

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of:)	
)	
Request for Review of)	
Of the Decision of the)	
Universal Service Administrator by)	
)	
Cumberland County School District)	CC Docket No. 02-6
BEN Number: 126975)	
)	
Schools and Libraries Universal Service)	Application Number 264487
Support Mechanism)	
)	
Wireline Competition Bureau)	
)	

REQUEST FOR REVIEW AND/OR WAIVER

Pursuant to sections 54.719 and 54.722 of the Commission's rules,¹ the Cumberland County School District (Cumberland or the District) hereby respectfully requests a review of a Universal Service Administrative Company (USAC) decision to rescind E-Rate funds disbursed in Funding Year 2001.

¹ 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a)

SUMMARY

Cumberland received a Form 471 Commitment Adjustment Letter (CAL) on December 7, 2018² from the Schools and Libraries Division of the USAC regarding Federal Communications Commission (FCC) Form 471 Number 264487, Funding Request Number (FRN) 693100. Cumberland appealed the CAL to USAC following the receipt of the letter. Cumberland's appeal was denied as indicated in the USAC's Decision on Appeal Letter received by Cumberland on August 1, 2019³. Cumberland is filing this instant appeal within the 60 days of receipt of the USAC's "Administrator's Decision on Appeal – Funding Year 2001" letter.

Cumberland contends that USAC's attempt to recover funds long after disbursement violated the District's due process rights and was inconsistent with the Commission's stated goal that investigations and recovery efforts be completed within five years. For these reasons, and because the USAC's recovery efforts are contrary to Wireline Competition Bureau directives issued in 2009, Cumberland County School District respectfully requests that the Bureau grant its request for review of the USAC's decision.

In the alternative, Cumberland requests a waiver of the Commission's rules to the extent necessary to grant the requested relief. It is contrary to public policy and does not advance the goals of the E-Rate program to recover funds more than 16 years after they were disbursed in the absence of waste, fraud, or abuse.

² See Attachment A.

³ See Attachment B.

BACKGROUND

Cumberland County School District is a rural school district located in Fayetteville, North Carolina. Cumberland County School District encompasses approximately 658 square miles and serves over 55,000 students with more than 98% of those students living at 185% or below the Federal Poverty Level as shown by their eligibility for the federal free or reduced-price school meal programs in 2018. It also serves the children of families stationed or working at Fort Bragg and Pope Army Airfield.

On December 4, 2000, Cumberland's Executive Director of Technology filed FCC Form 470 Number 563820000320494 which included a request for Telecommunications Services of cellular services. On January 17, 2001, Cumberland's Executive Director of Technology then filed Form 471 Number 264487 which included FRN 693100 which referenced service with 360 Communications Company d.b.a. Alltel. The services were delivered by Alltel during the 2001 Funding Year at which time the Funding Commitment Decision Letter (FCDL) was received, (07/23/2001) and the Form 486 completed and certified. Alltel filed a Service Provider Invoice (SPI) and received E-Rate funding for these services delivered.

On December 7, 2018, Cumberland received a Form 471 Commitment Adjustment Letter seeking recovery of \$21,440.00 in funding from Funding Year 2001. The USAC cited the following as its reasons for seeking recovery:

"Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be reduced by \$21,440.00. The request for funding included 500 free refurbished bag phones at \$40.00 each and 300 of free

Motorola Profile cellphones at \$40.00 each. According to FCC rules, the entity must pay the entire undiscounted portion of the cost of any services it receives through the schools and libraries program for eligible products and services which were competitively bid and at the discount level to which the applicant is entitled. Provision of free services or products by the service provider constitutes a rebate of the non-discount portion of the supported services. Moreover, offering of free services provides a discount level to applicants greater than to which the applicant was entitled or subsidizes ineligible products or services. Program rules are violated if the funding request does not reduce the pre-discount cost of services by the fair market value of free products or services. The request for funding included 500 of free refurbished bag phones 300 of free Motorola Profile cellphones with a market value of \$40.00 which, at the applicants' 67 percent discount rate, resulted in an improper commitment of \$21,440.00. Accordingly, your funding commitment has been reduced by \$21,440.00 to reflect deduction of the fair market value of free products from the total pre-discount cost of services. USAC has determined that the applicant is responsible for this rule violation and will seek recovery of \$21,440.00 in improperly disbursed funds from the applicant"

On January 31, 2019, Cumberland filed a timely appeal of the CAL. In its appeal, Cumberland noted that documentation retention mandates in 2007 were only five years⁴ and the last date of service for the disputed FRN would have been June 30, 2002. Because the Commitment Adjustment Letter was sent more than 16 years after that date; Cumberland, not unlike the USAC, was unable to locate any records associated with this request.

