our application filing rules,

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<sup>5</sup> *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, para. 9 (2006) (*Bishop Perry Order*).

<sup>6</sup> *Requests for Review of Decisions of the Universal Service Administrator by Ben Gamla Palm Beach et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6

<sup>7</sup> *ABC Unified School District Order, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (WCB 2011)

<sup>8</sup> *Ibid, Bishop Perry*.

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we will provide for a more effective application processing system that will ensure eligible schools and libraries will be able to realize the intended benefits of the E-rate program as we consider additional steps to reform and improve the E-rate program. Requiring USAC to take these additional steps will not reduce or eliminate any application review procedures or lessen the program requirements that applicants must comply with to receive funding. Indeed, we retain our commitment to detecting and deterring potential instances of waste, fraud, and abuse by ensuring that USAC continues to scrutinize applications and takes steps to educate applicants in a manner that fosters program participation.” Aside from a misunderstanding between the vendor and the library on who would be filing the reimbursement, not receiving a supposed email from the vendor indicating that a BEAR form should be filed for FRN 1799066153 can also be constituted as a clerical error which kept the library from meeting the deadline.

**V. CONCLUSION:**

I believe that Stanislaus County Library has demonstrated that error in communication with the vendors and lack of experience with the invoicing process prevented them from filing their BEAR forms, and that they consistently acted in good faith to comply with USAC’s deadline for filing BEAR forms. Stanislaus County Library attempted to work with the service provider to ensure the SPI was filed. They constantly followed up with the service provider, but due to lack of service provider response regarding the FY2017 funding, and a last-minute determination that a BEAR form needed to be filed, Stanislaus County Library was unable to comply with USAC’s administrative deadline. Since they had never filed a BEAR form before, Stanislaus County Library did not fully understand the BEAR process which also contributed to the BEAR not being filed before the deadline. They acted in good faith reaching out to a consultant to help them with the process unaware that what needed to be done (service substitution to correct the download speed) would not be fully completed before the last date to invoice on 2/26/2019. Stanislaus County Library can also not control the circumstances of an email from a vendor not coming through to them, nor the not following up on the email when they received no response regarding the library needing to file a BEAR form. Stanislaus County Library should not be denied the opportunity to file that BEAR form due to an administrative error and an error in communication with the



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vendor (each thinking the other was filing for reimbursement). All petitioners listing the same/similar circumstances as noted in paragraphs above were granted a waiver of the deadline by the FCC in the *Alton Order* and in *Ben Gamla Palm Beach* for clerical errors.

The assistance that Stanislaus County Library receives from the E-Rate Program is vital to the Library System's operations and community outreach. We respectfully request that the Commission continue to follow the precedent established in the *Alton* and *Bishop Perry Orders*, and grant a waiver of the Invoice Deadline Date to Stanislaus County Library so that it may file a Service Substitution to correct the funding request and submit a BEAR form to USAC for the discounted reimbursement of the funds paid out to Comcast.

**VI. Supporting Documentation:**

These documents are provided in support of the Invoice Deadline Date waiver request for FY2017:

1. Invoice Deadline Date Extension Denial
2. RFCDL
3. Email Thread between library and vendor

Sincerely,



Beverly Sutherland  
President – EdTechnologyFunds, Inc. (a division of The Sutherland Consulting Group)