

Federal Communications Commission  
445 12th Street SW  
Washington DC, 20554

11/21/17

Re: Letter of Appeal, USAC's Decision of Appeal for Funding Years 2013-2014 and 2015-2016, issued 9/26/17 and the Revised Funding Commitment Decision letter issued 11/1/2017

Dear Sir or Madam:

I am submitting this letter of appeal regarding denial of E-rate FY 2014 and FY 2015 Funding Request Internet Access on the grounds that all competitive bidding documentation has been retained, and all bids have been fully considered in the selection processes regarding the below funding requests:

Appellant Name: e2e Exchange, LLC  
Applicant Name: Southern Westchester BOCES

FY	471	FRN	Service Provider	Recipient
2013	881531	2430002	Lighttower	Rye City
2015	1000168	2722981	Lighttower	Rye City

### **Appeal Summary**

The denial reasons for all of these FRNs are grossly incorrect. The EPC portal has failed to provide the platform required to properly review and evaluate the FRNs for full E-rate funding.

The denials from the RFCDL issued are grossly incorrect for the following reasons:

- 1.) The selective reviews were issued under multiple 471s under BEN 123677 for Southern Westchester BOCES in the EPC portal. This means specific questions for specific 471s were not issued under their actual application numbers, rather, their own individual 471 request. However, the follow up questions issued were issued under their individual 471s. This made responding to these requests extremely difficult. As a result, the lack of consistency leaves no visible trail between applicant uploads and USAC questions during the PIA and Selective Review which led to USAC making the incorrect determination to deny these FRNs.
- 2.) The EPC upload function is known to us to be prone to errors that created incomplete submissions. We uploaded documentation at least 8 times and the attachments are present but are either incomplete or do not load upon clicking them due to errors within the EPC portal. There was no notification given to us that the uploads had failed. USAC then issued denials were sent out based on these failed upload submissions. We also reached out to USAC with every response to ensure all documentation was received and that USAC confirmed

receipt. USAC did not respond to let us know if anything further was needed to complete the review even though we asked several times.

### **Issues with SWB PIA and Selective Review Processes**

It is clear there have been major issues with the EPC PIA table and the upload documentation function in EPC from our experience. EPC only allows reviews to occur under one form 471, and so EPC has demonstrated it is not an adequate tool to address the review of multiple 471s in one request. By attempting to include the review of many applications, under this one application in EPC, USAC inadvertently created a situation which led to the denials of these funding requests.

The issuance of the selective review was messy, at best, by USAC reviewers and it is due to EPCs structural limitations noted above. It is unclear in EPC where the Selective Review began. There is no original issuance of the review. There is also no single place in EPC that all of the selective review responses and questions are located. USAC outreach dated 11/14 under App# 161003040 is the first Selective Review issuance, but it is labeled as follow up by USAC and claims items are missing from a response. However, the original request and submission is missing. This could mean there are possibly other questions and responses missing. There is no way to know for sure what was requested and was supplied. This makes it impossible to know if USAC's determination of what was originally uploaded is correct.

To add chaos to the confusion, we also see that USAC's outreach listed under 471# 161003040 dated 12/8/16 labeled "Incomplete response reminder" has an answered date of 10/26/16 and an assigned date of 12/8/16. The system shows it was answered before it was issued. Even worse, the denial notifications issued afterwards are dated 12/13/2013. The 15 day response time had not even expired before denials were issued.

This begins to paint a picture of carelessness. Applications are being denied before the response time has expired, there is no clear line of documentation requests, submission, and USAC outreach and responses are missing from the EPC PIA table.

USAC has tried to conduct a massive review with a tool that is not capable of handling such a large request. We have never seen a review of any size conducted in this manner, let alone such a large one. Not enough care was given by the USAC reviewers on how they issued and reviewed these applications. It became easy to deny these FRNs when the picture became very unclear, but it was the process that USAC reviewers implemented that created this confusion. : All of the attached documentation will demonstrate very clearly that all the information that is needed is available. The denial reasons that claim the documentation had not been kept on file, vendor evaluations not completed or consistent, and that full bid copies were not available are completely incorrect.

It has been the consultants experience with this Billed Entity in particular that USAC will work through any and all PIA requests in the best interest of the applicant to make sure

all documentation is in place in order to fund these applications. The proof is in the funding approvals where these FRNs began between funding year 2012 and funding year 2015. The previous year's funding request had met the criteria for approval and they were filed for in exactly the same manner in funding year 2016, only to be denied. The application review process for FY 2016 was inconsistent with the previous approvals that were based on the very same documentation.