USAC denied Cumberland's appeal on August 1, 2019, stating the following as its reasons for denial:

⁴ See *Fifth Report and Order*, 19 FCC Rcd 15808, 15823-24, (released August 13, 2004). (*Fifth-Report and Order*) para. 47

“After a thorough investigation, it had been determined that this funding commitment must be reduced by \$21,440.00. The request for funding included 500 free refurbished bag phones at \$40.00 each and 300 of free Motorola Profile cellphones at \$40.00 each. According to FCC rules, the entity must pay the entire undiscounted portion of the cost of any services it receives through the schools and libraries program for eligible products and services which were competitively bid and at the discount level to which the applicant is entitled. Provision of free services or products by the service provider constitutes a rebate of the non-discount portion of the supported services. Moreover, offering of free services provides a discount level to applicants greater than to which the applicant was entitled or subsidizes ineligible products or services. Program rules are violated if the funding request does not reduce the pre-discount cost of services by the fair market value of free products or services. The request for funding included 500 of free refurbished bag phones 300 of free Motorola Profile cellphones with a market value of \$40.00 which, at the applicant’s 67 percent discount rate, resulted in an improper commitment of \$21,440.00. Accordingly, your funding commitment has been reduced by \$21,440.00 to reflect deduction of the fair market value of free products from the total pre-discount cost of services. USAC has determined that the applicant is responsible for this rule violation and will seek recovery of \$21,440.00 in improperly disbursed funds from the applicant.”

As indicated, USAC denied the appeal; however, the decision did not recognize that Cumberland no longer has the documentation on file nor did USAC address Cumberland’s discussion of the document retention requirements in effect in 2001.

Cumberland County School District herein timely files its request for review and/or waiver with the Commission⁵ of the recovery of \$21,440.00 of FRN 693100 in the Schools and

⁵ 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a)

Libraries Division of the USAC CAL, and contends that these funds were disbursed appropriately within the rules of the E-Rate program. In the alternative, Cumberland requests a waiver of the Commission's rules to the extent necessary to grant the requested relief.

DISCUSSION AND ARGUMENT

I. DUE PROCESS

Seeking recovery of funds this long after they were disbursed violates Cumberland's due process rights. USAC is seeking to recover funding that was committed and disbursed over 16 years ago. This length of time between funding year and CAL is well beyond the recordkeeping requirements applicable to Funding Year 2001. The Commission established a five-year recordkeeping requirement in 2004, and extended it to ten years in 2014.⁶ Accordingly, there is no justification for expecting Cumberland to have retained any documents from Funding Year 2001 for more than five years. By issuing these CAL so long after the funding year in question, almost two decades, how can the District be expected to exercise its right of appeal?

The Commission was quite clear in the *Fifth Report and Order* stating "We believe that some limitation on the timeframe for audits or other investigations is desirable in order to provide beneficiaries with certainty and closure in the E-rate applications and funding."⁷

Additionally, the Commission went on to state "[t]herefore, in this Order, we amend section 54.516 of our rules to require both applicants and service providers to retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular Funding Year."⁸

⁶ See *Fifth Report and Order*, 19 FCC Rcd 15808, 15823-24 para. 47; *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8974-75 para. 262 (2014) (*First Modernization Order*).

⁷ *Id.*, para. 32.

⁸ *Id.*, para. 47.

Since the time for retaining all records related to the application has lapsed for over twelve years, Cumberland does not have any documentation relating to FRN 693100.

Attached to the CAL received by Cumberland was a document entitled: “FAQ (Frequently Asked Questions) for Commitment Adjustment (COMAD)/Recovery of Improperly Disbursed Funds (RIDF)” which indicated:

“What do I do if I no longer have documentation? If you no longer have documentation in support of the funding request, please contact USAC. We will provide copies of documentation that was submitted by the applicant or service provider from our files that is related to the issue identified in the COMAD and/or RIDF. To request documentation, contact the Schools and Libraries staff at SLCompliance@usac.org.”⁹

As this was applicable in this instance for Cumberland, a number of emails¹⁰ were sent requesting any documentation behind the reason of the decision to send the CAL by USAC for the rescinding of funds. Unfortunately, no documentation was forthcoming from the request. Therefore, Cumberland has no choice but to file an appeal. Hearing nothing, Cumberland filed an Appeal with USAC as directed in the CAL letter, not understanding why there were no results and no communications whatsoever, from the request for documentation.

Further Cumberland finds it odd that USAC starts the explanation for denial paragraph in the USAC CAL letter and the Administrator’s Decision on Appeal – Funding Year 2001, “After a thorough investigation...”¹¹ One would think that a “thorough investigation” would yield

⁹ See Attachment C.

¹⁰ See Attachment D.

¹¹ See Attachment B.

documentation, and yet, after many requests for this documentation, nothing was forthcoming from USAC to Cumberland. In the interests of due process and fairness, how can Cumberland defend itself when USAC holds all of the information and is not willing to furnish any documentation?

Since the SLC Compliance staff and USAC customer service staff cannot find any documentation that a competitive violation existed, Cumberland finds it difficult to process or comprehend why the CAL was sent in the first place. This letter to rescind funding now places the burden of proving a negative on the School District long after the record retention deadline related to the application for receipt and delivery of services has passed.

Further complicating matters, many of the school personnel have changed and left the district, and there is no one within the Cumberland staff that was involved in the alleged E-Rate free services violations in the CAL. Therefore, finding anyone to even speak with, let alone locate any documentation for the district to be able to defend against the alleged competitive bidding violations, has become impossible – nor is it required by regulations. By default, Cumberland should not have the burden of proof in this instance, as the onus of providing documentation to all allow any rescinding of funds rests with the USAC.

Any relevant documentation in the District's possession is long gone, as are the Cumberland personnel who handled E-Rate in Funding Year 2001.

Additionally, it is impossible to find anyone who knew about these allegations within the company that supposedly gave the information to USAC as the company, Alltel, does not exist anymore because Verizon acquired Alltel in 2008. The FCC approved the Verizon

Wireless/Alltel transaction on November 4, 2008.¹² The companies closed their transaction on January 9, 2009.¹³

Alltel was acquired in 2009 and now in 2019 – a decade later, there is no one to contact at Verizon for any understanding of what this CAL Letter is referencing.

