

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of:

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Request for Review of a Decision)	
by the Schools and Libraries Division)	Administrator Funding Denials Dated
from the State E-Rate Coordinators)	July 19, 2011 and later
Alliance)	
)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Request for Review and Waiver

In accordance with Sections 54.719 through 54.721 of the Commission's Rules, the State E-Rate Coordinators' Alliance (SECA) respectfully requests the Federal Communications Commission (Commission) to review the decisions of the Universal Service Administrative Company (Administrator) and waive the Item 21 Deadline requirements of the Commission's Public Notice, DA 10-2218 (released November 19, 2010) and subsequent Clarification Order, DA 11-88 (released January 14, 2011).

SECA accomplishes its work through the resources of its 98 individual members who provide statewide E-rate coordination activities in 46 states and 2 U.S. territories. Representatives of SECA typically have daily interactions with E-rate applicants to provide assistance concerning all aspects of the program. SECA provides face-to face E-Rate training for applicants and service providers. As state E-rate coordinators, members serve as intermediaries between the applicant and service provider communities, the Administrator, and the

Commission. SECA members typically provide more than 1300 hours of E-rate training workshops annually to E-rate applicants and service providers. In addition to the formal training hours, SECA members spend thousands of hours offering daily E-rate assistance to individual applicants through calls and e-mails.

Additionally, in their roles as state E-Rate coordinators, SECA members perform various tasks for the Administrator in support of applicants in their states. Tasks include verification of E-Rate discounts, certification that schools and libraries are eligible institutions and research applicable state laws concerning the eligibility of non-traditional schools to name a few. Often, state coordinators represent applicants before the Administrator or Commission to secure funding or appeal adverse decisions. E-Rate Coordinators from states cited in this waiver request concur with this filing and are authorized to file on behalf of a substantial number of applicants. We have listed all funding denials as examples.

In Wave 5 funding commitment decisions letters dated July 19, 2011 the Administrator denied dozens of E-Rate applications because applicants allegedly did not submit the required Item 21 attachments by the deadline of May 17, 2011. The initial denials are listed here in Attachment 1. In correspondence between SECA members and the Administrator staff in June and July 2011, the issue was discussed and a resolution appeared to be put in place, namely that when an Administrator PIA reviewer could not locate an Item 21 attachment they would reach out to the applicant and accept a statement by the applicant that the Item 21 attachment had been submitted by the deadline of May 17, 2011 without further evaluation. Based on this information, SECA refrained from submitting this waiver request at that time. Many of the denied applications were reconsidered for review and subsequently funded.

However, on December 6, 2011 an Administrator PIA reviewer sent the following request to an applicant:

You were previously informed that your Item 21 Attachments for FY2011 FCC Form 471 application # XXXXXX for FRN's XXXXXXXX, XXXXXXXX, XXXXXXXX, and XXXXXX were not received. We requested a copy of the Item 21 Attachment and proof of timely submission. To date, we have not received a response.

Since the Item 21 attachment is an FCC Form 471 filing window requirement, we must receive a copy of the Item 21 Attachment to complete the review of your funding request(s).

If you have supporting documentation that demonstrates that your Item 21 attachment was postmarked or submitted on or before May 17, 2011, please provide this documentation. Examples of acceptable documentation are proof of mailing or your submission (e.g., post-office receipt, actual email and/or fax with confirmation page). In addition to proof of submission, please submit an EXACT COPY of the Item 21 Attachments that were previously submitted.

Please submit the necessary response and corresponding documentation within the 15 calendar days deadline of this request. Failure to respond may result in the denial of your funding request(s).

The Item 21 attachments for this application had been filed with the Administrator twice. The initial submission was via email to the Administrator's Item 21 Attachment email address, with the Form 471 number listed and again on a CD sent to the Administrator via United Parcel Service after the Administrator issued the Item 21 Urgent Notification letters pursuant to the Clarification Order DA-11-18.

Because the December 6th correspondence conflicts with SECA's understanding previously reached with the Administrator on behalf of all applicants as to how Item 21 submissions would be reviewed, and after a review of recent funding denials, SECA feels compelled to take action by requesting a Waiver of the filing deadline for all Item 21 attachments for Funding Year 2011.

