

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of:)	
)	
Request for Review of a decision)	
by the Schools and Libraries Division)	Administrator Correspondence Dated
for Virginia Beach City Public Library)	October 1, 2018
Virginia Beach, VA)	
)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Request for Review

In accordance with Sections 54.719 through 54.721 of the Commission's Rules, Virginia Beach City Public Library (Virginia Beach) appeals this decision of the Schools and Libraries Division of the Universal Service Administrative Company (Administrator). The Administrator improperly denied two Funding Requests and denied the subsequent Virginia Beach appeals.

In accordance with longstanding precedent and clear procedures and the Federal Communications Commission (Commission) Aiken Order, Virginia Beach asks the Commission to overturn this decision and remand this application to the Administrator with instructions to follow provisions of the Aiken Order.¹ Clear Commission regulations were not followed in these cases.

This appeal comes timely submitted within 60 days of the Administrator decision.

¹ Aiken County Public Schools, FCC 07-61, rel. May 8, 2007, CC Docket 02-6. At 11: *Additional Processing Directives for USAC*.

Requestor: Virginia Beach City Public Library
Billed Entity Number: 210219
FCC Registration Number 0011920535
Funding Request Number: 1899058709, 1899054434
Form 471 Number: 181025007

Background

For Fund Year 2018 Virginia Beach requested E-Rate funding for a wide array of network equipment and maintenance of equipment. During application review the Administrator questioned the eligibility of products and services here under appeal. Virginia Beach timely and accurately replied to Administrator requests and provided valid third-party verification of product eligibility.

In the case of FRN 1899058709, the Administrator reviewer determined three of the five items associated with this FRN were ineligible for funding. Two items – CON-SSNT-CT5520K9 and Con-SSNT-C1ASRXK1 were 65 and 41 percent eligible, according to an Administrator review question.² Virginia Beach responded with third-party documentation showing partial eligibility of all items and agreed a *portion* of the items were ineligible.³ In its response, Virginia Beach supplied a detailed cost allocation for all of the items based on the ineligibility provided by the third-party.⁴ Without further communication with Virginia Beach, the Administrator denied the entire FRN citing the Commission’s 30 percent rule, contending:

“Thirty percent or more of this FRN includes a request for CON#SSSNT#CT5520K9, CON#ECMUS#C1FPAIR, CON#ECMUS#C1APAIK, CON#SSSNT#C1ASRXK1 and CON#ECMUS#CFPASR11 an ineligible product(s) or service(s) based on Program rules.”⁵

² Attachment 1 - PIA 1899058709 Inquiry and Response, Pages 1-2.

³ Attachment 1 - PIA 1899058709 Inquiry and Response, Page 3.

⁴ Attachment 1 - PIA 1899058709 Inquiry and Response, Page 4.

⁵ Attachment 2 - Funding Commitment Decision Letter Dated August 10, 2018, Page 7 denying FRN 1899058709.

For FRN 1899054434, the Administrator determined two line-items, .006 and .007, were partially eligible and ineligible for funding.⁶ Line item .006 for CISCO product number C1A1TCAT93002-5Y was 53 percent eligible, according to Administrator correspondence, and line item .007, CISCO product number C1AA1TCAT93001-5Y was determined to be completely ineligible. Like the previous FRN, Virginia Beach provided third party documentation and a detailed cost allocation showing partial eligibility of both items.⁷ The Administrator then contacted Virginia Beach a second time with an intent to modify line-item 006, requesting a detailed cost allocation.⁸ Again, Virginia Beach responded with third party documentation and cost allocation for both items which listed the ineligible unit prices and allocation of costs to all recipients of service.⁹ In its response, Virginia Beach drew attention to the difference between the Administrator's total funding amount to be included on the revised Funding Request and its own calculations.

Without further communication with Virginia Beach, the Administrator reduced line-item 006 as requested in Virginia Beach's August 2, 2018 response and denied line-item 007 contending: "The amount of the funding request was changed from \$501,639.92 to \$444,117.46 to remove C1A1TCAT93002-5Y \$41,520.46 and C1AA1TCAT93001-5Y \$16,002.00 the ineligible products."¹⁰

Discussion

Without question, the Administrator erred with these denials. The Aiken Order provided absolutely clear instructions to the Administrator when evaluating Funding Requests it determines to be partially eligible for funding, particularly in light of the 30 percent rule. When

⁶ Attachment 3 - PIA 1899054434 Inquiry and Response, Page 1-2.

⁷ Attachment 3 - PIA 1899054434 Inquiry and Response, Page 3-4.

⁸ Attachment 4 - PIA 1899054434 Other Issues Inquiry and Response, Pages 1-3.

⁹ Attachment 4 - PIA 1899054434 Other Issues Inquiry and Response, Pages 5-7.

¹⁰ Attachment 2 - Funding Commitment Decision Letter Dated August 10, 2018, Page 6 denying FRN 1899054434.

evaluating Funding Requests with partial eligibility, before denying funding due to the 30 percent rule, the Administrator must provide applicants with the opportunity to refute Administrator determination or segregate ineligible items on a new Funding Request while funding the eligible portion of the Funding Request.¹¹

During review, and documented here, the Administrator determined a portion of both Funding Requests were *eligible* for funding. Virginia Beach responded with third-party verification that a larger portion of both Funding Requests were eligible for funding and timely responded to Administrator queries. With no further communication, the Administrator denied funding for FRN 1899058709 in its entirety and denied funding for FRN 1899054434 line-item .007.

In accordance with specific instructions in Aiken, the Administrator should have continued review and offered Virginia Beach the opportunity to fund the eligible portion of both Funding Requests and issue new Funding Requests for the ineligible portions. Virginia Beach could appeal denial of the new Funding Requests while receiving discounted service for portions of existing Funding Requests deemed eligible.

Because of this Administrator failure, these Funding Requests must be remanded to the Administrator for further evaluation and funding of eligible portions.

Conclusion

Without question, the Administrator failed to implement provisions of the Aiken Order when denying these Funding Requests. Virginia Beach asks the Commission to overturn these

¹¹ Aiken at 11: "As of the effective date of this Order, when USAC has reason to believe that an applicant's funding request includes ineligible services, USAC shall: (1) inform the applicant promptly in writing of deficiencies in its funding request, and (2) permit the applicant 15 calendar days from the date of receipt of notice in writing by USAC to revise its funding request to remove the ineligible services or allow the applicant to provide additional documentation to show why the services are eligible. USAC shall advise an applicant, *where there is a disagreement about the eligibility of a service, to resubmit the request for the service at issue in a separate funding request.* (emphasis added).

denials and instruct the Administrator to re-evaluate eligibility of requested items, taking into consideration third party documentation provided to the Administrator during review.

It should be noted here that the CISCO eligibility website did not contain eligibility documentation for CISCO SKUs with the "CON" or "C1" prefixes when this application was filed and certified. During review Virginia Beach requested specific eligibility from the third-party and included that correspondence in its response to Administrator questions.

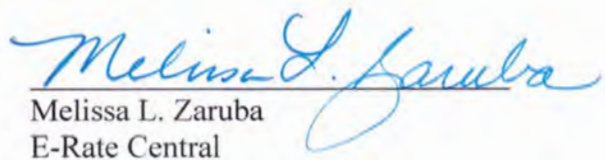
Alternatively, and in the public interest, Virginia Beach asks the Commission to waive any minor program policy or rule violations. There was absolutely no waste, fraud, or program abuse with these funding requests.

Virginia Beach reserves the right to supplement or amend this filing.

Respectfully Submitted this 8th day of November, 2018.

/s/ Eva D. Poole

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