

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of:)
)
Request for Review of a)
Decision of the Universal Service)
Administrator and Request for Waiver)
) CC Docket No. 02-6
by)
)
Our Lady of Mt. Carmel School)
Cleveland, OH)

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

Our Lady of Mt. Carmel School ("OLMC") respectfully requests that the Federal Communications Commission ("FCC" or "Commission") review a decision of the Administrator of the Universal Service Administrative Company ("USAC") denying OLMC FCC Form 472 Billed Entity Applicant Reimbursement ("BEAR") for FRN 2341632. OLMC further requests that, if necessary, it be granted a waiver of the invoicing deadline for the FRN. This Request for Review and/or Waiver is made pursuant to 54.719 through 54.723 of the Commission's rules.¹

Application Information

Billed Entity Number:	47669
FCC Form 471 Application Number:	860246
Funding Request Number Appealed:	2341632

¹ 47 C.F.R. §§ 54.719–54.723

BEAR Invoice ID:

2315127

Administrator's Decision on Appeal dated:

April 29, 2016

Contact Information:

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USAC ADMINISTRATOR'S DECISION ON APPEAL

Our Lady of Mt. Carmel School is requesting a Review and Waiver relative to USAC's denial of payment for a Billed Entity Applicant Reimbursement that was submitted for FRN 2341632. The BEAR denial was appealed and the USAC Administrator denied the appeal stating:

For the above listed FRN, the service start date was reset 1/28/2013 on your FCC Form 486 due to a late filing of the FCC Form 486. Therefore, the period for which discounts currently apply is the Adjusted Service Start Date to the Service End Date.

Information provided indicated that services were delivered outside of this period. You did not demonstrate otherwise in your appeal. Consequently, USAC denies your appeal because these services were not delivered within the service delivery period under program rules.

STATEMENT IN SUPPORT OF REQUEST FOR REVIEW AND WAIVER

On 1/19/2016 Invoice ID 2315127 was submitted to USAC and was timely certified by the vendor. Due to the late filing of the Form 486, the service start date ("SSD") for FRN 2341632 had been set back to 1/28/2013. This date should have been reflected on the BEAR,

however, due to a clerical error, a 7/01/2012 service start date was used. OLMC was unaware of the clerical error until it received the BEAR Notification Letter dated 2/3/2016.

Instead of processing the BEAR for the five (5) eligible months of service, the reimbursement was denied in its entirety. The denial was appealed to USAC who, incredulously, failed to take the common sense steps that would have prevented the need for this Request for Review; instead the Administrator's decision upheld full denial of reimbursement. We contacted USAC to see if they would review the appeal decision and issue payment for the five eligible months of service, but were told they would not, and were instructed to file this Request. We were also informed that the initial rejection occurred because scanning software caught the discrepancy between the actual 1/28/2013 SSD and the 7/1/2012 SSD used on the BEAR, which automatically resulted in a zero disbursement. In our appeal to USAC the 1/28/2013 SSD was never in dispute; OLMC's appeal simply requested that USAC review its decision denying all payment for Invoice ID 2315127 and process the reimbursement OLMC is entitled to receive for the service from 1/28/2013-6/30/2013. Instead of doing so, USAC based its denial of all payments on the inaccurate premise that all services were delivered outside of the service delivery period.

By the time the BEAR Notification Letter issued it was already past the last date to invoice so it was/is not possible to submit another Form 472. Knowing this, in its appeal to USAC, OLMC included a request that Invoice ID 2315127 be reprocessed. Since this was not done, and since it is past the last date to invoice, OLMC respectfully requests that, if necessary, the Commission grant it a waiver of the invoicing deadline for FRN 2341632.

This request for waiver is based on the Commission's authority to waive any provision of its own rules on its own motion and for good cause shown,² and waive a rule where the particular facts make strict compliance inconsistent with the public interest.³ The Commission has recognized that in granting a waiver, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis may be taken into account⁴ and has deemed a waiver to be appropriate ... where such deviation would better serve the public interest than strict adherence to the general rule.⁵ OLMC believes that equity decrees that to better serve the public interest, the circumstances presented herein warrant such a waiver be granted since, based on the facts of this matter, strict compliance with the invoicing deadline is not in the public interest or in the best interests of the students of OLMC, and will create undue financial hardship for the school.

Attachments in support of this Request are: (1) Invoice ID 2315127; (2) the pertinent page of the Form 472 Notification Letter; (3) the appeal submitted to USAC; and (4) the Administrator's Decision on Appeal Letter. OLMC asks that these documents be reviewed and the decision of the Administrator overturned so that OLMC may receive the reimbursements to which it is entitled for FRN 2341632.

CONCLUSION

Throughout its application process, OLMC demonstrated compliance with E-rate program rules and regulations. It followed all core E-rate program requirements and committed no fraud, abuse or waste of E-rate funds. The circumstances presented herein make

² 47 C.F.R. §1.3

³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)

⁵ *WAIT*, *supra*

it apparent that reimbursement for five months of service for FRN 2341632 was wrongfully denied due to USAC processing errors.

The E-rate Modernization Order had a noble goal of streamlining the E-rate process, but USAC's inability to correct its own mistakes has been, and continues to be, the antithesis of 'streamlined' and in turn, results in more of a waste of program administrative resources than many other processes.

For the above-stated reasons and to better serve the public interest and the interests of the students of Our Lady of Mt. Carmel, Educational Funding Group, Inc., OLMC's duly authorized E-rate consultant, respectfully requests that the Commission:

1. Grant its Request for Review;
2. Remand FRN 2341632 to USAC for further processing of Form 472 reimbursement for the five (5) eligible months of service;
3. If necessary, grant a waiver of the invoice deadline for FRN 2341632;
4. Waive any procedural rules necessary to effectuate the Commission's resultant Orders.

Respectfully submitted,

/s/ Courtney Cikach

Courtney Cikach

Educational Funding Group, Inc.

E-rate Consultant to Our Lady of Mt. Carmel