Background

In preparation for the 2011 E-Rate filing window, the Commission issued a Public Notice announcing the availability of revised Forms 470, 471 and instructions.¹ The Public Notice advised that Item 21 attachments must be filed "...with the form."² Subsequently, the Commission issued a clarifying Order, DA 11-88, on January 14, 2011 regarding the deadline for submission of Certifications and Item 21 attachments. While Form 471 Certifications and Item 21 attachments were required to be submitted to the Administrator by the form 471 window deadline at midnight March 24, 2011, the Clarification Order instructed the Administrator to treat Certifications and Item 21 attachments in much the same manner as other documents under the Bishop Perry Order. Specifically, the Commission wrote:

Beginning with funding year 2011, when USAC determines that an application lacks an Item 21 attachment, USAC shall treat the missing attachment as it treats a missing certification. USAC shall inform the applicant promptly in writing of the omission and give it 15 calendar days from receipt of that notice to submit the missing item 21 attachments.³

On April 27, 2011, the Administrator issued approximately 15,000 Urgent Reminder letters to applicants indicating that the filing deadline for Item 21 attachments would be May 17, 2011. A sample letter is attached as Attachment 2. The letter did not indicate that the Administrator had determined that an Item 21 had not been submitted; rather the letter was generically written and sent to all applicants who had not filed Item 21 attachments using the Administrator's online Item 21 system – an option only available to applicants that filed their Form 471 online. In other words, many applicants that had in fact submitted their Item 21

¹ Public Notice, DA 10-2218, rel. November 19, 2010.

² Public Notice at 4.

³ Clarification Order, DA 11-88, rel. January 14, 2011, paragraph 5.

attachments, or believed that they had, using the paper, fax, email or mail methods received the Urgent Reminder letter.

Applicants that the Administrator determined did not submit Item 21 attachments by May 17, 2011 began receiving denial letters during Wave Five of the 2011 Funding Commitment process. The Wave Five denials, identified by SECA, are listed with this appeal. The denials represented over \$500,000 in requested E-Rate funding.

Discussion

The filing deadline for Forms 471, Certifications and Item 21 attachments are matters of regulation and policy and not required under statute. The Commission may waive its regulations for good cause. Quite frequently in the history of the E-Rate program the Commission has seen fit to waive regulatory deadlines for good cause. For example, Form 471 deadlines are routinely waived for applications submitted within two weeks of the filing deadline or later when the E-Rate coordinator dies, is deployed for military service, or suffers debilitating illness.

Under the April 14, 2011 Corrections Order (FCC-11-60), the Commission allows applicants to actually add a funding request to an application months after the Form 471 deadline has passed if the applicant can prove that it failed to include an FRN on an application from its source list. The Order states:

Given the complexity and detail that is often involved in completing these forms and associated documentation, we recognize that such errors may not be discovered until after a request for funding was filed. Currently, if applicants discover the error after the 15-day deadline, they have to file an appeal with the Commission to correct a ministerial or clerical error. Those types of appeals unnecessarily waste applicant and

*administrative resources, and we find it is in the public interest to allow applicants a greater amount of time to correct ministerial and clerical errors.*⁴

Under Bishop Perry applicants are given the opportunity to correct a number of items and submit certifications after the filing deadline.⁵ Corrective actions include a myriad of items on Forms 470 and 471. Bishop Perry instructs the Administrator to reach out to applicants when it discovers errors or is unable to determine eligibility and allow applicants 15 calendar days to respond. Similarly, the Clarification Order instructed the Administrator to give applicants 15 calendar days to submit Item 21 attachments “*when USAC determines* an application lacks an Item 21 attachment...” (emphasis added).

The Administrator’s initial response to the Bishop Perry Order was to issue letters to all applicants outlining all corrections allowed under the Bishop Perry Order, giving applicants 15 days to submit corrections. After the 15 day deadline, the Administrator would not accept further corrections.

In response to specific instructions from the Commission for the Administrator to “determine” if an Item 21 attachment had been submitted, the Administrator issued approximately 15,000 letters to applicants that did not submit Item 21 attachments using the Form 471 online system. In some cases, applicants that prepared Item 21 attachments in conjunction with online Form 471 filing but failed to click the “submit” button also received letters. Contrary to clear Commission instructions for the Administrator to determine who had not submitted Item 21 attachments, the Administrator went on an expensive fishing expedition

⁴ Corrections Order, FCC 11-60, Rel. April 14, 2011, at 5.

⁵ Bishop Perry Middle School Order, FCC 06-64, Rel. May 19, 2006.

with 15,000 letters when at least 14,000 applicants had timely submitted Item 21 attachments through one of the many alternative submission methods including paper, email or fax.

