

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Schools and Libraries	)	CC Docket No. 02-6
Universal Service Support Mechanism	)	
	)	
Request for Waiver	)	Application Nos. 750446, 764900
By Lamar Consolidated ISD	)	

**PETITION FOR RECONSIDERATION**

Pursuant to section 1.106 of the Commission’s rules,<sup>1</sup> the Lamar Consolidated Independent School District (Lamar Consolidated or the District) respectfully requests that the Wireline Competition Bureau (Bureau) reconsider its decision to deny Lamar Consolidated’s requests for review of Universal Service Administrative Company (USAC) decisions to deny funding requests submitted by the District for Funding Year 2010. Lamar Consolidated also respectfully requests that the Bureau waive the Commission’s “red light rule”<sup>2</sup> to the extent necessary to grant the requested relief.

Specifically, Lamar Consolidated seeks reconsideration of a Wireline Competition Bureau decision in a Public Notice on July 31, 2019 denying Lamar Consolidated’s requests for review.<sup>3</sup> Lamar Consolidated had sought review of USAC’s decision to dismiss its FY 2010

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<sup>1</sup> 47 C.F.R. § 1.106.

<sup>2</sup> 47 C.F.R. § 1.1910.

<sup>3</sup> *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket No. 06-122, Public Notice, DA 19-701, at 7 & n.22 (WCB rel. July 31, 2019) (Public Notice).

funding request because it found Lamar Consolidated was in violation of the Commission's red light rule.<sup>4</sup>

The Bureau should grant this petition for reconsideration and direct USAC to re-instate Lamar Consolidated's funding requests for several reasons. First, the Bureau's decision erred in apparently relying upon its *Net56* order to deny Lamar Consolidated's appeal instead of using its *Metro Nashville* precedent to grant the appeal.<sup>5</sup> Unlike the *Net56* order, Lamar Consolidated did not allege a notice issue and did not commit a competitive bidding violation. Instead, Lamar Consolidated's situation is similar to the situation in *Metro Nashville*, where the Commission found that it would be a "grossly disproportionate penalty" to deny a significant amount of E-rate funding over a debt that was repaid.

Second, the Bureau did not explain why it did not grant Lamar Consolidated's appeal, although it is required to do so. It is therefore unclear whether the Bureau considered important facts that Lamar Consolidated explained contributed to the time period required to repay the disbursed funding. Most importantly, Lamar Consolidated had to receive instruction from its state department of education, the Texas Education Agency, on how to properly account for the payment given that it was for a funding year that had ended six years earlier.

Third, USAC and the Commission did not adhere to their own procedures for seeking recovery of funds. USAC appears to have prematurely dismissed Lamar Consolidated's pending funding applications, and if it had followed the timeline outlined in its procedures, Lamar Consolidated's payment would have been received prior to a dismissal of the applications. In

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<sup>4</sup> See Lamar Consolidated Independent School District, Application No. 750446, Request for Review and/or Waiver, CC Docket No. 02-6 (filed August 5, 2011); Lamar Consolidated Independent School District, Application No. 764900, Request for Review and/or Waiver, CC Docket No. 02-6 (filed August 5, 2011) (collectively, Lamar Appeals to the FCC).

<sup>5</sup> *Id.*

addition, a Commission order details the process for recovery of E-rate funds, including the issuance of demand letters by the Commission.

Finally, Lamar Consolidated's FY 2010 priority 1 application should have been granted before March 2011, as it had been submitted more than a year earlier. If USAC had timely reviewed and granted the application, that application would not have been pending when USAC issued the dismissal notice.

For these reasons, Lamar Consolidated respectfully requests that the Bureau reconsider its decision and waive the red light rule to allow Lamar Consolidated's 2010 funding request to be considered. Lamar Consolidated acted in good faith and paid its debt as soon as possible, given the constraints of the District's requisition process. Accordingly, a waiver of the Commission's rule is in the public interest.

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## **I. BACKGROUND**

The Lamar Consolidated Independent School District serves more than 34,000 students in the Houston-Richmond-Rosenberg metropolitan area in the state of Texas. The District consists of 26 elementary schools, five middle schools, five junior high schools, and five high schools, as well as an early childhood center and additional alternative and special needs centers.

On February 18, 2010, Lamar Consolidated submitted two applications for E-rate support requesting more than \$800,000 in support for FY 2010.<sup>6</sup> While waiting for USAC to process its FY 2010 applications, Lamar Consolidated received a Notification of Commitment Adjustment Letter (Notification Letter) on August 2, 2010. The letter notified Lamar Consolidated that USAC had adjusted Lamar Consolidated's overall funding commitment for FY 2004, and that it might seek recovery of \$49,504.00 in disbursed funds.<sup>7</sup> Lamar Consolidated immediately appealed the FY 2004 RFCDL, which USAC denied on November 19, 2010.

