

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Petition for Reconsideration by
Franklin County School District
Louisburg, North Carolina
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-459988
CC Docket No. 02-6

ORDER

Adopted: October 6, 2011

Released: October 6, 2011

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this order, we grant a petition for reconsideration by Franklin County School District, Louisburg, North Carolina, (Franklin County) of a decision by the Wireline Competition Bureau (Bureau). The petitioner seeks reconsideration of the Boston Renaissance School Order, in which the Bureau denied the school district a waiver of the deadline to submit its E-rate program appeal within 60 days, as required by the Commission's rules.

2. In its original appeal to the Commission, Franklin County said that it discovered USAC had denied its funding request when it conducted an internal audit. The audit was not conducted until the 60 day period to appeal had passed. In its petition for reconsideration, Franklin County explains that its new E-rate coordinator was not immediately aware of Franklin County's invoice denial because of the vague language in the FCC Form 472 (BEAR) Notification Letter. Franklin County said it timely filed its

1 The Bureau has the authority to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority. 47 C.F.R. § 1.106(a)(1) (2011). Letter from Christopher L. Shearer, Franklin County Schools, to the Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, filed Aug. 23, 2011 (Petition for Reconsideration).

2 Boston Renaissance School, et al., Schools and Libraries Universal Service Mechanism, File No. SLD-735147, et al., CC Docket No. 02-6, Order, 26 FCC Rcd 10405 (Wireline Comp. Bur. July 27, 2011) (Boston Renaissance School Order); 47 C.F.R. § 54.720 (2011). The E-rate program is more formally known as the schools and libraries universal service support program.

3 Letter from Christopher L. Shearer, Franklin County Schools, to the Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, filed Nov. 15, 2010 (Request for Review). Franklin County's appeal to USAC was filed more than a year late.

4 Petition for Reconsideration at 2. In its petition for reconsideration, Franklin County also cites to an Aug. 19, 2011 filing by the State E-rate Coordinator's Alliance (SECA) calling for changes to the invoicing process because "zero-funded" BEAR payments "are often not detected by applicants because of innocuous language in BEAR Notification letters resulting in undisbursed funds. Applicants are waiting for retroactive funds to be delivered but payment had never been made by USAC." Letter from Gary Rawson, Chair, State E-rate Coordinators' Alliance, to Gina Spade, (continued....)

invoice online but its service provider was 30 days late in certifying the invoice.⁵ USAC then issued the Form 472 (BEAR) Notification Letter that stated none of the funding for the submitted invoice was disbursed.⁶ The letter did not say that the invoice was denied, only that “Invoice Received Date [04/29/2009] Later Than.”⁷ The letter also did not include any language telling the party submitting the invoice how to appeal the decision.⁸ As a result, Franklin County was not aware that its invoices had been denied until the audit was conducted, but filed an appeal October 19, 2010 immediately after discovering the problem.⁹

3. A petition for reconsideration will only be entertained if it relies on facts or arguments that have changed or were unknown to the petitioner when it previously filed its appeal at the Commission.¹⁰ We now reconsider our decision in the *Boston Renaissance School Order* and grant Franklin County’s petition for reconsideration in light of the new arguments it presents.¹¹ Because Franklin County was not on notice about the denial and the language on the FCC Form 474 (BEAR) Notification Letter did not indicate that USAC denied the invoice,¹² we find that Franklin County submitted its appeal to USAC within a reasonable period of time after receiving actual notice of USAC’s adverse decision.¹³ Therefore, we find good cause to waive section 54.720 of the Commission’s rules and accept Franklin County’s appeal as timely filed.¹⁴

4. Consistent with the Bureau’s decision in the *ABC Unified School District Order*, we also grant Franklin County’s appeal on the merits.¹⁵ Franklin County is appealing USAC’s decision to deny its

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Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 02-6, filed Aug. 19, 2011 at 3 (SECA Ex Parte).

⁵ Petition for Reconsideration at 2.

⁶ Letter from USAC, Schools and Libraries Division, to Susan M. Leisy, Franklin County Schools, dated May 6, 2009 (Form 474 (BEAR) Notification Letter).

⁷ Form 474 (BEAR) Notification Letter at 3.

⁸ Form 474 (BEAR) Notification Letter.

⁹ Request for Review at 1; Petition for Reconsideration at 2.

¹⁰ See 47 C.F.R. § 1.106(b)(2) (2011).

¹¹ If Franklin County had written a more detailed pleading in its initial appeal that included the arguments it now makes, the Request for Review may not have been denied in the first instance.

¹² Form 474 (BEAR) Notification Letter.

¹³ We note that the language on the petitioner’s Form 472 (BEAR) Notification Letter is not only innocuous but cryptic and does not give an adequate explanation of why, or even if, the invoice is being denied. We note that USAC could improve the invoice process by giving applicants and service providers better explanations in the “Reimbursement Request Decision Explanation” line on the Form 472 (BEAR) Notification Letter. In this instance, USAC could note “funding denied because invoice received date [04/29/2009] is later than the FCC extension date [03/31/2009].”

¹⁴ 47 C.F.R. § 54.720 (2011).

¹⁵ *Request for Review of the Decision of the Universal Service Administrator by ABC Unified School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-584091, et al., CC Docket No. 02-6, (continued....)

funding after its service provider submitted the FCC Form 472 invoice certification late.¹⁶ As the Bureau found in the *ABC Unified School District Order*, we find that complete rejection of this request for payment is not warranted given that the applicant missed a USAC procedural deadline and did not violate a Commission rule.¹⁷ Therefore, we find good cause to grant the appeal and remand the underlying application to USAC for further action consistent with this order.

5. ACCORDINGLY, IT IS ORDERED that, 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, 1.106 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.106 and 54.722(a), waiver of section 54.720 of the Commission's rules, 47 C.F.R. § 54.720, IS GRANTED to Franklin County School District, Louisburg, North Carolina.

6. IT IS FURTHER ORDERED that, 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, 1.106 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.106 and 54.722(a), the Petition for Reconsideration filed by the Franklin County School District, Louisburg, North Carolina, IS GRANTED and the application IS REMANDED to USAC for further consideration in accordance with the terms of this order.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

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DA 11-1332 (Wireline Comp. Bur. Aug. 4, 2011) (*ABC Unified School District Order*) (granting 24 appeals after finding good cause to waive USAC's deadline for filing FCC Forms 472 or 474).

¹⁶ Letter from Christopher L. Shearer, Franklin County Schools, to USAC, Schools and Libraries Division, dated Oct. 19, 2010 (Appeal to USAC).

¹⁷ *ABC Unified School District Order* at para. 3.