

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

In the Matter of)	
)	
Petition for Reconsideration of a)	
Decision by the Telecommunications)	
Access Policy Division, Wireline)	
Competition Bureau for)	
)	
Ada School District)	File Nos. SLD-963751 et al.
Ada, Oklahoma et al.)	DA 16-448
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

PETITION FOR RECONSIDERATION

In accordance with CFR 47, Section 1.106(b)(2)(i),(ii), 1.106(c)(2), and 1.106(d)(2)

Edenton-Chowan Public Schools (Edenton) requests reconsideration of a decision by the Wireline Competition Bureau (Bureau), DA 16-448, Released April 25, 2016.¹ Edenton relies on facts or circumstances which have changed since the last opportunity to present such matters to the Commission and that consideration of the arguments relied on are in the public interest, particularly applicants participating in the Schools and Libraries Program. Additionally, the Bureau failed to properly cite clear precedent articulated in the original request for review.

Form 471 Application Number: 953922
FRN: 2592359
Billed Entity Number: 126922
FCC Registration Number: 0012053286

¹ Ada School District Decision, DA 16-448, Rel. April 25, 2016, CC Docket No 02-6 at 1.

Background

Edenton-Chowan Public Schools is a relatively poor rural school district in eastern North Carolina. Over 60 percent of Edenton students are eligible for the National School Lunch Program and 80 percent E-Rate discount. Edenton typically applies for approximately \$150,000 in E-Rate discounts for basic and necessary phone and broadband services. Utilization of E-Rate funding commitments is typically between 80 and 90 percent, which is far higher than average for the program. Annual E-Rate funding averages \$64 per student, which is not excessive for applicants of our size and discount rate.

Edenton does not pay an E-Rate consultant to prepare forms or submit invoices. Before this fund year, and during the tenure of the current E-Rate coordinator, Edenton has had relatively few problems and met deadlines in a timely manner. This is the first year Edenton found it necessary to appeal any decision or request a deadline waiver.

Discussion

In denying our appeal, the Commission cited paragraph 240 of the E-Rate Modernization Order and the Hancock County Library Decision. It should be noted here that the E-Rate Modernization Order is 162 pages in length, excluding statements of each Commissioner. Paragraph 240 is buried on page 97 of the Order. This paragraph allows applicants to seek and USAC to approve a one-time 120 day invoice deadline extension. Generally, no other extensions will be granted except when "...the Bureau should grant waivers of those rules in extraordinary circumstances."²

² E-Rate Modernization Order, FCC 14-99, Rel. July 23, 2014, WC Docket No 13-184 at 240.

In footnote six of the Ada Decision, the Commission itemizes criteria for granting waivers:

See, e.g., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26950, para. 93 (2003) (noting that USAC provides an extension of the deadline to file invoices under certain conditions, including (1) authorized service provider changes; (2) authorized service substitutions; (3) no timely notice to USAC (e.g., the service providers' Form 486 Notification Letter is returned to USAC as undeliverable); (4) USAC errors that result in a late invoice; (5) USAC delays in data entering a form that ultimately result in a late invoice; (6) documentation requirements that necessitate third party contact or certification; (7) natural or man-made disasters that prevent timely filing of invoices; (8) good Samaritan BEARs; and (9) circumstances beyond the service providers control).³

While the exceptions are extensive, they are not complete. The Commission has longstanding precedent granting waivers for three additional circumstances including Death of the E-Rate coordinator or immediate family, Deployment of the E-Rate coordinator and Illness of the E-Rate coordinator or immediate family.⁴ Although the Modernization Order does not specifically cite these conditions as the basis for granting deadline waivers, it is unimaginable the Commission's intent was to overturn these important precedents when including the phrase "extraordinary circumstances" in the Modernization Order. In the September, 2015 Streamlined Order release, the Commission granted a deadline waiver to St. Gerome Elementary School on the grounds of "Unexpected Serious Illness or Death," citing a 2014 order.⁵

Although Edenton did not footnote precedent decisions in its original appeal, the appeal outright stated illness was the reason for the late filed invoice.⁶ Upon review of the Edenton appeal, anyone experienced with E-Rate precedent should immediately recognize illness as a valid

³ Ada Decision, footnote six.