Finally, as conditions of the Verizon acquisition of Alltel, the FCC required that Verizon Wireless divest licenses and associated business units in 105 of the affected markets in order to preserve and promote mobile competition in these markets. In the Verizon-AT&T Transfer, the FCC approved the transfer to AT&T of licenses and business units in 70 of these markets. The great majority of these markets cover predominantly rural area of the United States. The FCC approved this final Alltel related transaction in 2010,¹⁴ approximately 8 ½ years before the CAL Letter was sent to Cumberland County Schools.

All of these mergers and acquisitions make it all the more impossible to understand from who and where the information in the CAL Letter was obtained, or to find within the Service Provider's records the details of the alleged "Free Services". Cumberland cannot defend itself against something that has no basis or documentation other than a letter that has information from an FRN that is over 17 years old. USAC's unexplained delay in seeking recovery of these funds thus violates Cumberland's due process rights.

¹² See *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling*, WT Docket No. 08-95, *Memorandum Opinion and Order*, FCC 08-258, (rel. Nov. 10, 2008) ("Verizon Wireless/Alltel Order").

¹³ *Verizon Wireless Completes Purchase of Alltel; Creates Nation's Largest Wireless Carrier*, News Release, Verizon Wireless, Jan. 9, 2009

¹⁴ See *Application of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, FCC 10-116, *Memorandum Opinion and Order* (rel. June 22, 2010) (*Verizon-AT&T Transfer*)

II. TIME-BARRED

Cumberland County School District has observed that over the past two years, the Commission has declined to recognize any formal temporal limitation on recovery actions by USAC. In the *Net56 Order*, the Commission determined that the five-year investigation period it had previously established in the *Fifth Report and Order* is a “policy preference” and “not an absolute bar to recovery.”¹⁵

In the *Net56 Order* the Commission stated that the USAC had concluded its inquiry within five years of the funding disbursement and the resulting action fell within a reasonable time thereafter.¹⁶

Unlike the *Net56 Order* where an investigation was initiated within five years of the last date to receive services, there was absolutely no audit or investigation directed at Cumberland prior to the Commitment Adjustment letter. The *Fifth Report and Order* is clear on that point stating: “Under the policy we adopt today, USAC and the Commission shall carry out any audit or investigation that may lead to discovery of any violation of the statute or a rule within five years of the final delivery of service for a specific funding year.”¹⁷

¹⁵ See *Application for Review of a Decision of the Wireline Competition Bureau by Net56, Inc., Palatine, Illinois*, CC Docket No. 02-6, Memorandum Opinion and Order, 32 FCC Rcd 963, 966 para 9 (2017) (*Net56 Order*).

¹⁶ *Id.*, para. 9.

¹⁷ See *Fifth Report and Order* para. 32.

More recently, in its *Blanca Order*, the Commission rejected an argument that the Supreme Court’s decision in *Kokesh v. SEC* imposed the general federal five-year statute of limitations in 28 U.S.C. § 2462 on USAC recovery actions.¹⁸

But even taking these Commission orders into account, USAC must still respect the Commission’s unequivocal preference for concluding investigations within five years. Understanding for the Commission’s policy preference is particularly important where, as is the case here, the facts can be distinguished from the *Blanca Order*.

In *Blanca*, the Commission determined that the federal five-year statute of limitations provision was not applicable to Blanca because the recovery at issue was not a penalty but “merely recovers for the USF a windfall to which Blanca was not entitled.”¹⁹ In this case, USAC’s recovery effort can only be characterized as a penalty. Unlike Blanca, Cumberland did not receive a “windfall”: USAC disbursed funds that paid for E-Rate eligible services that the District used to provide educational opportunities for its students, all in furtherance of the E-Rate program’s statutory goals, and the District paid its share for the services purchased.

And again, the commission reiterates this further in *Fifth Report and Order*: “For consistency, our policy for audits and other investigations mirrors the time that beneficiaries are required to retain documents pursuant to the rule adopted in this order. We believe that conducting inquiries within five years strikes an appropriate balance between preserving the

¹⁸ See *Blanca Telephone Company Seeking Relief from the June 22, 2016 Letter Issued by the Office of the Managing Director Demanding Repayment of a Universal Service Fund Debt Pursuant to the Debt Collection Improvement Act*, CC Docket No. 96-45, Memorandum Opinion and Order and Order on Reconsideration, 32 FCC Rcd 10594, 10611-12 paras. 44-45 (2017) (*Blanca Order*).

¹⁹ *Id.*, para. 45.

Commission's fiduciary duty to protect the fund against waste, fraud and abuse and the beneficiaries' need for certainty and closure in their E-rate application processes.”²⁰

USAC violated clear Commission regulation when issuing a Commitment Adjustment to Cumberland by failing to contact the District regarding an audit or investigation within 5 years of the last date to receive services. As the commission explained above, a balance must be preserved between USAC's fiduciary duty and beneficiaries' need for certainty and closure in their E-Rate application processes. Allowing USAC to reach back more than 16 years with no documentation to support its position and to pierce Cumberland's certainty and closure in its E-Rate application process is the very definition of imbalance when weighing the costs and benefits of these competing interests.

