



INGLEWOOD UNIFIED SCHOOL DISTRICT

401 S. Inglewood, Avenue, Inglewood, California 90301 phone: 310/419-2700

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

Dr. Vincent Matthews
STATE ADMINISTRATOR

In the Matter of)	
Request for Waiver of Commission Rules)	Administrator Correspondence Dated
by Inglewood Unified School District)	February 26, 2016
)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

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REQUEST FOR A WAIVER OF SECTIONS § 54.514(a) AND § 54.514(b) OF THE COMMISSION'S RULES

Applicant Name: Inglewood Unified School District
 Funding Year: 2014
 Entity Number: 143494
 FCC Form 471 Number: 989411
 Funding Request Number: 2700973

- ADMINISTRATION**
- Dr. Tiffany Rudek
Chief Academic Officer
 - Ms. Nora Roque
*Executive Director
Human Resources Services*
 - Dr. Antonio A. Raymo
Interim, Chief Business Official

In accordance with section 1.3 of the Commission's rules, Inglewood Unified School District ("IUSD" or "District") requests that the Federal Communications Commission grant a waiver of its invoice deadline extension rules in regard to FRN 2700973 to permit IUSD to obtain discount reimbursements on services already received and paid for. After problems required obtaining a 120-day extension of the original invoicing deadline, IUSD was forced through a highly exceptional convergence of circumstances to request a second extension. That request was dismissed by the Administrator / Universal Service Administrative Company (USAC) on February 26, 2016. The District does not dispute that USAC's decision was correct according to FCC rules and is timely filing this request for a waiver of the rules.

BACKGROUND:

Inglewood USD is an urban, disadvantaged K-12 district of 19 schools located just southwest of Los Angeles. Nearly a quarter of residents live in poverty; 78.3% of students qualify for free or reduced price meals. The student population (10,964 in fall 2014) is 57% Hispanic/Latino and 40.5% African American. Of Inglewood residents five years old and above, 51.5% speak a language other than English at home.

¹ See Exhibit A, Administrator's Decision on Invoice Deadline Extension Request.

In September 2012, IUSD accepted an emergency appropriation of \$55 million from the state to avoid fiscal insolvency and came under state receivership. Among the stated problems were chronic deficit spending and declining enrollment (300 to 400 annually, with state education funding being determined by enrollment). The State Superintendent of Public Instruction assumed all legal duties and powers of the Board of Education and appointed a state administrator to act as both the governing board and the district superintendent. The District has also been strongly monitored and supported – through temporary staffing and comprehensive review, audit, and recommendations – by the County Office of Education and the state’s Fiscal Crisis and Management Assistance Team (FCMAT).²

The FCMAT July 2015 *Progress Report* noted that the District had made progress in every operational area, attributed in large part to the work of the Executive Cabinet, but cautioned that the District remained in an unsettled position.³ In June 2015, the District announced that it had, for the first time in some years, presented a balanced budget for 2015-16. Shortly thereafter, the state administrator announced his resignation, pending selection of his replacement.

ISSUE:

Throughout the Erate process, Inglewood USD has been assisted by Tech Ed Services, Inc. (TES), with the account lead being Brenna Terrones, who has worked with Erate since the program’s inception. IUSD certified its Form 471 #989411 on 3/26/14 and received its FCDL on 6/11/14, with a commitment in the amount of \$186,654.36 (FRN 2700973, SPIN 143002665, Pacific Bell Telephone) for local voice service. This SPIN belongs to AT&T Corp.

On top of Erate discounts, California school districts are entitled to receive discounts from the state’s California Teleconnect Fund (CTF). They must select the SPI method of invoicing for Erate discounts, and then (for FY 2014), CTF would pay 50% of the remaining charges.⁴ TES prepared and presented AT&T’s required paperwork for District signature in early 2015, in the same time period as it presented nearly identical paperwork for FY 2013 (late-received FCDL). The Business Office faxed at least the 2013 SPI request form to AT&T on 1/16/15 –

² Fiscal Crisis Management and Assistance Team, *Inglewood Unified School District Progress Report, July 2015*, 1-7. Available at <http://fcmat.org/wp-content/uploads/sites/4/2015/09/Inglewood-USD-progress-report-July-2015.pdf>.

³ *Ibid.*, 4.

⁴ General information on the California Teleconnect Fund can be found on this webpage: <http://www.cpuc.ca.gov/ctf/>. Information on how CTF works in conjunction with Erate can be found here: <http://www.cpuc.ca.gov/General.aspx?id=3868>.

unfortunately, to an incorrect phone number.

