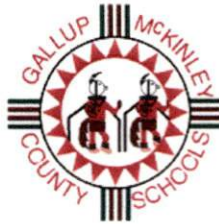


GALLUP-McKINLEY COUNTY PUBLIC SCHOOLS

MIKE HYATT
SUPERINTENDENT

TIM BOND
Assistant Superintendent of Support Services

JVANNA HANKS II
Assistant Superintendent of Business Services



PAULETTA WHITE
Assistant Superintendent of Student Services

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Assistant Superintendent of Curriculum & Instruction

"GROWING STUDENTS TO BE PRODUCTIVE CITIZENS IN A MULTI-CULTURAL SOCIETY"

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

In the Matter of)	
)	
)	
Schools and Libraries)	CC Docket No. 02-6
Universal Service Support Mechanism)	
)	
Application for Review)	
By Gallup-McKinley County)	Application No. 248147
Public Schools)	

PETITION FOR RECONSIDERATION BY GALLUP-MCKINLEY COUNTY PUBLIC SCHOOLS

On August 8, 2017 Gallup-McKinley County Public Schools (Applicant or Gallup) filed a Petition for Reconsideration requesting the Commission review the decision issued by the Wireline Competition Bureau (Bureau) in DA 17-712¹. In that filing, the Applicant indicated it would supplement the initial or submit a new filing on or before August 30, 2017. The purpose of this filing is to amend and/or replace the August 8, 2017 filing by the applicant.

¹ See Attachment A for August 8, 2017 Petition for Reconsideration

Pursuant to section 1.106 of the Commission's rules,² the Gallup-McKinley County Public Schools (Applicant or Gallup) respectfully requests that the Commission review a decision of the Wireline Competition Bureau (Bureau) to deny Applicant's appeal of a USAC decision to seek recovery of \$35,596.06 in Funding Year 2001 disbursements. In DA 17-712, released July 31, 2017, the Wireline Competition Bureau denied the district's appeal that was filed on May 20, 2011. Gallup requests the Commission reverse the Bureau's decision and approve the district's original request for appeal. Gallup believes there is past precedent that warrants approval of this appeal or alternatively circumstances that justify the waiver of FCC rules.

The basis for the denial in DA 17-712 was:

"To be able to grant the changes it requests, Gallup-McKinley County Public Schools should have appealed either of the following USAC decisions within 60 days of the issuance of the decision in question: 1) the February 23, 2005 USAC Administrator's Decision on Appeal reducing the funding from \$1,537,125.00 to \$1,136,072.10 (a reduction of \$401,052.90 in E-rate funding) to reflect the removal of illegible services from the funding request; or 2) the December 30, 2005 Supplemental Form 471 Application Approval Letter reducing the funding \$96,697.80 to reflect a service substitution. We also find no special circumstances to merit a waiver."

We believe the facts will show that funds were disbursed to eligible applicants and used for eligible purposes. The fact that USAC did not adjust the funding commitment in a timely manner resulted in funds being disbursed in excess of what USAC now believes to be the correct commitment amount. While it is correct that the district did not appeal the February 23, 2005 or the December 30, 2005 decisions, the district did appeal the January 11, 2011 "Approval" by USAC within the required 60-days. This is the first time the decision had an adverse impact on the district which triggered a recovery of \$35,596.06.

In denying the Applicant's appeal, the Bureau failed to consider that the January 11, 2011 approval, in itself, was an appealable event. Any decision of the Administrator that causes an applicant to lose funding

² 47 C.F.R. § 1.106.

or be forced to return funds on its face is an appealable decision. The district's failure to appeal the 2005 decisions notwithstanding, USAC ultimately made a decision in 2011 to implement a reduction in funding which it had failed to do for six years. When the Administrator decides to reduce funding on a request, the applicant has the right to appeal that decision.

FRN 606006 relates to work that was completed in 2001 almost 16 years ago. At this point, as was the case in 2011 when the appeal was originally filed, there is no one at the district who was involved that can speak intelligently about what transpired on this FRN. Any record retention period has long passed and a myriad of administrative mistakes were made in the handling of this funding request. If the FCC does not believe that the petition should be granted on its merits, we request a waiver based on the administrative errors that occurred on the part of USAC. A waiver would be consistent with the precedent laid out in the *Runnemedede Decision*³.

BACKGROUND

Gallup-McKinley County Public Schools is a school district based in Gallup, New Mexico. As one of the geographically largest districts in the continental United States at about 5,500 square miles, the district is, two-thirds the size of New Jersey. It is located in a rural area about two hours from Albuquerque. It serves approximately 11,000 students from kindergarten through 12th grade and has 1,880 employees, including teachers, administrators and support personnel. Gallup operates 46 facilities throughout the county of McKinley, including elementary, middle and high schools, special education centers, alternative schools and administrative offices. Gallup is surrounded by the Navajo Nation and other Tribal lands. About 83 percent of the student population is Native American.

Request for Relief

This FRN was originally denied by USAC on December 28, 2001. The district filed, and ultimately won, an FCC appeal and funding was finally provided funding in June, 2005 totaling a pre-discount amount of \$1,136,125.00. The funding was awarded almost four years after the work had been completed. We request that the FCC grant this Petition and cease any recovery actions against the district.