The cost-effective retention and disposal of records (evidence) through the normal course of business is one of the reasons why statutes of limitations exist.

As the Supreme Court has explained, “[s]tatutes of limitations are intended to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.”²¹ That is exactly what has happened here: certain witnesses have disappeared, others do not have clear memories of events that occurred over 16 years ago, and the District – nor USAC, can verify that it has any documents. Requiring Cumberland to maintain information on events that occurred more than 16 years ago would be an undue burden on the school district and would create costs and expenses that would detract from Cumberland's primary mission, which is, “to provide a

²⁰ *Id.*, para 33.

²¹ *See Gabelli v. SEC*, 568 U.S. 442, 449 (2013) (quoted authority omitted).

safe, positive, and rigorous learning environment to prepare lifelong learners to reach their maximum potential.”²²

The funding commitment adjustment sought by USAC is a penalty, not fraud, waste or abuse, under the statute of limitations. A penalty addresses a wrong against the public, not an individual, and is sought for the purpose of punishment and deterrence, not just compensation of a victim.²³ Rescission of E-Rate funding meets this definition, because there is no individual that is a victim. USAC seeks the return of funding to address a “wrong” against the E-Rate program and to recoup money for the Universal Service Fund on behalf of the federal government. The commitment adjustment thus constitutes a penalty for purposes of the Section 2462 statute of limitations.

The only purpose for recovery here would be to punish the School District and deter future violations by E-Rate participants, which means that the statutory limitation should apply.

Alternatively, the funding adjustment sought by USAC could also be considered a forfeiture under the statute of limitations. The common meaning of “forfeiture” is the requirement that a person turn over money or property because of a breach of a legal duty.²⁴ Rescinding of E-Rate funding meets this definition, because USAC would require Cumberland to turn over its money because it purportedly did not comply with the E-Rate rules regarding

²² See <http://ccs.k12.nc.us/ccs-mission-vision-core-values-strategic-priorities/>

²³ See *Kokesh v. SEC*, 581 U.S. ___, 137 S. Ct. 1635, 1642 (2017).

²⁴ See *SEC v. Graham*, 823 F.3d 1357, 1363 (11th Cir. 2016).

“free services”.²⁵ The commitment adjustment thus constitutes a forfeiture for purposes of the Section 2462 statute of limitations.

If USAC’s actions do not violate the letter of the Commission’s orders regarding the timely completion of investigations and recovery actions, they certainly violate the spirit. Cumberland asks that the FCC reverse USAC’s decision.

III. COST-ALLOCATION

By 2003 the Commission realized that cost allocation was difficult to obtain. In the *Third Report and Order* the commission stated “[w]e specifically amend our rules to make clear how applicants and service providers should allocate costs of a service or product that, although generally eligible for universal service support, contains both eligible and ineligible components. ...the marketplace has seen an evolution of products and services that contain both eligible and ineligible features but which are not commercially available on an unbundled basis. Thus, the issue has evolved ... to one of determining what components or features of an otherwise eligible service or product may be ineligible when the service or product is not commercially available on an unbundled basis.”²⁶

In 2010, The *Gift Rule Clarification Order* addressed questions received by the FCC regarding the Commission’s decision in the *Schools and Libraries Sixth Report and Order*

²⁵ The Communications Act actually treats the terms “penalty” and “forfeiture” synonymously. *See Worldwide Indus. Enters.*, 220 F. Supp. 3d at 337-38 (referring to a “forfeiture penalty”).

²⁶ *Order, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order, 18 FCC Rcd 26912, 26927 (2003) (*Schools and Libraries Third Report and Order*).

regarding, among other things, the E-Rate program gift rules.²⁷ The *Clarification Order* specifies that “service providers cannot offer special equipment discounts or equipment with service arrangements to E-rate recipients that are not currently available to some other class of subscribers or segments of the public.”²⁸

At the same time, the *Clarification Order* explains that because “many cell phones are free or available to the general public at a discounted price with the purchase of a two-year service contract...[s]chools and libraries are free to take advantage of these deals, without cost-allocation...”²⁹

Clearly the Commission understood that many times wireless service providers made it a policy to offer cell phones at a discounted price or no cost to the general public, of which Cumberland is considered. Evidently, USAC is not following the Commission’s guidance. Even if one takes into account the Commission’s clarification of the bundled ineligible components in 2014, “[w]e therefore determine that E-rate applicants must deduct the value of ineligible components bundled with eligible services unless those ineligible components qualify as

²⁷ *Order; Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762 (2010) (*Schools and Libraries Sixth Report and Order*).

²⁸ *Clarification Order*, para. 11.

²⁹ *Id.*, n.25.

“ancillary” to the eligible services under the Commission’s rules.³⁰ *This revised interpretation of our rules shall be effective beginning in funding year 2015.*³¹ [Emphasis Added]

All of these orders and actions transpired after the end of Funding Year 2001 in which FRN 693100 occurred.

IV. LIABILITY

Additionally, by issuing the CAL Letter, USAC failed to follow the Commission’s rules governing the recovery process. USAC also failed to follow the Commission’s directive to make the initial determination as to which party bears liability for the recovery only after considering factors in determining which party, Applicant or Service Provider, bears liability for the recovery only after considering factors such as which party actually committed the statutory or rule violation in question, if indeed there is a violation. In the Recovery Letter at issue here, USAC articulates no basis for its liability determinations, relying instead on conclusory assertions placing liability with Cumberland.

