

April 1, 2013

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

Submitted via ECFS  
2 PAGES TOTAL

**CC Docket No. 02-6**

**Request for Review and Waiver**

Hinton Independent School District hereby submits its appeal to the Commission to review the decisions of the Universal Service Administrative Company (USAC) concerning the Funding Commitment Decision Letter issued to the district on 2/5/2013 and to waive the Item 21 Deadline requirements of the Commission's Public Notice, DA 10-2218.

The relevant application information is as follows:

- Appellant Name: Hinton Independent School District
- BEN: 139779
- Application #: 865773
- FRNs included in this appeal: 2358967, 2358982

Hinton (along with its consultant, CRW Consulting, CRN: 16024800) is filing this appeal in support of the arguments advanced in the appeal filed by the State E-rate Coordinators' Alliance (SECA) on this matter on 1/19/2012. We believe the arguments advanced in SECA's appeal apply to the facts of this denial by USAC and we ask that the Commission instruct USAC to process our application based upon the reasonable position advocated by SECA.

The Commission issued a clarifying order for the deadline of Item 21 submission for the 2011 (year 14) filing period (DA 11-88, issued January 14<sup>th</sup>, 2011). In this order, the Commission provided detailed instructions for how USAC should proceed if the Applicant had missed this deadline (Para 5, emphasis added):

Beginning with funding year 2011, **when USAC determines that an application lacks an item 21 attachment**, USAC shall treat the missing attachment as it treats a missing certification. USAC shall inform the applicant promptly in writing of the omission and give it 15 calendar days from receipt of that notice to submit the missing item 21 attachments.<sup>1</sup> We believe that the 15-day period is limited enough to ensure that funding decisions are not unreasonably delayed, is sufficient time for applicants to file item 21 attachments, and ultimately should decrease administrative costs associated with

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<sup>1</sup> See *Bishop Perry Order*, 21 FCC Rcd at 5326-27, para. 23. Receipt of notice will be presumed to be five days after the notice is postmarked.

interrupted reviews. We also clarify that if applicants do not provide timely responses to USAC requests for omitted item 21 attachments, USAC should treat the associated applications as out of window for the purposes of meeting the filing window deadline.

For the 2012 (Year 15) filing period USAC issued Urgent Reminder” letters to those Applicants that did not file their attachments using USAC’s on-line Item 21 submission system. USAC never made the required “determination that an application lacks an item 21 attachment,” instead of making that determination USAC issued these letters to every applicant that filed their attachments by mail, email or facsimile. We ask for a waiver of the Item 21 deadline based upon this fact alone.

These letters did not inform the applicant that USAC was actually missing any information. The letter, in the first sentence explains that “This letter is to remind you of the deadline for submitting your 471 Item 21 Attachment(s).” Nothing in this letter informed the applicant of a specific deficiency in their application, as required by Commission’s Order, DA-88.

Additionally, the Commission has found that a waiver of the deadline is appropriate when applications “...submitted on time but for their certifications or Item 21 attachments.”<sup>2</sup>

The Commission has also found that a waiver of the filing deadline is appropriate when “...special circumstances exist to justify a waiver...”<sup>3</sup> We believe the following circumstances at Hinton during the Spring of 2012 justify a waiver as well:

#### **Special Circumstances at Hinton – Spring of 2012**

- The employee in charge of Federal Programs (including E-rate) no longer had responsibility for those programs, and a new person was put in place for these responsibilities.
- The Superintendent (who was the contact on the 471) resigned his position in early June.
- A new Superintendent was not hired until August 1<sup>st</sup>.
- The State Department of Education was in the initial stages of investigating the school due to suspected student testing infractions.

We ask the Commission Waiver of the Item 21 deadline based upon the fact that USAC did not follow the Commission’s guidelines in DA 11-88, and based the extenuating circumstances demonstrated above.

Respectfully,

/s/

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<sup>2</sup> See *Anderson Elementary School, DA 12-796, Released 5/22/2012, para 2.*

<sup>3</sup> *Ibid, para 2.*