

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

\*\* USAC appeal regarding 2018 FRN 1899047431 submitted 11/12/18  
\*\* FCC appeal regarding Red Light (2014 FRN) submitted 4/9/19  
\*\* USAC appeal regarding 2018 FRN 1899047431 denied 5/8/19  
\*\* FCC appeal regarding 2018 FRN 1899047431 submitted 6/18/19

Re: Request for Review of Revised Funding Commitment Decision Letter dated May 8th, 2019.

I am submitting this letter of appeal regarding the Revised Commitment Decision Letter denying the appeal submitted for FRN 1899047431 on the grounds that, an FCC appeal was submitted 4/9/19 disagreeing with the Recovery of Improperly Disbursed Funds. No decision should have been made regarding the USAC appeal until a decision was made on the outstanding FCC appeal. Denial of the USAC appeal was issued one month after submission of the FCC appeal.

Appellant Name:	e2e Exchange, LLC
Applicant Name:	Monmouth Regional High School District
471 Application Number:	181025873
Billed Entity Number:	122987
FRN:	1899047431
Service Provider:	Turn-key Technologies, Inc.

SLD Explanation: *"Pursuant to 47 C.F.R. sec. 1.1910(a)(1), USAC determined that you or an entity sharing the same Taxpayer Identification Number (TIN) has been delinquent on the payment of a debt owed to the Universal Service Administrative Company (USAC) and/or the FCC. We issued a Notice of Withholding Action explaining the nature of the debt(s) owed and the consequences of not satisfying the debt within 30 days of the date of the letter. USAC dismissed your application and denied all funding requests included in that application due to the fact that your debt(s) had not been satisfied. In your appeal, you have not shown that USAC's determination was incorrect. Consequently, your appeal is denied. You have been delinquent on your non-tax debt(s) owed to the FCC. FCC rules require that action be withheld on any application or request for benefits made by an entity found to be delinquent in its debt(s) to the FCC. The rules further state that the entity will be informed that action will be withheld on the application[s] until full payment or arrangement to pay any non-tax delinquent debt owed to the FCC is made and/or that the application may be dismissed. See 47 C.F.R. sec. 1.1910(b)(2)."*

The issue in this case simply boils down to this: The USAC appeal #129600 should have not had a decision issued until any outstanding FCC appeals for the Billed Entity were reviewed. The USAC appeal regarding denial of FRN 1899047431 was submitted 11/12/18 and an FCC appeal regarding the Recovery of Improperly Disbursed Funds for a 2014 FRN was submitted 4/9/19. Appeal #129600 should have remained in review until the FCC appeal was resolved. Therefore, we are submitting this FCC appeal for FRN 1899047431, so that the FRN can be re-reviewed after the outstanding FCC appeal results in a decision.

#### **Summary of Disagreement of Recovery of Improperly Disbursed Funds**

Monmouth Regional High School District 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." We have not received formal notification that this has been denied. Therefore, we have chosen to file an appeal with the FCC as this matter needs to be shared and understood at the FCC level.

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 Data Retrieval Tool (DRT) or Funding Status Tool (FRT) 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 Monmouth Regional specifically, FY 2014 FRN 2617400 BEAR invoice was originally filed 7/16/15 (invoice #2209481), well before the original Invoice Deadline (10/30/15). With the pending approval looming close to the invoice deadline, an additional BEAR invoice was filed 10/22/15 (invoice #2272388) again prior to the invoice deadline to further secure compliance with program rules. The BEAR invoices remained at the status of “awaiting certification” since the service provider failed to take appropriate action, and no BEAR Notification Letter was issued either denying or approving the reimbursement. After Monmouth Regional was identified as “similarly-situated” via the Jefferson-Madison order, another BEAR was filed on 08/30/17 (invoice #2676296), again prior to the new extended deadline of 09/01/17. The BEAR invoice #2676296 was approved and the BEAR Notification Letter issued 09/07/17.

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 Monmouth Regional High School District 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. This is a common problem arising for many applicants and this matter must be shared and understood at the FCC level.

In the case of Monmouth Regional, the 2014 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".

#### **Summary of Disagreement to 2018 Denial**

SLD Explanation for denial: *"On 9/10/2018 your application was denied because you are on Red Light status with the FCC as of 09/10/2018".*

As shown above, the only outstanding case of improperly disbursed funds for Monmouth Regional High School is currently being contested via an FCC appeal submitted 4/9/19. A decision must be made on the FCC appeal submitted 4/9/19 prior to another decision made on the 2018 Category 2 application via this new FCC appeal.

We respectfully request that you overturn the denial and restore full funding of the 2014 FRN, thereby rescinding the Red Light Status. We then respectfully request that you reexamine FRN 1899047431 and approve for full eligible funding. 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