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

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Request for Review of the Decision of | ) | |
| the Universal Service Administrator | ) | CC Docket No. 02-6 |
| and Addendum by | ) | |
| | ) | |
| Orange County School District | ) | File No. SLD-869250 |
| Orlando, Florida | ) | |
| | ) | |
| Schools and Libraries Universal Service | ) | |
| Support Mechanism | ) | |

## ADDENDUM TO APPEAL INFORMATION

Orange County School District ("School District"), by its representative, hereby respectfully requests to added further information contained in this addendum to the previously filed appeal. The School District requests that this additional information be considered together with the following matter that is currently pending before the Commission on appeal:

- Request for Review of the Decision of the Administrator by Orange County School District[1]
- Submitted and posted on September 3, 2013
- CC Docket 02-6
- http://apps.fcc.gov/ecfs/comment/view?id=6017466459

The earlier matter involved the eligibility of certain services being received by the District as part of Funding Year 2012 FRN 2383707. During the PIA process for an Internet access funding request, the PIA reviewer determined that certain charges were ineligible and these charges were moved to a separate Funding Request, FRN 2383707. The SLD then denied funding for FRN 2383707 and provided as the explanation that the charges now contained on this FRN were ineligible. The School District disagreed with

[1] A copy of the District's FCC appeal filed on September 3, 2013, is attached for ease of reference

the decision that the charges were ineligible and filed the underlying appeal with the FCC.

These same services were again requested as part of the District's Funding Year 2013 application on FRN 2479858. The District again filed one Internet request and did not separate the charges found to be ineligible during the FY2012 PIA review to a separate FRN. The SLD approved the FY2013 Funding Request as filed and the charges that were removed to a separate FRN in FY2012 were approved on the FY2013 application.

The School District submits that the approval of the FY2013 Internet FRN, with these same charges, means these charges are eligible and that the prior PIA reviewer erred in their determination that the charges on the FY2012 request were ineligible. In the event any of the services are found to be eligible in FY2012, the corresponding services in 2013 are also eligible. Therefore, the School District respectfully requests that if any of the services are determined by the FCC to be eligible for FY2012, the invoicing deadline should be extended to allow the District to invoice for these charges. Additionally, the School District respectfully requests that the invoicing deadline for the 2013 FRN be extended as well so the School District has an opportunity to verify that these same charges were invoiced correctly.

In support of this Addendum, the School District hereby incorporates by reference all of the materials submitted previously to the Commission in connection with its September 3, 2013 appeal.

Respectfully submitted
*on behalf of Orange County School District*

Lisa Connelly

Lisa Connelly
Sen. Admin. E-Rate Compliance
445 W. Amelia Street
Orlando, FL 32801
lisa.connelly@ocps.net

September 25, 2015

# Exhibit A

FCC Appeal filed September 3, 2013

STAMP & RETURN

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 205554**

| | |
|---|---|
| In the Matter of<br><br>Petition for Review of the Decision of the Universal Service Administrator<br><br>By Orange County School District Orlando, Florida<br><br>Schools and Libraries Universal Service Support Mechanism | CC Docket No. 02-6<br><br>WC Docket 06-122 |

ACCEPTED/FILED
SEP – 3 2013
Federal Communications Commission
Office of the Secretary

# APPLICATION FOR REVIEW

Frank Elmore
Orange County School District
445 W. Amelia Street
Orlando, FL 32801

September 3, 2013

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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 205554**

| | |
|---|---|
| In the Matter of<br><br>Petition for Review of the Decision of the Universal Service Administrator<br><br>By Orange County School District Orlando, Florida<br><br>Schools and Libraries Universal Service Support Mechanism | CC Docket No. 02-6<br><br>WC Docket 06-122 |

## APPLICATION FOR REVIEW

Orange County School District ("Orange County"), pursuant to Sections 54.722 and 1.115 of the Commission's rules, files this Application for Review of a decision by USAC to deny E-rate funding requested by Orange County for the provision of certain aspects of the services provided by Bright House Networks, LLC ("Bright House") in the 2012-2013 funding year.[1] Specifically, on July 5, 2013, USAC sent a funding commitment decision letter ("FCDL") to Orange County denying the funding associated with funding request number ("FRN") 2554127,[2] which had been split from a prior funding request (FRN 2383707). Orange County requested that the FRN be split in order to isolate elements of the services provided by BHN about which USAC staff had questions concerning eligibility for E-rate funding, including an Ethernet transport service to an Orange County data center and traffic shaping. As is indicated on page 4 of the FCDL, USAC denied funding for the circuit to the data center and traffic shaping.