In the CAL Letter, USAC failed to comply with the FCC’s directive for liability to be allocated between the applicant and service provider based on consideration of specific factors.

³⁰ The Commission rules state that “[i]f a product or service contains ineligible components that are ancillary to the eligible components, and the product or service is the most cost-effective means of receiving the eligible component functionality, without regard to the value of the ineligible component, costs need not be allocated between the eligible and ineligible components. Discounts shall be provided on the full cost of the product or service. An ineligible component is ‘ancillary’ if a price for the ineligible component cannot be determined separately and independently from the price of the eligible components, and the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality.” 47 C.F.R. § 54.504(e)(2). *See also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order, 18 FCC Rcd 26912, 26927, para. 37 (2003) (*Schools and Libraries Third Report and Order*).

³¹ *Order; Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 29 FCC Rcd 5457 (7) (*Cost Allocation of Bundled Services in E-Rate Program*).

In directing USAC to pursue this recovery, the Commission directed “USAC to make the determination, in the first instance, to whom recovery should be directed in individual cases,”³² as required. In the *Fourth Report and Order*, the Commission ruled that “USAC shall consider which party was in a better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation.”³³

Cumberland can only guess at the factors which led to liability being placed solely with the district as there is no direct statutory violation defined, nor is there a clear explanation of determination of liability. USAC does not offer the possibility that the parties should be jointly liable, or even that the liability rests with the service provider, but has decided, without merit that Cumberland is liable and yet the USAC funds were paid out to the service provider, Alltel Communications, through a service provider invoice (SPI), and not Cumberland.

³² See *Schools and Libraries Universal Service Support Mechanism*, Order on Reconsideration and Fourth Report and Order, 19 FCC Red 15252, ¶ 15 (2004) (*Fourth Report and Order*).

³³ *Id.*, at ¶ 10.

WAIVER REQUEST

In the alternative, a waiver of the Commission's rules is in the public interest. Cumberland respectfully requests that the Bureau waive the Commission's rules to the extent necessary to grant the requested relief. The only record Cumberland has is the CAL letter stating the reason for the rescinding of funds, though not once in 16 years did USAC indicate that there was an issue with the funding of FRN 693100. It is inconsistent with the public interest to force an applicant to try to defend itself against allegations of rule violations under these circumstances.

Any of the Commission's rules may be waived if good cause is shown.³⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁶

Attempting to recover funds from 2001-2002, based on missing documentation that the Cumberland was not required to retain beyond the original five years, harms Cumberland and its students. Waiving the rules in this situation will better serve the purpose of the E-Rate program to insure that [e]lementary and secondary schools and classrooms . . . and libraries should have access to advanced telecommunications services.”³⁷

³⁴ 47 C.F.R. § 1.3.

³⁵ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³⁶ *Id.*; See Also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

³⁷ 47 U.S.C. § 254(h).

CONCLUSION

The *Fifth Report and Order* states: “Under the policy we adopt today, USAC and the Commission shall carry out any audit or investigation that may lead to discovery of any violation of the statute or a rule within five years of the final delivery of service for a specific funding year.”³⁸

Again, the commission reiterates this further in *Fifth Report and Order*: “For consistency, our policy for audits and other investigations mirrors the time that beneficiaries are required to retain documents pursuant to the rule adopted in this order. We believe that conducting inquiries within five years strikes an appropriate balance between preserving the Commission’s fiduciary duty to protect the fund against waste, fraud and abuse and the beneficiaries’ need for certainty and closure in their E-rate application processes.”³⁹

The final delivery of service for FRN 693100 was June 30, 2002. The CAL sent to Cumberland, is dated December 7, 2018 - this is more than 16 years after the date last date of service and more than three times the 5-year document retention deadline has passed. Cumberland and USAC, as proven in the unanswered emails, have demonstrated more than once that neither party has any records regarding this FRN.

The lack of documented proof of the alleged free services makes it clear, by default that the CAL and the subsequent USAC decision to deny Cumberland’s appeal has no basis and therefore, cannot be enforced.

³⁸ See *Fifth Report and Order*, para 32.

³⁹ *Id.*, para 33.

There is no alleged fraud, waste, or abuse in this situation. Therefore, there is no harm to the E-Rate program in the event of a waiver being issued to Cumberland.

For the foregoing reasons, Cumberland asks the FCC to grant this request for review, or in the alternative waive the Commission's rules to the extent necessary to grant the relief requested.

Respectfully submitted
on behalf of Cumberland County School District

/s/ Rosemary Enos
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September 30, 2019

ATTACHMENT A

Christopher Young
CUMBERLAND COUNTY SCHOOL DIST
P.O. BOX 2357
FAYETTEVILLE, NC 28302



Commitment Adjustment Letter

Christopher Young
CUMBERLAND COUNTY SCHOOL DIST
P.O. BOX 2357
FAYETTEVILLE, NC 28302

12/7/2018

Our review of your Schools and Libraries Universal Service Support Program (or E-rate) funding request has determined funds were committed in violation of Federal Communications Commission (FCC) rules. You have 60 days from the date of this letter to appeal the following decision(s). For more detailed information see below.

Total commitment adjustment: \$21,440.00

Total amount to be recovered: \$21,440.00

<i>FCC Form 471</i>	<i>FRN</i>	<i>Commitment adjustment</i>	<i>Total amount to be recovered</i>	<i>Explanation(s)</i>	<i>Party to recover from</i>
264487	693100	\$21,440.00	\$21,440.00	Free Services	Applicant

See Attached Adjustment Report for more information on the specific FRNs and Explanations listed above.

