

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

Request for Waiver and/or Review of a Decision)
of the Universal Service Administrator)

by)

CC Docket No. 02-6

Fort Wayne Community Schools)
Fort Wayne, IN)

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

Fort Wayne Community Schools ("FWCS") respectfully requests that the Federal Communications Commission ("FCC" or "Commission") Review a decision of the Universal Service Administrative Company ("USAC") that denied an Invoice Extension Request and associated appeal for FRN 2370222. In the alternative, FWCS asks that the Commission grant it a Waiver relative to any rules applicable to FY2012 invoicing extensions. This Request for Waiver and/or Review are made pursuant to 54.719 through 54.723 of the Commission's rules.¹

Application Information

Billed Entity Number:	130451
FCC Form 471 Application Number:	837179
Funding Request Number Appealed:	2370222
Date of Administrator's Decision on Appeal:	June 18, 2015
Service Provider: NETech Corporation	SPIN 143005378

¹47 C.F.R. §§ 54.719–54.723
Fort Wayne Community Schools FY2012 Request for Waiver re invoice extension denial

Contact Information:

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USAC DECISION ON INVOICE EXTENSION APPEAL

FWCS is seeking a Waiver and/or Review relative to a USAC Administrator's Decision on Appeal which denied its appeal of an invoice extension denial for FRN 2370222. The Administrator's explanation stated:

- FCC Form 472 Number 2054349 was certified by the Service Provider on December 4, 2014 which was after October 28, 2014, the last date to submit an invoice to USAC. It is the applicant's responsibility to ensure that all blocks of the FCC Form 472 are submitted to USAC in a timely manner.

FCC rules require Invoice Deadline Extension requests to be filed by the end of the relevant invoice receipt period for the services 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.

On appeal, you have not provided extraordinary circumstances that prevented you from requesting an Invoice Deadline Extension in a timely manner. Since USAC's decision was consistent with FCC rules, your appeal is denied.

STATEMENT IN SUPPORT OF REQUEST FOR REVIEW AND WAIVER

A. BACKGROUND FACTS

Fort Wayne Community Schools ("FWCS") is an urban school district located in located in Fort Wayne, Indiana. It serves the needs of approximately 31,000 students, a significant number

of which qualify for free and reduced lunch programs. The school district has always relied on E-rate funding to supplement its telecommunications and technology budget.

FWCS requested the extension at issue in this Request because the service provider, Netech (SPIN 143005378), failed to timely certify a BEAR that was submitted to USAC on October 24, 2014, four days before the invoicing deadline for the FRN. FWCS was unaware that the vendor failed to timely certify the BEAR until almost two months later when its E-rate consultant and duly authorized contact, Educational Funding Group, Inc. ("EFG") (CRN 16043587), received the USAC BEAR Notification Letter ("NL") dated December 12, 2014, denying the payment on the BEAR. Upon receipt of the NL (December 16, 2014), EFG immediately submitted an Invoice Extension Request for FRN 2370222. USAC denied both the extension and the appeal of the denial on the basis that the extension was not timely filed, however, given the above-described circumstances, FWCS had no reason to submit an extension request while the BEAR showed as still active in the system and USAC had not yet issued the official denial for lack of timely certification.

B. DISCUSSION

USAC's website lists several conditions under which invoice deadline extensions may be granted. Included in this list is "Documentation requirements that necessitate third-party contact or certification". It was upon this basis that FWCS submitted its request for extension stating that "Since BEAR requirements necessitate third-party/Vendor certification, we are asking for an invoice deadline extension to submit another BEAR. We have been in communication with the Vendor who indicates they will timely certify the new BEAR which will allow the school district to receive the reimbursement to which it is entitled."

Since USAC didn't issue its NL until almost two months after the last date to invoice, FWCS only learned at that time that it needed to request an invoice extension. Once aware, FWCS immediately requested the extension, but USAC denied it stating that it had to have been filed by the end of the relevant invoice receipt period (10/28/2015); the Administrator's Decision on Appeal affirmed this denial.

