

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON DC 20554

In the matter of )  
)  
Request for Waiver by )  
)  
Ventura County Office of Education )  
Camarillo, California )  
)  
Schools and Libraries Universal Service ) CC Docket No. 02-06  
Support Mechanism )  
)

**REQUEST FOR WAIVER**

Funding year 2012 (7/1/2012 to 6/30/2013)  
Billed Entity Name: Ventura County Office of Education  
Billed Entity No.: 143807  
Form 471 Application No.: 838447  
Funding Request Number: 2274817  
FCC Registration Number: 0003763141

I. Introduction and Background.

Ventura County Office of Education ("Ventura"), through its E-rate consultant, Infinity Communications and Consulting, Inc. ("Infinity") respectfully requests a waiver of the guidelines and procedures denying applicants an additional extension of the invoice deadline, if a previous extension request had been granted.

Ventura is an eligible applicant under the Universal Service Support Mechanism for Schools and Libraries, commonly referred to as "the E-rate program". Through a Letter of Agency<sup>1</sup> authorizing Infinity to act on behalf of Ventura, this request for waiver is filed in response to the Administrator's Decision on Invoice

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<sup>1</sup> Copy attached (Exhibit A).

Deadline Extension Request (Administrator's Decision)<sup>2</sup> which was issued on January 30, 2015 by the Universal Service Administrative Company (USAC). The Administrator's Decision denied the request because "Current deadline guidelines and procedures do not allow approval for the reason submitted."

Infinity requested an invoice deadline extension on October 1, 2014.<sup>3</sup> The reasoning for the request was:

"...because the service provider was unable to complete the needed Form 472 (Billed Entity Application [sic] Reimbursement) BEAR. Due to the lack of communication on the service provider's part we have been unable to submit the fourth page of this form..."

There was an error in our letter, as for this FRN Infinity submitted a grid to the service provider to initiate the Service Provider Invoice (SPI) process. In California there is a state program that discounts telecommunications for schools, the California Teleconnect Fund (CTF) and in order to realize those discounts, the service provider must utilize the SPI process. Although the grid was submitted to the service provider in April of 2013, as of October 1, 2014 the applicant's discounts had still not shown up on their bills. For this reason, Infinity submitted the invoice extension request.

Denying the applicant the opportunity to keep pursuing realization of the discounts to which they are entitled is a gross injustice. The applicant has already paid for the services IN FULL and therefore received no benefit from the E-rate program for such services. Furthermore, the service provider, having been paid in full for its services, has no incentive to cooperate with the applicant and

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<sup>2</sup> Copy attached (Exhibit B). We note that there were other FRNs included in the Administrator's Decision, but they are not the subject of this request.

<sup>3</sup> Copy attached (Exhibit C).

implement the discounts (or even invoice USAC; which has also yet to be done for the above FRN). While there could well be legitimate reasons for the service provider to delay instituting the discounts, we maintain that without extending the applicant's invoice deadline there is no opportunity to explore with the service provider the reason for the delay (such as misplaced forms, changes in personnel, etc.). The applicant is thus punished for actions of the service provider, a situation that cannot be tolerated in the E-rate program.

## II. Legal Standard

A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied* 409 U.S. 1027 (1972). 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. *See Northeast Cellular*, 897 F.2d at 1166.

## III. Discussion

### A. Ventura's Acted in Accordance with E-rate Rules

In the instant case, Ventura received its Funding Commitment Decision Letter on January 22, 2013<sup>4</sup>, well into Funding Year 2012. Since Ventura had been receiving services covered by their Funding Year 2012 Form 471 application since

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<sup>4</sup> This is actually a Revised Funding Commitment Decision Letter, based on a successful appeal.

July 2012, they paid the service provider in full for the services received. The FRN that is the subject of this request is for \$152,882.37 (post discount).

It is simply unthinkable that the Commission would allow Verizon to obtain full payment for the services that were obtained pursuant to a duly filed E-rate application and yet deny the applicant the opportunity to receive discounts for those services and reap the very benefit for which the E-rate application was filed.

B. Waiver Would Better Serve the Public Interest

Given the facts and circumstances described above, waiver would better serve the public interest than strict adherence to the general rule. *See Northeast Cellular*, 897 F.2d at 1166. The public interest would best be served by ensuring that the benefits of the E-rate program are fully realized by the applicants to that program. To rule otherwise would be to deny such applicants their legal standing in the program and would have a chilling effect on future applications.

Furthermore, it does not serve the public interest to have the service providers under the program realize the full cost of their services and be under no obligation to ensure that the applicants realize the benefits to which they are entitled. In fact, one could argue that the certifications that the service provider signs on various FCC forms create the legal obligation for the service provider to ensure that the benefits are realized by the applicant. By allowing USAC to deny the invoice extension needed to complete the SPI process, this legal obligation is thus circumvented. This is not an acceptable outcome.

Second, the denial of funding will inflict undue hardship on Ventura and its schools. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, ¶ 11 (rel. May 19, 2006). The District serves many poor, rural students. By forcing Ventura to pay in full for these commitments without

the benefit of the E-rate discounts to which they were entitled means they have to redirect their limited funds and seriously impact both the implementation of broadband access and other classroom initiatives and thus, the denial of a waiver will negatively impact the education and information access of the very target population meant to be served by the program.

III. Prayer for Relief

For the reasons set forth above, Infinity respectfully requests that the guideline that an invoice extension request cannot be granted in the circumstances cited be waived in the instant case.

Respectfully submitted,

*Fred Brakeman*

Fred Brakeman RCDD, CSI, CEMP  
Infinity Communications and Consulting, Inc.

March 31, 2015