During this time, Brenna Terrones suffered a pinched nerve in her neck, which became debilitating and produced excruciating pain beginning on 1/24/15. She had surgery on 2/17/15 and was on medical leave until 3/3/15. Before her leave, she checked with AT&T in regard to the 2013 and 2014 forms and found they had received nothing. At this point, a TES colleague took over and sent the FY 2013 forms to AT&T, but did not realize that FY 2014 was an issue as well.

Believing that the paperwork for FY 2014 had been filed, Ms. Terrones periodically used USAC's Data Retrieval Tool (DRT) to check whether AT&T had begun invoicing USAC. The Invoicing Mode remained at NOT SET, indicating USAC had received no invoice from AT&T, but this indicated little, as it would be two or three billing cycles before discounts appeared, and if they did not, it was likely that AT&T had determined that it was too late in the year to give monthly discounts and intended to give one end-of-year discount and invoice USAC in July.

When a DRT check on August 5 again showed the Invoicing Mode at NOT SET, Ms. Terrones contacted her colleague, who searched the TES email archive and determined that the paperwork for FY 2014 had in fact not been sent to AT&T. As the District, with TES help, was focused on a lengthy (July – September) dispute with another vendor over contract timing and billing matters, and knowing that an automatic invoice deadline extension was available, the issue of the AT&T discount paperwork was temporarily set aside.

On 10/2/15, a check of Form 471 statuses showed that IUSD's FY 2015 Category 2 471 was in active PIA. As she hadn't received the PIA questions from the District, Ms. Terrones left two phone messages with her primary Erate contact, the long-time Director of Technology, which went unanswered; she then followed up and learned that a new State Administrator had been named on 9/17/15 but would not take office until 10/19/15, the Deputy Chief Superintendent (the Erate form certifier) had left without replacement or was on the point of doing so, the Chief Business Official was gone, and the Technology Director had just left suddenly as well.

The Business Office put TES in contact with the Los Angeles County Office of Education employee who was assisting the District with IT in the interim. Together, they arranged for authorization from the State Superintendent of Public Instruction for the District's Executive Director of Human Resources to certify on an emergency basis the FY 2015 Form 486 for Category 1 services (but only that form, no other paperwork). IUSD filed an Invoice Deadline Extension Request for FRN 2700973. Ms. Terrones contacted the PIA supervisor for California

to explain the leadership vacuum; he agreed to suspend PIA until new leadership could arrive, settle in, establish a new Erate team, and issue a new Letter of Agency to TES. Between 11/17 and 11/25, USAC extended the invoice deadline for the FRN to 2/25/16.

All of the District's immediate E-rate needs had been taken care of. However, no Erate team yet existed and TES was not legally able to act on the District's behalf. The new State Administrator and Interim Chief Business Official arrived from out of town and spent the months of November and December focused on learning about the community and district and developing a Recovery Plan for going forward. The County employee who had been assisting with IT returned to his own job and a new Director of Technology had not yet been hired. Despite several inquiries by Ms. Terrones, the District was not yet ready to decide on a new Erate team.

After IUSD's Winter Break (12/21/15 – 1/2/16), Ms. Terrones emailed the District, providing a status report, explaining that a new LOA was needed immediately, and requesting a meeting to plan for FY 2016. TES once again prepared the AT&T SPI discount paperwork. The State Administrator decided that Antonio Raymo, the Interim CBO, was authorized to sign for Erate. Mr. Raymo signed a new LOA for Tech Ed Services and also signed the AT&T paperwork for FRN 2700973, which was faxed to the AT&T Erate Center on 1/18/16.

On 1/21/16, AT&T responded that it "requires 60 days prior to the Last Date to Invoice to process your discounts and invoice USAC. Your last date to invoice is Feb. 25, 2016." It therefore instructed IUSD, "... it is necessary for you to file for an FRN extension."⁵

At this point, IUSD could have opted to file a BEAR, which would take AT&T only one week to process. However, IUSD would lose all its California Teleconnect Fund discounts (approximately \$11,535 based on the Form 471), most of which had already been credited on bills and would need to be repaid. This was not a preferable choice for a district in receivership.

Ms. Terrones therefore called the Client Service Bureau (CSB) for guidance (Case #43481, 1/22/15, Mattisa Harrison) and described the AT&T problem. She explained that the District had received its automatic invoicing extension, referring specifically to the *E-rate Modernization Order* and the new rules, and explained that she couldn't afford to spend time waiting on an IDER that could not be granted. Ms. Harrison quoted the rule that applicants are allowed to request one, one-time 120-day invoicing extension – but went on to say that this doesn't count the automatic extension that IUSD had already received; that it refers to one additional extension

⁵ See Exhibit B, Email from Sandra Mccline, AT&T E-rate Customer Care.

that an applicant can request. Therefore, IUSD should request another extension.