USAC also issued a Notice of Withholding of Action for Lamar Consolidated's FY 2010 funding applications; this Notice added debt from a FY 2007 COMAD, for a total amount of \$58,717.66.<sup>8</sup> The Notice of Withholding of Action indicated that it contained a "revised recovery amount" and included an attachment detailing the additional \$9,213.66. To Lamar Consolidated's knowledge, this was the first time it had seen a recovery notice for the FY 2007 debt. Lamar also received a second demand letter on February 4, 2011, requesting repayment for

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<sup>6</sup> Lamar filed Form 471 Application No. 750446 for the requested amount of \$768,933.76 and Form 471 Application No. 764900 for the requested amount of \$35,262.22.

<sup>7</sup> The Notification of Commitment Adjustment Letter indicated that it was not a bill and that USAC would later seek recovery if recovery was warranted.

<sup>8</sup> Lamar Appeals to the FCC, Attachment 2. Attached herein at Exhibit 1 for your convenience.

the FY 2007 COMAD, even though it had no record of receiving any previous demand for payment.<sup>9</sup>

Lamar Consolidated decided to pay the debts instead of continuing to appeal. Because the debts were both from previous fiscal years, Lamar Consolidated had to seek guidance from the Texas Education Agency, its state department of education, on how to code and account for the payment several years later, as this was not a typical expenditure. In these situations, a district will routinely seek guidance from the Texas Education Agency.

After receiving this direction and processing the payment, Lamar Consolidated was able to remit its payment to USAC on March 25, 2011—just seven weeks after it had received notification of the second debt.<sup>10</sup> USAC cashed Lamar Consolidated's check for the full amount owed on March 29, 2011.

At the same time, the District staff received USAC's March 11, 2011, Notice of Dismissal for Lamar Consolidated's FY 2010 applications on March 21—after the District's spring break. On March 29, 2011—the same day USAC cashed Lamar Consolidated's reimbursement check—USAC issued funding commitment decision letters denying Lamar Consolidated's FY 2010 applications. USAC stated it denied the applications because the District was in violation of the red light rule due to the outstanding debt from FY 2004 and 2007. However, on the very next day, USAC issued Recovery Repaid-in-Full Acknowledgement letters for the FY 2004 and 2007 debt.

Lamar Consolidated filed a timely appeal of USAC's FY 2010 funding denials. On June 9 and June 13, 2011, USAC denied the appeals, finding the District was delinquent on repayment

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<sup>9</sup> Exhibit 2, Demand Payment Letter, Second Request (Feb. 4, 2011).

<sup>10</sup> Lamar does not have any record of receiving either a first demand letter for either of the debts or the previous letters it should have received for the FY 2007 debt.

of debts owed to USAC. On August 4, 2011, Lamar Consolidated appealed to Commission. Nearly eight years later, the Commission issued a decision denying Lamar Consolidated's appeals in the July 31, 2019 Public Notice.<sup>11</sup>

Lamar Consolidated timely files this petition for reconsideration and respectfully asks the Bureau to reconsider its decision to deny Lamar Consolidated's requests for review of its FY 2010 applications for E-rate support.

## **II. RECONSIDERATION OF THE BUREAU'S DECISION IS WARRANTED AND IN THE PUBLIC INTEREST**

Reconsideration and reversal are warranted in this case for three separate reasons, as explained more fully below. First, the Bureau's denial of Lamar Consolidated's requests for review in a Public Notice on July 31, 2019 did not identify with specificity its basis for denial.<sup>12</sup>

Second, the Public Notice apparently relied upon the *Net56* decision to deny Lamar Consolidated's waiver request. Lamar Consolidated's case, however, is more consistent with the facts and analysis in the Bureau's decision in *Metro Nashville*.

Third, USAC did not follow its own procedures before USAC dismissed Lamar Consolidated's Funding Year 2010 applications. Had USAC followed its own procedures, Lamar Consolidated's payment for these debts would have been received within the time period allowed, before its applications were dismissed. Finally, if USAC had processed the FY 2010 applications in a timely manner, instead of waiting until almost a year later, then Lamar Consolidated's priority 1 application would not have been pending and available for dismissal in March 2011.

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<sup>11</sup> Public Notice at 7 & n.22.

<sup>12</sup> Public Notice at 7 & n.22.

### **A. The Bureau Did Not Explain Why It Denied Lamar Consolidated’s Request for Review**

The Bureau denied Lamar Consolidated’s requests for review in a Public Notice on July 31, 2019.<sup>13</sup> The Public Notice did not identify with specificity the basis for denial. Rather, the appeals were denied, along with another appeal, under the heading “Failure to Satisfy Debt/Red Light Rule” which cited to two Bureau’s decisions, *Net56* and *Metro Nashville*.<sup>14</sup>

Section 6(e) of the Administrative Procedure Act requires an agency to provide a “brief statement of the grounds for denial” when it denies a petition, unless the denial is self-explanatory.<sup>15</sup> The D.C. Circuit has explained: “A ‘fundamental’ requirement of administrative law is that an agency ‘set forth its reasons’ for decision; an agency’s failure to do so constitutes arbitrary and capricious agency action.”<sup>16</sup> The D.C. Circuit has also stated that “[a]lthough nothing more than a ‘brief statement’ is necessary, the core requirement is that the agency explain ‘why it chose to do what it did.’”<sup>17</sup> Under this framework, the D.C. Circuit has reversed agency decisions in which the agency “provide[d] no basis upon which [the court] could conclude that it was the product of reasoned decisionmaking.”<sup>18</sup>

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<sup>13</sup> Public Notice at 7 & n.22.

