

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Request for Review and/or Waiver of Decisions of
the Universal Service Administrator by
Ada Public Library
Ada, Oklahoma et al.
Schools and Libraries Universal Service Support
Mechanism
File Nos. SLD-937638 et al.
CC Docket No. 02-6

ORDER

Adopted: March 16, 2017

Released: March 16, 2017

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

1. In this Order, we grant two waivers related to the E-rate program’s invoicing rules. First, we waive the requirement in section 54.514(b) that applicants must request an extension prior to the invoice filing deadline as it applies to those applicants for whom the Universal Service Administrative Company (USAC) had not, as of October 31, 2016, issued the FCC Form 498 ID, and who therefore were unable to submit an invoice. We direct USAC to grant these applicants an extension of the invoice filing deadline for 30 days from the release of this Order. Second, we grant a waiver of our rules for several petitioners that properly requested an invoice deadline extension but failed to timely file their invoice filings due to circumstances beyond their control, including USAC’s inability to timely process their invoice deadline extension requests.

2. Background. E-rate applicants may seek reimbursement for E-rate supported services in one of two ways. An applicant either may pay upfront for the full cost of services and then seek reimbursement of the discounted share from USAC, or the applicant may pay the non-discounted share of the services and require the service provider to invoice USAC for reimbursement of the discounted share. If an applicant pays upfront, it must submit an FCC Form 472, known as the Billed Entity Application for Reimbursement (BEAR) form, to request reimbursement from USAC. As part of the E-rate Modernization Order’s directive to allow applicants to receive direct reimbursement and move to electronic filing, applicants must now file the BEAR form online in order to receive reimbursement.

1 The E-rate program is more formally known as the schools and libraries universal service support mechanism.

2 47 CFR § 54.514(b) (directing USAC to grant a 120-day extension of the invoice filing deadline “if it is timely requested”). We note that the deadline for requesting an extension was extended from October 28, 2016 to October 31, 2016 due to technical issues. See Wireline Competition Bureau Extends Deadline for E-rate Participants to Request Invoice Deadline Extension, CC Docket No. 02-6, Public Notice, 31 FCC Rcd 11924 (WCB 2016).

3 47 CFR § 54.514(c).

4 USAC, Invoice Changes, http://www.usac.org/sl/invoicing-changes.aspx (last visited Mar. 13, 2017).

5 See id. (explaining that all BEAR forms must be filed online as of July 1, 2016). The E-rate Modernization Order required USAC to phase in electronic filing for all documents over three funding years. See Modernizing the E-rate

Before it can file a BEAR form, however, the applicant must receive an FCC Form 498 ID, which USAC provides to an applicant after USAC has approved the banking information on the applicant's FCC Form 498,<sup>6</sup> and a personal identification number (PIN), which enables an authorized person to certify the online BEAR form.<sup>7</sup>

3. The deadline for filing these BEAR forms is described in section 54.514(a) of the Commission's rules,<sup>8</sup> which states that invoices must be submitted 120 days after the last day of service or 120 days after the date of the FCC Form 486 Notification Letter,<sup>9</sup> whichever is later, in order to provide certainty to allow USAC to more efficiently deobligate committed funds.<sup>10</sup> Applicants may seek a one-time automatic 120-day extension of the invoice filing deadline, but such a request must be filed prior to the invoice filing deadline.<sup>11</sup>

4. *Waivers.* On our own motion, we waive the portion of section 54.514(b) of the Commission's rules that requires an applicant to timely submit a request for an invoice filing deadline extension for the limited number of applicants who were waiting for USAC to provide an FCC Form 498 ID or a PIN and were therefore unable to file the BEAR before the funding year 2015 invoice filing deadline for recurring services.<sup>12</sup> Generally, waiver of the Commission's rules is appropriate if (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>13</sup> In codifying the invoicing rules in 2014, the Commission determined that waivers of the invoicing rules were generally not in the public interest and that the Bureau should grant waivers of the invoicing rules only in extraordinary circumstances.<sup>14</sup>

5. As of July 1, 2016, all applicants must have an FCC Form 498 ID and a PIN before they can file an invoice. Once an applicant obtains the FCC Form 498 ID and a PIN, those numbers will remain valid for future funding years. However, the changes to the invoicing process to allow for direct applicant reimbursement caused a dramatic, one-time increase in FCC Form 498 filings, resulting in the submission of almost 17,000 FCC Form 498s at USAC in the four-month period before the invoicing deadline. Similarly, the move to online filing increased the requests for PINs in the months leading to the deadline. As a result, some applicants have faced delays in receiving the necessary FCC Form 498 ID and PIN.

