

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554

In the matter of)
)
Petition for Reconsideration of)
)
DA 15-505)
)
On behalf of Washington Unified)
School District)
Fresno, California)
)
Schools and Libraries Universal Service) CC Docket No. 02-06
Support Mechanism)
)

PETITION FOR RECONSIDERATION

Funding year 2014 (7/1/2014 to 6/30/2015)
Billed Entity Name: Washington Unified School District
Billed Entity No.: 16067741
Form 471 Application No.: 973606
Funding Request Number: 2650782
FCC Registration Number: 0013894597

I. Introduction and Background.

Washington Unified School District (“WUSD”), through its E-rate consultant, Infinity Communications and Consulting, Inc. (“Infinity”) respectfully requests reconsideration of their Request for Waiver, which sought a waiver of the rule requiring that applicants submit their request for review (appeal) within sixty (60) days of the underlying action. That waiver was dismissed in DA 15-505 as an Untimely Filed Request for Review.

WUSD 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 Agency¹ authorizing Infinity to act on behalf of WUSD, this Petition for Reconsideration is filed.

II. Legal Standard

A petition for reconsideration may be filed when the petition relies on “facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters.”²

The change in circumstances since the initial 60 day period for appeal (based on the Funding Commitment Decision Letter which was dated December 10, 2014³) is that Infinity became aware that that the Universal Service Administrative Company (USAC) used the unsubstantiated costs as a basis for denial of the entire funding request (FRN) in contravention of precedent set by Commission in a prior appeal.⁴ This affects not only the applicant in this case, but perhaps other situations as well, where USAC has inappropriately applied the 30% rule. Additionally, Infinity went through a change in personnel since the initial appeal period, which resulted in a review of this application and a realization that an appeal should have been filed to challenge the USAC actions.

III. Discussion

A. WUSD's Application Included Eligible Services Only

The Form 471 application herein is for the applicant's Wide Area Network, both on-going services and a necessary expansion. The “requests for unsupported taxes, service to ineligible entities” can be explained as follows. The taxes

¹ Copy attached (Exhibit A).

² 47 CFR §1.106(b)(2)(i)

³ Copy attached (Exhibit B).

⁴ Iroquois West School District 10, Gilman, Illinois DA 05-54

(\$292.74 per month) were estimates derived by using the same percentage for taxes as had been on prior bills and applying that percentage to the funding request amount. That is how we have dealt with taxes in the past.

The service to ineligible entities (\$2524.50 per month) was based on a misunderstanding; the District Office has the same physical location as West Fresno Elementary School (2888 S. Ivy Ave; Fresno). West Fresno Elementary School *was* listed in block 4 of the Form 471, so we did not include the District Office separately. (There was also a new school being built and services were to be installed there as well. Since the new school was omitted from Block 4, we would agree to a *reduction* of the total FRN by \$1262.25 [half of the amount described above] to account for costs associated with that entity.) It was this confusion about entities on Block 4 that led USAC to conclude that the entities receiving service (the District Office and the new school) were not eligible. We contend that USAC was mistaken in this, at least as it relates to the District Office.

As to the “non-recurring charges without a scope of work (\$96,049),” there were numerous emails back and forth between Program Integrity Assurance (PIA) and Infinity to clarify the scope of work. We recognize [now] that PIA was asking for more information about the specific construction costs, but unfortunately, when our prior employee was handling this she was overwhelmed by other circumstances and did not appreciate what it was that PIA was looking for. As a consequence she kept resending the same (inadequate) information. Again, while we have changed our procedures, at that time no one else was aware that she was having such difficulties in handling her workload.

Even if, however, we cannot substantiate these charges at this point, we ask that the FRN be *reduced* by the questionable amounts, rather than outright denied.

B. The Thirty Percent Rule Should Not be Used for Denial

In a prior decision⁵, the Wireline Competition Bureau has ruled that the Schools and Libraries Division (SLD) of USAC had erred in using the 30% rule to deny an FRN based on *unsubstantiated* costs rather than requests for ineligible services. In that case, Vickie Robinson, Deputy Chief Telecommunications Access Policy Division wrote:

“We understand SLD’s rationale for applying the 30 percent policy to unsubstantiated amounts for eligible services – to create incentives for applicants to request only those amounts that they can justify as reasonable estimates of the costs of eligible services. The 30 percent policy, however, applies to requests for ineligible services, not for unsubstantiated amounts of eligible services. Such an application goes beyond the scope of the 30 percent policy as drafted.”

In that case the application was remanded to USAC to make a determination of the appropriate reduction of the FRN (rather than denial of the entire FRN). We respectfully request the same outcome in this case.

C. Waiver Would Better Serve the Public Interest

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

⁵ Iroquois West School District 10, Gilman, Illinois DA 05-54

(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.

Given the facts and circumstances described above, waiver of the 60 day appeal rule would better serve the public interest than strict adherence to the general rule. *See Northeast Cellular*, 897 F.2d at 1166. First, not allowing the waiver would deny the chance of pointing out how SLD has gone beyond the direction of the Commission laid out in previous Orders, a serious breach of how SLD should operate. This kind of disregard of previous Orders makes it difficult for applicants to predict with any certainty how SLD will make decisions on applications, undermining the trust that applicants need to place in SLD. Additionally, it allows SLD to operate without any chance for corrective actions or other consequences to ensure that they are upholding the Commission's directives and announced policies in a consistent and appropriate manner.

Second, the denial of funding will inflict undue hardship on WUSD and its schools. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, ¶ 11 (rel. May 19, 2006). Fresno is a city in California's Central Valley, a mainly agricultural and rural area. The District serves many poor, rural students. It is exactly the target population for the Commission's push for expanded broadband access. This FRN includes on-going costs for the high speed data circuits necessary to implement that access. WUSD has not reserved the money to try to obtain these high speed data circuits outside of the E-rate process, anticipating that the services provided were properly approved and would be paid for through the E-rate program. If forced to pay in full for these commitments they would 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.

Finally, strict compliance with the rule would not further the purpose of 47 U.S.C. § 254(h). Section 254 directs the commission to “enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries.” The successful implementation of broadband access across the most rural and impoverished sections in America, would embody the fulfillment of this directive.

IV. Prayer for Relief

For the reasons set forth above, Infinity respectfully requests that the requirement that a request for review be filed within 60 days be waived in the instant case and the application be remanded to USAC for a reduction in the FRN, rather than a total denial.

Respectfully submitted,

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May 28, 2015