Page Three of the FCC Form 472 Instructions (July 2013) very clearly states *"The system is designed so that once you make the appropriate certifications, the service provider featured is notified that the BEAR is available for their review and online certification or response to you."* EFG recently contacted Netch in an attempt to ascertain the reason the BEAR wasn't timely certified and learned that it didn't certify it on time because Netch never received notification from USAC that the online BEAR had been submitted. See the email from Netch, attached as Exhibit A, which states that although it received notifications for other BEARs submitted in that time period, none was received for the invoice submitted for FRN 2370222. FWCS (and EFG) were unaware of this when the appeal was submitted to USAC, so the issue was not raised in that appeal.

It appears to have been USAC's apparent failure to issue notice to Netch, or at the very least, a failure for the email to have been received by Netch, that directly contributed to the need for an invoice extension. Therefore, denying FWCS an extension under the circumstances presented is a harsh penalty, is contrary to the public interest, and is financially detrimental to the district that made its best efforts to comply with all program rules in a timely manner.

Further, the Commission should review the Administrator's explanation of the appeal denial which imposes the onus of the vendor's certification on the applicant by stating: "It is the applicant's responsibility to ensure that all blocks of the FCC Form 472 are submitted to USAC in a timely manner". *Nowhere* in the E-rate program rules or USAC's published guidance is this/has

this ever been stated and for USAC to impute this responsibility to FWCS is unjustified. This is especially so because the notification obligation in the Form 472 instructions clearly makes this USAC's responsibility, yet the Administrator's misconceived explanation more than infers that it is the applicant's responsibility..

It is also important to note that the rules and procedures that were applied by the Administrator in denying FWCS's appeal were not in effect at the time FWCS's invoice deadline extension request 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 FWCS's invoice deadline extension request was submitted on December 16, 2014, prior to the effective date, and in compliance with the invoice deadline guidelines and procedures that were in effect at that time. This means USAC should have processed FWCS's request for invoice extension based on the rules in effect at the time they were filed and those in effect for FY2012, not by subsequently implemented rule changes.

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. FWCS asserts that based on the facts of this matter, and its good faith efforts to comply with program rules, strict compliance with the invoice extension guidelines to which USAC is referring, is inconsistent with the public interest and will cause FWCS to endure

significant financial hardship. The district proffers that, USAC's failure to issue notification to Netech, together with the other circumstances presented herein, constitute special circumstances sufficient to justify issuing a waiver of the invoicing deadline rules. In the event the Commission determines that USAC fulfilled its notification obligations, it still remains that, for unascertainable reasons, Netech never received the notification. Given the facts, it would be equitable for the Commission to grant FWCS a waiver of any applicable invoice extension rules, and respectfully requests that it do so.

CONCLUSION

Throughout its application process, FWCS 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 FWCS an invoice extension for FRN 2370222 is against the public interest and will create significant financial hardship for the school district, which serves a significant number of low-income students.

Therefore, for the special circumstances presented herein and to better serve the public interest and the interests of the students of Fort Wayne Community School District, FWCS respectfully requests that the Commission:

1. Grant its Request for Review of USAC's denial of the invoice deadline extension for FRN 2370222;
2. Grant its Request for a Waiver of the invoice deadline for FRN 2370222;
3. Issue an Order instructing USAC to grant an invoice extension for FRN 2370222;
4. Remand the FRN to USAC for further processing;

5. Waive any procedural rules necessary to effectuate the Commission's resultant Orders.
6. Provide guidance on whether and how it's applicant's responsibility to ensure that a service provider certify a BEAR in a timely manner

Thank you for your consideration.

Respectfully submitted,

/s/ Paul Karas

Paul Karas
Educational Funding Group, Inc.

EXHIBIT A

From: Katie Mackinnon <kmackinnon@netechcorp.com>
Sent: Tuesday, July 28, 2015 4:15 PM
To: linda.sadler@naa.com
Subject: BEAR notification for FWCS_MpZU

EFGContact: Courtney Cikach
SourceCpu: server02

Hi Linda,

I did not find a notification email from USAC when the BEAR form for FWCS was ready for certification. I did find similar email notifications from USAC for other schools both before and after October 2014 (the date that the BEAR was submitted online), but nothing for the FWCS invoice.

I checked both my person email and receivables@netechcorp.com (this is the email address most of the notifications go to).

Katie Mackinnon | General Accountant

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