

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

In the Matter of: )  
)  
Request for Review and/or Waivers of a )  
Decision of the Universal Service )  
Administrator ) CC Docket No. 02-6  
)  
by )  
)  
LakewoodCitySchool District )  
Lakewood, OH )

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

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Lakewood City School District ("Lakewood") respectfully requests that the Federal Communications Commission ("FCC" or "Commission") review two decisions of the Administrator of the Universal Service Administrative Company ("USAC ") relative to the denial of invoice extensions for multiple FY2012 FRNs. Lakewood further requests that the Commission grant it a Waiver allowing it extensions to file FCC Forms 472, Billed Entity Applicant Reimbursements ("BEAR"), for the FRNs. This Request for Review and Waiver is made pursuant to 54.719 through 54.723 of the Commission's rules.<sup>1</sup>

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<sup>1</sup>47 C.F.R. §§ 54.719–54.723

**Application Information**

Billed Entity Number: 129476

**(1) FCC Form 471 Application Number: 832076**

Funding Request Number Appealed: 2292164, 2292168, 2292170, 2292174 and 2292175

Administrator's Decision on Appeal: April 8, 2015

Service Providers: Ohio Bell Telephone Co. SPIN 143001688

Verizon Wireless SPIN 143000677

Cox SPIN 143018993

SBC Long Distance SPIN 143008823

Index Blue SPIN 143029142

**(2) FCC Form 471 Application Number: 831518**

Funding Request Number Appealed: 2292193

Administrator's Decision on Appeal: April 8, 2015

Service Provider: Datacore SPIN 143033424

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## USAC DECISION ON INVOICE EXTENSION APPEALS

Lakewood City School District is seeking a Review and/or Waiver relative to two USAC Administrator's Decisions on Appeal, which denied its appeals of invoice extensions denials for the above-referenced FRNs, stating:

Administrative procedures related to the payment of support for discounted services establish deadlines for applicants or service providers to submit invoices to USAC. The administrator provides an extension of the deadlines under certain conditions. Those conditions are documented in the Reference area on the USAC website. (See Invoice Extensions for more information.) Your request did not provide information that that satisfied those conditions.

Your appeal has not brought forth clear information establishing that those conditions were met but not considered. Therefore your appeal is denied.

### **STATEMENT IN SUPPORT OF REQUEST FOR REVIEW AND WAIVER:**

#### **A. BACKGROUND FACTS**

Lakewood City School District is located in Lakewood, Ohio and has always relied on E-rate funding to supplement its telecommunications and technology budget.

On October 27, 2014 Lakewood, by and through its duly authorized E-rate consultant, Educational Funding Group, Inc., ("EFG") (CRN 16043587) submitted Invoice Extension Requests for the FY2012 FRNs listed above (USAC Case No. 22-687139). All of the extensions were denied by USAC as were both of the ensuing appeals.

## B. DISCUSSION

Lakewood is bringing forth two separate issues to be addressed by the Commission in this Request for Review and/or Waiver.

### **ISSUE 1: Whether Lakewood was entitled to invoice deadline extensions for the reasons originally provided USAC in its Requests for Invoice Deadline Extension filed on October 27, 2014**

One of the reasons listed on the USAC website as acceptable for requesting an invoice extension is where documentation requirements necessitate third-party contact or certification. Lakewood fails to comprehend why the invoice extension requests filed citing this reason were denied "because current guidelines and procedures do not allow approval for the reasons submitted" when documentation requirements necessitating third-party contact or certification was what Lakewood needed in order to prepare accurate FCC Forms 472 ("BEAR"), and which reason(s) were stated in its extension requests.

Since USAC published guidance remains unchanged, Lakewood is at a loss as to why USAC did not allow this as an acceptable reason for granting invoice extensions for these FRNs. Additionally, for several of the extension requests it was also indicated that after many months of personnel changeover and unfilled positions, the necessary documentation had only been received in early October which did not provide adequate time to review the invoices for accuracy, prepare a BEAR and have it certified before the October 28, 2014 last date to invoice. These latter personnel issues establish circumstances beyond the service providers' control, which is also listed on the USAC website as a condition for which an extension may be granted. So, although acceptable reasons were given in support of the extension requests, USAC nonetheless denied all of them. As recently as the USAC Service Provider Webinar held on

March 4, 2015, Michael Kraft, head of USAC's invoicing department, confirmed that the responsibility lies with an applicant to submit an accurate BEAR to USAC. Lakewood has always been aware of its responsibility to submit accurate BEARs and has made good faith efforts to do so, but this time, USAC's denials of the extensions and the appeals is penalizing the district for making concerted efforts to remain in compliance with program rules.

