

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
Requests for Waiver or Review of Decisions )
of the Universal Service Administrator by )
Hancock County Library System ) File Nos. SLD-354032 et al.
Bay Saint Louis, Mississippi et al. )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: May 11, 2015

Released: May 11, 2015

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

1. We deny the requests for review and/or waiver listed in the Appendix from petitioners that failed to submit their invoicing form (FCC Form 472) and are seeking invoicing deadline extensions for reimbursement of services under the E-rate program (more formally known as the schools and libraries universal service support program).1 In accordance with guidance provided by the Commission in the E-rate Modernization Order, we deny the requests because the petitioners waited an unreasonable amount of time after the last date to invoice to seek an invoicing deadline extension and have failed to present extraordinary circumstances that would justify the failure to timely submit the invoices.2

2. Background. After funding for E-rate eligible services is approved, applicants must submit an FCC Form 486 to the Universal Service Administrative Company (USAC) confirming receipt of supported services from the specified service provider(s).3 After processing the FCC Form 486, USAC issues an FCC Form 486 Notification Letter (FCC Form 486 NL) confirming the information provided on the form and advising applicants to discuss with the service provider which of two ways the reimbursements process should work after E-rate eligible services have been delivered.4 If the applicant prefers to pay the full cost of the services upfront, then the applicant must submit an FCC Form 472,

1 The requests for waiver and review are listed in the Appendix. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

2 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, 8967, para. 242 (2014) (E-rate Modernization Order).

3 See USAC, Schools and Libraries (E-rate): FCC Form 486 Filing, http://www.usac.org/sl/applicants/step06/form-486.aspx (last visited May 11, 2015). Specifically, the FCC Form 486 must be filed to: (1) authorize the payment of invoices from the service provider(s); (2) indicate approval of Technology Plans, as required; and (3) indicate the status of compliance with CIPA (Pub.L. 106-554). Id.

4 See USAC, Schools and Libraries (E-rate): Starting Services, http://www.usac.org/sl/applicants/step06/ (last visited May 11, 2015); see also Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9217-19, paras. 44-50 (2003) (Schools Second Report and Order); USAC, Schools and Libraries: Form 472 Filing Information, http://www.sl.universalservice.org/reference/8bear.asp (last visited May 11, 2015); USAC, Schools and Libraries (E-rate): Invoicing, http://www.usac.org/sl/service-providers/step05/default.aspx (last visited May 11, 2015).

Billed Entity Application for Reimbursement (BEAR) form, to secure reimbursement from USAC.<sup>5</sup> If the applicant prefers only to pay its portion of the cost of the services, then the service provider must file an FCC Form 474, Service Provider Invoice (SPI) form, to receive its reimbursement.<sup>6</sup> All petitioners seeking relief in this order chose the FCC Form 472 BEAR form method for reimbursement. In the past, USAC required invoices submitted for reimbursement to be postmarked no later than 120 days after the date of the FCC Form 486 NL or 120 days after the last day to receive service, whichever was later.<sup>7</sup> Applicants could seek an extension of the invoice deadline from USAC as long as the request was postmarked by the end of the relevant invoicing period.<sup>8</sup>

3. In the *Canon-McMillan Order*, the Bureau established a precedent of granting relief to petitioners demonstrating good faith in complying with the invoicing deadline despite submitting very late invoices.<sup>9</sup> That order noted, however, that invoice filing deadlines are necessary for the efficient administration of the E-rate program and that as schools and libraries continue to participate in the E-rate program, participants should “become more experienced with the invoice requirements of the program.”<sup>10</sup>

4. In the *E-rate Modernization Order*, the Commission recognized that firmer limits on invoicing extensions were required to more quickly de-obligate committed funding from past years to carry forward for future E-rate funding needs.<sup>11</sup> It codified USAC’s invoice deadline procedures on a going forward basis, and directed the Bureau to grant requests for waiver of the new rule only under extraordinary circumstances.<sup>12</sup> With respect to invoice extension requests for funding years predating the

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<sup>5</sup> FCC Form 472, *Billed Entity Applicant Reimbursement (BEAR) Form*, <http://www.universalservice.org/res/documents/sl/pdf/forms/472.pdf> (last visited May 11, 2015). Based on information provided on the FCC Form 472, USAC remits the E-rate support payments to the service provider which then reimburses applicants within 20 business days of receiving the reimbursement payment. See 47 C.F.R. § 54.514(b) (2010); see also *Schools Second Report and Order*, 18 FCC Rcd at 9219, para.51.