<sup>14</sup> See Public Notice at 7, n.22 (WCB rel. July 31, 2019) (citing *Requests for Review of Decisions of the Universal Service Administrator by Net56, Inc., Wheeling School District 21, Schools and Libraries Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13122, 131267, para. 6 (WCB 2013) (finding that the E-rate applicant violated the red light rule, denying the applicant’s request for a waiver of the red light rule, and dismissing their funding year 2010 request where the applicant’s only justification for not paying the debt was that it was not notified because USAC sent the Commitment Adjustment Letter to a retire employee) (*Net56*). But see *Metropolitan Nashville Public Schools, Schools and Libraries Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 12334, 12338, para. 13 (WCB 2018) (granting a limited, one-time waiver of the red light rule give the disproportionate penalty the applicant would suffer coupled with other unique circumstances presented) (*Metro Nashville*)).

<sup>15</sup> 47 U.S.C. § 555(e).

<sup>16</sup> *Roelofs v. Secretary of the Air Force*, 628 F.2d 594, 599 (D.C. Cir.1980).

<sup>17</sup> *Id.*

<sup>18</sup> See, e.g., *Amerijet Int’l, Inc. v. Pistole*, 753 F.3d 1343, 1350-52 (D.C. Cir. 2014).



In addition, the lack of analysis of the cases the Bureau cited, as described below, it is also unclear whether the Bureau considered important facts that Lamar Consolidated explained contributed to time period required to repay the disbursed funding. Most importantly, Lamar Consolidated had to receive instruction from its state department of education, the Texas Education Agency, on how to properly account for the payment given that it was for a fiscal year that had ended six years earlier. The Commission acknowledged this specific situation in the *Fifth Report and Order* in describing why USAC should allow some flexibility in repayment options. The Commission noted that “we expressly recognize that a school or library’s ability to pay outstanding debts may be dependent on action by state or local officials on budgetary requests, and the timing of such budgetary action may be considered in determining satisfactory repayment options.”<sup>19</sup> Even if USAC was not aware of Lamar Consolidated’s issue in attempting to make payment before the dismissal of the applications, Lamar Consolidated noted the issue in its appeal.<sup>20</sup>

As such, USAC and the Bureau should have considered this fact in making its decision. There is no evidence that it did so and therefore no indication of how the decisions comply with the Commission’s directive in the *Fifth Report and Order* to take into account budgetary matters when deciding whether the payment was made satisfactorily.

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<sup>19</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-5, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15821, para. 42 (2004) (*Fifth Report and Order*).

<sup>20</sup> Lamar Appeals to the FCC, pg. 2.

**B. Consistent with the Bureau’s Finding in *Metro Nashville*, the Dismissal of Lamar Consolidated’s \$800,000 in E-Rate Funding Requests Would be a “Grossly Disproportionate Penalty.”**

Using the precedent established by the *Metro Nashville* order, the Bureau should have determined that Lamar Consolidated’s request also warranted a waiver.<sup>21</sup> In *Metro Nashville*, the Bureau granted a waiver of the Commission’s red light rule, finding a waiver was warranted due to the special circumstances in the case.<sup>22</sup> Specifically, the Bureau found that the extreme disparity between the debt and the amount of E-rate funding lost was inconsistent with the public interest. The Bureau also found that dismissing the funding request would create an undue hardship on Metro Nashville Public Schools and would not promote the overall policies of the E-rate program.

The Bureau also found that a grant of the waiver for Metro Nashville was consistent with the policy considerations underlying the Commission’s red light rule, noting that the purpose of the red light rule is to encourage parties to repay debts owed to the government and to prevent parties that owe debts from receiving further government funds. The Bureau said that those policy considerations did not require it to deny Metro Nashville’s waiver request because Metro Nashville had already repaid its debt. Further, the Bureau distinguished the Net56 order because, in that case, the applicant’s only justification for not paying the debt was that USAC sent the notice to a retired employee *and* the applicant violated the competitive bidding rules.<sup>23</sup>

Lamar Consolidated’s situation is very similar to Metro Nashville’s. While the discrepancy between the debt owed and the potential loss of E-rate funding is less extreme here

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<sup>21</sup> The Bureau cited to both *Metro Nashville* and *Net56* in denying Lamar’s appeal. But without further explanation, it is impossible to determine the Bureau’s analysis with respect to each case.

<sup>22</sup> *Metro Nashville*, 33 FCC Rcd at 12338, para. 13.

<sup>23</sup> *Metro Nashville*, n. 47 (emphasis in original).

than it was in the *Metro Nashville* order, Lamar Consolidated's debt is nonetheless significantly less than the amount of its funding requests, and therefore the dismissal of its application was also a "grossly disproportionate penalty." The inability of Lamar Consolidated to receive funding for necessary telecom, Internet and internal connections services meant that Lamar Consolidated had to cut other parts of its budget in order to pay for those bills—an undue hardship that it suffered.

