BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHIGNTON, D.C.

In the Matter of:	)
Request for Waiver of the	)
Invoicing Deadline	)
	)
By:	)
	)
Rutland South Supervisory Union	)
North Clarendon, VT	)

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

Introduction and Background:

The Rutland South Supervisory Union ("District", "RSSU"), 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) 2700981 on Form 471 application 989228 for the Rutland South Supervisory Union.

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 deadline.[1] Additionally, the district is requesting a waiver of the requirement that Invoice Deadline Extension Request be submitted by the original invoicing deadline.[2]

Background and Discussion:

1 See paragraph 15 of FCC 01-195 which indicates an applicant should request a service delivery extension "on or before the original non-recurring services deadline."

2 See §54.514 (b) which requires that invoice deadline extension request be submitted before the original 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.

The district 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 been several staffing changes that are partially responsible for the missed deadlines. There was also miscommunication between the former and new staff regarding whether a service delivery extension and invoicing deadline extension was required.

The staff was under the impression that the Service Provider was monitoring 472 applications and would certify the reimbursement request in a timely manner without a direct request or notice from the District to do so. Because of this communication breakdown the October 28, 2015 deadline for submitting a BEAR Invoice request was missed. The communication breakdown also resulted in the district missing the October 28, 2015 deadline for requesting an Invoicing Deadline Extension Request. The district staff member that had operational responsibility for E-rate is no longer with the district.

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 BEAR form could not be completed by October 28, 2015 because of circumstances beyond the service provider’s control. If the new District staff had realized that direct communication with the service provider was necessary and they did not receive an automatic request for their certification request the Service Provider would have responded before the deadline.

While the district understands that the Invoicing Deadline Extension Request should have been filed by October 28, 2015 the staffing changings and miscommunication explained above resulted in the district not being aware of a 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 and 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.[3] In this instance RSSU's request for a Invoicing Deadline Extension Request is being filed within a year of the deadline and within weeks 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.

RSSU 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 missing certification the deadline may not have been missed.

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.

Given 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."[4] It appears that strict adherence to

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

[4] See Recommendations for Executive Action on page 50 of GAO 09-253.

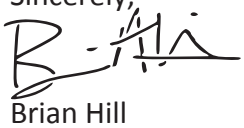
these deadlines with limited notice from the administrator would be an impediment to achieving the goal of reducing undisbursed funds.

If the FCC finds that a waiver of 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."[5]

Summary:

RSSU 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. We thank you for your consideration in this matter.

Sincerely,



Brian Hill
Technology Director
Rutland South Supervisory Union

[5] See Paragraph 7 of DA 08-2385.