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*Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8951, para. 205 (2014) (*E-rate Modernization Order*).

<sup>6</sup> USAC, Invoice Changes, <http://www.usac.org/sl/invoicing-changes.aspx> (last visited Mar. 13, 2017). The FCC Form 498 provides banking and financial information for the applicant so that USAC can reimburse the applicant directly by electronic funds transfer.

<sup>7</sup> *Id.* A PIN is a unique number assigned by USAC.

<sup>8</sup> 47 CFR § 54.514(a).

<sup>9</sup> The Form 486 Notification Letter notifies an applicant that USAC has received and accepted an FCC Form 486, the Receipt of Service Confirmation Form, which informs USAC that services have started for the recipients of service.

<sup>10</sup> See *E-rate Modernization Order*, 29 FCC Rcd at 8965-66, paras. 238-40. The FCC Form 472, the BEAR form, is the form for applicants to submit reimbursement requests to USAC. USAC may request copies of vendor invoices if necessary to verify the information on the BEAR form.

<sup>11</sup> 47 CFR § 54.514(b).

<sup>12</sup> 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*).

<sup>13</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>14</sup> See *E-rate Modernization Order*, 29 FCC Rcd at 8965-66, para. 238-40.

6. We find that this one-time influx in requests and the subsequent inability of USAC to provide some applicants with an FCC Form 498 ID before the deadline present extraordinary circumstances that warrant a deviation from the extension request rule. We believe it is contrary to the public interest if applicants who made an effort to comply with the requirements prior to the deadline, but were impacted by a delay from USAC resulting from these one-time changes to the invoicing process, are unable to file their invoices. We therefore waive section 54.514(b) and direct USAC to provide applicants that had pending requests for an FCC Form 498 ID as of October 31, 2016 with a 30-day extension of the invoice filing deadline, if the applicant did not already request an extension. Similarly, we waive section 54.514(b) if an applicant already has received an extension, but USAC is unable to provide the applicant with an FCC Form 498 ID or a PIN before the end of the 120-day extension. In these cases, we direct USAC to provide the applicant with 30 days to file the BEAR form after the issuance of the FCC Form 498 ID or the PIN. We note that these are extraordinary circumstances and, in the future, applicants should give themselves ample time to work with USAC to meet all requirements necessary to successfully file a BEAR form.

7. Next, we waive section 54.514(a) of the Commission's rules, requiring an applicant to timely submit an invoice, for a limited number of applicants who properly requested an automatic 120-day invoice deadline extension but still could not file in time because of various factors, including USAC's inability to approve the extensions in a timely manner.<sup>15</sup>

8. In the *E-rate Modernization Order*, the Commission adopted a rule allowing applicants and service providers to seek and receive from USAC a one-time 120-day invoicing extension for any given funding request, provided the request was made before the deadline for submitting the invoice.<sup>16</sup> The Commission noted there would be minimal administrative burden for USAC since those seeking an extension would not be required to identify a reason for the request.<sup>17</sup>

9. The invoices for the petitioners at issue in the appeals were due October 28, 2015, the deadline for most funding year 2014 recurring service invoices.<sup>18</sup> All petitioners timely filed requests for an invoice deadline extension until February 25, 2016 to submit invoices.<sup>19</sup> USAC, however, did not immediately approve the extension requests.<sup>20</sup> Because the extension requests remained pending, USAC's system would not accept the petitioners' invoices.<sup>21</sup> Before and after requesting the invoice deadline extension requests, all of the petitioners said they faced difficulties in gathering and submitting the information and forms necessary to successfully invoice.<sup>22</sup> When USAC eventually approved the invoice extension requests, it did so without granting an extension of the deadline for the full 120 days, meaning that the petitioners had, in most cases, only 30 to 40 days left to complete the invoicing

