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

STATEMENT OF FUNDS FOR LEARNING, LLC
in support of the

PETITIONS FILED BY THE STATE E-RATE COORDINATORS ALLIANCE FOR
RECONSIDERATION, OMNIBUS WAIVER OF INVOICE DEADLINE REGULATION,
AND RULEMAKING TO REVISE INVOICE DEADLINE REGULATION

Funds For Learning, LLC ("FFL") supports the petitions filed by the State E-rate
Coordinators Alliance ("SECA") in connection with the Commission's recent decision to
implement a new, more restrictive invoice deadline rule. Like SECA, and for all of the
same reasons, we believe strongly that this new invoice deadline rule is unfair, unrealistic,
and, as a matter of policy, extremely counterproductive. The issue in a nutshell, as SECA
has already made clear, is this:

.... the Commission made it very clear that their mission is to fund broadband for
schools and libraries. To fulfill the Commission's goal, the invoice phase of the
E-rate application process must be more flexible for the intended recipients. A
poison pill at the end of an 18-month exhaustive journey is the antithesis to
simplification for Applicants. Knowing that the entire reason for the E-rate
program is to provide actual funding or discounts to Applicants for their
broadband purchases, it should be of paramount importance that the invoice phase
of the program be treated with utmost flexibility to ensure that the intended
recipients of the funding are able to actually receive the benefits of their E-rate
funding.

We agree.

In denying the requests of 125 applicants for invoice extensions, the Commission
reasoned that "efficient program administration" generally trumps "the public interest"
where waiving invoice deadlines is concerned. Since the Commission has made
affordable, high-speed access to the Internet from every school and library in the United

States a cornerstone of its national broadband policy, its decision to assign more importance to closing out applicants' funding commitment accounts than to effectuating the program's policy goals and objectives is quite surprising to say the least.

From our 19 years of "in-the-weeds" E-rate experience, we know how very hard schools and libraries have to work to apply for E-rate support and, moreover, how difficult it frequently is, especially for small, economically disadvantaged ones, to actually receive that support. The number and height of the hurdles that the E-rate application *and* payment process throws up at applicants on their way to the finish line is overwhelming.

From rule changes promulgated via appeal decisions and tucked away in USAC News Briefs -- to vendors who refuse to cooperate with applicants (or simply disappear) -- to USAC representatives who are either non-responsive or provide conflicting advice -- to directions for completing forms that are long, dense, and replete with E-rate jargon -- to USAC's ever changing (not always for the better) online systems -- the E-rate application *and* payment process is not a welcoming place for the inexperienced or faint of heart. Therefore, when it comes to balancing efficient public administration against the public interest to help decide (1) how many days the invoice deadline and deadline extensions ought to be; (2) whether a grace period for filing invoices should be established; and (3) under what circumstances invoice deadline waivers should be granted, the Commission should take all of this into account and give it the significant weight it deserves.

At the end of a very long and arduous administrative process, if everything goes well, all applicants have to do to receive their E-rate funding is to submit a reimbursement request (a "BEAR" invoice form) on time. How hard could that be? Surely that's the question the Commission pondered while contemplating what to do with the 125 cases before it in the *Ada School District* matter. The answer to that question, however, is not that simple; indeed, for a variety of reasons, filing invoices on time can be considerably more difficult than one might imagine. Let's be realistic, no applicant is ever going to purposely fail to submit an invoice on time because it has decided it doesn't need the money.

When a significant number of applicants fail to file invoices on time, the correct response ought to be to first consider the sufficiency of the current 120-day invoice deadline -- i.e.,

gather feedback from the applicant community regarding a reasonable timeframe for invoice submissions; determine what data USAC can provide as to the number of late invoices and their average latency; consider whether a longer, 150 or 180-day deadline for example, would remedy the problem in the majority of cases; and, finally, adopt a deadline that takes all of this, along with USAC's operational needs, into account.

Then, after establishing a reasonable invoice deadline, the Commission ought to take up the question of what to do when an applicant fails to meet the new deadline. Our suggestion would be to give late-filing applicants an automatic grace period, and then, allow USAC a reasonable amount of leeway in terms of granting a waiver. In the context of what the E-rate program is trying to accomplish, that is the kind of response that makes the most sense. The new policy of zeroing out an applicant's E-rate account in all but the most extraordinary cases, on the other hand, does not make any sense at all.

