



EAST CENTRAL EDUCATIONAL SERVICE CENTER

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December 17, 2015

REQUEST FOR REVIEW AND WAIVER

CC Docket No. 96-45 and CC Docket No. 02-6

E-Rate Appeal Filed Electronically via the FCC ECFS System

Marlene H. Dortch, Secretary

Federal Communications Commission

Office of the Secretary

445 12th Street SW

Washington, DC 20554

RE: Request for Review of the Administrator's Decision on Appeal 471 Application 1015960

FRN 2757616 and 2757635.

Re: Applicant: East Central Education Service Center

BEN: 130590

Form 471 Application Number: 1015960

FRN: 2757616 and 2757635

Funding Year: 2015 Services: Telecommunications

Service Providers: AT&T Mobility SPIN: 143025240 and

Verizon Wireless SPIN: 143000677

To Whom It May Concern:

This is an appeal of the denial of the Administrator's Decision on Appeal – Funding Year 2015 – 2016 dated October 29, 2015 in connection with FRN 2757616 and FRN 2757635 on FCC Form 471 Application Number 1015960. A copy of the Administrator's Decision of Appeal is attached hereto as Exhibit A. Exhibit A serves as the basis for the USAC appeal. It has always been the desire of the East Central ESC to comply with all FCC, state, and local procurement/competitive bidding requirements. East Central ESC respectfully requests the FCC to waive their rule restricting services for education to a brick and mortar building. This is in conflict with FCC rule 47 U.S.C. § 254(c)(1)(A) which requires the Commission, in designating supported services to consider the extent to which services are essential to education, public health, or public safety.

Text Being Requested for Review:

“Your FCC Form 471 1015960, funding request numbers 2757616 and 2757636 include costs for data plans and/or air cards for mobile devices which are, except under limited circumstances, ineligible for funding. USAC has given you an opportunity to provide documentation demonstrating that the data plans and/or air cards are the most cost-effective option for providing internal broadband access or that installing a wireless local area network is not physically possible. You failed to demonstrate that data plans and/or air cards for mobile devices requested in both FRNs should be considered eligible due to one of the two above specified reasons. Accordingly, your funding request was denied.”

Overview of Migrant Education

Title I, Part C Migrant Education Program (MEP) of the *No Child Left Behind Act* of 2001 supports high quality education programs for migratory children (ages 3-21) and helps ensure that migratory children who move among the states are not penalized in any manner by disparities among states in curriculum, graduation requirements, or state academic content and student academic achievement standards. The MEP is designed to help migratory children overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors that inhibit the ability of such children to do well in school and to prepare such children to make a successful transition to postsecondary education or employment.

Section 1301 outlines the purpose of the program, placing a particular emphasis on, “ensuring that migratory children who move among the States are not penalized in any manner by disparities among the States in curriculum, graduation requirements, and State academic content and student academic achievement standards.” In order to meet the needs of a population of students that are highly mobile, often spending more time on the road than in one place, and in accordance with section 1301(3), it is essential to ensure migratory children are, “provided with appropriate educational services that address their special needs in a coordinated and efficient manner.” Migrant students and families often live in remote locations, far from educational structure and supports that would otherwise provide access to traditional internet and wireless services. In addition, many migrant students spend their time working to provide for their families instead of enrolling in a traditional school based program. These unique needs require the Indiana Migrant Education Program to provide resources and supports, like access to cellular data service, to students so they are able to continue their education in spite of their migratory lifestyle. Students utilize the device and the corresponding service to complete work from their home school and state, access credit accrual course to help them stay on track for graduation, communicate with instructors and teachers from their remote and rural location, and enhance their knowledge and further their skills ensuring future academic success.

The Indiana Migrant Education Program is a national model, as recognized by the US Department of Education’s Office of Migrant Education, for providing innovative approaches to technology enhancement and integration to meet the unique needs of migrant families. The ability to provide cellular data service to families and students has enabled the program to provide additional supports and opportunities to students, while coordinating these efforts with schools in the student’s home state. Additionally, section 1306, each state is required to complete a comprehensive needs assessment for the program, identifying key areas of focus and refinement. The comprehensive needs assessment for the Indiana Migrant Education program identifies the need for high quality technological support and resources for students in order for them to continue their education, regardless of location. Without access to resources, like those offered through the use of cellular data, migrant students would not have access to content and supports on the same level as non-migratory children.