<sup>6</sup> FCC Form 474, *Service Provider Invoice (SPI) Form*, <http://www.universalservice.org/res/documents/sl/pdf/forms/474.pdf> (last visited May 11, 2015).

<sup>7</sup> See USAC, *Schools and Libraries: June 2002 Announcements, Invoicing Deadlines Extended*, <http://www.sl.universalservice.org/whatsnew/2002/062002.asp#062002> (last visited May 11, 2015). Prior to Funding Year 2003, invoice deadlines were as follows: For Funding Year 2000, the invoice deadline was January 31, 2002 or no later than 90 days after the date of the FCC Form 486 Notification Letter to the service provider. See USAC, *Schools and Libraries: November 2001 Announcements, Funding Year 3 Disbursement Closeout Process*, <http://www.sl.universalservice.org/whatsnew/2001/112001.asp#111301> (last visited May 11, 2015). For Funding Year 2001, the invoice deadline was December 9, 2002. See USAC, *Schools and Libraries: December 2002 Announcements, Deadline for Invoices for FY 2001 Recurring Services*, <http://www.sl.universalservice.org/whatsnew/2002/122002.asp#120302a> (last visited May 11, 2015). For Funding Year 2002, the invoice deadline was December 31, 2002. See USAC, *Schools and Libraries: October 2003 Announcements, Two October Deadlines for Certain Applicants*, <http://www.sl.universalservice.org/whatsnew/2003/102003.asp#100803> (last visited May 11, 2015).

<sup>8</sup> See, e.g., Letter from USAC, Schools and Libraries Division, to Greg Weisiger, Madison County Public Library (dated Jan. 28, 2013) (Administrator’s Decision on Madison Invoice Deadline Extension Request) (denying an invoice extension request because “[c]urrent guidelines and procedures require Invoice Deadline Extension requests to be filed by the end of the relevant invoice receipt period for: the service category of the FRN requiring an extension (120 days after the end of the service delivery date”).

<sup>9</sup> See *Requests for Review of the Decisions of the Universal Service Administrator by Canon-McMillan School District et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd at 15555, 15558, para. 6 (Wireline Comp. Bur. 2008) (*Canon-McMillan Order*).

<sup>10</sup> See *id.* at 15558-9, paras. 7, 9. The Bureau granted relief to petitioners whose late filings or failures to file were due to personnel changes or inadvertent employee errors. *Id.* at 15558, para. 6.

<sup>11</sup> *E-rate Modernization Order*, 29 FCC Rcd at 8965-67, paras. 238-242.

<sup>12</sup> *Id.* at 8965-66, paras. 238-240.

Commission's codification of the invoice deadline process, the Commission directed the Bureau and USAC to deny any invoice deadline extension requests of more than 12 months after the last date to invoice, absent extraordinary circumstances justifying the failure to timely submit invoices.<sup>13</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 the Bureau 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>14</sup>

5. *Hancock County Library System (Hancock County)*. Hancock County failed to file any invoices for E-rate reimbursement for a period spanning funding year 2003 to 2008.<sup>15</sup> According to Hancock County, a new employee was hired in 2003 and, while regularly submitting E-rate applications, the employee failed to seek reimbursement for much of the services delivered to the library system during her tenure as E-rate coordinator from 2004 to 2009.<sup>16</sup> Notably, there was a period of time in 2006 when a new executive director took over and made sure that E-rate applications and reimbursements were done properly.<sup>17</sup> In its appeal, Hancock County has sought permission to seek reimbursement on invoices that would have been no less than one year late and as much as three years late.<sup>18</sup>