⁴ Acorn Public Library, DA 08-2376, Rel. October 30, 2008; Bishop Perry, FCC 06-54, Rel. May 19, 2006; Academy of Academic Excellence, DA 07-1180, Rel. March 9, 2007; Greenfield Public School District, DA 06-487, Rel. February 28, 2006 (Deployment).

⁵ Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, DA 15-1105, CC Docket No. 02-6 et al. Rel. September 30, 2015, footnote 13.

⁶ Edenton-Chowan appeal at 2.

reason for granting a waiver. This is the first opportunity for Edenton to present this argument to the Commission, since it was not considered in the Bureau's Decision.

Edenton recognizes that FCC lawyers, like all humans are prone to make mistakes. One example is this Decision itself. Edenton is concerned that "streamlined" FCC review of applicant appeals may not receive sufficient attention to detail. Applicant requests are corralled into groups of similarly situated appeals and summarily denied without considering individual facts, denying applicants' precious E-Rate funding and denying them due process. Appeals are granted or denied based on obscure precedent cited in short footnotes. The Richmond Public Library was denied in such fashion. The four precedent cases cited in the initial Bureau decision had absolutely nothing to do with the facts and circumstances underlying the Richmond appeal. Richmond filed a Petition for Reconsideration and the improper decision was overturned.⁷ E-Rate applicants without access to experienced E-Rate consultants, telecommunications lawyers, or numerous hours required to research volumes of Commission and USAC documents will simply lose E-Rate funding.

Immediately after the Ada Decision was published, Funds For Learning, an E-Rate consulting company, published a news article assessing the impact of the Decision:

- *The applicants directly impacted by the decision were primarily small schools.*
- *The median applicant denied payment supports 2 sites and serves 985 students.*
- *The average discount rate involved in the denials is 71.5%.*
- *80% of the applicants did not list a consultant on their Form 471 application.*
- *The sum total of undisbursed funds for the applications in question is \$2.1 million.*
- *The undisbursed funds represent, on average, \$31.79 per student.⁸*

⁷ Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, DA 15-1237, Rel. October 30, 2015.

⁸ <https://www.fundsforlearning.com/news/2016/04/citing-efficiency-fcc-denies-payments>

Clearly, small schools and libraries, particularly those not represented by consulting companies were not familiar with paragraph 240 on page 97 of the Modernization Order. This group of applicants has become wholly disenfranchised from the E-Rate program.

Information dissemination about paragraph 240 of the Modernization Order by the Administrator has been marginal at best. Implementing wholesale changes in the way applicants apply for and receive discounts, the administrator overwhelmed applicants with News Briefs, Website Updates and regional trainings. The closest live USAC training event for Edenton was Washington, DC which was completely booked within days of training announcement and too expensive for Edenton's limited travel budget. Invoice deadline changes in 2014 trainings were overshadowed by more pressing immediate items like discount calculation changes, phase-out of phone service, additional ineligibility of phone and cellular line-items, category two budgets, urban/rural designations just to name a few. Invoice deadline rule changes were a year away during 2014 training. There was scant mention of 2014 invoice deadline regulations at 2015 trainings as the bulk of conversation centered on the unmitigated disaster known as EPC.

The North Carolina Department of Public Instruction provides outreach to applicants and individually calls applicants when Form 472 or Form 486 deadlines approach. Because Edenton files invoices throughout the year and most of their funding had been disbursed before the 2014 deadline (74 percent), Edenton was not on the DPI call list for 2014.

Other longstanding Commission precedent for E-Rate applicants was to waive filing deadlines and certain regulations the first year of implementation. This was the first year of implementation for the Modernization Order. Applicants should be afforded generous latitude during the first year of implementation.

Conclusion

Edenton asks the Commission to reconsider its decision and extend the invoice deadline for this FRN based on existing precedent. The deadline was missed because of extraordinary circumstances. Commission precedent clearly favors waiver of deadlines for the reasons articulated in the Edenton appeal. Confusion and misunderstanding of requirements stated in the 162 page Modernization Order contributed to Edenton's failure to seek the one-time extension described in paragraph 240 of the Order. In the first year of Modernization Order implementation, Commission precedent also calls for a waiver of initial deadlines. Finally, in the public interest Edenton asks the Commission to overturn this decision and allow Edenton to claim the last \$30,000 in E-Rate discounts authorized in accordance with the Telecommunications Act of 1996.

Respectfully submitted,

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