Commitment Adjustment

FCC rules require the Universal Service Administrative Company (USAC) to rescind commitments and recover funding when it is determined that funding was committed and disbursed in violation of the rules. This letter notifies you that USAC will be adjusting your funding commitment(s) and provides information on how to appeal this decision.

This is NOT a bill. If disbursed funds need to be recovered, USAC will issue a Demand Payment Letter. The debt referenced in the Demand Payment Letter will be due within 30 days of that letter's date. Failure to pay the debt may result in interest, late payment fees, and administrative charges and will invoke the FCC's "Red Light Rule."

FCC's Red Light Rule

The FCC Red Light Rule requires USAC to dismiss pending FCC Form 471 applications, appeals, and invoices or to net disbursements offsetting the debt if the entity responsible for paying the outstanding debt owed to the FCC has not paid the debt or made satisfactory arrangements to pay the debt within 30 days of the Demand Payment Letter. For information on the Red Light Rule, see

<https://www.fcc.gov/licensing-databases/fees/debt-collection-improvement-act-implementation>

To Appeal This Decision

If you wish to contest any part of this letter, you must first file an appeal with USAC to seek review of the decision. Parties that have filed an appeal with USAC and received an adverse decision may, if they choose, appeal USAC's decision to the FCC. Parties seeking a waiver of a codified FCC rule should file a request for waiver directly with the FCC because USAC cannot waive FCC rules. Your appeal to USAC or waiver request to the FCC must be filed within 60 days of the date of this letter.

All appeals filed with USAC must be filed in EPC by selecting "Appeal" from the menu in the top right hand corner of your landing page and providing the requested information.

Your appeal should include the following information. (Because you file the appeal through your EPC account, the system will automatically fill in some of these components for you).

- 1) Name, address, telephone number, and email address for the contact person for this appeal.
- 2) Indicate specifically that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., Commitment Adjustment Letter) and the decision you are appealing:
 - a. Appellant name;
 - b. Applicant name and service provider name, if different from appellant;
 - c. Applicant BEN and Service Provider Identification Number (SPIN);
 - d. FCC Form 471 Application Number and the Funding Request Number (FRN) or Numbers as assigned by USAC;
 - e. "Commitment Adjustment Letter," AND the exact text or the decision that you are appealing.



3) Identify the problem and the reason for the appeal and explain precisely the relief sought. Please keep your appeal to the point, and provide supporting documentation. Be sure to keep a copy of your entire appeal, including any correspondence and documentation. A copy will automatically be saved for you in EPC. USAC will reply to your appeal submission to confirm receipt.

For more information on submitting an appeal to USAC including step by step instructions on how to file the appeal through EPC, please see "Appeals" in the Schools and Libraries section of the USAC website.

As mentioned, parties seeking a waiver of FCC rules or that have filed an appeal with USAC and received a decision may file a request for waiver or appeal USAC's decision to the FCC. Waiver requests or appeals to the FCC must be made within 60 days of the issuance of USAC's decision and include all of the information referenced above for appeals to USAC.

The FCC recommends filing appeals or waiver requests with the Electronic Comment Filing System (ECFS) to ensure timely filing. Electronic waiver requests or appeals will be considered filed on a business day if they are received at any time before 11:59 PM ET. If you have questions or comments about using the ECFS, please contact the FCC directly at (202) 418-0193.

For more information about submitting waiver requests or appeals to the FCC, including options to submit the waiver request or appeal via U.S. mail or hand delivery, visit the FCC's website.

Schools and Libraries Division

cc: Viola Baboola
Alltel Communications

Adjustment Report

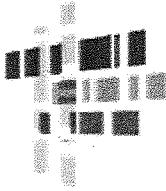
FCC Form 471 Application Number: 264487
Funding Request Number: 693100
Commitment Adjustment: \$21,440.00
Total Amount to Be Recovered: \$21,440.00
Explanation(s): Free Services

Party to Recover From: Applicant
Funding Year: 2001
Billed Entity Number: 126975
Services Ordered: TELCOMM SERVICES
Service Provider Name: Alltel Communications
SPIN: 143008900
Original Funding Commitment: \$49,229.32
Adjusted Funding Commitment: \$27,789.32
Funds Disbursed to Date: \$49,229.32

Funding Commitment Adjustment Explanation

After a thorough investigation, it has been determined that this funding commitment must be reduced by \$21,440.00. The request for funding included 500 free refurbished bag phones at \$40.00 each and 300 of free Motorola Profile cellphones at \$40.00 each. According to FCC rules, the entity must pay the entire undiscounted portion of the cost of any services it receives through the schools and libraries program for eligible products and services which were competitively bid and at the discount level to which the applicant is entitled. Provision of free services or products by the service provider constitutes a rebate of the non-discount portion of the supported services. Moreover, offering of free services provides a discount level to applicants greater than to which the applicant was entitled or subsidizes ineligible products or services. Program rules are violated if the funding request does not reduce the pre-discount cost of services by the fair market value of free products or services. The request for funding included 500 of free refurbished bag phones 300 of free Motorola Profile cellphones with a market value of \$40.00 which, at the applicants 67 percent discount rate, resulted in an improper commitment of \$21,440.00. Accordingly, your funding commitment has been reduced by \$21,440.00 to reflect deduction of the fair market value of free products from the total pre-discount cost of services. USAC has determined that the applicant is responsible for this rule violation and will seek recovery of \$21,440.00 in improperly disbursed funds from the applicant.