³ See DA 99-2957

A.) USAC's FRN Reduction in 2011 was an Appealable Event

The district believes a service substitution was submitted in December of 2005 and that may have resulted in a reduction to the FRN which was never implemented by USAC. As shown in the attached screenshot, as of February 2, 2011 USAC had not implemented the reduction of the FRN and the committed amount remained at \$1,136,125.00⁴.

More than five years later, USAC had not made the proper reduction on the FRN. This inaction by the Administrator resulted in funds being paid to the district in error, according to the Administrator. The decision at issue is USAC's 2011 decision to retroactively reduce funding after it had already approved payment to the district for eligible services delivered to eligible entities. The district reasonably relied on the Administrator's decision to disburse funds on this request and the correctness of the information contained in its public systems. Had the Administrator reduced the funding in a timely manner, the district would not have been reimbursed for these funds. In the Runnemedede decision in paragraph four, the FCC stated:

"Review of the record also reveals that SLD did not post Runnemedede's FCC Form 470 to its web site at that time, nor did it notify Runnemedede that it was not doing so. The lack of 28 days posting prior to the filing of Runnemedede's FCC Form 471 thus resulted from SLD's failure to timely post the FCC Form 470 in accordance with section 54.504(b)(3) of the Commission's rules.⁵ In light of the fact that SLD's failure to post Runnemedede's FCC Form 470 to its web site resulted in Runnemedede's non-compliance with the 28 day posting requirement set forth in 47 C.F.R. § 54.504(b)(4), we believe that a waiver of that requirement is warranted."

The fact pattern in this case mirrors the fact pattern in the Runnemedede case. USAC did not make the adjustment to the funding request as it said it was going to, nor did it notify the district that it was not making the adjustment and this inaction lead to disbursement. USAC's failure to make the adjustment was the main cause of funding being disbursed in excess of what USAC believed to be correct.

⁴ See Attachment USAC Data Retrieval Tool February 2, 2011.

⁵ 47 C.F.R. § 54.504(b)(3).

In reviewing this decision, the FCC should consider whether or not funds were disbursed for ineligible services, services to ineligible entities, or in excess of the commitment that was displayed on USAC's public site and presumably used in its accounting of Universal Service Funds. If the district did not appeal the decision in 2005, the issue would be moot had USAC effected the adjustment to the commitment. However, that did not happen. Instead USAC delayed over five years to make the change, subsequently disbursed funds, and then requested recovery of those funds.

In the Fifth Report and Order the FCC stated "Likewise recovery may not be appropriate for violation of procedural rules codified to enhance operation of the e-rate program."⁶ We believe that this is a case that recovery is not warranted. Additionally, the Fifth Report and Order stated:

"We conclude that in situations where a service substitution would meet the criteria now established in our rules, the appropriate amount to recover is the difference between what was originally approved for disbursement and what would have been approved, had the entity requested and obtained authorization for a service substitution. In situations where the service substitution would not meet the criteria established in our rules, the appropriate amount to recover is the full amount associated with the service in question."⁷

Effectively, that is the situation we have here. A service substitution was submitted that pre-dates current staff involvement in the process and it resulted in a reduction of funding that was never implemented by USAC. The district, therefore, in good-faith invoiced USAC for the amount committed on the FRN per USAC's public database. Rather than looking at when an appeal should have been filed, the FCC should be focusing on whether or not funding was paid for ineligible services or in excess of the original requested amount or the committed amount on USAC's public website. If the answer to these questions is "No," then it would appear that recovery is not warranted in this case.

⁶ See FCC 04-190 at paragraph 19.

⁷ See FCC 04-190 at paragraph 23.

We believe the district's initial funding request did include funding for eligible services in excess of the amount paid out on the FRN. It is clear that errors were made by USAC and the district, but ultimately any error in funding is the result of administrative errors and not fundamental violation of program rules. Additionally, there is no evidence of waste, fraud, or abuse. All of these factors combined justify granting this Petition and/or waiving any FCC rules required to result in a positive outcome for the district.

B.) Granting the Requested Relief Is in the Public Interest

Gallup acted in good faith when it invoiced USAC. Gallup also acted in good faith when, it filed its appeal as soon as it realized that they had been adversely impacted by a decision of the Administrator. At all times, Gallup did its best to comply with Commission rules and believed that it was, in fact, complying with Commission rules. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁸

Finally, in this Petition for Reconsideration, as in its prior filings with the Bureau, Gallup is seeking a review of USAC's original funding decision, how USAC's inaction impacted the situation, and whether recovering funds from a school district that serves a low income, high risk population is in the public interest. Gallup acknowledges the importance and appropriateness of bright-line filing deadlines. At the same time, though, Gallup believes that leniency is appropriate where, as here, the Applicant made a good-faith effort to comply and their efforts were exacerbated by the actions of the Administrator. Gallup requests that the Commission reverse this decision and find that the district is not required to repay almost \$36 thousand relating to work completed almost 16 years ago.

CONCLUSION

For the reasons stated above, the Commission should grant Gallup's Petition for Reconsideration and, to the extent necessary, the requested waiver of the Commission's rules, and remand this matter to the Administrator to close out the FRN.

⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Hyatt", with a stylized flourish at the end.

Mike Hyatt,
Superintendent
Gallup-McKinley County Schools