Ms. Terrones immediately filed an Invoice Deadline Extension Request using USAC's Submit a Question.⁶ Please note that the online system asked for a reason for the request as it had in funding years prior to 2014, although this question was no longer relevant under new FCC rules (and has since been removed). Seeing the usual questions would have allayed any remaining concerns on Ms. Terrones' part as to the accuracy of the CSB's advice.

On 2/26/16, 35 days later, one day after the invoicing deadline, IUSD received the Administrator's Decision dismissing the request because "Current deadline extension rules and procedures do not allow approval for the reason submitted" and providing instructions for appealing the decision to USAC.⁷ However, what had actually happened, and the remedy that must be sought, was not made clear until a subsequent TES search deep into the *E-rate Modernization Order* found the relevant clause, "...USAC shall grant no other invoicing deadline extensions" beyond the initial 120-day extension.⁸

DISCUSSION:

To provide for more efficient program administration, enabling USAC to de-commit funds quickly after the invoicing deadline has passed, the *E-rate Modernization Order* set a high standard for granting second invoicing extensions: "in considering waivers of our new invoicing rules, we find that it is generally not in the public interest to waive our invoicing rules, and therefore the Bureau should grant waivers of those rules in extraordinary circumstances."⁹ IUSD contends that a unique confluence of many factors that have in the past each been sufficient "ordinary" reasons for granting extensions and waivers have combined over the past year to constitute an "extra-ordinary" situation deserving of a waiver – a situation that very few other applicants will find themselves in. We discuss these factors and related precedents below.

- Inglewood USD is only the ninth California school district to be placed in state receivership. The District is working hard to right itself in order to regain local control and the confidence of its community – which should in turn result in stemming the tide of enrollment loss and obtaining more attendance-based funding from the state. Regaining \$186,654.36 in refunds

⁶ See Exhibit C, IDER Receipt Acknowledgement Email for Case 22-875900

⁷ See Exhibit A, Administrator's Decision on Invoice Deadline Extension Request.

⁸ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8967, para. 240 (2014) (*E-rate Modernization Order*).

⁹ *Ibid.*

from this funding request would support these efforts. Assisting the District in emerging from receivership is in the public interest of the students, teachers, and people of Inglewood – and in the broader sense, the interest of Los Angeles County and the State of California, as supporting IUSD expends County Office of Education, State Superintendent of Public Instruction, and FCMAT resources that could be used elsewhere.

- While under receivership, all governing and administrative authority is vested in one person, the appointed State Administrator. Thus, during the transition period from September through December 2015, when the District’s Erate team left and was not replaced, the Executive Cabinet shrank from seven to four people (only two of whom were there in September), TES’s existing Letter of Agency from the District was no longer valid, and new leaders coming from outside the district needed to focus on settling in and developing overall plans, almost nothing could be accomplished in regard to Erate except a few emergency measures. The Commission has granted waivers of deadlines when timely filing was prevented by even less radical reorganization.¹⁰
- The *Canon-McMillan Order* set the previous invoicing deadline waiver-granting standard of demonstrating that petitioners had made good faith efforts to comply with programmatic rules. Reasons cited in the granted requests included staff changes and inadvertent errors by staff.¹¹ During IUSD’s first attempt to file the AT&T paperwork, a District employee used an incorrect fax number, similar forms for FY 2013 and FY 2014 caused confusion, and a debilitating injury to the consultant resulted in discontinuity and miscommunication.
- “USAC errors ... that ultimately result in a late invoice” was an acceptable reason in the past for USAC to grant an invoicing extension.¹² In IUSD’s case, the guidance provided by the CSB was incorrect, and USAC took 35 days to dismiss an IDER that by rule they could not grant. Thus IUSD lost the opportunity to submit a BEAR form and receive Erate discounts.

¹⁰ See *Requests for Waiver and Review of Decisions of the Universal Service Administrator by A Special Place; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 29 FCC Rcd 5827, 5828, para. 1 (Wireline Comp. Bur. 2014) and *Requests for Waiver of Decisions of the Universal Service Administrator by Academy for Academic Excellence et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 4747, 4749, para. 4 (Wireline Comp. Bur. 2007) (finding special circumstances exist to justify granting waiver requests where petitioners were unable to file Form 471s on time due to reorganizations, but still filed within a reasonable time).

¹¹ *Requests for Review of the Decisions of the Universal Service Administrator by Canon-McMillan School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15555, 15558, para. 6 (Wireline Comp. Bur. 2008).

¹² *E-rate Modernization Order*, footnote 590.