6. *Madison County Public Library (Madison County)*. Madison County hired a new E-rate coordinator in August 2011 who was unfamiliar with the program and unaware of the need to file invoices to receive reimbursement on E-rate supported services.<sup>19</sup> Consequently, Madison County did not file invoices for services received in funding years 2007-2009.<sup>20</sup> In October 2012, a consultant hired by the state of North Carolina checked USAC's website and notified Madison County that it was "past due" on its invoice filing.<sup>21</sup> Madison County then filed an invoice extension request with USAC, which was denied for being filed late.<sup>22</sup> In its appeal, Madison County has sought permission to seek reimbursement on invoices that would have been more than two years late and some that would have been more than four years late.<sup>23</sup>

7. *School District of South Milwaukee (South Milwaukee)*. South Milwaukee failed to file invoices in funding years 2000, 2005 and 2008.<sup>24</sup> According to South Milwaukee, after an internal review of its finances in 2012, it discovered that some of its invoices had not been submitted for reimbursement.<sup>25</sup> South Milwaukee blamed the problem on E-rate staff turnover that resulted in

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<sup>13</sup> *Id.* at 8967, para. 242.

<sup>14</sup> *Id.*

<sup>15</sup> Hancock County Library System Request for Waiver at 1.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.* at 1 (Untimeliness of request calculated based on the date of Hancock County's request for waiver filed with the Commission and the last date to invoice for each funding request under USAC's then existing procedures.)

<sup>19</sup> Madison County Public Library Request for Waiver at 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*; Administrator's Decision on Madison Invoice Deadline Extension Request.

<sup>23</sup> Madison County Public Library Request for Waiver at 2 (Untimeliness of request calculated based on the date of Madison County's invoice deadline extension and the last date to invoice for each funding request under USAC's then existing procedures).

<sup>24</sup> School District of South Milwaukee Request for Waiver at 1-2.

<sup>25</sup> *Id.* at 2.

confusion over how the invoicing process worked.<sup>26</sup> It filed invoice extension requests with USAC for each of the three funding years, which were denied for being late.<sup>27</sup> In its appeal, South Milwaukee has sought permission to seek reimbursement on invoices that would have been more than two and a half years late and some would have been more than a decade late.<sup>28</sup>

8. *Morton High School District 201 (Morton High School)*. Morton High School failed to file any invoices from several funding years dating back to 2000.<sup>29</sup> It filed an invoice extension request with USAC, which was denied for being late.<sup>30</sup> On appeal, Morton High School offered no explanation for its failure to file invoices timely other than staff confusion over E-rate rules and procedures.<sup>31</sup> Morton High School sought a 10 month extension to file two of its invoices and it sought an extension of more than a year for the balance of its invoices which included invoices that were more than a decade late.<sup>32</sup>

9. Discussion. We deny the requests for invoice extensions identified in the Appendix, based on the Commission's guidance in the *E-rate Modernization Order*. All of the petitioners seek permission to file invoices that were more than 12 months late at the time the petitioners first sought invoice deadline extensions. Some of the requests ask for permission to seek reimbursement many years after services were delivered. None of the petitioners offer compelling explanations for their delay in seeking reimbursement. Instead they offer 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>33</sup> The Commission has previously found that misunderstanding does not relieve an applicant of its responsibility to understand and comply with the Commission's rules and procedures.<sup>34</sup> Thus, with respect to the requests that were filed more than 12 months after USAC's invoice extension, we find that the petitioners have not demonstrated "extraordinary circumstances" that would justify filing invoice extension requests more than a year late.<sup>35</sup>

10. In addition to seeking invoice deadline extensions that were many years late, Morton High School sought extensions for filing two invoices 10 months late. In deciding Morton High School's request with respect to those two invoices, we must consider whether such requests were made in good

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<sup>26</sup> *Id.* at 2

<sup>27</sup> *Id.*; *see, e.g.*, Letter from USAC, Schools and Libraries Division, to Brian Gannon, School District of South Milwaukee (dated Jun. 14, 2012) (Administrator's Decision on South Milwaukee Invoice Deadline Extension Request).