[1] 47 C.F.R. §§ 54.722, 1.1115.
[2] A copy of the FCDL is attached.

Although the FCDL contains no explanation as to why the funding request for these items was denied, based on interactions and correspondence with USAC, Orange County believes that USAC denied the request based on three misunderstandings, namely: (1) that the use of the word "redundant" indicated the provision of duplicative services, (2) the false assumption that separate pricing of traffic shaping is a conclusive indicator that traffic shaping is not a basic functionality integral to Bright House's standard Internet access service offering, and (3) that the circuit to the data center is a duplicative service. Orange County addresses each of these misunderstandings below.

## I. THE TERM REDUNDANT AS USED IN CONNECTION WITH THE BRIGHT HOUSE SERVICE INDICATES A STANDARD LEVEL OF NETWORK RESILIANCY AND IS NOT AN INDICATION OF DUPLICATIVE SERVICES

The FCDL gives no explanation as to why funding for FRN 2554127 was denied. It states only that "Internet Circuit for 1000 Mbps to Data Center in Atlanta, . . . and Traffic Shaping Devices to Support Redundant Internet."[3] The use of the term "redundant" as used in the documentation provided to USAC during its review of the funding request does not indicate that the service provider, Bright House, provided duplicative services or network facilities. Rather, the use of the term "redundant" was solely meant to convey a standard level of network resiliency that Bright House would provide to any customer purchasing its Internet access service. The physical and logical redundancy built into these services is similar to the provisioning of a service over a SONET, self-healing network. The purpose of configuring Bright House's network in this manner is to ensure quality and reliability of the service.

Like all carrier-class telecommunications networks, BHN's network has standard redundant network elements and traffic routing logical to support its video, voice, and data

[3] FCDL at 4.

services. This redundancy ensures the stability and availability of services to BHN's several million customers. For instance, if one network element fails, the network recognizes this and routes traffic through a different network path until the impaired element is repaired. Moreover, BHN's physical backbone is built on large fiber rings that traverse multiple cities. These fiber rings must be redundant to ensure continuity to deal with emergency issues such as a construction worker accidentally cutting a fiber circuit while building a new road. Further, BHN's traffic is routed logically through the network by carrier-class IP routers. When a router recognizes it cannot send a packet to its first choice, it sends it to the next best router—a basic tenant of responsible IP routing. None of these resiliency features are unique to the service provided to OCPS. Rather, they are fundamental design characteristics of a high quality telecommunications network that have been implemented by BHN as well as by many, many other telecommunications companies around the world.

In addition to the routing and equipment found at the core of BHN's network, BHN built dual fiber paths into the two main OCSD sites (Board of Education buildings) to ensure that critical voice, video, and data services provided to all 200+ sites would not be shut down due to the impairment of a single fiber. This is no different than the legacy SONET ring design deployed by phone companies for many decades and is the build-out configuration that BHN would provide for any similarly-situated customer (including those that do not receive E-rate funding as well as BHN's E-rate customers). The only difference is that BHN's services are provided via IP signaling rather than SONET. The fundamental purpose is the same—to ensure that traffic will continue to flow if one fiber route is damaged. Because all the schools in the

district feed off of these two sites, it would be irresponsible for OCPS and BHN to only provide these sites with a single fiber connection.[4]

In no case is Bright House providing more than one service to any OCSD location. Instead, it is providing to each location a standard Internet access location with the same level of network redundancy that it provides to all of its Internet access service customers. In fact, Bright House would need to create entirely new network architecture to provide a "non-redundant" Internet access service to OCSD, which would be prohibitively expensive, if not impossible, because technical and geographic restrictions preclude duplicating many of the core components of its network. Instead, what Bright House has provided is a responsibly-engineered service that is similar to (if not identical) what any other service provider—cable operator, local exchange carrier, etc.—would provide.

## II. TRAFFIC SHAPING IS A BASIC FUNCTIONALITY OFFERED AS AN INTEGRAL COMPONENT OF BRIGHT HOUSE'S STANDARD INTERNET ACCESS SERVICE OFFERING

BHN's standard Internet access service includes traffic shaping. Traffic shaping is a packet routing protocol used to optimize or guarantee performance, improve latency, and/or increase usable bandwidth so that the various services and types of traffic flow harmoniously over the same network. It is an industry standard technique for network management.

BHN does not normally break out pricing for traffic shaping because it is a standard component of its Internet access service. In this instance, however, OCSD sought a break out of the cost so that it could fairly compare bids for services that included traffic shaping (such as BHN's) against those that only offer such functionalities on a standalone basis. It seems that

[4] By contrast, the rest of the OCSD sites are serviced by single fiber paths from the edge of BHN's network into the school property.

