



Administrator's Decision on Appeal – Funding Year 2014

October 5, 2018

Nichole O'Neal
O'Neal Consulting
5701 E. Circle Drive #380
Cicero, NY 13039

Re: Applicant Name: Orange Elem School District
Billed Entity Number: 120173
Form 471 Application Number: 960449
Funding Request Number(s) (FRN): 2644971, 2673391
Your Correspondence Dated: July 10, 2018

The Universal Service Administrative Company (USAC) has completed its evaluation of the July 10, 2018 letter of appeal (Appeal) submitted by Orange Elem School District (the District).¹ The Appeal requests that USAC cease its recovery action because the District timely submitted its invoices before the extended September 1, 2017 invoicing deadline.²

USAC has reviewed the appeal and the facts related to this matter and determined that it cannot grant the appeal because USAC is not authorized to waive the Federal Communications Commission (FCC) rules.³ USAC is also required to seek recovery for funding that is disbursed in violation of the FCC rules.⁴

On May 30, 2017, the Federal Communications Commission (FCC) issued the *Jefferson-Madison Reconsideration Order* directing USAC to identify and allow all applicants who timely filed their Billed Entity Application for Reimbursement (BEAR) forms to be

¹ Letter from Nichole O'Neal, Consultant, O'Neal Consulting to Schools and Libraries Division, USAC (July 10, 2018) (*Appeal*).

² *Id.* at 2.

³ See generally, 47 C.F.R. § 54.702(c) (2013) (“[USAC] may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.”). See 47 C.F.R. § 54.719(c) (“Parties seeking waivers of the Commission’s rules shall seek relief directly from the Commission.”).

⁴ See *Changes to the Bd. Of Directors of the Nat'l Exchange Carrier Association, et al.*, CC Docket Nos. 96-45, *et al.*, Order, FCC 99-291 (1999) (*Commitment Adjustment Order*); *Changes to the Bd. Of Directors of the Nat'l Exchange Carrier Association, et al.*, CC Docket Nos. 96-45, *et al.*, Order, 15 FCC Rcd 7197 (1999) (*Commitment Adjustment Waiver Order*); *Changes to the Bd. of Directors of the Nat'l Exchange Carrier Association, et al.*, CC Docket Nos. 96-45, *et al.*, Order, 15 FCC Rcd 22975 (2000) (*Commitment Adjustment Implementation Order*).



allowed to resubmit their BEAR forms even if their service provider failed to certify the BEAR form prior to the original invoicing deadline.⁵

The invoicing deadline for Funding Request Numbers (FRNs) 2644971 and 2673391 was February 25, 2016 and May 27, 2016, respectively. The District did not submit a BEAR form for those FRNs by that deadline, and therefore was ineligible for relief under the *Jefferson-Madison Reconsideration Order*. However, USAC erroneously identified the District as an applicant who qualified for the relief and improperly extended the invoice filing deadline for FRNs 2644971 and 2673391 to September 1, 2017.⁶ Because USAC is not authorized to waive the FCC's invoicing deadline rules,⁷ USAC must recover funding that was disbursed in violation of the FCC's rules.⁸ For these reasons, your appeal is denied.

If you want to seek a waiver of FCC rules, or if you wish to appeal this decision, you must submit your request for waiver or appeal to the FCC within 60 days of the date of this decision letter. On all communications with the FCC, be sure to reference CC Docket No. 02-6. The FCC recommends filing with the Electronic Comment Filing System (ECFS) to ensure timely filing. You can find instructions for using ECFS on the ECFS Online Manual page of the FCC's website. The FCC will consider electronic filings as filed on a business day if they are received before midnight ET. If you have questions or comments about using the ECFS, please contact the FCC directly at (202) 418-0193 or via email. For additional information about submitting appeals or waiver requests to the FCC, including options to submit via U.S. mail or hand delivery, visit the FCC's website at: <https://www.fcc.gov/reports-research/guides/how-file-paper-documents-fcc>.

⁵ *Petition for Reconsideration by Jefferson-Madison Regional Library*, CC Docket No. 02-6, Order on Reconsideration, 32 FCC Rcd 4626, 4632, para. 15 (2017).

⁶ See Letter from Schools and Libraries Division, USAC to Gary Bunker, Orange Elem School District (Aug. 2, 2017) (notifying the District that it qualified for relief pursuant to the *Jefferson-Madison Order* and extending the invoicing deadline to September 1, 2017).

