**Before the**

**Federal Communications Commission**

**Washington, D.C.**

**In the Matter of:**

)

Request for Review of a decision )

by the Schools and Libraries Division ) Administrator Correspondence Dated

for Northampton County School District, ) October 1, 2018

Machipongo, VA )

)

Petition of NTCA—The Rural Broadband )

Association and the United States Telecom ) WC Docket No. 17-206

Association for Forbearance Pursuant to )

47 U.S.C. § 160(c) from Application of )

Contribution Obligations on Broadband )

Internet Access Transmission Services )

)

Schools and Libraries Universal Service ) CC Docket No. 02-6

Support Mechanism )

**Request for Review or Waiver**

In accordance with Sections 54.719 through 54.721 of the Commission’s Rules, Northampton County Public Schools (Northampton), requests review of a decision on Appeal by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).

In correspondence dated October 1, 2018, the Administrator issued a Revised Funding Commitment Decision Letter (RFCDL), Number 119030, denying an appeal submitted to the Administrator by Northampton. Consistent with precedent in Ann Arbor, Northampton asks the Commission to overturn the Administrator decision and increase eligible monthly charges by $294.40 per month and increase the total E-Rate funded amount by $3,179.52 for the FRN here under appeal.[[1]](#footnote-1)

Alternatively, and in accordance with clear Commission directive in the Rural Broadband Association Order (Rural Broadband Order), Northampton asks the Commission to compel Eastern Shore Virginia Broadband Authority (ESVBA) to cease imposition of Universal Service Fees (USF) on Internet Access and credit Northampton all USF improperly collected.[[2]](#footnote-2)

**Northampton County Public Schools**

**Form 471 Application Number: 181016731**

**FRN: 1899028116.001**

**Billed Entity Number:** [**126521**](https://tools.e-ratecentral.com/us/public/utilizationSummaryChart.asp?typ=entNum&ste=VA&ky=126521)

**FCC Registration Number 0002033710**

**Background**

Northampton county is located on the Eastern Shore of Virginia, an isolated, rural county with a 90 percent E-Rate discount. Northampton applied for E-Rate discounts in Fund Year 2018 for Internet access from Eastern Shore Virginia Broadband Authority under an existing multi-year contract. The application was reviewed and funded as submitted.

Unknown to Northampton at the time of filing and review of the 2018 Form 471, was ESVBA’s addition of $294.40 per month for USF. Northampton objected to the fee and maintained that ESVBA was collecting the fee in violation of FCC regulations. According to ESVBA, counsel had advised that ESVBA should collect USF for transport of Internet. Northampton asserted that no other Internet service provider in the Commonwealth of Virginia collected USF on Internet Access service and ESVBA should reconsider its decision. During a conference call between ESVBA, Northampton and Northampton’s E-Rate consultant, ESVBA was unable to quote a specific Commission regulation requiring USF collection for Internet Access.

**Discussion**

The Commission has held that errors on a Form 471 could be corrected once discovered. In this case, the error was discovered before the deadline for appeal submission from the Funding Commitment Letter, and an appeal was immediately submitted to the Administrator. In accordance with Ann Arbor, Northampton asks that the pre-discount funding request be increased $294.40 per month to account for unknown and unprecedented USF charges.

In the Rural Broadband Order, the Commission clearly and without equivocation stated that the ***“…Commission does not, and has never, imposed contribution obligations on retail broadband Internet access service…”***[[3]](#footnote-3) while acknowledging some rural common carriers may have been obligated to contribute USF when participating in the National Exchange Carrier Association pooling arrangements.[[4]](#footnote-4)

The Rural Broadband Order grants the NTCA petition “…seeking forbearance from the application of USF contribution requirements to rural LECs’ provision of broadband Internet access transmission services.”[[5]](#footnote-5) The Commission stated: “In sum, we conclude that the standard for forbearance under section 10 of the Act is met, and we therefore forbear from applying USF contribution requirements to rural LEC-provided broadband Internet access transmission services offered on a common carrier basis.[[6]](#footnote-6) Further, the forbearance was to take effect July 3, 2018.[[7]](#footnote-7)

Without question ESVBA improperly imposed USF charges on Northampton in violation of the Rural Broadband Order. Northampton asks the Commission to compel ESVBA to return all USF collected from Northampton since July 3, 2018.

**Conclusion**

Commission precedent allows for the increase in funding when new information is discovered after submission of Form 471 and deadlines for appeal exhausted.

The Rural Broadband Order made clear that USF contributions are not warranted for Internet access transmission services. As such, ESVBA collected USF contributions from Northampton in violation of Commission regulation. Such fees should be returned to Northampton. If the Commission orders return of improperly collected USF to Northampton, an increase in the FRN is not necessary.

This appeal comes timely filed within 60 days of the Funding Commitment Letter for this FRN, November 27, 2018

Respectfully,

//s//

Greg Weisiger

Consultant to Northampton County Schools

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1. Ann Arbor Public Schools, DA 10-2354, Rel. December 16, 2010, CC Docket Number 02-6 [↑](#footnote-ref-1)
2. Petition of NTCA – The Rural Broadband Association and United States Telecom Association Petition for Forbearance, FCC 18-75, Rel. June 8, 2018, WC Docket 17-206 at 11: “The Commission has consistently declined to impose USF contribution obligations on retail broadband Internet access service. We therefore find that requiring a subset of rural LECs that provision a component of that service as a common-carriage offering to comply with our legacy rate-of return rules is not “necessary” to ensure that the rural LECs’ charges or practices in connection with this service are “just and reasonable.” [↑](#footnote-ref-2)
3. Rural Broadband Order at 4. [↑](#footnote-ref-3)
4. Rural Broadband Order at 4. [↑](#footnote-ref-4)
5. Rural Broadband Order at 5. [↑](#footnote-ref-5)
6. Rural Broadband Order at 17. [↑](#footnote-ref-6)
7. Rural Broadband Order at 18. [↑](#footnote-ref-7)