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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHIGNTON, D.C.

In the Matter of: Request for Waiver of the Service Delivery Deadline and Invoicing Deadline By: Cleveland Municipal School District Cleveland, Ohio	CC Docket No. 02-6

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

Introduction and Background:

The Cleveland Municipal School District ("Cleveland", "District", "CMSD") *a.k.a.* Cleveland City School District, respectfully requests that the Federal Communications Commission ("Commission", "FCC") waive the Service Delivery Deadline and the Invoicing Deadline of the Federal E-rate program for funding request number (FRN) 2397423 on Form 471 application 427121 for the Cleveland Municipal School District.

Specifically, the District is requesting that the FCC waive the requirement that a Service Delivery Deadline Extension Request be submitted on or before the original non-recurring services

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deadline. Additionally, the district is requesting a waiver of the requirement that Invoice Deadline Extension Request be submitted by the original invoicing deadline.

Background and Discussion:

CMSD understands the importance of deadlines in the administration of an effective program and has historically exercised diligence in meeting the myriad of deadlines that are required in the E-rate program. For many years the district had the same staff working on the E-rate program, but over the last year there have several staffing changes that are partially responsible for the missed deadlines. Additionally, miscommunication between the district and its consultant regarding whether a service delivery extension and invoicing deadline extension was required contributed to the missed deadlines.

The consultant was under the impression that the funding was not being utilized and, therefore, an extension was not required. Because of this communication breakdown the September 30, 2014 deadline for submitting a Service Delivery Extension was missed. In addition, the January 25, 2015 deadline for requesting an Invoicing Deadline Extension Request was missed, as a result of the miscommunication. The consultant that worked with the district during this time is no longer assisting the district and the district staff member that had operational responsibility for E-rate is no longer with the district.

Shortly after I joined the district in June of 2015, we began working with our new consultant and internal staff to determine if the district had missed out on any vital sources of E-rate funding. During this process we discovered that the ongoing internal wiring work being performed under FRN 2397478 had not been fully invoiced to USAC and that the service delivery deadline had lapsed without an extension request being filed.

The district has also engaged an outside firm to review the efficacy of the E-rate program at the district to improve our internal process and help ensure these types of deadlines are not missed in the future. It is my belief that the District is taking the appropriate

[illegible]

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steps to rectify the situation and we are hopeful that the FCC will waive its rules so the much needed wiring upgrades can continue and the district can get reimbursed for wiring that has already occurred.[1]

Consistent with FCC rules USAC will approve timely filed Service Delivery Extension Requests if one of the following criteria are met:

- A Funding Commitment Decision Letter (FCDL) is issued by USAC on or after March 1 of the funding year for which support is authorized.
- Operational SPIN changes or service substitutions are approved by USAC on or after March 1 of the funding year.
- The applicant or service provider requested an extension because the service provider was unable to complete delivery and installation for reasons beyond the service provider's control.
- The applicant or service provider requested an extension because the service provider has been unwilling to complete delivery and installation after USAC withheld payment for those services on a properly-submitted invoice for more than 60 days after submission of the invoice.

In this instance the work could not be completed by September 30, 2015 because of circumstances beyond the service provider's control. Had the district filed a timely service delivery extension request it is our belief that the request would have been granted because the delay was beyond the control of the service provider. The work could not be completed because of various changes that occurred within the district. In the middle of this project there was a change in district IT leadership and as part of this change in leadership a reevaluation of projects occurred to ensure the district was best leveraging its finite resources. We believe this revaluation was appropriate to ensure that the projects were in-line with the curricular goals of the district. Additionally, at the time the district did not have a project management office dedicated to ensuring timely completion of such projects. Once a

[1] It should be noted that the FRNs being invoiced via the Service Provider Invoice (SPI) process so the reimbursement will actually be used to make the service provider whole. If the waiver request is denied, the district will become pay for the unable services out of its own budget.

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decision was reached to continue moving forward with this project there was not amble time for the service provider to complete the implementation of the project prior to September 30, 2015. Since the new leadership team has been in place the district has created a project management office to ensure that these types of projects are completed within budget and during the expected time frame. This delay was clearly beyond the control of the service provider and, therefore, based on USAC's guidelines an acceptable reason to extend the service delivery deadline.

