

2016 WL 1628815 (F.C.C.)

Federal Communications Commission (F.C.C.)  
Order

IN THE MATTER OF REQUESTS FOR WAIVER OF DECISIONS OF THE UNIVERSAL  
SERVICE ADMINISTRATOR BY ADA SCHOOL DISTRICT ADA, OKLAHOMA ET AL.  
Schools and Libraries Universal Service Support Mechanism

CC Docket No. 02-6  
File Nos. SLD-963751 et al.  
DA 16-448  
Released: April 25, 2016  
Adopted: April 25, 2016

\*1 By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Consistent with precedent and in accordance with Commission guidance in the *E-rate Modernization Order*,<sup>1</sup> we deny the requests for waiver listed in the Appendix, all of which seek waiver of the E-rate program rules governing invoicing deadlines.<sup>2</sup> As described in greater detail below, compliance with the invoicing rules is straightforward for applicants and service providers and important for the efficient administration of the E-rate program. The rules allow billed entities and service providers to seek and automatically receive a one-time extension of the invoicing deadlines, provided that the extension request is made in advance of the initial invoicing deadline. None of the petitioners timely sought such an extension, and none present evidence that would justify waiving the requirement that invoice extension requests be filed before the invoicing deadline.<sup>3</sup>

2. *Background.* E-rate applicants select one of two ways to seek reimbursement for E-rate supported services.<sup>4</sup> If an applicant pays the full cost of the services upfront, then the applicant must submit an FCC Form 472, Billed Entity Application for Reimbursement (BEAR) form, to secure reimbursement from the Universal Service Administrative Company (USAC). The service provider must approve and certify the BEAR form before the applicant submits the form seeking reimbursement.<sup>5</sup> If an applicant pays its portion of the cost of the eligible services, then the service provider must file an FCC Form 474, Service Provider Invoice (SPI) form, to receive reimbursement from USAC.

3. Before 2014, invoice extension requests were governed by a USAC procedural rule that allowed applicants or vendor to request and receive a 120 day invoice extension under certain conditions.<sup>6</sup> USAC routinely granted invoice extension requests that met its criteria, including requests made up to a year after the original invoice deadline. In order to ensure that USAC is able to timely identify unused E-rate funds that can be used for future funding years, as part of the *E-rate Modernization Order*, the Commission codified invoice deadline procedures for the E-rate program. The Commission's E-rate rules now require applicants and service providers to submit invoicing forms for reimbursement to USAC no later than 120 days after the last day to receive service or 120 days after the date of the FCC Form 486 Notification Letter, whichever is later.<sup>7</sup> Recognizing that there can be circumstances in which an extension is necessary, the rules allow a billed entity or a service provider to receive a single one-time 120-day extension of the invoice deadline for any cause, if the billed entity or service provider requests the extension before the invoice deadline.<sup>8</sup> The Commission found that adopting a rule providing for 120-day invoice extensions while eliminating the requirement that billed entities and service providers identify a reason for the requested extension, provides more time for applicants and service providers that are unable to submit invoices by the deadline, while removing the administrative burden to USAC in determining which extensions should be granted.<sup>9</sup> In the interest of efficient program administration, the Commission prohibited USAC from granting any other invoicing deadline extensions.<sup>10</sup>

\*2 4. None of the Petitioners identified in the Appendix availed themselves of the opportunity under the E-rate rules to seek a 120 day invoicing extension, before their initial invoicing deadline. They are therefore all seeking waivers of our invoicing deadline and extension rule.<sup>11</sup> Applicants and service providers are free to seek a waiver of the Commission's rules, and the Commission may exercise its discretion to waive a rule where the particular facts demonstrate that (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>12</sup> However, in the interest of efficient program administration, in adopting the invoice deadline rules, the Commission prospectively found that it is generally not be in the public interest to waive the invoice deadline rules and therefore it directed us to grant waivers of the invoicing deadline rules only under extraordinary circumstances.<sup>13</sup>

5. With respect to those deadline extension requests not covered under the newly codified invoicing rules, the Commission likewise found that only extraordinary circumstances would justify any invoice deadline extension requests for invoices submitted more than 12 months after the last date to invoice.<sup>14</sup> With respect to all other invoice extension requests for funding years predating the Commission's codification of the invoice deadline process, the Commission directed us and USAC to consider whether such requests were made in good faith and within a reasonable period of time after the services were provided, or whether other extraordinary circumstances exist that support an extension request.<sup>15</sup>