ATTACHMENT B



Universal Service
Administrative Co.

Schools and Libraries Division

Administrator's Decision on Appeal - Funding Year 2001

8/1/2019

Rosemary Enos
P.O. Box 39490
Solon, OH 44139

Re: Applicant Name: Cumberland County School District
Billed Entity Number: 126975
Form 471 Application Number: 264487
Funding Request Number(s): 693100
Your Correspondence Dated: 2/4/2019

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's decision for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 693100

Decision on Appeal: Denied

Explanation:

After a thorough investigation, it has been determined that this funding commitment must be reduced by \$21,440.00. The request for funding included 500 free refurbished bag phones at \$40.00 each and 300 of free Motorola Profile cellphones at \$40.00 each. According to FCC rules, the entity must pay the entire undiscounted portion of the cost of any services it receives through the schools and libraries program for eligible products and services which were competitively bid and at the discount level to which the applicant is entitled. Provision of free services or products by the service provider constitutes a rebate of the non-discount portion of the supported services. Moreover, offering of free services provides a discount level to applicants greater than to which the applicant was entitled or subsidizes ineligible products or services. Program rules are violated if the funding request does not reduce the pre-discount cost of

services by the fair market value of free products or services. The request for funding included 500 of free refurbished bag phones 300 of free Motorola Profile cellphones with a market value of \$40.00 which, at the applicants 67 percent discount rate, resulted in an improper commitment of \$21,440.00. Accordingly, your funding commitment has been reduced by \$21,440.00 to reflect deduction of the fair market value of free products from the total pre-discount cost of services. USAC has determined that the applicant is responsible for this rule violation and will seek recovery of \$21,440.00 in improperly disbursed funds from the applicant.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

CC: Rosemary Enos
Cumberland County School District
396 Elementary Drive
Fayetteville, NC 28301- 6267

ATTACHMENT C



Commitment Adjustment (COMAD)/ Recovery of Improperly Disbursed Funds (RIDF)

Why am I receiving a letter for recovery of funds on an old funding year?

USAC is obligated by federal law to rescind commitments and recover improperly disbursed funding. There is no time limit on such actions.

As an example, USAC placed a number of recoveries on hold based on its interpretation of the timeline for recoveries identified in the Fifth Report and Order issued in 2004 by the Federal Communications Commissions (FCC). On January 17, 2017 the FCC issued a decision on an appeal filed by service provider, Net 56 Inc. The FCC explained in this decision that there is no time limit for recovering E-rate funding that was committed and/or disbursed in violation of FCC rules. Additionally, that decision stated that the five-year document retention period, in place at the time, was only an administrative policy and does not negate USAC's obligation to protect the E-rate program from waste, fraud, and abuse.

How does USAC identify a COMAD or RIDF?

COMAD or RIDF letters are issued when program rule violations are discovered during audits, Payment Quality Assurance (PQA) reviews, invoice reviews, appeal reviews, and other investigations or post-commitment reviews.

What is the reason for the Commitment Adjustment (COMAD) or Recovery of Improperly Disbursed Funds (RIDF) letter?

The letter provides an explanation of the rule violation, the amount of recovery being sought, and from whom the recovery is being sought. You have 60 days to appeal the decision contained in this letter before USAC begins recovery actions by issuing a Demand for Payment Letter.

What do I do if I no longer have documentation?

If you no longer have documentation in support of the funding request, please contact USAC. We will provide copies of documentation that was submitted by the applicant or service provider from our files that is related to the issue identified in the COMAD and/or RIDF. To request documentation, contact the Schools and Libraries staff at SLCompliance@usac.org.

NOTE: Effective November 20, 2014, all applicants and service providers are required to retain receipt and delivery records relating to pre-bidding, bidding, contracts, applications process, invoices, provision of services, and other matters relating to the administration of the universal service for a period of at least ten years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request.

When do I appeal to USAC and when do I appeal to the FCC?

Any USAC decision must be appealed to USAC first. You have 60 days from the date USAC issued its decision to submit an appeal to USAC. If you disagree with USAC's decision on appeal, you can appeal USAC's decision to the FCC. You must submit your appeal to the FCC within 60 days of the date when USAC issued the decision. USAC issues decisions through multiple letters including the COMAD letter you received with this FAQ document.

USAC cannot waive program rules. Any requests to waive program rules must be filed as a waiver request to the FCC. For example, instances where you may be requesting a waiver of program rules includes a waiver request of late payment fees, a form filing deadline that you missed, or collection rules.

What if I want to file an appeal with USAC or an appeal or a waiver request with the FCC and USAC does not provide documentation to me in time?

Please refer to your COMAD and/or RIDF Letter for instructions on filing an appeal with USAC. If you need to request documentation, we strongly urge you to make your request promptly. Staff will make every effort to respond to your documentation request within 15 days. If the recovery was the result of an Audit the Audit Report is provided with the COMAD and/or RIDF letter. Please remember that you have 60 days from the date of your COMAD/RIDF letter to file your appeal with USAC.

Is there a payment plan option if I do not have enough money to repay the debt right now?

