

Letter of Appeal
 Federal Communications Commission
 Office of the Secretary
 445 12th Street, SW
 Washington, DC 20554
 CC Docket No. 02-6

Re: Request for Review of Red Light Status Alert dated March 18th, 2019.

I am submitting this letter of appeal regarding the Red Light Status Alert for Millcreek Township on the grounds that, an appeal was submitted disagreeing with the COMAD's misleading "FCC Directive" reasoning, where by the issued *Jefferson-Madison* decision ([DA 17-526](#)) directing USAC to accept resubmitted invoices from certain applicants is contradicted. No explanation as to why the applicant no longer qualifies as subject to the Jefferson-Madison decision has been given.

Appellant Name:	e2e Exchange, LLC
Applicant Name:	Millcreek Twp,
471 Application Number:	1012691
Billed Entity Number:	125578
FRN:	2805034, 2805054
Service Provider:	Connectivity Communications, Zenith Systems

SLD Explanation: *"As of 3/18/2019, the entitie(s) listed below are delinquent by at least one day on a balance due to USAC".*

The above applicant had received USAC notice of "Recovery of Improperly Disbursed Funds" letter (dated June 18, 2018) indicating USAC's intention to recapture payments on invoices now deemed to have been submitted after the associated invoice deadlines. The only explanation given for these actions is "FCC Directive."

Unlike more traditional Commitment Adjustment ("COMAD") actions, by which USAC rescinds committed funds, these new invoice payment recalls do not actually reduce commitments. As a result, these invoicing actions do not show up in any [DRT](#) or [FST](#) databases and are, therefore, difficult to track.

The underlying problem appears to trace back to USAC and applicant invoicing problems for earlier funding years, as far back as FY 2012 for the applicants involved in similar appeals. In May 2017, the FCC issued its *Jefferson-Madison* decision ([DA 17-526](#)) directing USAC to accept resubmitted invoices from certain applicants who had missed invoice deadlines as the result of delayed service provider certifications. At the same time, the FCC instructed USAC to accept resubmitted invoices from other "similarly-situated" applicants. In August 2017, after investigating such similar cases, USAC reached out to applicants it so identified, invited them to resubmit invoices for specific FRNs and gave them new invoice deadlines.

In the case of Millcreek Township specifically, FY 2015 FRN 2805034 & 2805054 were originally filed 5/17/16, an entire year before their Invoice Deadline (5/28/17). A customer service case was created in EPC on 7/28/17 regarding the fact the 2015 BEARs remained at the status of "awaiting certification", 14 months after originally being filed and 2 months after the invoice deadline. The response from USAC was "These BEAR forms were never certified by the Service Provider, which is an old process. Since invoicing has changed, this is no longer required, but you will need to resubmit these invoices". The status of denied was never indicated, and therefore, no BEAR Notification Letters issued to notify the applicant. As such, both BEARs were refiled immediately on 7/28/17, invoice #2645704 and #2645707. The BEAR notification letters were issued 8/4/17 approving the reimbursements.

However, USAC has now apparently reexamined its own review process and determined that it had improperly identified some applicants qualifying as "similarly-situated" and should not have provided new

invoice deadlines. By “FCC directive,” USAC is now proposing to recover payments on invoices which USAC itself had specifically — but “improperly” — allowed. The applicant followed all original procedures and deadlines, as well as later corrective measures as instructed by USAC. The subsequent COMADs requesting the return of funds is essentially punishing applicants for reasons beyond their control, as all proper actions have been taken by the applicant. If USAC has “improperly” identified applicants as “similarly situated”, the solution of this procedural error should not become the burden of the applicants if the programs mission is to better the education of students. Additionally, thus far it has been proven Millcreek Township was not improperly identified as “similarly situated”.

Note that this is not a case of improperly committed funds. It is only a case of invoice deadlines — a problem of USAC’s and the FCC’s own making. The re-filing and disbursement of these FRNs was done so on the procedural basis created because of the Jefferson-Madison Order and does not create a substantive violation. No further explanation as to why USAC has identified these FRNs as *not* being subject to the Jefferson-Madison has been shared. The FCC Order 06-54 waives the rules for procedural, not substantive violations. Furthermore the recovery of funds, properly committed, but paid under an erroneously applied invoice extension, “...may not be appropriate for violation of procedural rules codified to enhance operation of the e-rate program as per FCC 04-190.” As such the language used in these COMAD letters is misleading as the FCC has not directed USAC to seek repayment of funds. USAC’s application of the deadline extension does not constitute a substantive violation on behalf to the applicant and as such should not apply.

An appeal was submitted, to appeal this denial of funds, via a customer service case in EPC at the direction of USAC, as this appeal involved an application prior to 2016. Confirmation that a record of the appeal has been created was confirmed through the case, see record submitted with this appeal. The original appeal that was submitted via a customer service case in EPC is also submitted with this appeal for record. However, the applicant never received notification of the appeal being denied in order to submit an FCC appeal within 60 days of the supposed denial. On April 3rd, 2019 Karen Humes of USAC was able to confirm that the appeal (created 8/17/18) was denied on 11/30/18; this was the first indication that the original filed appeal has been denied. Due to USAC’s unclear process with appeals prior to FY 2016, the applicant was never notified of the denial, therefore never given the opportunity to appeal the denial and avoid improper red-light status.

In the case of Millcreek Township, the 2015 BEAR forms were originally submitted before their deadlines, the appeal arguing this case against the COMAD also was submitted in the proper timeframe - the only issues at hand here have been caused by USAC’s inability to sort out their own processes’ and deadline extensions. These procedural issues which have led to USAC’s COMAD requests and subsequent Red Light Status are extremely detrimental to applicants as they cause complicated budget issues when granting and then denying these reimbursements. Once more, the COMAD argument for the return of these funds is not a substantive violation, but a procedural one created by the convoluted and complex nature of the E-rate program. FCC order 06-54 waives the rules for procedural errors, such as in this instance where the funds have been properly committed but paid under an erroneously applied invoice extension, all factors outside of the applicant’s control.

This is a clear example of what Chiarman Pai describes in his April 18, 2017 letter addressed to Chris Henderson as “serious flaws in USAC’s administration of the E-rate program – flaws that relate to the process by which schools and libraries apply for E-rate funding and that are preventing many schools and libraries from getting their funding”.

We respectfully request that you overturn the denial and restore full funding of these FRNs, thereby rescinding the Red Light Status. Thank you for reviewing this appeal. Please use the contact information below.

Tiffany Bullion, E2e Exchange, LLC, PO Box 451, Syracuse, NY 13206, Tel. 315.422.7608, Fax 866.283.9332, trb@e2eexchange.com

Sincerely,
E2e exchange, LLC

Tiffany Bullion
Director of Operations

Attachments:

- Case #188782 requesting status of BEAR for FRN #2805034, #2805054
- Case #245632 submitted to create appeal #A194977 at the direction of USAC
- BEAR Notification Letters dated 08/04/17