

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

In the Matter of)	
)	
Request for Waiver of a Decision of the Universal Service Administrator by)	
)	
Byte Networking, LLC)	File Nos. SLD-161029839, 161029913,
Juneau, Alaska)	161030606, 161032561, 161029937
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6

ORDER

Adopted: August 27, 2019

Released: August 27, 2019

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

1. Byte Networking, LLC (Byte) is a small service provider to rural entities participating in the E-Rate program¹ in Alaska. Following the death of the company’s owner, David Kunat, in a plane crash on May 27, 2017, the owner’s parents assumed control of the company. However, unaware of the funding year 2016 invoicing deadline of October 30, 2017, they failed to timely submit invoices for several of the company’s funding requests.² After discovering the issue and unsuccessfully attempting to submit invoices in November 2017, Byte now seeks a waiver of the invoice filing deadline for five E-Rate funding requests.³ Based on the record before us, we grant the request for waiver filed by Byte, finding that there were extraordinary circumstances that merit a waiver of the E-Rate program’s invoicing rules.⁴ As a result, we direct USAC to extend the invoice filing deadline for these funding requests by 90 days from the effective date of this Order.

2. *Background.* E-Rate applicants or service providers may seek reimbursement for E-Rate supported services in one of two ways.⁵ An applicant may either 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. In either case, the deadline for seeking reimbursement is described in section 54.514(a) of the Commission’s rules, 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, whichever is later.⁶ Under the rule, applicants may seek a one-time automatic 120-day extension of the invoice filing deadline from USAC, but such a request must be filed prior to the invoice filing deadline.⁷

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

² Request for Waiver by Byte Networking, LLC, CC Docket No. 02-6 (filed Dec. 12, 2017) (Request for Waiver).

³ *Id.*

⁴ 47 CFR § 54.514(a).

⁵ 47 CFR § 54.514(c).

⁶ 47 CFR § 54.514(a).

⁷ 47 CFR § 54.514(b).

3. 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.⁸ 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 Wireline Competition Bureau should grant waivers of the invoicing rules only in extraordinary circumstances.⁹ USAC accordingly has denied requests for an extension of the invoice filing deadline that are received after the deadline itself, and the Bureau has denied similar requests for waiver of the rule.¹⁰

4. Byte is a small business with very few employees.¹¹ After the owner's unexpected death in a plane crash on May 27, 2017, Mr. Kunat's parents assumed control of the business, but only discovered in November 2017 that several of the company's invoices for E-Rate funding requests for funding year 2016 had not yet been submitted.¹² Upon discovering the issue, they attempted to file for reimbursement in November 2017. However, Byte was unable to submit the invoices because the filing deadline of October 30, 2017 had passed and an extension of the invoice deadline had not been requested in advance.¹³ Byte then filed a request for waiver the day that it became aware of the missed deadline, which was just weeks after the invoice filing deadline.¹⁴

5. *Discussion.* Upon consideration of the record, we find that Byte has demonstrated extraordinary circumstances warranting grant of a waiver of our invoice rules. We have generally held that the obligation to comply with all relevant rules and procedures applies even when employees are away from the office on medical leave or otherwise incapacitated and that stakeholders are responsible for the action or inaction of employees and consultants.¹⁵ However, the facts presented to us in the Request for Waiver here demonstrate that Byte was unable to file timely invoices due to circumstances outside of its control. In this instance, we find that the sudden death of the service provider's owner combined with the small size of the business and the absence of a successor involved in the daily operations of the company were extraordinary circumstances that warrant a deviation from the general rule. In waiving the rule, we also find significant Byte's good faith efforts to seek reimbursement as soon as it discovered the outstanding invoices and to request a waiver as soon as it became aware of the missed invoice filing deadline. The Commission has a strong interest in ensuring efficient program administration,¹⁶ but we find, under the circumstances presented, that it would not serve the public interest to withhold these funds

⁸ 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).

⁹ 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, 8965-66, paras. 238-40 (2014) (*2014 First E-Rate Order*).

¹⁰ See, e.g., *Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834 (WCB 2016) (*Ada Order*).

¹¹ Request for Waiver.

¹² *Id.* The Request for Waiver seeks extensions for application numbers 161029839, 161029913, 161030606, 161032561, and 161029937.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Ada Order*, 31 FCC Rcd at 3837, para. 10; see *Requests for Review of the Decision of the Universal Service Administrator by St. Lucy School; 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, 97-21, Order, 18 FCC Rcd 1792, 1793, para. 5 (WCB 2003).

¹⁶ See *2014 First E-Rate Order*, 29 FCC Rcd at 8965-66, para. 238-40.

from a small business that had provided service to rural, Alaskan entities in furtherance of the goals of the E-Rate program. We, therefore, waive section 54.514(b) of our rules,¹⁷ consistent with other waiver relief we have granted previously.¹⁸

6. 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 section 54.514 is WAIVED and USAC SHALL GRANT an extension for Byte Networking, LLC by 90 calendar days from the effective date of this Order as described herein.

7. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁷ 47 CFR § 54.514(b). We also 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).

¹⁸ See, e.g., *Petition for Reconsideration by Jefferson-Madison Regional Library; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, 32 FCC Rcd 4626, 4630-32, paras. 10-13 (WCB 2017) (finding extraordinary circumstances for White Lake School District to merit a waiver of the invoice filing deadline).