

Before the
Federal Communications Commission
Washington, DC

In the Matter of)
)
Request for Review of the Decision of)
the Universal Service Administrator)
or Waiver by)
)
Economic Opportunities Council of)
Indian River County)
Vero Beach, Florida)
)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)

To: Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, D.C. 20554

REQUEST FOR REVIEW OR WAIVER

Economic Opportunities Council of Indian River County (“Applicant”), through its representative, E-Rate Strategies, LLC (ES), hereby respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) review a decision of the Universal Service Administrative Company (“USAC”) that denied invoice deadline extensions for FY 2012 FRNs 2386901, 2386919, 2386932, 2386942, and 2386977, and instruct USAC to grant the requested invoicing deadline extensions. Alternatively, the Applicant requests that the Commission reach the same results by waiving its rules pursuant to §§ 54.719 through 54.723 of the Commission’s rules.¹

At issue is the Applicant’s contention that circumstances, outside of its control and firmly under the control of the service provider, necessitated the invoice deadline extension requests for FY 2012 FRNs 2386901, 2386919, 2386932, 2386942, and 2386977. Furthermore, the Applicant asserts that the invoice deadline extension requests were submitted in compliance with the USAC invoice deadline extension procedures that were in place at that time.

¹ 47 C.F.R. §§ 54.719 - 54.723

Application Information

Billed Entity Number:	16040691
FCC Form 471 Application Number:	874525
FRN's Under Appeal:	FRNs 2386901, 2386919, 2386932, 2386942 and 2386977
Administrator's Decision on Invoice Deadline Extension Request:	Not received
Administrator's Decision on Appeal:	March 24, 2015
Service Providers:	Multiple
Service Provider Identification Number (SPIN):	Multiple

I. Facts

In the beginning of September 2014, prior to the invoicing deadline, the Applicant's consultant, ES, noted that there were several FRNs for which BEAR forms had not been filed. The Applicant was asked to gather the relevant bills for each FRN, however, not all pages of each bill could be located. At that time ES reached out to each of the service providers to request duplicate bills to replace those pages that had been damaged or lost. ES was informed that it could take several months for the each of the many months of replacement bills to be produced and mailed to the Applicant. It quickly became clear that significant billing information might not be available until after the October 28, 2014 Invoice Deadline that had been established when USAC granted an automatic one (1) year extension for all undisbursed 2012 FRNs.

Therefore, ES contacted the Client Service Bureau to determine whether the new rules regarding a single allowable Invoice Deadline Extensions would apply to 2012 FRNs. As the initial extension had been automatic, and not requested directly by the Applicant, it was unclear how those extension requests would be handled.

During five (5) separate calls to the Client Service Bureau ES in September and October of 2014, ES was assured that requests for Invoice Deadline Extensions would, in fact, be considered for qualified 2012 FRNs. On the strength of this information, on October 28, 2014, prior to the expiration of the then current deadline, the Applicant's consultant, ES, submitted a Request for Invoice Deadline Extension on the condition "that documentation requirements necessitated third party contacts and certification", which we believed to fit the situation. A copy of the October 28 2014 Request is attached as Exhibit A.

Ultimately the request for an Invoice Deadline Extension was not granted. The Applicant did not forward a copy of that correspondence, but did preserve the date. So, within the 60 day Appeal window, ES submitted an Appeal dated February 23, 2015. It is attached as Exhibit B.

Subsequently, on March 24, 2015, ES received notification from USAC that the Request for Invoice Deadline Extensions for the aforementioned FRNs was denied citing the denial reason that:

“Current invoice deadline guidelines and procedures require that Invoice Deadline Extension requests be filed by the end of the relevant invoice period for the service category of the FRN requiring an extension. The invoice receipt deadline is 120 days after the end of the service delivery date or 120 days after the date of the Form 486 Notification Letter, whichever is later. USAC denied your request for Invoice Deadline Extension because the request was not filed in a timely manner. Since USAC’s decision was consistent with Invoice Deadline Extension guidelines, your appeal is denied.”

II. Discussion

The Applicant and ES are submitting this Request for Review or Waiver to the Commission based on the following points:

1. The request for invoice deadline extensions and subsequent appeal to USAC were made in good faith, and extraordinary circumstances existed that supported the request
2. The request for invoice deadline extension was filed in accordance with the guidance posted on USAC’s website

Request Made in Good Faith and Extraordinary Circumstances

We respectfully suggest that the rules and procedures noted in USAC’s dismissal and denial reasons noted above were not in effect at the time the invoice deadline extension request was submitted to USAC. Paragraph 240 of the E-rate Modernization Order states:

“We adopt a rule allowing applicants to seek and receive from USAC a single one-time invoicing extension for any give funding request, provided the extension request is made no later than what would otherwise be the deadline for submitting invoices: 120 days after the last day to receive service, or the date of the FCC form 486 notification letter.”

This ruling codified USAC's existing invoice filing deadline; however, the amended rule, 47 C.F.R. §54.514, did not become effective until December 18, 2014.¹² Notwithstanding, the invoice deadline extension was submitted within the relevant invoice period, in compliance with the invoice deadline guidelines and procedures cited by USAC in its appeal denial reason.

III. Conclusion

Throughout its application process, the Applicant has complied with all E-Rate program rules and regulations. No waste, fraud, or abuse of E-Rate funds has occurred, and it would serve the public interest for the Commission to grant the requested invoice deadline extensions for FRNs 2386901, 2386919, 2386932, 2386942 and 2386977 and would alleviate financial hardship for the Applicant.

Furthermore, we believe there were no violations of E-Rate program rules or regulations that warranted denial of the invoice deadline extensions or the subsequent appeal. Therefore, we respectfully request that the Commission grant this appeal and find that the School District's invoice deadline extension requests for FRNs 2386901, 2386919, 2386932, 2386942 and 2386977 were submitted in compliance with the invoice deadline guidelines and procedures that were in place at the time of the requests.

Alternatively, the Commission has previously established that a rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Therefore, in the event that the Commission does find that the Applicant's invoice deadline extension requests for FRNs 2386901, 2386919, 2386932, 2386942 and 2386977 were not submitted in compliance with the invoice deadline guidelines and procedures that were in place at the time of the requests, we request that the Commission grant the School District a waiver of the invoice deadline for FRNs 2386901, 2386919, 2386932, 2386942 and 2386977.

Respectfully submitted,

Jill Leavenworth
E-Rate Strategies, LLC.