Further, just like Metro Nashville, Lamar Consolidated had already paid its debt to the Commission, so it did not need further incentive to do so. Just like Metro Nashville, Lamar Consolidated paid its debt within a short amount of time of receiving the February 4, 2011 Notice of Withholding. Lamar Consolidated was only delayed by the fact that it had to ask for guidance from its state department of education, so it did not run afoul of accounting rules when issuing the payment to USAC.

Finally, the applicant in *Net56* had committed a competitive bidding violation. Here, however, Lamar Consolidated was not in violation of any other program requirement that would warrant denial of its FY 2010 applications.<sup>24</sup>

For these reasons, the Bureau should reconsider its decision and rely upon the precedent in the *Metro Nashville* order, where the facts are much more similar to Lamar Consolidated's situation than the facts in the *Net56* decision.

**C. According to USAC's Own Procedures, USAC Prematurely Dismissed Lamar Consolidated's Applications.**

As an initial matter, USAC has some discretion as to whether to seek recovery of funds. For both the FY 2004 and FY 2007 COMADs, USAC waited several years before seeking

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<sup>24</sup> *Net56*, 28 FCC Rcd at 13126, para. 7.

recovery of funds from Lamar Consolidated. As such, Lamar Consolidated would not have known it was going to receive demands for these debts. Regardless, after USAC provided notice it was seeking recovery of these funds, USAC did not provide Lamar Consolidated the proper amount of time to respond as required by USAC's own procedures.

USAC's process for seeking recovery of funds is outlined in its Semi-Annual Audit Recovery Report submitted to the Commission.<sup>25</sup> Under those procedures, as described further below, applicants should have 60 days to pay their debts after the issuance of the second demand letter. USAC only allowed Lamar Consolidated 35 days after issuance of the second demand letter before it issued its Notice of Dismissal, which notified Lamar Consolidated that its applicants for FY 2010 had been dismissed. As an agent of the Commission, USAC must provide notice before changing its procedures, especially when such significant consequences may result from its actions. The standard for whether an agency has provided fair notice is whether "by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects the parties to conform."<sup>26</sup> An agency must provide fair notice when it "wishes to use [its new] interpretation" of a vague rule "to cut off a party's

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<sup>25</sup> See Universal Service Administrative Company, Schools and Libraries Program, Semi-Annual Audit Recovery Report, CC Docket No. 02-6 (filed March 31, 2009) (USAC Semi-Annual Audit Recovery Report). The Commission has directed USAC to submit semi-annual status reports on USAC's outstanding audit findings. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-5, Fifth Report and Order and Order, 19 FCC Rcd 15808 (2004) (*Schools and Libraries Fifth Report and Order*). Although this process for recovery is based on audit findings, there is no reason why the recovery procedures would differ for other types of recoveries.

<sup>26</sup> *Trinity*, 211 F.3d at 628 (citing *Gen. Elec.*, 53 F.3d at 1329); accord *Otis Elevator Co. v. Sec'y of Labor*, 762 F.3d 116, 125 (D.C. Cir. 2014).

right.”<sup>27</sup> Similarly, if USAC intends to provide less than 60 days before dismissing an application, then it should revise its procedures so that parties have notice of its actual practices.

Per USAC’s own procedure if it determines funding should be recovered, USAC is supposed to issue a Notification of Commitment Adjustment Letter or a Notice of Recovery of Improperly Disbursed Funds Letter (collectively Notification Letter) to the applicant and/or service provider.<sup>28</sup> If the applicant and/or service provider doesn’t appeal the Notification Letter within 60 days, USAC is supposed to issue the First Demand Payment Letter on the 61<sup>st</sup> day notifying the parties USAC intends to seek recovery.<sup>29</sup> If the applicant and/or service provider does not respond to the First Demand Payment Letter, or does not make satisfactory arrangements to repay the debt within 30 days, a Second Demand Payment Letter is issued and the red light rule is activated. If the applicant and/or service provider does not respond to the Second Demand Payment Letter, or does not make satisfactory arrangements to repay the debt within 60 days, USAC is supposed to issue a Notice of Dismissal Letter for any pending Form 471 applications.<sup>30</sup> USAC will then advise the Commission of the party’s failure to repay the debt and will transfer the debt for collection.<sup>31</sup> If an appeal is filed with USAC or an appeal or

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<sup>27</sup> *Satellite Broad. Co., Inc. v. FCC*, 824 F.2d 1, 4 (D.C. Cir. 1987); *see also United States v. Chrysler Corp.*, 158 F.3d 1350, 1354 (D.C. Cir. 1998) (“fair notice” requirement applies in the absence of “explicit penalties”).

<sup>28</sup> USAC Semi-Annual Audit Recovery Report at 1.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 2. Although neither the Commission nor USAC is required to provide the applicant more than 30 days, see 47 CFR § 1.1910(b)(3), it is USAC’s practice and procedure to allow the applicant more than 30 days to pay its debt or make other satisfactory arrangements to pay its debt after it is notified of the debt. *Id.*; *Metro Nashville* at para. 5. USAC cannot give notice of its procedures and then deviate from those procedures without explanation or cause.

