

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 Burlington County 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:	Burlington County
471 Application Number:	839795
Billed Entity Number:	123231
FRN:	2315765
Service Provider:	Communications Acquisitions Corp

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 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.

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 Burlington County 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. 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 Burlington County, the 2012 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 Chairman 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 #245628 submitted to create appeal at the direction of USAC
- BEAR Notification Letters dated 06/06/14 and 12/13/17