

Letter of Appeal

Federal Communications Commission
445 12th Street SW, Washington, DC 20554

To Whom It May Concern:

We are writing to appeal a *USAC Decision and Recovery of Improperly Disbursed Funds* decision from Funding Year 2015 related to an eligible entity that received service and was included in a disbursement, but which was accidentally not included on the Form 471 as a recipient of service.

Entity & BEN	Berks County Intermediate Unit #14 (BEN 126278)
Contact Person	Cherie Zimmerman
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Service Provider	Verizon Pennsylvania LLC (SPIN 143001398)
Funding Year	2015
Form 471	1015029
FRN	2800436

Background:

USAC is attempting to recover \$3920 from our Intermediate Unit because they discovered during a PQA audit for FY 2015 that one of our eligible entities was not listed on the Form 471 as a recipient of service. Specifically, the finding states:

“During a PQA review it has been determined funds were improperly disbursed on this funding request. Services were delivered to an entity that was not approved on an FCC Form 471 and is therefore ineligible to receive discount services. FCC rules state that only eligible entities that make a bona fide request for support are eligible to receive benefits under the program. The following entity Berks County Intermediate Unit #14 Admin (BCIU Learning Center) received internet access in the amount of \$3,920.00 but was not listed on the block 4 of the 471. Accordingly, USAC will seek recovery of \$3,920.00 of improperly disbursed funds from the applicant.”

The original COMAD/RIDF Letter was dated 1/10/2018. We appealed this decision to USAC, which was subsequently denied on 8/20/2018.

Appeal Explanation and Supporting Information:

The Berks County Intermediate Unit #14 (BCIU) is an eligible LEA and Educational Service Agency in Pennsylvania that provides K-12 education and support services to the 21 schools in Berks County,

Pennsylvania. The IU is the Administrative Authority for 3 eligible entities covered under this Verizon service contract:

- Berks County IU Admin Building: 1111 Commons Blvd, Reading, PA 19605
- Berks County Learning Center at St. Pauls: 131 N. 9th Street, Reading, PA 19601
- Berks County Learning Center: 705 Friedensburg Road, Reading, PA, 19606

All of these buildings are connected to the Berks County IU Admin Building, which is then connected to the IU Regional Wide Area Network and Internet Consortium (RWAN) by Verizon Pennsylvania.

The PQA finding issue relates to one of the three Verizon Pennsylvania LLC circuits that was included on Form 471 1015029, FRN 2800436 (Figure #1 471 Item 21 Details). FRN Line Item # 4 includes 3 lines (100 mb circuits), costing \$700/line/month. There were three entities listed as recipients of service for FRN Line Item # 4:

- Berks County IU Admin
- Brecknock Elementary School
- BCIU Learning Center at St. Paul's

Due to confusion about how entity numbers should be assigned, we mistakenly listed Berks County IU Admin (the Administrative Authority) as the Recipient of Service, instead of the actual entity receiving the service which was the BCIU Learning Center (located at Friedensburg Rd.).

Figure #1

Item 21 Details											
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FRN Line Item Number	Service Type	Product Type	Purpose	Lines	Upload Speed	Burst Bandwidth? Burst Speed	Last Mile?	Firewall? WAN?	Monthly Cost Eligible Ineligible	One Time Cost Eligible Ineligible	Extended Cost
1	Digital Transmission Service	Ethernet	Transport	8	1000Mbps	No	No	No	\$16,776.00	\$0.00	\$201,312.00
3	Digital Transmission Service	Ethernet	Transport	5	100Mbps	No	No	No	\$4,985.00	\$0.00	\$59,820.00
4	Digital Transmission Service	Ethernet	Transport	3	100Mbps	No	No	No	\$2,100.00	\$0.00	\$25,200.00
Entity # Entity Name											
16036581	BERKS COUNTY INTERMEDIATE UNIT #14 ADMIN										
21123	BRECKNOCK ELEMENTARY SCHOOL										
16064431	BCIU LEARNING CENTER AT ST. PAULS										

As you can see from the Verizon invoice, there are three circuits that relate to FRN Line Item # 4, which the last one being the BCIU Learning Center.¹ (Figure #2 Invoice Excerpts)