<sup>31</sup> *Id.* at 2.

request for waiver is filed with the Commission, however, then the recovery process is held in abeyance pending resolution of the appeal or waiver request.<sup>32</sup>

Here, USAC issued the Revised FCDL on August 2, 2010, and Lamar Consolidated immediately appealed this action to USAC. At this point, according to USAC's own procedure, the recovery process should have been held in abeyance pending resolution of the appeal. USAC denied the appeal on November 19, 2010. However, pursuant to Commission rules, Lamar Consolidated had 60 days to file an appeal of USAC's denial with the Commission.<sup>33</sup> Accordingly, the recovery process should have been held in abeyance until the expiration of the appeals period, or until January 18, 2011. Following this procedure, USAC should not have issued the first demand payment letter until January 18, 2011.<sup>34</sup>

If an applicant does not respond to the first demand payment letter or make arrangements to repay the debt within 30 days, a second demand payment letter is issued, and the red light rule is activated. USAC issued the second demand payment letter on February 4, 2011. If USAC had adhered to its own procedure, it would not have issued the second demand payment letter until February 17, 2011 (30 days following January 18).

Furthermore, according to USAC's own procedure, USAC is supposed to wait 60 days after issuing the second demand letter before dismissing any pending applications. USAC dismissed Lamar Consolidated's pending FY 2010 applications on March 11, 2011. However, 60 days after the second demand letter (calculated from the correct date of February 17) would have been April 17, 2011, instead of March 11, 2011. Again, had USAC followed its own

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<sup>32</sup> *Id.* at 2.

<sup>33</sup> 47 C.F.R. § 54.720(a).

<sup>34</sup> Lamar does not have a record of receiving a first demand letter for either the FY 2004 or the FY 2007 debt.

procedure, Lamar Consolidated would have had until April 17 to repay its debt before USAC could dismiss any of its pending applications. Even if the second demand letters for the FY 2004 and FY 2007 debt were both issued on February 4, 2011, Lamar Consolidated should have had until April 5, 2011 to pay. In fact, Lamar Consolidated did repay its debt in full during this time, submitting its payment on March 25, 2011.

If USAC had correctly followed its own procedures, Lamar Consolidated would have repaid its debt within the permissible time period and USAC would not have dismissed Lamar Consolidated's pending applications. Because USAC failed to follow its own procedures for seeking recovering of funds, which resulted in the denial of Lamar Consolidated's applications, the Bureau should grant this petition for reconsideration and instruct USAC to review Lamar Consolidated's funding applications for FY 2010.

**D. If USAC had Processed the FY 2010 Application in a Timely Manner, Lamar Consolidated's Application Would Not Have Been Pending and Available for Dismissal.**

Lamar Consolidated submitted its FY 2010 applications on February 18, 2010. USAC, however, waited more than a year to issue a funding decision on these applications. USAC did not place Lamar Consolidated on the red light list until a year after Lamar Consolidated had filed its FY 2010 applications. If USAC had processed Lamar Consolidated's FY 2010 category 1 application in a timely manner, at least that application would not have still been pending when USAC placed Lamar Consolidated on the red light list.

USAC has the responsibility to review and issue commitments for all workable applications within a timely manner for each funding year. There is no evidence that Lamar

Consolidated's FY 2010 applications were not workable.<sup>35</sup> If USAC had processed the FY 2010 applications in a timely fashion, Lamar Consolidated's applications would not have still been pending in March and available for dismissal. Once Lamar Consolidated was on the red light list, instead of rejecting a pending application, USAC would have only rejected any invoices that may have been filed during that time. Lamar Consolidated could have paid the debt and worked with its service provider to resubmit any such invoices by the invoicing deadline. This process would have enabled the USF to recover the funds—meeting the Commission's recovery goals—without the need to resort to the draconian penalty of application denial.

### **III. A WAIVER OF THE COMMISSION'S RULE IS IN THE PUBLIC INTEREST**

As we have explained, Lamar Consolidated repaid its debt within the timeline allowed pursuant to USAC's own procedures and its applications should not have been dismissed. Should the Bureau disagree, however, Lamar Consolidated respectfully requests that the Bureau waive the red light rule in order to grant the requested relief. A waiver of the red light rule in this case would advance the E-rate program's goals and would be in the public interest.

Any of the Commission's rules may be waived if good cause is shown.<sup>36</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>37</sup> In addition, the Commission may take into

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<sup>35</sup> We note that in FY 2010, category 2 applications were not processed until after the August 22, 2011 Commission order making available additional funding for FY 2010. *Funds for Learning, LLC Petition to Reject the Administrator's Discount Threshold Recommendation for Funding Year 2010, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11145 (WCB 2011).

<sup>36</sup> 47 C.F.R. § 1.3.

<sup>37</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).



account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>38</sup>

For the Bureau to affirm USAC's decisions would be to punish the students of Lamar Consolidated out of proportion to the District's alleged wrongdoing. Lamar Consolidated asks the Bureau to consider the equities in this case. Lamar Consolidated acted in good faith and repaid the debt in March 2011, as soon as it was able to navigate internal miscommunications and the District's complex payment procedures, including obtaining the required guidance from external parties in order to meet the District's strict audit compliance processes. There was no waste, fraud, or abuse in this case. Under these circumstances, there is no public interest rationale for denying more than \$800,000 in E-rate funding because of a \$50,000 debt that was repaid as soon as possible.