At the time the extensions were submitted, the guidance on the USAC website for 'circumstances beyond the service provider's control' only provides this general statement, with no specificity or further detail. The circumstances described by Lakewood in its extension requests were clearly ones that met this criterion so we cannot understand why the invoice extension requests filed on October 27, 2014 were denied, stating "Your request did not provide information that that satisfied those conditions". Despite the fact that this was argued by Lakewood in its appeals to USAC, when the Administrator denied the appeals, it failed to address this information, and appears to have applied a higher standard other than what is listed as guidance on the USAC website, and is one which Lakewood cannot discern. Worse yet, in denying Lakewood's appeals, the USAC Administrator gave explanations that included the incomprehensible statement that "Your appeal has not brought forth clear information establishing that those conditions were met but not considered." Lakewood has no idea what USAC means by "those conditions were met but not considered", which further hinders its ability to adequately address the issue in this Request.

**ISSUE 2: Whether Lakewood has presented special circumstances sufficient for the Commission to grant it a Waiver**

In the situation described in Issue 1, Lakewood was faced with submitting BEARs by the deadline, knowing they wouldn't be accurate, or seeking an extension so that it could continue working to obtain the information necessary to prepare accurate BEARs, and thus remaining compliant with program rules. Denying invoice extensions under these circumstances is not only punitive to the applicant, and contrary to public interest, but is financially detrimental to the district that made its best efforts to obtain the information and documentation necessary to prepare accurate BEARs for these FRNs, but for reasons that were clearly outside of the service providers' control, were unable to do so by the last date to invoice.

The Commission has recognized that a rule may be waived where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). In addition, the Commission has recognized that it may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. It has deemed a waiver to be appropriate if special circumstances warrant a deviation from the general rule, where such deviation would better serve the public interest than strict adherence to the general rule. *WAIT, supra*.

Lakewood asserts that based on the facts of this matter, and its extensive good faith efforts, strict compliance with the invoice extension guidelines to which USAC is referring, is inconsistent with the public interest and it will continue to endure financial hardship if the guidelines are strictly enforced. The district believes that, based on the special circumstances

presented herein, it would be equitable for the Commission to grant it a waiver of USAC's invoice extension rules and respectfully requests that it do so, for all of the FRNs at issue in this Request.

Lakewood also wishes to point out that the rules and procedures that appear to have been applied by the Administrator in denying its appeals were not in effect at the time Lakewood's invoice deadline extension requests were submitted. The changes implemented by the E-rate modernization Order regarding invoice filing deadlines (47 C.F.R. §54.514, ) did not go into effect until December 18, 2014 and Lakewood's invoice deadline extension requests were submitted on October 27, 2014, prior to the effective date, and in compliance with the invoice deadline guidelines and procedures in effect at that time. USAC should have processed Lakewood's requests for invoice extensions based on the rules in effect at the time they were filed and those in effect for FY2012, not by subsequently implemented rule changes. Further, by USAC issuing incomprehensible explanatory statements, Lakewood's ability to comprehend the standard applied by USAC is severely impeded and leaves it unable to adequately address the issue(s) in these Requests for Review and/or Waivers.

### **CONCLUSION**

Throughout its application process, Lakewood acted in good faith and demonstrated compliance with E-rate program rules and regulations. It followed all core E-rate program requirements and committed no fraud, abuse or waste of E-rate funds. Under the circumstances presented, for USAC to deny Lakewood invoice extensions is against the public interest and will create financial hardship for the school district.

Therefore, for the reasons contained herein and to better serve the public interest and the interests of the students of Lakewood City School District, Lakewood respectfully requests that the Commission:

1. Grant its Request for Review of USAC's denial of the invoice deadline extensions for all the FRNs at issue in this Request;
2. Grant its Request for a Waiver of the invoice deadlines for these FRNs;
3. Issue an Order to USAC to grant invoice extensions for the FRNs;
4. Remand the FRNs to USAC for further processing;
5. Waive any procedural rules necessary to effectuate the Commission's resultant Orders.

Thank you for your consideration.

Respectfully submitted,

*/s/ Michele Scaduto*

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