

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

Re: Request for Review of Commitment Adjustment Letters for Funding Year 2012 issued June 18<sup>th</sup>, 2018.

Dear Marlene H. Dortch:

I am submitting this letter of appeal regarding denial of E-rate FY 2012 funding requests # 2315765, on the grounds that, 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. Burlington County was identified as an affected applicant and once notified successfully filed for reimbursement prior to the new deadline.

Appellant Name:	e2e Exchange, LLC
Applicant Name:	<b>Burlington Co Schools</b> , Hanover Park, Millcreek Twp, Ivy Academia, and Dobbs Ferry
471 Application Number:	<b>839795</b> , 942093, 1012691, 981881, 936712
Billed Entity Number:	<b>123231</b> , 123135, 125578, 16034451, 123637
FRN:	<b>2315765</b> , 2567146, 2805034, 2805054, 2676954, 2559254
Service Provider:	Communications Acquisitions Corp

SLD Explanation for denial: *“FCC Directive; You received disbursements after your invoice deadline extension.”*

The above applicants have all received USAC notice of “Recovery of Improperly Disbursed Funds” letters (all 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. All of the applicants listed in this appeal re-filed BEARs before their new respective deadlines.

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.

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.

In the case of Burlington County specifically, FY 2012 FRN #2315765 was originally filed 10/21/2013 via invoice #1913978, prior to the required invoice deadline of 10/28/2013. The invoice remained in the status of "Awaiting SP Certification" and therefore, no BEAR Notification Letter was issued officially denying invoice #1913978. After communicating with USAC and being directed to resubmit the BEAR invoice, another invoice was filed 05/06/14 (#2000935). A BEAR Notification Letter was then issued 06/06/14 approving the reimbursement for invoice #2000935. Another duplicate invoice (#2657635) was filed 08/10/17 after the Jefferson-Madison Order extended the invoice deadline to 09/01/2017 to ensure the re-approval of the reimbursement. The invoice went through a BEAR review that was completed on 09/19/17. An final BEAR Notification Letter (BNL) was issued 12/13/17 re-affirming approval of the reimbursement through invoice #2657635. Although this is a duplicate invoice approval, only the committed amount of \$70,429.97 has been disbursed to the applicant.

In the above case BEAR forms were originally submitted before their original and subsequently extended deadlines, and 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 are further detrimental to applicants as they cause complicated budget issues when granting and then denying these reimbursements.

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

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Sincerely,  
**E2e exchange, LLC**

Tiffany Bullion  
Director of Operations