- For funding years prior to 2014, the *E-rate Modernization Order* added “within a reasonable time period after the services were provided” to the *Canon-McMillan* standard for granting waivers for late-filed invoices, defined as within 12 months of the Last Date to Invoice.¹³ IUSD’s paperwork to initiate the SPI process was sent to AT&T 38 days before the extended Last Date to Invoice. Only AT&T’s demand for a lead time of 60 days – fully half of the 120-day extension – prevented the filing from being timely. “Documentation requirements that necessitate third-party contact or certification” had long been an accepted reason for USAC to grant invoicing extensions.¹⁴ An extension of less than a month was all that would have been required; the Commission has often granted waivers for filings (such as Form 471s) that were less than 30 days late when special circumstances existed.¹⁵
- The new invoicing rules mark a radical departure from the previous, forgiving practices of USAC granting multiple extensions, the FCC granting waivers fairly readily, and automatic extensions given everyone without even asking (for Hurricane Sandy for FY 2011 and a full year for FY 2012). In the *Hancock County Library Order*, explaining denials of pre-FY 2014 extension requests, the FCC pointed out that in the *Canon-McMillan Order*, it was expected that “as schools and libraries continue to participate in the E-rate program, participants should ‘become more experienced with the invoice requirements of the program.’”¹⁶ Paradoxically, it was Ms. Terrones’ unusually lengthy experience with the old processes that contributed to a lessened sense of urgency in getting the AT&T paperwork filed as soon as possible throughout the year-long process and her trust in the CSB’s guidance. USAC has not done a thorough job of communicating the radical change in the invoicing requirements. For instance, Fall 2014 applicant training Power Points used the sentence, “Applicants can request and automatically receive a single one-time 120-day extension of the invoicing

¹³ *Ibid.*, para. 242.

¹⁴ *Ibid.*, footnote 590.

¹⁵ See for example *A Special Place Order*; 29 FCC Rcd 5827, 5828, para. 1 (Wireline Comp. Bur. 2014) (granting a waiver because applicant filed within 30 days of the close of the filing window despite an unexpected serious illness or death of the person responsible for submitting the form); *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Abbotsford School District et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 15299, 15300, para. 2 (Wireline Comp. Bur. 2012) (granting waiver where the applicant filed within a reasonable period after the close of the filing window despite delays beyond its control).

¹⁶ *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Hancock County Library System et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 30 FCC Rcd 4723, 4726-27, para. 3 (Wireline Comp. Bur. 2015) (*Hancock County Library Order*).

deadline.”¹⁷ Attention focused on the “automatically” rather than the “single one-time.” The issue was not addressed in the Fall 2015 Power Points. The policy that USAC cannot grant a second extension, thus applicants and service providers must meet the extended deadline, is not explicitly made on the Invoicing Extensions page of the USAC website.

- After the *Canon-McMillan Order*, applicants and service providers were granted up to six years of implementation to learn the invoice requirements. From the advice given to IUSD by the Client Service Bureau and the AT&T National Erate Center that the District could file for and presumably receive a second extension, it appears that all concerned needed a few months of living through the first implementation of the new rules in order to un-learn what years of experience had taught them about the invoice requirements of the program.

REQUEST FOR RELIEF:

Pursuant to section 1.3 of the Commission's rules, Inglewood USD requests that the Commission grant a waiver of its invoicing rules, § 54.514(a) and § 54.514(b), for FRN 2700973 and allow a 120-day invoicing extension from the date of the Order. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸

There is no evidence in the record that IUSD engaged in activity to defraud or abuse the Erate program. Failure to grant the waiver will create hardship for this urban, disadvantaged, heavily minority district working to stabilize its finances.

IUSD believes that the new standard of “extraordinary circumstances” has been met by the unique combination of its unusual position of being in state receivership AND losing the E-rate team at the same time as the District changed overall leadership/power/direction AND having two good faith efforts to follow invoicing rules in a timely fashion derailed by consultant physical injury and recovery, employee inadvertent error, an unusually long lead time required by the service provider, and USAC/Client Service Bureau error and misleading communications AND the need to use the SPI method to obtain California-specific discounts AND the short

¹⁷ USAC, “E-rate Modernization Order Highlights”, 29. Available at: http://www.usac.org/_res/documents/SL/training/2014/1-E-rate-Modernization-Order-Highlights.pdf

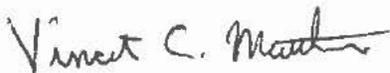
¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), affirmed *WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972), cert. denied 409 U.S. 1027 (1972).

length of extension needed at the time requested AND the demonstrated need for some USAC, applicants, and service providers to be provided a bit of leeway in this first year of implementation to un-learn old ways of thought and expectations, especially when other factors press heavily upon decision-making.

Thank you for your consideration of our request. Any questions, concerns, or requests for additional information should be addressed to:

Brenna Terrones
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310.625.0453
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Respectfully submitted,



Vincent C. Matthews, Ed.D.
State Administrator
Inglewood Unified School District

¹⁹ See Exhibit D, Tech Ed Services Letter of Agency from Inglewood Unified School District.