Yes, there is a payment plan option. However, payment plan agreements usually impose additional requirements on the debtor, such as interest on the balance owed, administrative fees, and possible audit obligations.

Payment plan requests can be submitted to:

Universal Service Administrative Co.
Finance Department
700 12th Street, NW
Suite 900
Washington, DC 20005
Fax: (202) 776-0080

Program participants that wish to request an installment payment agreement must first provide evidence to demonstrate their inability to pay the debt in one payment, and USAC must review and approve the evidence. If your request is approved for further processing, you will be required to execute a written agreement deemed suitable by the FCC. This includes a written installment payment agreement (including a promissory note) to pay the full amount of the debt.

What is a COMAD?

A Commitment Adjustment (COMAD) rescinds or reduces funding on a commitment that was made improperly. The COMAD process is how USAC notifies a program participant that its commitment has been adjusted, and the COMAD letter sent to the program participant provides the rationale for the decision.

For example: A discount reported on an FCC Form 471 was too high, and the commitment calculation was therefore incorrect. USAC must adjust the commitment amount downward to reflect the correct discount rate. Say the pre-discount cost of the service was \$1,000.00 and the discount reported on the FCC Form 471 was 80%. However, when USAC discovered after commitment that the discount should have been 60%, USAC would modify the discount and reduce the commitment from \$800.00 to \$600.00.

What is a RIDF?

A Recovery of Improperly Disbursed Funds (RIDF) occurs when USAC has determined that funds have been improperly disbursed and must be recovered.

For example: USAC improperly paid an invoice for ineligible products/services, so the funds that were disbursed in error must be recovered. In this example, if it was determined that \$1,000 was improperly disbursed, USAC would recover the \$1,000 through a RIDF action.

What is the difference between a COMAD and RIDF?

A COMAD occurs when USAC determines the original commitment was improper. There may or may not be a recovery of disbursed funds associated with a COMAD. A RIDF occurs when USAC determines funds were improperly disbursed. There is always a recovery associated with a RIDF.

ATTACHMENT D

Rosemary Enos

From: Chris Young <chrisyoung@ccs.k12.nc.us>
Sent: Thursday, December 13, 2018 2:23 PM
To: LaTia.Cook@usac.org; Nancy Carpenter; Rosemary Enos
Subject: Re: COMAD Letter

Good afternoon Ms. Cook,

Given the extensive time that has passed since this incident transpired, please provide copies of documentation that was submitted by the applicant or service provider from our files that is related to the issue identified in the COMAD and/or RIDF.

We will begin looking into this situation for you once we have that documentation.

Thank you for your time and we look forward to hearing from you.

Christopher Young | Network Systems Administrator | Technology Dept. | [Cumberland Co.Schools](http://CumberlandCo.Schools) | 910-678-2700



On Mon, Dec 10, 2018 at 3:15 PM LaTia Cook <LaTia.Cook@usac.org> wrote:

Good Afternoon,

You are receiving this email from the Schools and Libraries Division of USAC. We are contacting CUMBERLAND COUNTY SCHOOL DISTRICT inform you that you will be receiving a Commitment Adjustment Letter and/or Recovery of Improperly Disbursed Funds letter regarding an old debt. The debt originated from an Audit from 2001. The COMAD letter will include all of the details regarding the COMAD. You will receive your letter with an FAQ to answer any additional questions you may have.

Thank you.

Tia Cook

Program Analyst

Schools & Libraries

USAC | lcCook@usac.org

The information contained in this electronic communication and any attachments and links to websites are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, or the person responsible for delivering this communication to the intended recipient, be advised you have received this communication in error and that any use, dissemination, forwarding, printing or copying is strictly prohibited. Please notify the sender immediately and destroy all copies of this communication and any attachments.

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Rosemary Enos

From: Rosemary Enos <rpenos@epicinc.org>
Sent: Friday, December 28, 2018 4:13 PM
To: 'SLCompliance@usac.org'
Cc: currieasutton@epicinc.org
Subject: CUMBERLAND COUNTY SCHOOL DISTRICT. 12-07-2018 - REQUEST FOR DOCUMENTATION
Attachments: CAL for FRN 693100.pdf

From the frequently asked questions document:

What do I do if I no longer have documentation?

If you no longer have documentation in support of the funding request, please contact USAC. We will provide copies of documentation that was submitted by the applicant or service provider from our files that is related to the issue identified in the COMAD and/or RIDF.

This is a request for documentation submitted by the applicant or service provider from USAC files related to the issue identified and in support of FRN: 693100 – please see the attached CAL letter for more information.

Thanks,
Rosemary

Rosemary Enos
Epic Communications
P.O. Box 39490
Solon, OH 44139
866-716-3336 (toll free)
866-604-8456 (toll free fax)
216-514-3336 (phone)
216-514-3337 (fax)
216-218-9193 (cell)
rpenos@epicinc.org

Rosemary Enos

From: Rosemary Enos <rpenos@epicinc.org>
Sent: Wednesday, January 23, 2019 5:59 PM
To: 'SLCompliance@usac.org'
Cc: currieasutton@epicinc.org
Subject: RE: CUMBERLAND COUNTY SCHOOL DISTRICT. 12-07-2018 - REQUEST FOR DOCUMENTATION
Attachments: CAL for FRN 693100.pdf

Just wanted to check-in on this request for documentation.

Thanks,
Rosemary

Rosemary Enos
Epic Communications
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