

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

In the Matter of )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: February 26, 2018

Released: February 26, 2018

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

I. INTRODUCTION

1. In this order, by our own motion, the Wireline Competition Bureau (Bureau) grants a limited waiver of the Commission’s invoicing rules to allow certain E-rate program applicants and service providers to submit invoices beyond the 120-day extension already received and allowed by the Commission’s rules.1 Specifically, and subject to the limitations stated in this order, the Bureau waives the invoice extension rule to provide extraordinary relief for applicants and service providers that: (a) timely requested and received the one-time 120-day extension to invoice for funding year 2016 recurring charges from the Universal Service Administrative Company (USAC); and (b) are currently awaiting, or recently received, a revised funding commitment decision letter (RFCDL) issued for a post-commitment change request submitted to USAC (Affected Program Participants).

2. We direct USAC to allow Affected Program Participants to submit invoices for their funding year 2016 recurring service charges on or before 120 days from the date of their post-commitment RFCDL. We take this action in response to the extraordinary circumstances created by technological system issues that delayed USAC’s issuance of post-commitment RFCDLs for funding year 2016. As a direct result of this delay, Affected Program Participants may not receive their RFCDLs in time to submit accurate invoices by February 27, 2018, the extended invoice deadline for recurring services. Affected Program Participants, therefore, face the imminent and significant consequences of having their invoices rejected due to issues with USAC’s systems that are beyond their control, and after they complied with the requirement to seek an extension before the original invoice deadline. Consistent with the Commission’s direction that waivers of the E-rate invoicing rules be granted only in extraordinary circumstances,2 we emphasize the limited and narrowly tailored nature of this decision. The relief granted by this order is limited to the specific facts and program participants described herein.

II. BACKGROUND

3. E-rate Invoicing Rules. Before 2014, invoice deadlines were established by USAC’s procedures, and invoice extension requests were governed by a USAC procedural rule that allowed applicants or vendors to request and receive a 120-day invoice extension under certain conditions.3

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

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, 8966, para. 240 (2014) (First 2014 E-rate Order).

3 See, e.g., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26950, para. 93 (2003) (noting that USAC provides an extension of the deadline to file invoices under certain conditions, including: (1) authorized service provider changes; (2) authorized service substitutions; (3) no timely notice to USAC (e.g., the service

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USAC routinely granted invoice extension requests that met its criteria, including requests made up to a year after the original invoice deadline.<sup>4</sup> In the *First 2014 E-rate Order*, the Commission codified the invoice deadline established by USAC's procedures,<sup>5</sup> and adopted a strict standard for granting extensions of the applicable invoice deadline.<sup>6</sup> Specifically, the Commission's rules only permit USAC to grant a single 120-day extension of an invoicing deadline, provided that the applicant or service provider submits the request on or before that invoicing deadline.<sup>7</sup> USAC will automatically grant timely filed invoice extension requests.<sup>8</sup> In the interest of efficient program administration, however, the Commission has prohibited USAC from granting any other invoice deadline extensions.<sup>9</sup> As a result, if applicants and service providers require more time than the single 120-day extension to complete the invoicing process, they may only obtain it by seeking a waiver of the invoice extension rule from the Commission.<sup>10</sup> The Commission has concluded, however, that "it is generally not in the public interest to waive [the] invoicing rules,"<sup>11</sup> and the Bureau should grant waivers of the invoice deadline rules only under "extraordinary circumstances."<sup>12</sup>

4. *Post-Commitment Requests.* When USAC approves a funding request, it issues a funding commitment decision letter (FCDL).<sup>13</sup> Under certain circumstances, applicants and service providers may request post-commitment changes to their approved funding requests (e.g., a Service Provider Identification Number (SPIN) change request to change service providers or correct a service provider's identification number, service substitutions permitted by program rules).<sup>14</sup> Once USAC processes the

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providers' Form 486 Notification Letter is returned to USAC as undeliverable); (4) USAC errors that result in a late invoice; (5) USAC delays in data entering a form that ultimately result in a late invoice; (6) documentation requirements that necessitate third party contact or certification; (7) natural or man-made disasters that prevent timely filing of invoices; (8) good Samaritan BEARs; and (9) circumstances beyond the service providers control).

<sup>4</sup> See *Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834, 3835, para. 3 (WCB 2016).