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<sup>15</sup> Request for Review and/or Waiver by Ada Public Library et al., CC Docket No. 02-6 (filed Aug. 5, 2016) (Ada Public Library Appeal); Request for Review and Petition for Waiver by Frontier Communications Corporation (Bridgeport Public School District and Hartford Public School District), CC Docket No. 02-6 (filed Sept. 2, 2016); 47 CFR § 54.514(b) (instructing USAC to grant a one-time 120-day extension of the invoice filing deadline, if timely requested). The petitioners are listed in the Appendix.

<sup>16</sup> See *E-rate Modernization Order*, 29 FCC Rcd at 8965-66, paras. 238-40.

<sup>17</sup> *Id.* at para. 240.

<sup>18</sup> This date is 120 days after the last date to receive service, Jun 30, 2015. See 47 CFR § 54.514(a) (requiring invoices to be submitted 120 days after the last day to receive service or 120 days after the date the FCC Form 486 Notification Letter, whichever is later).

<sup>19</sup> Ada Public Library Appeal at 1, 6.

<sup>20</sup> *Id.* at 4.

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

<sup>22</sup> *Id.* at 8-11. For instance, Ada Public Library, through a consultant, had been trying to get its invoice paid for months, submitting four BEAR forms that USAC rejected. *Id.* at 9.

process.<sup>23</sup> They claim they were then unable to complete the invoicing process in the shortened time provided after USAC approved their invoice requests.<sup>24</sup>

10. We find that the invoicing challenges presented to these petitioners, combined with the absence of an adequate extension window within which to submit invoices, constitutes an extraordinary circumstance warranting a deviation from the extension deadline rule. These narrow circumstances warrant a waiver because of the unique difficulties these invoice filers faced in funding year 2014. All the petitioners made efforts to comply with program requirements prior to the deadline and properly requested an extension for additional time. We note the limited nature of this waiver, which is based on a one-time occurrence that USAC has since taken steps to address.<sup>25</sup> While E-rate participants must still wait to receive USAC invoice deadline extension approval before submitting invoices, USAC has created the Invoice Deadline Extension Tool, which immediately informs applicants whether an extension had been approved.<sup>26</sup> Because we find that USAC did not give these applicants adequate time to complete the invoicing process despite the petitioners' best efforts at complying with the invoice rules and procedures, we grant these appeals and direct USAC to work with these applicants to complete the invoice process within the next 90 days.<sup>27</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, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the requirement under Section 54.514(a) and (b) that applicants timely file invoices and request an invoice deadline extension is WAIVED and USAC SHALL GRANT an extension for the impacted applicants as described herein.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>23</sup> *Id.* at 2. Of the petitioners in the Ada Public Library Appeal, South San Antonio Independent School District was given the longest period to complete the invoice process at 98 of the 120 days. Conversely, Kansas Public Library's request was granted on the 121<sup>st</sup> day, eliminating any opportunity to timely submit an invoice.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> USAC, Invoice Extensions, <http://usac.org/sl/applicants/step06/invoice-extensions.aspx> (last visited Mar. 13, 2017).

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

<sup>27</sup> We waive section 54.514(a) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. 47 CFR § 54.514(a).

## APPENDIX

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Date Request for Review/Request for Waiver/Petition for Reconsideration Filed</b>
Ada Public Library, Ada, OK	937638	Aug. 5, 2016
Area Coop Educational Services, North Haven, CT	955094	Aug. 5, 2016
Bridgeport School District, Bridgeport, CT	957825	Aug. 5, 2016, Sept. 2, 2016
Hartford School System, Hartford, CT	951343	Aug. 5, 2016, Sept. 2, 2016
Idabel School District 5, Idabel, OK	941738	Aug. 5, 2016
Kansas Public Library, Kansas, OK	937562	Aug. 5, 2016
Nobel Independent School District 40, Nobel, OK	950583	Aug. 5, 2016
Quest Academy, West Haven, UT	951117	Aug. 5, 2016
South San Antonio Independent School District, San Antonio, TX	957614	Aug. 5, 2016