**FCC APPEAL CC Docket No. 02-6**

**Date: September 6, 2017**

**APPEAL for SERVICE DELIVERY DEADLINE EXTENSION**

**APPLICANT**: SMYRNA SCHOOL DISTRICT BEN: 126329

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**SERVICE PROVIDER**: UNDER/COMM, INC. SPIN: 143006165

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**E-RATE CATEGORY 2 FORM 471 #1041969 FUNDING YEAR 2015-16 32 FUNDING REQUESTS**

**FCDL DATE: 11/30/2015 FCDL COMMITTED AMOUNT: $428,205.39**

**TOTAL FUNDING UNDER APPEAL**: **$116,537.28**

FRN #2846461 – FUNDING COMMITMENT $20,006.40

FRN #2849861 – FUNDING COMMITMENT $35,511.36

FRN #2850029 – FUNDING COMMITMENT $61,019.52

**REASONS FOR APPEAL:**

1. Smyrna School District legally extended their contract term period with Under/Comm to cover additional time required to finish all Category 2 work.
2. Under/Comm completed work within the Service Delivery Deadline of 09/30/2016 in accordance with contract terms agreed upon with Smyrna School District.
3. Smyrna made a ministerial/clerical error in trying to request a Service Delivery Deadline Extension (SDDE) which caused the denial of E-Rate reimbursement via SPI to Under/Comm. The very small ministerial/clerical error on a “Submit a Question” led to this major problem of Under/Comm getting their SPIs approved.
4. Under/Comm completed all work and filed SPI forms within the E-rate Invoicing deadline and followed all Program Rules but these 3 FRNs were denied by USAC.
5. Smyrna School District is neither financially capable, nor legally budgeted, to cover these lost E-rate reimbursements to Under/Comm.
6. Under/Comm is suffering from the denial of invoices totaling $116,537.28
7. Waiver of a Service Delivery Deadline is only addressable by the FCC but that was not revealed to the District and Service Provider until September, 2017.

**Service Delivery**

* Smyrna completed “Submit a Question” Case #22-907685 on 09/23/2016 to file a Service Delivery Deadline Extension (SDDE) following USAC guidance. Smyrna rightfully completed this request as the correct procedure to extend Category 2 project work through December 2016. See attached receipt “FW SLD Inquiry #22-907685 Received.txt” where Smyrna states in the Case: “I am requesting an extension for the following projects” and lists 8 FRNs, 3 of which are the subject of this Appeal.
* Smyrna used the “Submit a Question” vehicle to request the SDDE and chose Topic Inquiry “[FormType]=Invoice Extension [Owner]=DEADLINEEXTENSIONS” seeing no other suitable option in the Topic Inquiry menu to extend his project.
* Smyrna used USAC guidance and thought they completed the SDDE properly and in a timely manner before the SDDE window closed.
* The reasons for needing time past the original Service Delivery Deadline are:
  + A single small vendor like Under/Comm doing Category 2 work in 8 different school buildings over 2 summer months did not happen.
  + Restrictions concerning access to school buildings during school hours starting in mid-August necessitated a longer installation period. All building work was started on time but couldn’t be finished before school opened.
  + Smyrna School Administration was aware of this protracted installation time and prepared the contract expiration extension letter well in advance, thinking that was all they needed to do to be E-rate compliant.
* Smyrna was not aware of the SPI Denial until 11/14/2016 when Under/Comm emailed with news that 3 of the 8 FRNs had been denied for Reasons stated below in **Invoicing**.
* By that date, the Service Delivery Deadline Extension request window was closed and there was no way to refile.

**Invoicing**

* “Invoice Deadline Extension Requests” or IDERs were filed by State E-Rate Coordinator on 9/23/2016 for all FRNs on this Form 471 to set the new Invoicing Deadline of 5/30/2017.
* First SPI was filed on 10/26/2016, fully anticipating that all FRNs would be paid but they were denied on 10/27/2016 with these notes:
  + Reason Code 224: Billed Date After Contract Expiration Date
  + Reason Code 285: Billed Date Outside of Funding Year
* Thinking that the IDER was filed to answer the Reason Code 224, a second SPI was filed on 12/12/2016 but denied on 12/16/2016 for the same two reason codes. Only then was it apparent that USAC did not perform the SDDE.
* On 01/19/2017, USAC’s Mick Kraft was consulted to explain the problems and offer guidance as to “next steps” to getting this project through the SPI denial problems.