<sup>5</sup> See *First 2014 E-rate Order*, 29 FCC Rcd at 8965-66, para. 238-39. The Commission's E-rate rules now require applicants and service providers to submit invoicing forms for reimbursement to USAC no later than 120 days after the last day to receive service or 120 days after the date of the FCC Form 486 Notification Letter, whichever is later. 47 CFR § 54.514(a).

<sup>6</sup> See *First 2014 E-rate Order*, 29 FCC Rcd at 8965-66, paras. 238-40.

<sup>7</sup> 47 CFR § 54.514(b).

<sup>8</sup> *Id.*

<sup>9</sup> *First 2014 E-rate Order*, 30 FCC Rcd at 8966, para. 240.

<sup>10</sup> *Id.*

<sup>11</sup> The Commission has concluded that the its invoice deadline rules are necessary to ensure the efficient operation of the program, provide certainty for program participants, and allow USAC and the Commission to identify unused E-rate funds that may be carried forward to future funding years. *Id.* at 8965-66, paras. 238-39.

<sup>12</sup> *Id.* at 8966, para. 240.

<sup>13</sup> See *Request for Review or Waiver of a Decision of the Universal Service Administrator by RECTec Technology and Communications, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 8180, 8181, para. 3 (WCB 2014); see also USAC, Step 4 Application Review, <http://www.usac.org/sl/applicants/step04/default.aspx> (last visited Feb. 22, 2018).

<sup>14</sup> See *Request for Review of a Decision of the Universal Service Administrator by Warren Village School, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 237, 237-238, para. 2 (WCB 2011). All post-commitment changes to a funding commitment must be filed with USAC before the last date to submit an invoice, and in some cases, earlier than that. *Id.* (stating that SPIN changes must be submitted before the last date to submit an invoice); *Requests for Review of Decisions of the Universal Service Administrator*

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post-commitment request, it issues an RFCDL with the updated information for the funding commitment.<sup>15</sup> The RFCDL must be received before applicants and service providers can submit invoices reflecting the post commitment changes approved by USAC.<sup>16</sup> Otherwise, their invoices will either be immediately rejected (in instances where information on the invoice does not match the system) or submitted with incorrect information that could lead to funding denials.

5. *Invoice Deadline Extension for Funding Year 2016 Recurring Services.* The invoice deadline for most funding year 2016 recurring service charges was October 30, 2017, which is 120 days after the last date to receive service on June 30, 2017.<sup>17</sup> Accordingly, applicants and service providers that timely requested a 120-day extension of that deadline must submit their invoices to USAC by February 27, 2018. While recently investigating concerns expressed by E-rate program participants about their ability to meet that deadline, the Bureau learned that many post-commitment funding requests were either still pending or just recently completed by USAC due to late implementation of the functionality necessary to process certain post-commitment requests in the online E-rate Productivity Center (EPC).<sup>18</sup> After consultation with USAC, it was determined that many program participants that timely requested and received extensions of the October 30, 2017 invoice deadline will be unable to file invoices by the February 27, 2018 extended deadline, because: (a) their post-commitment requests will not be processed by that date, so they will not have received the RFCDLs necessary to accurately invoice; or (b) their post-commitment requests have been processed, but their RFCDLs have issued too close to that date for timely submission of accurate invoices to be practicable. Because USAC does not have the authority to grant additional extensions under program rules, the late-filed invoices would be rejected and the associated funding requests eventually would be de-committed.<sup>19</sup>

### III. DISCUSSION

6. We find that extraordinary circumstances exist to grant a limited waiver of the Commission's invoicing rules to allow additional time for the Affected Program Participants to submit invoices to USAC. Generally, waiver of the Commission's rules is appropriate if: (a) special circumstances warrant a deviation from the general rule; and (b) such deviation will serve the public interest.<sup>20</sup> However, as noted above, in codifying the invoicing rules in 2014, the Commission determined that waivers of the invoicing rules are generally not in the public interest and that the Bureau should grant

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by *Beaufort County School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 3124, 3125, para. 3 n. 6 (WCB 2014) (“[A] service substitution request must be received or postmarked by the last day to receive service for that funding request number”).

<sup>15</sup> See Schools and Libraries News Brief, *Schools and Libraries Program News Brief: RFCDL Reminders* (Jan. 19, 2018), <https://usac.org/sl/tools/news-briefs/preview.aspx?id=812> (listing post-commitment changes and events for which RFCDLs will be issued).