A waiver would also further the goals of the E-rate program without undermining the purpose of the red light rule and would thus be in the public interest. The purpose of the debt collection rules and procedures is not to punish debtors, but to provide incentives to repay the money owed.<sup>39</sup> The dismissal of Lamar Consolidated's FY 2010 applications is a disproportionate response to the District's delay in repayment. The penalty of denying more than \$800,000 in funding requests is more than 13 times the amount of debt the District had owed. It is not in the public interest for the red light rule to result in such a disproportionate penalty. The Commission intended the red light rule to encourage repayment by program

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<sup>38</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>39</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15821-22, para 42 (2004) (stating that adopting debt collection requirements for the E-rate program "would be beneficial to the administration of the program in the prevention of waste, fraud and abuse . . . as it would strengthen incentives for beneficiaries and service providers to comply with the statute and our rules").

participants; the Commission did not intend the rule to be punitive in nature. Here, that encouragement operated as it was supposed to and Lamar Consolidated repaid the debt, albeit a few days later than USAC had calculated it should have. Accordingly, the public interest is best served not by punishing Lamar Consolidated, but by allowing E-rate funding to be disbursed to a school district that could use the funding as Congress intended—to improve the educational opportunities of its students.

Lamar Consolidated believes that it is unjust, in light of these circumstances and in the complete absence of waste, fraud, or abuse, to punish the school district by withholding \$800,000 in E-rate funding. Furthermore, the failure of USAC to follow its own procedures in this case make reversal all the more appropriate. As such, it is in the public interest for the Bureau to grant the requested relief.

#### **IV. CONCLUSION**

For the foregoing reasons, Lamar Consolidated respectfully requests that the Bureau grant this petition for reconsideration and reverse its denial of Lamar Consolidated's requests for review with respect to the above-captioned applications. Lamar Consolidated also respectfully requests that the Bureau waive section 1.1910 of the Commission's rules to the extent necessary to grant the requested relief.

Respectfully submitted,

/s/ Gina Spade

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August 30, 2019

*Counsel for Lamar Consolidated ISD*

### **CERTIFICATE OF SERVICE**

This is to certify that on this 30th day of August 2019, a true and correct copy of the foregoing Petition for Reconsideration was sent via email to:

SLD, Universal Service Administrative Company, Appeals@USAC.org.

/s/ Theresa Schrader

## **EXHIBIT 1**



Schools and Libraries Division

## Notice of Withholding of Action

February 04, 2011

Steve Hickman  
LAMAR CONS INDEP SCHOOL DISTRICT  
3911 AVENUE I  
Rosenberg, Texas 77471-3960

Revised recovery amount

Re: Notification of Withholding of Action Pending Red Light Rule

Application Numbers: 750446, 764900  
Billed Entity: 141295  
Fund Year: 2010

The Schools and Libraries Division received your request, cited above, for a funding for the Schools and Libraries Universal Service Support Mechanism (E-Rate) holding FCC Registration Number 0001666924.

As required by 47 C.F.R. § 1.1910(a)(1), we have reviewed our records and determined that as of 02/04/2011, you or an entity sharing the same Taxpayer Identification Number (TIN) is delinquent on the payment of a debt owed to the Universal Service Administrative Company (USAC):

LAMAR CONS INDEP SCHOOL DISTRICT \$58,717.66

Pursuant to 47 CFR § 1.1910(b) no further disbursements will be made until the complete debt owed to USAC and the FCC is satisfied and/or arrangements have been made to pay the delinquent debt. **If no payment is made within 30 days of the date of this letter, any pending applications and requests for benefits may be dismissed.** This means that any funding requests filed on the Form(s) 471 listed above will be denied.

Please be advised that any additional applications or requests for benefits from the FCC or its reporting components, including but not limited to support from the Universal Service Fund, payments from the Telecommunications Relay Services Fund, or the issuance of telephone numbers from the North American Numbering Plan Administrator, will be reviewed to determine if any delinquent debts are outstanding.

If you have any questions regarding the debt owed to USAC, please contact us at:

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Schools and Libraries Division - Correspondence Unit  
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-0685  
Visit us online at: [www.usac.org/sl](http://www.usac.org/sl)

Address: USAC Billing Collections & Disbursement  
Attention: Red Light Inquiries  
2000 L Street, N.W., Suite 200  
Washington, DC 20036

Telephone: (888) 641-8722

Facsimile: (888) 637-6226

E-mail: [customerservice@bcd.usac.org](mailto:customerservice@bcd.usac.org)

Sincerely,  
Schools and Libraries Division  
Universal Service Administrative Company

cc: Networld Solutions Inc, INX Inc, Nextel South Corp, Smarsh, Inc, Intrafinity, AT&T,  
Southwestern Bell Telephone Company, PAETEC Communications, Inc, Sprint.