<sup>28</sup> School District of South Milwaukee Request for Waiver at 1-2 (Untimeliness of request calculated based on the date of South Milwaukee's invoice deadline extension and the last date to invoice for each funding request under USAC's then existing procedures).

<sup>29</sup> Morton High School District 201 Request for Review at Exh. A.

<sup>30</sup> *Id.*; Letter from USAC, Schools and Libraries Division, to Cathy Johnson, Morton High School District 201 (dated Oct. 11, 2012) (Administrator's Decision on Morton Invoice Deadline Extension Request).

<sup>31</sup> Morton High School District 201 Request for Review at 2.

<sup>32</sup> *Id.* (Untimeliness of requests calculated based on the date of Morton High School's invoice deadline extension and the last date to invoice for each funding request under USAC's then existing procedures).

<sup>33</sup> *See supra* paras. 5-8.

<sup>34</sup> *See, e.g., Request for Waiver by Dermott Special School District et al., 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, 17 FCC Rcd 5087 (Com. Car. Bur. 2002); *Request for Waiver by Elgin Independent School District; 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 97-2, Order, 16 FCC Rcd 15895 (Com. Car. Bur. 2001).

<sup>35</sup> *See E-rate Modernization Order*, 29 FCC Rcd at 8967, para. 242.

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>36</sup> We have already determined that employee misunderstanding or confusion of the E-rate invoicing procedures does not represent “extraordinary circumstances” that would justify the failure to timely submit the invoices, or to seek an extension of the invoice filing deadline.<sup>37</sup> We also find that staff confusion about how to comply with the E-rate rules is not a “reasonable basis” for a substantial delay in submitting invoices for payment. Morton High School’s petition, therefore, offers no basis on which to find that a 10 month delay in seeking an invoicing deadline extension was reasonable.<sup>38</sup>

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 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), the Requests for Review and/or Waiver filed by Petitioners in the Appendix are DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>36</sup> *See id.*

<sup>37</sup> *See supra* para. 9.

<sup>38</sup> In light of our determination that the deadline extension requests at issue were not made within a reasonable period of time and were not justified by extraordinary circumstances, we need not determine whether those deadline extension request were made in good faith, although the Commission guidance makes clear that USAC and the Commission can and should deny invoice deadline extension requests that are not made in good faith. *See E-rate Modernization Order*, 29 FCC Rcd at 8967, para. 242.

**APPENDIX**  
**Requests for Review and/or Waiver**

| <b>Petitioner</b>  | <b>Application Numbers</b>   | <b>Funding Year(s)</b>  | <b>Date Request for Review/Waiver Filed</b> |
|--|--|---|---|
| Hancock County Library System<br>Bay Saint Louis, Mississippi    | 354032, 393974,<br>479566, 483775,<br>534582, 581931,<br>635497  | 2003, 2004,<br>2005, 2006,<br>2007, 2008  | Jun. 10, 2010                               |
| Madison County Public Library<br>Marshall, North Carolina        | 567999, 624417,<br>692415, 765019  | 2007, 2008,<br>2009, 2010   | Feb. 5, 2013                                |
| Morton High School District 201<br>Cicero, Illinois              | 189628, 209346,<br>317439, 325912,<br>343725, 375457,<br>410957, 465175,<br>501473, 582194,<br>619261, 688166,<br>734836 | 2000, 2001,<br>2002, 2003,<br>2004, 2005,<br>2006, 2007,<br>2008, 2009,<br>2010 | Dec. 10, 2012                               |
| School District of South Milwaukee<br>South Milwaukee, Wisconsin | 178569, 481886,<br>621011  | 2000, 2005,<br>2008   | Jul. 30, 2012                               |