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

<sup>17</sup> 47 CFR § 54.514(a). The deadline would have been Oct. 28, 2017, which is 120 days from the June 30, 2017 date, but Oct. 28, 2017 fell on Saturday and the deadline was therefore moved to Monday, Oct. 30, 2017, consistent with the Commission's rules. 47 CFR § 1.4 (noting that if a filing date falls on a weekend, the document “shall be filed on the next business day”).

<sup>18</sup> Requests for post-commitment changes to funding requests filed for funding year 2016 and later are processed through EPC. The functionality necessary to process all post-commitment funding requests and issue RFCDLs was implemented in EPC between April and December 2017.

<sup>19</sup> See *supra* para. 3.

<sup>20</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. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

waivers of the invoice deadline rules only in extraordinary circumstances.<sup>21</sup> Given this strict standard, the Bureau has granted a waiver of the invoicing deadlines in only extremely limited circumstances. Those circumstances have included when applicants and service providers have made every attempt to comply with the invoice deadline rules, but were blocked from timely completing the invoicing process because a predicate request or function had not been completed (or could not be completed) by USAC's systems.<sup>22</sup>

7. Consistent with that precedent, we find that granting a limited waiver is appropriate. The Affected Program Participants in this situation timely requested and received the single 120-day extension allowed by our rules, but are unable to accurately submit their invoices within that extended time period solely because of USAC system issues, which is a circumstance beyond their control.<sup>23</sup> Further, the extraordinary nature of the instant circumstances is indicated by the fact that the waiver and relief granted here is limited in both scope and time (i.e., to invoices for funding year 2016 recurring charges for which post-commitment changes were required and delayed due to a lack of functionality that has now been implemented in EPC); thus, this specific USAC system issue should not prevent program participants from timely submitting invoices going forward. We find that it would not be in the public interest to require schools and libraries to lose or experience significant delays in receiving E-rate funding for services needed to connect students and library patrons to high-speed broadband when the Affected Program Participants requested the additional time available under program rules to complete the invoicing process, but cannot complete the invoicing process within that time solely because of USAC system issues beyond their control.

8. We, therefore, grant a limited waiver of our invoice extension rule to allow the Affected Program Participants to submit invoices to USAC up to 120 days after the date of the RFCDL issued for their pending or recently processed funding year 2016 post-commitment requests. We direct USAC to process such invoices as timely filed. In so doing, we emphasize the extraordinary and limited nature of the waiver granted by this order. We have long recognized that it is the responsibility of E-rate applicants and service providers to know and comply with the rules and procedures of the program, including program deadlines.<sup>24</sup> The Commission in the *First 2014 E-rate Order* recognized that, even though invoices are not due for at least 120 days after services are delivered, outside factors may create delays that require additional time. It, therefore, created the 120-day automatic extension process as a safety net should applicants or service providers anticipate that additional time would be needed for such things as post-commitment SPIN changes. In this regard, we reiterate that it is the responsibility of the E-rate participant to anticipate any post-commitment change necessary to submit an invoice to USAC and to

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<sup>21</sup> See *supra* para. 3.

<sup>22</sup> 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, 4629-30, paras. 8-9 (WCB 2017) (granting the waiver requests of petitioners that filed a BEAR form timely, but were unable to receive reimbursement because the service provider did not certify it before July 1, 2016, at which point the USAC system could no longer process the BEAR form); *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, 11925 (WCB 2016) (granting additional time for program participants to submit invoices because USAC's systems stopped accepting invoice filings prior to the deadline); *Request for Review and/or Waiver of Decisions of the Universal Service Administrator by Ada Public Library; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 1909, 1910, paras. 4-6 (WCB 2017) (granting a waiver for applicants that were unable to file the BEAR form while waiting for USAC to provide an FCC Form 498 ID or personal identification number (PIN) at the time of the invoice filing deadline due to the one-time influx in requests in the fall of 2016).

<sup>23</sup> See *supra* note 22.

<sup>24</sup> See *Request for Waiver by Jemez Pueblo Tribal Consortium and Zia Pueblos, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 10238, 10243, para. 10 (WCB 2017).

request the one-time 120-day extension allowed under our rules if those requests will not be processed by the invoicing deadline.

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, 47 CFR § 54.514 IS WAIVED to the extent described above.

10. 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  
Telecommunication Access Policy Division  
Wireline Competition Bureau