## **EXHIBIT 2**



Schools & Libraries Division

**Demand Payment Letter  
SECOND REQUEST**

( Funding Year 2007: July 1, 2007 - June 30, 2008 )

February 4, 2011

Steve Hickman  
LAMAR CONS INDEP SCHOOL DIST  
3911 AVENUE I  
ROSENBERG, TX 77471 3960

**- PAST DUE NOTICE -**

**THIS NOTICE PROVIDES IMPORTANT INFORMATION ABOUT YOUR  
ACCOUNT AND YOUR RIGHTS AND OBLIGATIONS UNDER LAW**

Re: Form 471 Application Number: 552639  
Funding Year: 2007  
Applicant's Form Identifier: LCISD-2007-TC/IA  
Billed Entity Number: 141295  
FCC Registration Number: 0001666924  
SPIN: 143030894  
Service Provider Name: SunGard VeriCenter, Inc.  
Service Provider Contact Person: Heather Vice  
Payment Due By: 2/4/2011

You were recently sent a Demand Payment Letter informing you of the need to recover funds for the Funding Request Number(s) (FRNs) listed on the Funding Commitment Adjustment Report (Report) attached to this letter. Our records indicate that you have not responded to the Demand Payment Letter.

As of 02/04/2011, the debt is past due and delinquent.

**THE FOLLOWING PROVISIONS CONTAIN IMPORTANT INFORMATION AND A DESCRIPTION OF LEGAL  
RIGHTS, OBLIGATIONS, AND OPPORTUNITIES**

1. Debtor is cautioned that failure to make the demanded payment or make other satisfactory arrangements will result in further sanctions, including, but not limited to, the initiation of proceedings to recover the outstanding debt, together with any applicable administrative charges, penalties, and interest pursuant to the provisions of the Debt Collection Act of 1982 (Public Law 97-365) and the Debt Collection Improvement Act of 1996 (Public Law 104-134), as amended (the DCIA), as set forth below.
2. If we do not receive full payment of the outstanding debt within 30 days of the date of this letter (Demand Date), pursuant to the DCIA, you may incur additional charges and costs, and the debt may be transferred to the Federal Communications Commission (Commission or FCC) and/or the United States Department of Treasury (Treasury) for debt collection. The FCC has determined that the funds are owed to the United States pursuant to the provisions of 31 U.S.C. § 3701 and 47 U.S.C. § 254. Because the unpaid amount is a debt owed to the United States, we are required by the DCIA to impose interest and to inform you what may happen

Schools and Libraries Division - Correspondence Unit  
100 South Jefferson Road, P.O. Box 902, Whippany, NJ 07981  
Visit us online at: [www.usac.org/sl](http://www.usac.org/sl)



if you do not pay the full outstanding debt. Under the DCIA, the United States will charge interest from the date of this notice, you will be required to pay the administrative costs of processing and handling a delinquent debt as set by the Treasury (currently 18% of the debt), and you will be charged an additional penalty of 6% a year for any part of the debt that is more than 90 days past due. Interest on the outstanding debt (DCIA Interest) will be assessed at the published investment rate for the Treasury tax and loan accounts (Treasury Current Value of Funds Rate). If, however, you pay the full amount of the outstanding debt within 30 days of the Demand Date, the DCIA Interest will be waived. These requirements are set out at 31 U.S.C. § 3717.

3. When we transfer the debt (to the Commission or later to the Treasury), you may be subject to other administrative proceedings. Your failure to pay the debt may be reported to credit bureaus (see 31 U.S.C. § 3711(e)), the debt will be considered for administrative offset (see 31 U.S.C. § 3716), the debt may be further transferred to collection agencies (see 31 U.S.C. §§ 3711 & 3718), and also the debt may be referred to the United States Department of Justice or agency counsel for litigation. In that situation, you may be subject to additional administrative costs that result from the litigation. Moreover, pursuant to 31 U.S.C. § 3720 (B), a person owing an outstanding non-tax debt that is in delinquent status shall not be eligible for Federal financial assistance. You should be aware that the discharge of any portion of the debt may be reported to the Internal Revenue Service as potential taxable income.

#### Opportunity of Inspection and Review

4. You have an opportunity to inspect and copy the invoices and the records pertinent to the debt. The Notification of Commitment Adjustment Letter constituted notice of your opportunity to appeal the validity of the debt.

#### Opportunity to Request Repayment Agreement

5. You have an opportunity to request a written repayment agreement (which includes a Promissory Note) to pay the full amount of the debt. In that case, however, you must first provide evidence that demonstrates financial inability to pay the debt in one payment. Your claim of financial inability to pay in one payment is subject to verification (see 31 C.F.R. § 901.8). If your request is approved for further processing, you will be required to execute a written agreement suitable to the Commission. You should be aware that repayment agreements regularly impose a number of obligations on the debtor, including additional administrative charges, audit obligations, and surety bond requirements. For more information on the obligations associated with repayment agreements, see "USAC Repayment Request Procedure"

<http://www.usac.org/fund-administration/contributors/paying-your-invoice/payment-extension-plans.aspx>.

If you desire to exercise any of the above described rights, you must do so in writing which must be delivered to and received at the address below within 30 (thirty) days of the Demand Date. Any required evidence must be submitted at the same time that you submit your request. Failure to provide the written request (and, as appropriate, the required evidence) within the stated time is a waiver of these opportunities.

