

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

In the Matter of:)
)
Request for Review and/or Waiver of a)
Decision of the Universal Service)
Administrator) CC Docket No. 02-6
)
by)
)
West Geauga Local School District)
Chesterland, OH)

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

West Geauga Local School District (“West G”) respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) review of a decision of the Administrator of the Universal Service Administrative Company (“USAC”) relative to the denial of invoice extensions for FRNs 2287764, 2287766 and 2311598. West G further requests that the Commission grant it a Waiver allowing it an extension to file a FCC Form 472 Billed Entity Applicant Reimbursement (“BEAR”) for the FRNs. This Request for Review and Waiver is made pursuant to 54.719 through 54.723 of the Commission’s rules.¹

¹ 47 C.F.R. §§ 54.719–54.723

Application Information

Billed Entity Number: 129413
FCC Form 471 Application Numbers: 832141
Funding Request Number Appealed: 2287764, 2287766 and 2311598
Administrator's Decision on Appeal: April 21, 2015

Service Provider: Ohio Bell Telephone Co. SPIN 143001688

Contact Information:

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USAC DECISION ON INVOICE EXTENSION APPEAL

West Geauga Local School District is seeking a Review and/or Waiver relative to a USAC Administrator's Decision on Appeal, which denied its appeal of invoice extensions denials for FRNs 2287764, 2287766 and 2311598 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 you appeal is denied.

STATEMENT IN SUPPORT OF REQUEST FOR REVIEW AND WAIVER:

A. BACKGROUND FACTS

West Geauga Local School District, located in Chesterland, Ohio, has always relied on E-rate funding to supplement its telecommunications and technology budget. On October 27, 2014 West G, by and through its duly authorized E-rate consultant, Educational Funding Group, Inc., (“EFG”) (CRN 16043587) submitted Invoice Extension Requests for the three FY2012 FRNs listed above (USAC Case No. 22-687319).

B. DISCUSSION

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

For the three FRNs subject of this Request for Review and/or Waiver, West G provided specific reason(s) to USAC supporting its requests for invoice extensions: that the AT&T FRNs needed extensions because West G required third party documentation and/or certification to prepare an accurate BEAR for submission to USAC. The guidance provided on the USAC website allows for extensions requested for this reason, so West G fails to 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” when the circumstances described by West G in its extension request(s) were clearly ones that met this standard. Despite the fact that this was argued by West G in its appeal to USAC,

when the Administrator denied the appeal, it appears to have ignored this information, or applied a standard other than what is listed as guidance on the USAC website.

(a) West G's Invoice Extension Requests for these three FRNs met USAC's Conditions for Extensions

The services for FRNs 2287764, 2287766 and 2311598 were provided pursuant to signed contracts between West G and AT&T/Ohio Bell Telephone Co. Although the contracts were properly signed by both parties, between 2012-2014 Ohio Bell never implemented the agreed upon contract rates and billed West G excessive sums, often many times what was provided for in the contract(s). Ohio Bell eventually acknowledged that its incorrect pricing entitled West G to a substantial credit and only recently processed the credit, which spans multiple funding years, and which was applied in a single lump sum. However, AT&T/Ohio Bell has never provided the details of the credit, and West G is therefore unable to determine which portion of the credit applies to which funding year. Because the details of the credit are essential to preparing accurate BEARs for FRNs 2287764, 2287766 and 2311598, West G has been unable to submit accurate invoices to USAC, which is the reason it sought invoice deadline extensions for the FRNs. West G continues its good faith efforts to get the credits issued, but has no way to know how long it will take Ohio Bell to issue them, so the matter remains unresolved.

One of the conditions for extension listed on the USAC website is when “documentation requirements that necessitate third-party contact or certification”. West G fails to comprehend why the invoice extension requests filed for FRNs 2287764, 2287766 and 2311598 were dismissed “because current guidelines and procedures do not allow approval for the reasons submitted” when documentation requirements necessitating

third-party contact or certification is *exactly* what West G needed to prepare accurate BEARs. Since West G satisfied this requirement, it fails to understand how USAC can list it as an acceptable reason on its website, yet deem it an unacceptable reason for granting invoice extensions for these three FRNs. Since the Administrator’s Decision on Appeal Explanation lacks specificity, it hinders West G’s ability to address the issue on appeal.

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

In the situation described above, it is evident that West G is, and always has been, completely dependent on Ohio Bell to provide them with the credit, and the details thereof, necessary to assure program compliance in the preparation of accurate BEARs. West G has, and continues to make, diligent efforts to obtain the credit from Ohio Bell, but has had no response from them. Neither USAC nor the FCC provides guidance or recourse for an applicant who paid in good faith but cannot get the vendor to act and supply them with the correct paperwork necessary to prepare and submit accurate E-rate reimbursements. Given the behemoth AT&T/Ohio Bell is in the telecom industry a “little guy” like West G has limited ability to get them to cooperate. This left West G faced with submitting a BEAR by the deadline, knowing it wasn’t accurate, or seeking an extension so that it could remain in program compliance hoping to obtain the information necessary to prepare an accurate BEAR.

Service providers must register with USAC and comply with universal service requirements, but frequently it is the applicant who has to bear the burden of compliance and is asked to potentially forfeit reimbursements because vendors fail to provide the documentation necessary to support BEARs. Denying an invoice extension under these

circumstances is a harsh penalty, and is financially detrimental to the district that made its best efforts to comply with all program rules in a timely manner.

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. West G asserts that based on the facts of this matter, strict compliance with the invoice extension guidelines to which USAC is referring, is inconsistent with the public interest and West G stands to suffer financial hardship if the guidelines are strictly enforced. The district believes that, based on the special circumstances presented herein, it would be equitable that for FRNs 2287764, 2287766 and 2311598 the Commission grant West G a waiver of USAC's invoice extension rules and respectfully requests that it do so.

It is also important to note that the rules and procedures that appear to have been applied by the Administrator in denying West G's appeal were not in effect at the time West G's invoice deadline extension requests was 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 West G'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. West G's requests for invoice extensions should have been decided based on the rules in effect at the time they were filed and in those in effect for FY2012, not by subsequently implemented rule changes.

CONCLUSION

Throughout its application process, West G 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 West G invoice extensions for FRNs 2287764, 2287766 and 2311598 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 West Geauga Local School District, West G respectfully requests that the Commission:

1. Grant its Request for Review of USAC's denial of the invoice deadline extensions for FRNs 2287764, 2287766 and 2311598;
2. Grant its Request for a Waiver of the invoice deadlines for FRNs 2287764, 2287766 and 2311598;
3. Issue an Order to USAC to grant an invoice extension for FRNs 2287764, 2287766 and 2311598;
4. Remand the FRNs to USAC for further processing;
5. Issue guidance as to how to get a non-responsive vendor (Ohio Bell) to provide the documentation necessary for an applicant (West G) to prepare its BEAR; and

6. 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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E-rate Consultant to West Geauga Local School District