

Petition for Reconsideration

In accordance with CFR 47, Section 1.106(c)(2) and 1.106(d)(2) Homewood City School District (Homewood) requests reconsideration of a decision by the Wireline Competition Bureau (Bureau), DA 16-448, Released April 25, 2016. Homewood specifically requests a waiver for its failure to meet the E-Rate program's invoice submission deadline. Homewood submits that granting it such relief would be consistent with Commission precedent and in the public interest.

Billed Entity Number: 127969

Discussion

The Commission should reconsider its rejection of Homewood's request for a waiver for failure to meet the Commission's invoice submission deadline because Homewood filed its invoice within 14 days of the close of the submission window. In fact, Homewood only missed the deadline by three business days.

In the 2006 *Bishop Perry* Order, the Commission adopted a policy of granting waivers for Form 471 applications filed just after the deadline, stating that "a slight delay in USAC's receipt of the applications in each of these cases does not warrant the complete rejection of each of these applicants' E-rate applications."¹ The Commission reasoned that rejection of such applications is not warranted because such a near miss of a filing deadline is merely a procedural, rather than substantive, violation of Commission rules.² The Commission later extended this reasoning to provide waivers for applicants filing invoice submissions just after the

¹ *In the Matter of Request for Review of the Decision of the Universal Serv. Adm'r by Bishop Perry Middle Sch. New Orleans, La, et al. Sch. & Libraries Universal Serv. Support Mechanism*, 21 F.C.C. Rcd. 5316, 5322 (2006)

² *Id.*

established deadline.³ In 2010, the Commission further held that Form 471 applications submitted within 14 days of the close of a filing window “were filed close enough to the deadline so as not to impair the administration of the program.”⁴ In light of this reasoning, the Commission established a policy of routinely granting waivers for Form 471 applications received within 14 days of the deadline, doing so as recently as April 29th of this year.⁵

The Commission should extend its policy of granting waivers for forms filed within 14 days of the close of a filing window to cover invoices submitted within 14 days of the invoicing deadline. While the Ada School District Decision correctly places great weight on the Commission’s interest in efficient program administration⁶, Commission precedent holds that such a minor procedural violation does not impair the efficiency of the E-rate program’s administration.⁷ Rather, the Commission has determined that “rigid adherence to filing procedures does not further the purposes of section 254(h) of the Act or serve the public interest.”⁸ As the Commission noted in the *Canon-McMillan* Order, this is especially true for invoice submission deadlines, “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.”⁹

³ *In the Matter of Requests for Review of Decisions of the Universal Serv. Adm'r by Canon-McMillan Sch. Dist., Canonsburg, Pa, et al. Sch. & Libraries Universal Serv. Support Mechanism*, 23 F.C.C. Rcd. 15555, 15558 (2008)

⁴ *In the Matter of Requests for Waiver & Review of Decisions of the Universal Serv. Adm'r by Acad. of Math & Sci. Tucson, Az, et al. Sch. & Libraries Universal Serv. Support Mechanism*, 25 F.C.C. Rcd. 9256, 9260 (2010)

⁵ *Streamlined Resolution of Requests Related to Actions by the Universal Serv. Admin. Co.*, 05-195, 2016 WL 1720463, at 2 (OHMSV Apr. 29, 2016)

⁶ *In the Matter of Requests for Waiver of Decisions of the Universal Serv. Adm'r by ADA Sch. Dist. ADA, Oklahoma et al.*, CC02-6, 2016 WL 1628815, at 1 (OHMSV Apr. 25, 2016)

⁷ *Supra* note 4.

⁸ *Id.* (Referencing the 1996 Federal Telecommunications Act (47 U.S.C. § 254(h)) authorizing the E-Rate Program).

⁹ *Supra* note 3.

In this instance, such rigid adherence would provide little benefit for the effective administration of the E-rate program, and would result in a complete rejection of Homewood's submission. Such an outcome would mean a loss of \$17,000 of funding based on a procedural mistake having little impact on overall program administration. On balance, the public interest is better served by granting Homewood's request for a waiver.

An examination of the practical realities many schools face in filing E-rate forms and invoices further strengthens Homewood's request for reconsideration. As the Commission noted in *Bishop Perry*, the "primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to positions dedicated to pursuing federal grants."¹⁰ Such employees often juggle myriad responsibilities in addition to keeping up with E-rate program rules. Failure to reconsider the denial of Homewood's waiver application would result in complete denial of a school's invoice submission based on such an employee's minor procedural violation of a policy buried in paragraph 240 on page 97 of the 162 page Modernization Order.¹¹ Such a result would be inconsistent with Commission precedent and fundamentally unfair.

Finally, allowing a 14 day grace period for invoices submitted after the deadline window does not implicate the major (legitimate) concerns raised by the Commission in both the Modernization Order and the Ada School District Decision. In paragraph 240 of the Modernization Order, the Commission states the reason for adopting the new invoice deadline extension rule is to "eliminate the need for applicants and service providers to identify a reason

¹⁰ *Supra* note 1, at 5323.

¹¹ See *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, 8966, para. 240 (2014).

for the requested extension and the need for USAC to determine whether such timely requests meet certain criteria.”¹² Likewise, the Ada School District Decision states the justification for the new rule is “removing the administrative burden to USAC in determining which extensions should be granted.”¹³ A policy of allowing a 14 day grace period for filing invoice submissions requires no additional factual determinations whatsoever. It simply requires the same inquiry USAC currently undertakes -- looking at the date the invoice was submitted. Such a policy adds no more administrative burden, but instead makes provision for the normal administrative delays, life events, and human errors that may cause a submission to be slightly late. Because such a policy places no more administrative burden on USAC, the Commission should reconsider Homewood’s application for a waiver and allow its slightly late invoice submission.

Conclusion

Homewood urges the Commission to extend its policy of accepting E-rate forms filed within 14 days of the Commission’s deadline to include invoice submissions submitted within 14 days of the close of the filing window. Such a policy will have little effect on the efficiency of the program’s administration, while allowing for the many good faith reasons a submission may be slightly late.

For all of foregoing reasons, Homewood therefore requests that the Commission reconsider its previous decision and grant it a waiver for failing to meet the invoice submission deadline.

Respectfully submitted,

¹² *Id.*

¹³ *Supra* note 6.

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FCC Form 471 Application:

973332

Service Provider Name:

TekLinks, Inc.

Service Provider Identification Number:

143024409