### **This Appeal Must Be Overturned**

It is now important to demonstrate that all of the documentation USAC needs to overturn the denial reasons. We have carefully collated every bid, vendor evaluation, and signed agreement for each denied FRN. This will clearly show that not only has all the documentation been kept on file, but that every FRN has gone through an intensive selection process that upholds the integrity of these applications. It is disappointing to have to go through the appeals process to fund FRNs that have been fully funded by USAC over a number of years when all needed documentation is in place. Many of these FRNs are continuations from previous years and have been consistently funded since their inception FRNs. In any event, the below summary, attached detailed spreadsheet of bidding information, and copies of all bids and vendor evaluations will dispel all denials so that these requests are funded in full.

### **FRN Summary of Appeals**

The status of the discussed FRNs all stem from the same basket of clerical issues. Awards for the denied FRNs brought forth in the received denials letters are listed below were a result of the Funding 2013 Form 470# 205140001066678. By means of a clerical error Lighttower was listed on the 471 however service from Lighttower was never actually received from FY 2013-2014 onwards. This problem was later exacerbated with Light tower approved a BEAR reimbursement for this funding request. Lighttower obviously did not review the BEAR, and approved it as is.

Only 3 bids were submitted as a result of this Form 470, One from Bestweb, one from Lighttower, and the last from Fibertech

All providers returned the provided bid sheets. BestWeb and Lighttower also included individual bids. Windstream only returned the bid pricing sheet.

Scenario#1 1 Gig Star was the option selected for Rye City was selected based on the following prices per the attached bids:

District	Number of Bids	Best Web Bids	Lighttower Bids	Fibertech	Current Vendor
Rye City	3,4 with current vendor	\$2,439.56	\$2,395.00	<b>\$2,235.00</b>	\$4,300.00

Fibertech was actually the chosen and utilized by Rye City for being the lowest cost vendor. The correct vendor was chosen based on the pricing and bid evaluation, it was simply not data entered correctly onto the 471.

For clarity, it is important to note that this is just a series of unfortunate and forgivable clerical errors by all parties involved on this process. The wrong SPIN was used on FY 2013 and FY 2015 FRNs 2430002 and 2722981. Furthermore, Lighttower twice approved disbursements for these FRNs and did not catch that Rye City was not a direct client of their own. The money from USAC simply flowed through the wrong provider as a result. There was no malice, abuse, or misuse of funds at play. This information only came to light as it was brought forth during the denial of many of entity 123677's funding from FY 2016. USAC also conducted no PIA review on these FRNs, and simply funded them as submitted. It is reasonable to assume this missing piece of due diligence also would have benefited the district in the long run, pointing out what was simply a clerical error

It should also be noted that Lighttower bought Fibertech in August 2015. As of FY 2015, all E-rate operations were assumed and conducted by Lighttower anyway, so there really is no error when it comes to the FY 2015 funding as Fibertech was assumed by Lighttower.

This series of errors lays some blame at the feet of all parties involved, but the wrong decision is to do is punish the entity Southern Westchester BOCES and the recipient Rye City SD. It would be neither in the good of the public interest, nor in the best interest of the applicant, its community, or the students they serve to deny this applicant E-rate funding or revoke previous E-rate funds.

Southern Westchester BOCES is a longtime supporter of Universal Service and has never had any issues that have been portrayed in the denials. The documentation and records being shared here do not only show that they have followed program rules, but that they are upholding the integrity of Universal Service. Keeping records of this magnitude is no small feat, and there is supporting documentation for every FRN.

It is a major disappointment that EPC has been a real issue with getting these FRNs funded. It is no coincidence that the first year PIAs are in EPC that these denials have occurred. The denials are a direct result of EPCs growing pains. The process was messy and unclear, the communication was non-existent between reviewers and consultant despite our attempts to bridge that gap.

A Consortium of this size needs to be treated with great care from USAC. Southern Westchester BOCES has demonstrated how invested they are in this process and Universal Service by being able to provide every piece of documentation for every FRN. Southern Westchester BOCES has shown its integrity here, and upholding a denial would be a real setback in USAC's ability to govern the E-rate process.

We respectfully request that you overturn the denial and restore full funding of these FRNs. Thank you for reviewing this appeal. Please use the contact information below.

Sincerely,

Sean Cuskey  
Director of Operations e2e Exchange LLC

Attachments –

- All bids from Bestweb, Lighttower, Fibertech
- Bid Evaluation Sheet
- LOI Agreement