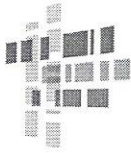
⁷ See generally, 47 C.F.R. § 54.702(c) (2013) ("[USAC] may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress."). See 47 C.F.R. § 54.719(c) ("Parties seeking waivers of the Commission's rules shall seek relief directly from the Commission."). *Request for Review of the Decision of the Universal Service Administrator by Merced Union High School*, CC Docket No. 96-45, Order, 15 FCC Rcd 18803, 18805 (2000) ("We note that rules and policies are enforced even where a party received erroneous advice from a government employee, and the Commission is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when the relief requested would be contrary to an applicable statute or rule.").

⁸ See *Changes to the Bd. Of Directors of the Nat'l Exchange Carrier Association, et al.*, CC Docket Nos. 96-45, et al., Order, FCC 99-291 (1999) (*Commitment Adjustment Order*); *Changes to the Bd. Of Directors of the Nat'l Exchange Carrier Association, et al.*, CC Docket Nos. 96-45, et al., Order, 15 FCC Rcd 7197 (1999) (*Commitment Adjustment Waiver Order*); *Changes to the Bd. of Directors of the Nat'l Exchange Carrier Association, et al.*, CC Docket Nos. 96-45, et al., Order, 15 FCC Rcd 22975 (2000) (*Commitment Adjustment Implementation Order*).



Schools and Libraries Division
Universal Service Administrative Company

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Visit us online at: www.usac.org/sl



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Recovery of Improperly Disbursed Funds Letter

Gary Bunker
ORANGE ELEM SCHOOL DISTRICT
5701 E. Circle Drive #380
Cicero, NY 13039 - 1142

6/18/2018

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.

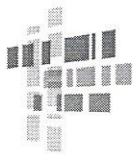
Total amount to be recovered: \$3,455.52

<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>
960449	2644971	\$0.00	\$3,455.52	FCC Directive	Applicant

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

Recovery of Improperly Disbursed Funds

Our review of your Universal Service Schools and Libraries Support Program (or E-rate) funding request(s) referenced in the Adjustment Report has determined funds were improperly disbursed in violation of Federal Communications Commission (FCC) rules. A copy of that Adjustment Report is also attached to this letter.



Universal Service Administrative Co.

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>

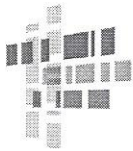
To Appeal This Decision

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., Recovery of Improperly Disbursed Funds) and the decision you are appealing:



**Universal Service
Administrative Co.**

- 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. "Recovery of Improperly Disbursed Funds," 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.

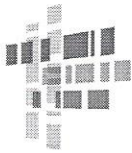
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The FCC recommends filing appeals or waiver requests with the Electronic Comment Filing System (ECFS) to ensure timely filing. Electronic waiver requests or appeals will be considered filed on a business day if they are received at any time before 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: Kathryn Whitney
Crocker Communications, Inc.



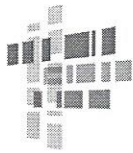
Universal Service
Administrative Co.

Adjustment Report

FCC Form 471 Application Number:	960449
Funding Request Number:	2644971
Commitment Adjustment:	\$0.00
Total Amount to Be Recovered:	\$3,455.52
Explanation(s):	FCC Directive
Party to Recover From:	Applicant
Funding Year:	2014
Billed Entity Number:	120173
Services Ordered:	INTERNET ACCESS
Service Provider Name:	Crocker Communications, Inc.
SPIN:	143007436
Original Funding Commitment:	\$11,184.00
Adjusted Funding Commitment:	\$11,184.00
Funds Disbursed to Date:	\$3,455.52

Funding Commitment Adjustment Explanation

You received disbursements after your invoice deadline. For recurring services, invoices must be submitted no later than 120 days after the last day to receive service or 120 days after the FCC Form 486 Notification Letter date, whichever is later. Services must be delivered within the fund year. Your invoice was received after the invoice deadline. Therefore, USAC must seek recovery of improperly disbursed funds in the amount of \$3,455.52.



Universal Service
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Recovery of Improperly Disbursed Funds Letter

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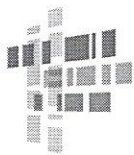
Total amount to be recovered: \$159.92

<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>
960449	2673391	\$0.00	\$159.92	FCC Directive	Applicant

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

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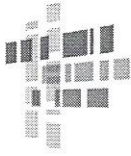
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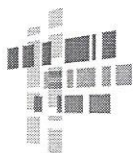
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Explanation(s):	FCC Directive
Party to Recover From:	Applicant
Funding Year:	2014
Billed Entity Number:	120173
Services Ordered:	INTERNET ACCESS
Service Provider Name:	Crocker Communications, Inc.
SPIN:	143007436
Original Funding Commitment:	\$360.00
Adjusted Funding Commitment:	\$360.00
Funds Disbursed to Date:	\$159.92

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