In the *Ada Order*, the Commission announced that efficient program administration should generally take precedence over disbursing E-rate funds already committed to applicants, where invoice deadline issues are concerned. With that in mind, the Commission went on to examine 125 requests for invoice deadline waivers and, because none of them involved extraordinary circumstances, rejected them all.

The 125 applicants were predominantly small, served mostly economically disadvantaged populations, and, for the most part, received no professional help from consultants.

- The applicants were primarily small schools with an average discount rate of 72%
- The median applicant supported 2 sites and served 985 students.
- 80% of the applicants did not list a consultant on their Form 471 application.
- The total of undisbursed funds for the applications in question was \$2.1 million.
- The undisbursed funds represented, on average, \$31.79 per student.

These are the types of applicants who need advocates. These are the types of applicants who can least afford to lose the Commission's help. These are the types of applicants who serve populations who, without the Commission's support, will increasingly be left behind. They should not, in the interest of "closing out the books", be penalized for failing to file an invoice on time. Only in extraordinary cases, we submit, should invoice

deadline waivers not be granted.

Naturally, the *receipt of funding* is what makes this program work. It is the reason for its existence and the reason, of course, for its success. That is why the bar for withholding committed funding from applicants should be set extremely high. Taking money out of the hands of schools and libraries because of a 120-day deadline runs counter to all the Commission is trying to accomplish with this important universal service program.

The irony in the Commission adopting a new, hardline approach to invoice deadlines is that the payment process itself is responsible in large part for the recent invoice-related problems and appeals. In its *E-rate Modernization Order*, the Commission said that one of its goals was to make E-rate processes “fast, simple, and efficient.” The invoice process is now so full of minefields that even the most experienced of the experienced can barely manage to get through it. Short paid invoices with little explanation or with decisions that makes no sense are rapidly becoming the norm.

The most troubling of USAC’s invoice-related practices is its “new invoice” requirement, which it uses to remedy short payment and other invoice-related problems. Note that when a business or any other organization discovers that it has short paid an invoice by mistake, it does not demand a new invoice for the amount it neglected to pay. It simply pays the balance due on it. That, however, is not what the FCC has instructed USAC to do. USAC is required to wipe the original invoice off of its books and forces the applicant to submit a “new invoice” for the balance due on its original invoice. Then, the “new invoice” is held to the deadline for the original, timely filed invoice, which, technically, USAC has already closed out. Then, and this is where this process becomes impossible to defend, the amount due on the “new invoice” will not be paid if the applicant misses the deadline associated with the original, timely filed invoice.¹

¹ See <http://apps.fcc.gov/ecfs/document/view?id=60001090739>. Request for Review or Waiver by Atlanta Public Schools, an appeal currently pending before the Commission, where the school district filed its original invoices *before* their respective deadlines; USAC did not process them until shortly before and, in one case, after the invoice deadline had passed; USAC short paid all of them by mistake and required the school district to submit new invoices for the balance due on each one; because of USAC’s delay, the school district was unable to file the “new” invoices until after the original invoice deadlines for them had passed; and then, USAC refused to pay the “new” invoices because the school district filed them after the original invoice deadlines.

FFL has a large staff of professionals who help schools and libraries to prepare and submit their invoices throughout the course of the year. We can attest from personal experience that the current approach to invoicing is causing many invoice-related appeals. Applicants who do not have professional help, however, oftentimes do not understand the process by which they can receive the E-rate payments due to them.

Mistakes made during invoice reviews do not simply jump off the page. Finding them takes work, because the reason for short paying or not paying an invoice tends to be hidden in the cryptic and confusing remittance documents. Many applicants, particularly those who do not have consultants to help them, lack the in-house resources and wherewithal necessary to discover invoice-related mistakes in the first place, let alone question USAC if and when they manage to uncover one. These schools and libraries belong, unfortunately, to a growing underclass of applicants who are having funds withheld, in full or in part, for services for which they rightfully can claim an E-rate discount. This, we submit, is a serious problem that clearly needs to be fixed.