Appeal Review and Wavier Request:

USAC based the denial on failure to demonstrate that data plans and/or air cards for mobile devices requested in both FRNs should be considered eligible due to one of the two specified reasons,

1. demonstrating that the data plans and/or air cards are the most cost-effective option for providing internal broadband access or
2. that installing a wireless local area network is not physically possible.

While this may be an acceptable requirement in most circumstances, Migrant Education is an exception to the rule.

We request that the FCC consider adding Migrant Education as an exemption to the presumed cost-effectiveness of WLANs, similar to those already delineated for library systems. The restriction of data plans can only be funded if they are the most cost-effective option for providing internal broadband access or that installing a wireless local area network is not physically possible becomes an unintended migrant specific barrier.

Migrant Education students characteristically read below grade level. The purpose of these devices is to give them an opportunity to overcome this barrier by providing them access to the myOn Reading Program (see Exhibit B). This program allows the migrant student to:

- Connect below grade level readers with “just right books” to promote reading.
- High-quality informational texts to help learners meet—and exceed— State reading standards.
- To develop and improve their literacy skills, migrant learners need time to practice reading with books that are at their level, meet their interests and are available anytime. Often, this additional practice time occurs outside of the school day: before or after school, over the weekends and during school breaks.

Cellular data service is only provided to students that participate in the federal Migrant Education Program so that they, too, can have a “level playing field” when it comes to meeting their education goals. The continued insistence of the FCC that service can only be supported in a brick and mortar building during normal building hours becomes another unintended migrant specific barrier the FCC has created. This unintended barrier to the education of migrant students unfortunately increases the educational divide between non-migratory students that have the resources to meet educational goals and migratory students that do not have the necessary resources.

The cellular data service is deemed necessary to the performance of these students. As the local agency, we believe that we best understand our community's goals and needs and we are always aware of our requirement to be a prudent guardian of the public's resources and to allocate our resources where they do the most public good. This is a belief supported by long standing practice in the E-Rate program and we believe best described in the FCC's own words; "The Commission has recognized that the applicant is the best entity to determine what technologies are most suited to meet the applicant's specific educational goals." (paragraph 30 of FCC 03-313, The Ysleta Order). The FCC's usurpation of that responsibility has resulted in overly broad assumptions that do not fit our local situation. It is also in direct conflict with Federal Regulation 47 USC §254(c)(1)(A) which requires the FCC to support services that are essential to education, public health, or public safety. The East Central Education Service Center has determined that these students' educational performance is enhanced by cellular data connectivity.

REQUEST FOR WAIVER OF FCC RULES AND TO RESTORE FUNDING COMMITMENT FOR FRN 2757616 and 2757635

The East Central Education Service Center believes special circumstances warrant a deviation from the FCC general rules, and such deviation would better serve the public interest than strict adherence to the general rules. In addition, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements.

It is important to remember that the FCC is required to direct USAC to run the E-Rate program within ALL of the federal rules governing the Universal Services Fund, and while the Modernization Orders of July 11, 2014 and December 11, 2014 both spell out the reasons why the current FCC Board presupposes supplying data service to devices on campus is most cost effectively supplied by WiFi, neither of these orders address the necessity of supplying data service to the devices for specific federal programs such as Migrant Education. Federal Regulation 47 USC §254(c)(1)(A) requires the FCC to support services that are essential to education, public health, or public safety and it is important to remember that this regulation predates both Modernization Orders and nothing in either Modernization Order amends, curtails, or in any way ameliorates the need to conform with 47 USC §254(c)(1)(A). As a result, we are requesting this waiver of paragraphs 151-153 of FCC 14-99 and paragraphs 156-159 of FCC 14-189 in order to continue to support student education through the federally mandated Migrant Education Program and that the FCC **direct USAC to review their denial and restore full funding for FRNs 2757616 and 2757635.**

Thank you for your time and consideration. You are hereby authorized to contact our E-Rate Contact, Linda Sittloh, if you have any questions concerning this appeal or require additional information. Her contact information is as follows:

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Authorized Signatures:



Larry John, Director



Larry Williams, Educational Technology Coordinator

Exhibit A: Administrator's Decision on Appeal – Funding Year 2015 – 2016 dated October 29, 2015

Exhibit B: myON Main Brochure 2015

CC:

The Honorable Daniel Coats
Messer

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