**Contracting**

* The original Contract Expiration Date was 06/30/2016. A contract extension letter was issued on 04/01/2016 to Extend Expiration to 01/31/2017.
* SPI was denied on 10/27/2016 stating that the reason was “Billed Date After Contract Expiration Date” under Reason Code 224 (see above).
* A second SPI was filed and denied on 12/16/2016 for same reasons.
* Customer Service Case #22-936457 was opened by Cathy Carley who told Smyrna to file Form 500 to request Contract Expiration Date (CED) Extension.
* Following that guidance, Smyrna filed Form 500 on paper on 01/27/2017 and later in EPC as the Form 500 came online on 2/27/2017.
* PIA Inquiry on the Form 500 required applicant revisions and was completed on 03/22/17.
* Form 500 Contract Expiration Date Extension was **Approved by USAC** on 04/03/2017 to change CED from 06/30/2016 to 12/31/2016. See attached “SMYRNA Form500 CED Chg dtd 4-3-17.pdf”
* This Denial Reason is now resolved and should no longer prevent SPIs from being Approved.
* This 04/03/2017 approval is the extent of USAC’s ability to address the SPI denial.

**E-Rate Program Rules**

* The original E-rate “Account Administrator” (AA) and Technology Director for the Smyrna School District, David Brown, prepared all FY 2015-16 Category 2 project plans, Forms 470/471 and did all the necessary E-rate tasks. Mr. Brown attended all E-rate training classes and learned all the E-rate Program Rules.
* Mr. Brown took an extended leave from the District starting in August, 2015 and permanently left the District in March, 2016. Because of the sudden leave, there was no time to do an E-rate knowledge transfer and the E-rate tasks fell to Gerard Gallagher, the District Business Manager.
* While Mr. Gallagher assumed the “Account Administrator” role, he had missed all the training classes and was playing “catch-up” on all the projects and tasks that Mr. Brown had previously managed.
* These tasks included issuing Invoice Deadline Extension Requests, Service Delivery Deadline Extension requests, and a myriad of other E-rate responsibilities. While he did a valiant job of handling E-rate in addition to all his Business Manager duties, he came into the job rather unprepared. It showed most noticeably in the problems with the IDER and SDDE which led to this Appeal.
* The complexity of E-rate with its myriad of rules is nearly impossible for a beginner to grasp. Mr. Gallagher came in after-the-fact to finish up the Cat 2 project and bring it to closure. The very small ministerial/clerical error on a “Submit a Question” should not have led to this major problem getting SPIs approved.
* The impact of this Denial on the Smyrna School District is devastating. Under the proposed State budget for next year, the School District is at risk of losing $1,654,701 in State resources. This reduction may necessitate the elimination of an estimated 76 instructional positions. The denial of this appeal would result in the District bearing additional unforeseen expenses which could necessitate a further reduction of 2 to 3 positions. These reductions will directly impact on the District's ability to provide instruction through increases in class size, reduction in related arts and non-core subject areas as well as pupil support services.
* Until now, Under/Comm has been a very willing partner on many school projects but this first-year Category 2 experience has been devastating to them. This $116,537.28 is 11.4% of Under/Comm’s annual income. Their average yearly net profit runs between 4 and 5%. If they are capable of surviving the loss of cash flow, it will take Under/Comm a minimum of 3 to 4 years to recover from that loss. This estimate does not take into consideration the additional costs that may be associated with loans or lines of credit that will be needed in order to maintain their cash flow.
* Under/Comm is a small company but in the State of Delaware, they shine as a vendor that is much respected with an excellent reputation. Under/Comm is one of just a few quality vendors reliable enough to work in the demanding K-12 environment with the shortened access periods over summer breaks and holiday weeks. The time compression to complete installations is very tough and especially on a small company without unlimited resources. The delay and potential loss of this E-rate reimbursement has made Under/Comm afraid to accept more E-rate jobs. Who can blame them when the financial impact is so devastating? Delaware needs Under/Comm and other vendors like them to bid our K-12 projects and give us most competitive prices. With this unwieldy process and the potential to lose funding on a tiny mistake, it has already shown up in fewer bids and higher prices now 3 years into the program. E-rate has earned a black eye with many vendors who simply cannot afford the risk of taking on any more E-rate jobs.