6. In the *Hancock County Library Order*, we denied several appeals seeking permission to file invoices that were more than 12 months late.<sup>16</sup> Petitioners offered employee confusion, lack of understanding of the program rules, or staff turnover as bases for failing to seek reimbursement in a timely fashion, or no reason at all for their failure to timely submit invoices.<sup>17</sup> We found that the petitioners had not demonstrated "extraordinary circumstances" that would justify filing invoice extension requests more than a year late.<sup>18</sup>

7. *Discussion.* Based on the Commission's guidance in the *E-rate Modernization Order* and other precedent, we deny the requests from the petitioners identified in the Appendix seeking a waiver of our rules requiring that invoice extension requests for funding year 2014 and beyond be filed in advance of the invoice filing deadline. All of the petitioners could have, but failed to submit timely invoice deadline extension with USAC to receive extra time for filing and reimbursement.<sup>19</sup> The invoice extension process adopted by the Commission in 2014 requires very little effort and either the billed entities or the service providers can seek an extension with no need to identify a reason for seeking the extension.<sup>20</sup> In light of the ease with which petitioners could have sought an automatic extension, and the Commission's strong and clearly articulated interest in using the invoicing rule to drive efficient administration of the program, we find that none of the petitioners demonstrate that they faced special circumstances warranting a deviation from the invoice deadline rules, nor that a deviation from those rules will serve the public interest.<sup>21</sup>

\*3 8. Many of the petitioners listed in the Appendix offer employee confusion, lack of understanding of the program rules, staff turnover, or no reason at all for not timely seeking an extension.<sup>22</sup> As we found in the *Hancock County Library Order*, these explanations do not constitute extraordinary circumstances and we deny these requests for waiver.<sup>23</sup>

9. Another set of petitioners seeks an extension of the deadline for BEAR forms claiming that they did not timely file an invoice extension because they had already filled in the applicant portion of the form and were unaware that the service provider would fail to approve and certify the form before the invoicing deadline.<sup>24</sup> Yet other petitioners claim that personal or family health issues, either planned medical procedures or emergencies, prevented the timely filing of an invoice extension request.<sup>25</sup> Another petitioner waited until the afternoon of the last day to mail its invoice, and belatedly requested an extension after discovering the postal service postmarked its invoice mailing with the next day's date.<sup>26</sup> We find that none of these explanations justify a waiver of our invoice deadline rules.

10. Applicants and vendors are responsible for knowing and following our rules, and for submitting their E-rate filings in a timely manner.<sup>27</sup> Applicants have the ultimate responsibility of complying with all relevant rules and procedures, and alleged incorrect or inconsistent advice concerning those rules and procedures from USAC employees does not obviate that obligation or justify a waiver of the Commission's rules.<sup>28</sup> In order for the program to work efficiently, applicants and vendors must assume responsibility for timely submissions and for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely filings on its behalf.<sup>29</sup> This obligation persists even when employees are away from the office on medical leave or otherwise incapacitated.<sup>30</sup> The Commission has also explained that it does not usually grant waivers based on failures of third-party couriers because, although these circumstances may be unexpected, they are reasonably foreseeable and therefore applicants should allow enough time to meet cutoff deadlines to account for such unanticipated problems.<sup>31</sup> Furthermore, if a billed entity is uncertain about its ability to timely submit a BEAR form because of trouble coordinating the certification requirement with a service provider, either the billed entity or the service providers may file an invoice extension request before the deadline, and automatically receive an extension.<sup>32</sup> We therefore find that, in the above situations, petitioners have not demonstrated “extraordinary circumstances” to justify a finding that it would be in the public interest to waive our rules to allow an extension to file invoices after the deadline.

11. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), the Requests for Waiver filed by Petitioners in the Appendix are DENIED.