Listed and discussed below are some of the more egregious examples of what we believe is wrong with the program's current, standard operating invoice procedures. Either in response to SECA's petitions or independent of them, we urge the Commission to put a stop to these practices as quickly as possible.

- **REQUIRING APPLICANTS TO SUBMIT NEW INVOICES.** As we have already discussed, applicants *who have already filed timely invoices* are required to file disputed invoices again, *even if* USAC failed to pay all or part of the original one in error. Among other things, this forces applicants to prepare unnecessary paperwork and to get their vendors to sign off on a second BEAR form for the exact same invoice(s), creates additional, unnecessary opportunities for clerical and other errors to occur, and subjects' applicants to unfair invoice deadlines, which, as we know, can and do result in the unfair loss of E-rate funding.

- **PROVIDING LITTLE OR NO EXPLANATION.** As we have already pointed out, there is very little information provided to applicants about the payment processing decisions. Frequently the explanation provided in the BEAR Notification Letter (BNL) provides only a limited statement (10 words or less), leaving applicants puzzled by the decision and wondering what to appeal, if anything. (Please note that we have addressed this issue in more detail in the final bullet point below).
- **ISSUING “EXPIRED ON ARRIVAL” INVOICE EXTENSIONS.** When granting invoice extensions, applicants are given 120 days from the original last date to invoice, regardless of when the extension is granted. This oftentimes results in a very narrow window in which to submit the new payment paperwork. In some cases, we have even seen schools granted an extension that has already expired on the day it is granted (i.e. the extension is granted more than 120 days after the original invoice deadline). To remedy this, invoice deadline extensions should be calculated from the day an extension is granted.
- **SHORT PAYING INVOICES BECAUSE OF SITE NAME DISCREPANCIES.** Site name discrepancies frequently appear to be the reason payments are withheld from applicants. An invoice may be short paid when one or more site names do not appear on the invoice or fail to match exactly the site names listed on the applicant’s Form 471 -- *even when* the difference could be due to nothing more than a spelling error, a minor change in the name, or any other innocuous, fully understandable reason.

This would only be an annoyance if it were not for the fact that the invoice payment decisions lack meaningful detail. For these scenarios, when the applicant’s payment is withheld, the payment decision letter looks like this:

Reimbursement Request Decision Explanation:
Service to Entity Not Approved on 471;
(scan of actual decision letter)

Not only is it difficult for an applicant to judge what went wrong with its reimbursement, it also has to worry about the deadline for appealing the decision, and resubmitting an invoice and/or requesting an invoice deadline extension. For this reason, we propose that the FCC require the following standards for invoice reviews:

1. Invoice reviewers should be required to reach out to applicants and vendors in much the same way as they do during Form 471 application reviews.
2. Applicants and vendors should be able to check the status of any pending payment, including the need for additional information.
3. Payment notifications should include adequate descriptions such that the applicant or vendor will exclude the disputed item(s) from future submissions and/or be adequately equipped to prepare an appeal letter.
4. Adjustments to an invoice should never require an applicant to prepare an entirely “new invoice” for an item that has already been submitted.

In conclusion, we agree with SECA that an appropriate balance can and should be struck between the important needs of applicants on the one hand and the important, but very different, need for program efficiency on the other. Accordingly, like SECA, we urge the Commission to initiate a Notice of Proposed Rulemaking to revise its invoice deadline regulations. More specifically, we urge the Commission to gather from both the applicant community and USAC as much information as it possibly can about the reimbursement invoicing process in general and the invoice deadline issue in particular and to revise its rules as follows:

1. An invoice deadline of 150 days, 180 days, or however many days the Commission concludes is reasonable.
2. A 45-day reminder in advance of the impending invoice deadline for each FRN for which no funds have been invoiced yet.

3. Implementation of a reminder for any FRN for which no funds have been authorized for disbursement as of the original invoice deadline, and provision of a 30-day grace period for the invoice to be submitted and to be considered timely submitted.
4. Direct USAC to automatically extend the invoice deadline for any timely submitted invoice that was “zero paid” or “short paid” for 120 days, to allow for the invoice to be resubmitted.

Respectfully submitted,

/S/ John D. Harrington

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May 26, 2016