You may notify us in writing by mail or facsimile transmission at the following address and telephone number:

Schools and Libraries Division - Program Compliance II,  
Dept. 125 - Correspondence Unit,  
100 South Jefferson Road,  
Whippany, NJ 07981  
Phone Number: 973-581-5395  
Fax Number: 973-599-6582

If USAC has determined that both the applicant and the service provider are responsible for a program rule violation, then, pursuant to the Order on Reconsideration and Fourth Report and Order (FCC 04-181) (Fourth Report and Order), USAC will seek recovery of the improperly disbursed amount from BOTH parties and will continue to seek recovery until either or both parties have fully paid the debt. If USAC has determined that both the applicant and the service provider are responsible for a program rule violation, this will be indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report.

If USAC is attempting to collect all or part of the debt from both the applicant and the service provider, then you should work with your service provider to determine who will be repaying the debt to avoid duplicate payment. Please note, however, that the debt is the responsibility of both the applicant and service provider. Therefore, you are responsible for ensuring that the debt is paid in a timely manner.

Please remit payment for the full Funds to be Recovered from Applicant amount shown in the Report. To ensure that your payment is properly credited, please include a copy of the Report with your check. Make your check payable to the Universal Service Administrative Company (USAC).

If sending payment by U. S. Postal Service or major courier service (e.g. Airborne, Federal Express, and UPS) please send check payments to:

Bank of America  
c/o Universal Service Administrative Company (105056)  
1075 Loop Road  
Atlanta, GA 30337  
Phone 404-209-6377

If you are located in the Atlanta area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company  
P.O. Box 105056  
Atlanta, GA 30348-5056  
Phone 404-209-6377

Local messenger service should deliver to the Lockbox Receiving Window at the above address.

**PAYMENT MUST BE RETURNED IMMEDIATELY.**

Complete program information is posted to the SLD section of the USAC web site at [www.usac.org/sld/](http://www.usac.org/sld/). You may also contact the SLD Technical Client Service Bureau by e-mail using the "Submit a Question" link on the SLD web site, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

Universal Service Administrative Company  
Schools and Libraries Division

cc: Heather Vice  
SunGard VeriCenter, Inc.



**Funding Commitment Adjustment Report  
for Form 471 Application Number: 552639**

Funding Request Number: 1553148  
Services Ordered: INTERNET ACCESS  
SPIN: 143030894  
Service Provider Name: SunGard VeriCenter, Inc.  
Contract Number: N/A  
Billing Account Number:  
Site Identifier: 141295  
Original Funding Commitment: \$10,718.82  
Commitment Adjustment Amount: \$9,213.66  
Adjusted Funding Commitment: \$1,505.16  
Funds Disbursed to Date: \$10,718.82  
Funds to be Recovered from Applicant: <sup>1</sup> \$9,213.66

After a thorough review, it was determined that the funding commitment for this request must be reduced by \$9,213.66. During the course of review it was determined that funding was provided for the following ineligible items: 1) Managed advance services, 2) Managed Network Services 3) Manager Server Services 4) Managed Software Services and the associated tax. The pre-discount cost associated with these items is \$14,624.86, for a total ineligible amount of \$14,624.86. At the applicants 63 percent discount rate this resulted in an improper commitment of \$9,213.66. FCC rules provide that funding may be approved only for eligible products and/or services. The USAC web site contains a list of eligible products and/or services. See the web site, [www.universalservice.org/sl/about/eligible-services-list.aspx](http://www.universalservice.org/sl/about/eligible-services-list.aspx) for the Eligible Services List. In this situation, the applicant made the certifications on the BEAR Form indicating that the services and/or equipment provided to the applicant were eligible for funding. On the BEAR Form, the authorized person certifies at Block 3, Item A that discount amounts for which reimbursement is sought represent charges for eligible services delivered to and used by eligible entities. Therefore, USAC has determined that the applicant is responsible for the rule violation. Accordingly, the commitment has been reduced by \$9,213.66 and if recovery is required USAC will seek recovery from the applicant.

PLEASE SEND A COPY OF THIS PAGE WITH YOUR  
CHECK TO ENSURE TIMELY PROCESSING

<sup>1</sup> Please note that if the Funds to be Recovered from the Applicant is less than what was reported on the Notification of Commitment Adjustment Letter or the 1st Demand Payment Letter, it's because you have partially repaid the debt or because the Service Provider has partially repaid the debt.

Address: USAC Billing Collections & Disbursement  
Attention: Red Light Inquiries  
2000 L Street, N.W., Suite 200  
Washington, DC 20036

Telephone: (888) 641-8722

Facsimile: (888) 637-6226

E-mail: [customerservice@bcd.usac.org](mailto:customerservice@bcd.usac.org)

Sincerely,  
Schools and Libraries Division  
Universal Service Administrative Company

cc: Networld Solutions Inc, INX Inc, Nextel South Corp, Smarsh, Inc, Intrafinity, AT&T,  
Southwestern Bell Telephone Company, PAETEC Communications, Inc, Sprint.