#### FEDERAL COMMUNICATIONS COMMISSION

\*4 Ryan B. Palmer  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

#### Footnotes

- 1 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) (*E-rate Modernization Order*); *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, para. 9 (WCB 2015) (*Hancock County Library Order*); *infra* notes 25, 26, 28, 29, 31.
- 2 The E-rate program is more formally known as the schools and libraries universal service support program. The E-rate rule at issue can be found at 54 CFR § 54.514. Section 54.719(c) of the Commission's rules provides that any party seeking a waiver of the Commission's rules shall seek relief directly from the Commission. 47 CFR § 54.719(c). While all the petitioners in the Appendix have submitted a filing with the Commission seeking a waiver to allow for an invoice deadline extension because they missed the filing deadline, some of the requests may be unnecessary because a third party timely filed such a request with USAC and received a one-time extension to file the invoices at issue in this order. While the denial of relief in this order does not affect already-approved invoice extensions, going forward USAC should only grant invoice extension requests from the service provider or billed entity associated with the invoices. See 47 CFR § 54.514(b) (noting that “service providers or billed entities may requests a one-time extension of the filing deadline”).
- 3 Generally, the Commission's rules may be waived if good cause is shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.
- 4 47 CFR § 54.514(c).
- 5 USAC, Invoicing: FCC Form 472 Filing, <http://usac.org/sl/applicants/step06/form-472-filing.aspx> (last visited Apr. 25, 2016).

- 6 *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).
- 7 47 CFR § 54.514(a).
- 8 47 CFR § 54.514(b).
- 9 *E-rate Modernization Order*, 30 FCC Rcd at 8966, para. 240.
- 10 *Id.*
- 11 47 CFR § 54.514.
- 12 *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).
- 13 *E-rate Modernization Order*, 30 FCC Rcd at 8966, para. 240.
- 14 *Id.* at 8967, para. 242.
- 15 *Id.*
- 16 *Hancock County Library Order*, 30 FCC Rcd at 4726, para. 9.
- 17 *Id.*
- 18 *Id.*
- 19 47 CFR § 54.514(b); *see* Petitions identified in the Appendix.
- 20 *E-rate Modernization Order*, 29 FCC Rcd at 8966, para. 240.
- 21 *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).
- 22 *See, e.g.,* Berlin-Brothersvalley School District Request for Waiver (missing the invoice deadline because of a new, inexperienced employee); Patton Public Library Request for Waiver (thinking the library's invoice forms were filed when, in fact, they were not); Lafayette Parish Library Request for Waiver (requesting an invoice deadline extension to add a funding request left off a timely BEAR form); Au Gres-Sims School District Request for Waiver (unaware of the invoice deadline); Humboldt Public Library Request for Waiver (offering no reason for missing the deadline).
- 23 *Hancock County Library Order*, 30 FCC Rcd at 4726, para. 9.
- 24 *See, e.g.,* Hopatcong School District Request for Waiver; Gladewater Independent School District Request for Waiver; Elk City Independent School District 6 Request for Waiver.
- 25 *See e.g.,* Edenton-Chowan County School District Request for Waiver (missing the invoice deadline because the E-rate staff member was caring for sick parents); Bishop Heelan Catholic Schools Request for Waiver (missing invoice deadline because employee undergoing major planned surgery); Central Catholic High School Request for Waiver (medical complications of consultant resulted in missed invoice filing); St. Margaret Mary School Request for Waiver (missing the deadline after the employee in charge of filing invoices had a family emergency).
- 26 *See* Scotland School District 4-3 Request for Waiver.
- 27 *See, e.g., Request for Waiver by Lombard School District 44; Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13166, para. 6 (CCB 1999);
- 28 *Request for Review of Sacred Heart School; Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 20 FCC Rcd 8162, 8164, para. 8 (WCB 2005).
- 29 *Requests for Review of the Decision of the Universal Service Administrator by St. Lucy School; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 1792, 1793, para. 5 (WCB 2003).
- 30 *Id.*
- 31 *See, e.g., Request for Review of the Decision of the Universal Service Administrator by Esko Public Schools; Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 20 FCC Rcd 2171, 2171-72, paras. 2, n.4 (WCB 2005) (claims that filing was submitted to post office before deadline despite a postmark to the contrary is not a special circumstance warranting a waiver of the Commission's deadlines); *Request for Review of the Decision of the Universal Service Administrator by Charlotte County Public Schools; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 6993, 6994, para. 3 (CCB 1999) (missing a filing deadline after the post office incorrectly prepared a mailing not a special circumstance warranting a waiver of the Commission's deadlines).

32 See 47 CFR § 54.514(b) (noting that “service providers or billed entities may requests a one-time extension of the filing deadline”).  
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