While the district understands that the Service Delivery Extension should have been filed by September 30, 2014, the staffing changings and miscommunication explained above resulted in the district not being aware of missed deadline. When the district was recently made aware of the missed deadline, through the denial of a Service Provider Invoice, it investigated the situation decided that a waiver request was the appropriate action step.

In the E-rate modernization order the FCC codified the invoicing deadline process and directed the Bureau and USAC to deny any invoice deadline extension request of more than 12 months after the last date to invoice, absent extraordinary circumstances justifying the failure to timely submit invoices.[4] In this instance CMSD's request for a Service Delivery Extension is being filed within a year of the deadline and within two months of my being made aware of the missed deadline. Therefore, it would appear that the fact pattern in this case would not preclude the FCC from granting relief and offering additional time to complete the installation of these much needed services. In the past the FCC has found good cause to waive rules that are administrative in nature.

CMSD is hopeful that the FCC will provide a positive outcome for this waiver request. While ignorance of the deadline is not an excuse, it should be pointed out that this is one of the few deadlines in the program where USAC does not proactively reach out to individual applicants to notify them of the pending deadline. USAC provides individualized notification if an applicant missed or is about to miss the Form 470 filing deadline (to submit a timely Form 471), the Form 486 deadline, and the Form 471 deadline. Perhaps if USAC had reached out to the district and explained that there was a pending deadline the deadline may not have been missed.

[4] See Paragraph 242 of FCC 14-99.

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It is our belief that the invoicing process should function in a manner more similar to the rest of program. We believe the FCC should consider instructing USAC to individually notify applicants if a service delivery or invoicing deadline is about to be missed or has been missed. The level of outreach USAC does relating to Form 470, Form 471, and Form 486 deadlines should be mirrored by the invoicing process. It is our belief that this would reduce the number of appeals the FCC will receive and also increase the percentage of committed funds that are ultimately disbursed.

The recent codification of the invoicing deadlines makes this type of outreach imperative for the effective operation of the program and to ensure fewer dollars are unclaimed. Schools are in desperate need of funding and E-rate is a vital source of such funding. USAC and the FCC have taken great strides in making the commitment process easier, but unfortunately the invoicing process, arguably the more important of the two processes, remains very complicated with harsh deadlines and little direct applicant notice from the administrator.

Reducing the percentage of unused funds has always been a topic raised in Government Accountability Office reports on the E-rate program. Specifically, the GAO recommended that the FCC provide information on the actions taken to reduce the amount of undisbursed funding and the outcomes associated with these actions.[1] It appears that strict adherence to these deadlines with limited notice from the administrator would be an impediment to achieving the goal of reducing undisbursed funds.

If the FCC finds that a waiver of the service delivery deadline is not warranted, CMSD requests that the FCC waive the invoicing deadline so the service provider can get reimbursed for work it has already completed. We believe that this action would be consistent with FCC precedent. The FCC has found that "rigid adherence to certain E-rate rules and requirements that are 'procedural' in nature does not promote the goals of section 254 of the Act, and therefore does not serve the public interest. This is especially true in these circumstances, where the applicants are at the end of the process and have already received service and complied with all other E-rate program rules to date."[2]

[1] See Recommendations for Executive Actions page 50 of GAO-09-233
[2] See Paragraph 7 of DA 08-2383

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Summary:

CMSD truly appreciates the hard work FCC staff and USAC has put into modernizing the E-rate program and understands the challenging policy decisions that must be made. The district also understands the importance of having deadlines and is taking the appropriate steps to ensure that its E-rate deadlines are not missed in the future. The district takes responsibility for not having adequate controls in place to ensure that ALL programmatic deadlines were met. We do believe that improved coordination from USAC in regards to invoicing and service delivery deadlines will improve the program and help other applicants from making the same mistake CMSD made. While a mistake was made, we do believe it is in the public interest to waive the service delivery deadline and grant an invoicing deadline extension and we believe the FCC has reasonable cause to do so. We thank you for your consideration in this matter.

Sincerely,

Curtis Timmons
Deputy Chief of Information Technology
Cleveland Municipal School District