Figure #2

Circuit: 28.LVXX.250065..PA 21223 BRECKNOCK ELEMENTARY SCHOOL	
Circuit: 28.LVXX.250065..PA 06/22/15-07/21/15	28.LVXX.250065..PA 21123 BRECKNOCK ELEMENTARY SCHOOL
Monthly Charges	700.00 Brecknock
Net Charge	\$ 700.00
Total Charges	\$ 14,512.00
Circuit: 28.LVXX.250085..PA 16064431 BCIU LEARNING CENTER AT ST. PAUL	
Circuit: 28.LVXX.250085..PA 03/22/16-04/21/16	28.LVXX.250085..PA 16064431 BCIU LEARNING CENTER AT ST. PAULS
Monthly Charges	700.00
Net Charge	\$ 700.00
Circuit: 28.LVXX.250086..PA 16036581 BCIU LEARNING CENTER	
Circuit: 28.LVXX.250086..PA 03/22/16-04/21/16	28.LVXX.250086..PA 16036581 BCIU LEARNING CENTER
Monthly Charges	700.00
Net Charge	\$ 700.00

The BCIU Learning Center (located at Friedensburg Rd.) is an eligible entity and was included with the original RFP and contract (Figure #3 Verizon Contract Excerpt).²

Figure #3

IU#14 Locations -Verizon						
*F24-IU14	Berks County IU 14	BCIU Learning Center	705 Friedensburg Road	Reading	19606	100 Mbps
*F26-IU14	Berks County IU 14	St. Paul's ECE	131 N 9th St	Reading	19601	100 Mbps
*F72-IU14	Governor Mifflin SD	Brecknock Elementary	1332 Alleghenyville Road	Mohnton	19540	100 Mbps

The entity is fully eligible to receive E-rate funding and was simply accidentally left off the Form 471 as a Recipient of Service for that FRN Line Item. Instead, we inadvertently listed our Admin Building as the Recipient of Service (Figure #1 Item 21 Details)³

Argument:

While we fully admit that a clerical error was made by not including this eligible entity on the FRN Line Item as a Recipient of Service, we do not believe it should warrant funding recovery. This is a fully eligible site, being provided with a fully eligible service, being used for fully educational purpose, which was competitively bid and contracted according to E-rate rules.

¹ Refer to supporting document #1 *APPEAL FRN 2800436 Verizon Invoices*.

² Refer to supporting document #2 *Verizon RWAN Contract 03-17-11*.

³ Refer to supporting document #3 *FCC Form 471 1015029 FRN 2800436 (LINE 4) BEN 126278 Funding Year 2015*.

In a letter dated 1/16/2009 to Mr. Scott Barash, USAC Acting CEO, regarding Schools and Libraries Program, WC Docket No. 02-6 "Table C" Recovery Issues, Ms. Dana R. Shaffer, FCC Chief of Wireline Competition Bureau, included a reference to this specific situation:⁴

Services Delivered to an Entity Not Listed on the FCC Form 471: USAC recommended complete recovery in every instance in which services were delivered to an entity that was not listed in the applicant's FCC Form 471. Pursuant to the Commission's direction in its *Bishop Perry Order*, however, USAC has allowed applicants to modify their FCC Forms 471 for clerical and ministerial errors. Accordingly, an applicant first must be given an opportunity to show that the omission of such entity from the FCC Form 471 was a ministerial or clerical error. If such entity would otherwise be eligible, then recovery is not warranted.

The chart below, an excerpt from Table C Policy Issues included in the same letter, also indicates that there should have been an opportunity to modify the 471 to either include or properly identify the eligible site. (Figure #4)

Figure #4


Issue	Relevant Rule	Guidance
3. Services delivered to an entity that was not approved to receive the service on FCC Form 471 for the Funding Request Number (FRN).	4 th R & O, 19 FCC Rcd 15252, ¶15, stating that the service provider is likely to be the responsible party if it delivers services that were not approved for funding under the Form 471.	USAC should determine if the entity should have been listed on the FCC Form 471 and, if so, allow the applicant to amend the FCC Form 471. <i>See</i> letter. Otherwise recover.

We believe the facts of our finding and appeal are identical to the situation referenced in the FCC's letter to USAC from 2009, indicating that recovery for such ministerial and clerical errors is not warranted.

Therefore, we request that the FCC reverse USAC's decision to recover \$3,920.00 (56% discount rate on \$7,000.00 of eligible charges). If necessary for justification and documentation, we can take the necessary steps to have an entity number assigned to the BCIU Learning Center location and Form 471, line item #4, can be amended to reflect this entity in place of the Berks County Intermediate Unit #14 Admin.

Thank you for your kind consideration of this appeal.

Sincerely,



Cheryl R. Zimmerman
Assistant Director of Information Technology
Berks County Intermediate Unit

⁴ Supporting Document #4: DA-09-86A1 Table C Recovery Issues.

Supporting Documentation:

1. APPEAL FRN 2800436 Verizon Invoices.pdf
2. Verizon RWAN Contract 03-17-11.pdf
3. FCC Form 471 1015029 FRN 2800436 (LINE 4) BEN 126278 Funding Year 2015.pdf
4. FCC Letter to USAC Acting CEO DA 09-86.pdf