

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

In the Matter of: )  
 )  
Request for Review and/or Waiver )  
 ) CC Docket No. 02-6  
by )  
 )  
Lima City Schools )  
Lima, OH )

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

Lima City Schools (“Lima” or “LCS”) respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) grant it a Waiver allowing it to change the category of service from Telecommunications to Internet Access for Funding Request Number (“FRN”) 2665272. This Request Waiver is made pursuant to 54.719 through 54.723 of the Commission’s rules.<sup>1</sup>

**Application Information**

Billed Entity Number: 130098  
FCC Form 471 Application Number: 978069  
Funding Request Number: 2665272  
Date of USAC Decision on Appeal: December 23, 2015

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

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Lima City School District is seeking a Waiver with regards to the need for a change of service category.

**STATEMENT IN SUPPORT OF REQUEST FOR REVIEW and/or WAIVER:**

Lima City Schools (“LCS”) located in Lima, Ohio is the largest public school system in Allen County and the region, serving a diverse population of about 4,000 students, the majority of which qualify for NSLP. The school district has always relied on E-rate funding to supplement its telecommunications and technology budget.

The original service provider for LCS’ WAN, Communications Options, Inc. (“COI”), SPIN 143001231, notified us in January, 2015 that it was going out of business and would cease providing service by mid-February, 2015. We had to scramble to find another service provider to keep our WAN from being shut down; as of February 5, 2015 Yes Learning and Computer Center (“Yes”) (SPIN 143018000) began providing us service. The COI-LCS WAN contract was assigned to Yes Learning and Computer Center (“Yes”) (SPIN 143018000). All of the terms and conditions of the contract remained unchanged (including pricing). COI was an Eligible Telecommunications Provider (“ETP”); Yes Learning is an internet Service Provider (“ISP”). Since COI was an ETP, FRN 2665272 had been applied for in the telecommunications category.

I filed for an operational SPIN change request, which USAC denied because Yes was not an ETP. On 10/22/2015 I appealed the denial, but the USAC Administrator denied the appeal for the same reason. Without the change of category of service we cannot get the operational SPIN change and consequently will not be able to file for reimbursements.

I wish to note that when the WAN was bid COI was the only company that responded, so our SPIN change request was in compliance with the SPIN change rules.

Since the SPIN change request violated no substantive rules, for the reasons stated above, I ask the FCC to grant LCS a category of service change from Telecommunications to Internet Access so that Yes Learning and Computer may become the service provider of record, and our reimbursements may be processed. Subsequent to the Commission granting this Waiver, we will also need a Waiver to file an 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. LCS asserts that based on the facts of this matter, the category of service guidelines upon which USAC based its denial, is inconsistent with the public interest and LCS stands to suffer financial hardship if the guidelines are strictly enforced. LCS believes that, based on the special circumstances presented herein, it would be

equitable that the Commission grant it Waivers for FRN 2665272, (1) allowing a change category of service from Telecommunications to Internet Access; and (2) an invoice deadline extension.

## **CONCLUSION**

Throughout its application process, LCS 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. LCS requests the Commission grant it a Waiver so that it may obtain an operational SPIN change and reimbursement for FRN 2665272 and avoid the financial hardship the school district will suffer if it is not permitted to do so.

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

1. Grant its Request to change category of service for FRN 2665272 from Telecommunications to Internet Access;
2. Issue an Order to USAC directing an operational SPIN change for FRN 2665272 from COI to Yes Learning and Computer;
3. Grant an invoice deadline extension for FRN 2665272;
6. Waive any rules necessary to effectuate the Commission's resultant Orders.

Thank you for your consideration.

Respectfully submitted,

/s/ Peter Badertscher

Peter Badertscher