The historic reality of Item 21 attachments has been for Program Integrity Assurance (PIA) reviewers to request that applicants resubmit documentation already submitted to the Administrator. In many cases, applicants are required to submit the same information multiple times to various PIA reviewers. While the goal of early submission of Item 21 attachments was to streamline the review process and speed application review, the implementation of the Clarification Order failed to achieve this goal. The overly broad issuance of the Item 21 “Urgent Reminder” letters to the majority of recipients who had in fact submitted Item 21 attachments using means other than the online submission method created even more inefficiencies. *Aegrescit medendo*: the cure is worse than the disease. SECA and others have commented on these inefficiencies and duplicate documentation requests numerous times over the years. USAC should have scoured all of its records and identified only those applicants that truly had not submitted Item 21 attachments using any and all of the approved methods and sent the “Urgent Notification Letter” only to those applicants.

Between the form 471 window deadline of March 24 and April 27, when the Item 21 “Urgent Reminder” letters were issued, the Administrator had over a month to reconcile Item 21 attachment submissions with filed applications. If a major goal of early Item 21 attachment submission was enhanced program efficiency, it would naturally follow that the Administrator would have a system in place to rapidly match incoming Item 21 attachments with filed Forms 471. Certainly a month after the filing deadline the Administrator should have narrowed the missing documents to the relatively few that were actually missing. Even as late as December,

2011 the Administrator appears to have failed to reconcile Item 21 attachments that had been submitted *twice* to the administrator using two different submission methods.

We are aware of at least one case where an applicant was threatened with funding denial because of a missing Item 21 attachment when the applicant had submitted the Item 21 on paper with the Form 471 application. In this case it appears the Administrator failed to note the submission when data entry occurred. We include with this filing a list of funding requests denied for failure to timely submit Item 21 attachments as of December 2011 as Attachment 3.

Finally, because of the massive scope of the Urgent Reminder Letter, state coordinators were unable to target affected applicants and provide individual counsel. When state coordinators became aware of the letters, many simply sent reminders to all applicants that the hard deadline for Item 21 attachment submission was May 17. Coordinators had no way of knowing who had or had not submitted Item 21 attachments because that information is not available on the Administrator's publically available Data Retrieval Tool (DRT).

The Administrator will send a courtesy copy reminder letter to state coordinators when an applicant fails to respond to a PIA inquiry and the state coordinator will often follow-up with the applicant to ensure funding is not denied because of personnel changes or vacation. SECA is appreciative of this notification policy. However, state coordinators are not copied on missing Certification notices. In previous years, a missing Item 21 attachment would generate a PIA inquiry with a subsequent notification to the state coordinator. Again, state coordinators could reach out individually to the few applicants who truly failed to submit Item 21 attachments. The DRT does not currently have a data field confirming Item 21 attachment submission.

Conclusion

SECA asks the Commission to waive the Item 21 attachment deadline for Fund Year 2011 because:

- This year is the first year that Item 21 attachments were a Form 471 filing deadline requirement compared to the policy in recent years when these documents could be submitted later.
- Moreover, this deadline is a matter of policy rather than statute, and the Commission has discretion to waive its regulations for good cause.
- The implementation of the new policy was overly broad and flawed, and gave rise to much confusion.
- There are documented instances where applicants that complied with the deadline nonetheless were threatened with denials due to the Administrator's failure to accurately track the receipt of Item 21 attachments.

We ask that any missing Item 21 attachments be treated as a routine PIA inquiry, with reminder notifications sent to state coordinators under current policy. SECA believes waiver is warranted in the public interest and interest of applicants already denied funding or denied in the future. The Commission has previously granted a universal waiver of procedural deadlines for the first year of implementation of a requirement.⁶ The Form 471 had been revised for Fund Year 2011, this was the first year of the Item 21 deadline requirement, the Item 21 clarifies funding requests but does not alter any information submitted on the application, and applications were otherwise substantially complete.

Further, we believe this omnibus request for waiver will relieve the Commission of the burden of reviewing what could be hundreds of missing Item 21 attachment appeals.

⁶ Naperville Community Unit School District 203, FCC 01-73, Rel. February 27, 2001 at 16: (1) the request for information was a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by SLD through examination of other information included in the application; and (3) the application is otherwise substantially complete.

Finally, we ask that the DRT include a field for Item 21 attachment submission so state coordinators can reach out to applicants before applications are denied.

Respectfully Submitted by:

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