BHN's effort to accommodate this request has led to the false assumption that this separate pricing indicates that this is not a basic functionality integral to BHN's standard Internet access service offering. This is incorrect, and in fact, appears to be based on a misguided application and interpretation of Commission precedent with respect to firewall protection.

In the 2010 Sixth Report and Order, the Commission determined that it would continue to fund "basic" firewall protection. Specifically, it stated that:[5]

> We will continue to fund basic firewall protection, but we will not at this time extend E-rate support beyond basic firewall protection that is included as part of an Internet access service.[316]

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> [316]Funding Year 2010 ESL at 8 (stating that eligible Internet access may include features typically provided for adequate functionality and performance when provided as a standard component of a vendor's Internet access service). When seeking comment on enhanced firewalls, we had described them as 'separately priced' firewalls. See 2009 Further ESL NPRM, 25 FCC Rcd at 6578-6579, para. 34.

As footnote 316 makes clear, the presence of separate pricing is not conclusive, but rather, was mentioned as one way in which non-basic firewall protection had been characterized in past. This passage also makes clear that the conclusive factors are whether the firewall is (1) basic and (2) included as a standard part of the Internet access service.

The traffic shaping functionality provided by BHN is basic and included as an integral part of the Internet service it provides to OCSD. First, it is basic because it is providing the industry standard level of traffic/packet management that is provided to all BHN customers. Second, it is an integral part of the BHN Internet access service. BHN always provides traffic shaping as part of its Internet access service, including to enterprise customers such as OCSD. These customers are provided traffic shaping as part of their Internet access service with no

---

[5] In Re Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future, Sixth Report and Order, 25 FCC Rcd 18762 (FCC rel. Sept. 28, 2010) at para. 105 and n.316 (emphasis added).

additional charge and in fact, there is no separate pricing or allocation of pricing for the traffic shaping component unless specifically requested.

The fact that BHN, in response to OCSD's request, was able to allocate a portion of the monthly service charge to traffic shaping in a logical way does not negate the foregoing. It is exactly the same exercise that USAC requests E-rate participants to perform if a portion of a service is found to be ineligible—the participants are asked to create a logical cost allocation proposal and reduce the funding accordingly. This cost allocation process is routinely undertaken where the ineligible functionality is not a separately-priced, stand-alone service offering. The fact that it is possible to undertake such an exercise does not transform the nature of the service or functionality.

Finally, the fact nowhere in Commission decisions, rules or the Eligible Services List ("ESL") is the E-rate eligibility of traffic shaping questioned, combined with the fact that it is a standard part of BHN's basic Internet service offering, means that the Commission should approve funding for the traffic shaping functionality provided to OCSD.

## III. THE CIRCUIT TO THE ATLANTA DATA CENTER IS AN ELIGIBLE SERVICE TO A NON-INSTRUCTIONAL FACILITY

USAC staff has also denied funding for an Ethernet transport circuit provided to one of OCSD's non-instructional facilities. The FCDL provides no explanation as to why this funding was denied. As for the other service components being appealed, the FCDL merely states that funding for this circuit is denied.

Non-instructional facilities like this data center may receive services supported by E-rate funding if the activities undertaken in such facilities are "activities that are integral, immediate,

and proximate to the education of students."[6] The circuit to this OCSD site permits OCSD teachers to access critical data files necessary to perform their educational duties at the school sites.

In other words, this circuit is not duplicative of any other service or circuit. There is one circuit to this data center, and one means of accessing the files it contains. Moreover, this is not a data backup service. What is being provided is a communications circuit to the site, not a file storage service. The files maintained at this site are stored at the sole expense of OCSD. What BHN is providing is access to the site so that teachers and OCSD staff may access the district's files.

## IV. CONCLUSION

For the foregoing reasons, OCSD respectfully requests that the Commission grant its appeal and reinstate E-rate funding for the circuit to the Orange County data center and the traffic shaping component of the BHN services for funding year 2012-2013.

Respectfully submitted,

Frank Elmore
Orange County School District
445 W. Amelia Street
Orlando, FL 32801

[6] In Re Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (FCC rel. Apr. 30, 2003) at para.17.

Orange County Public Schools
445 West Amelia Street • Orlando, FL 32801-1129 • Phone 407.317.3200 • www.ocps.net

Executed on September 3, 2013.

VERIFICATION

I verify under penalty of perjury that the foregoing is true and correct.

Frankie Elmore
Orange County School District (OCSD)
445 W. Amelia Street
Orlando, FL 32801

USAC
Universal Service Administrative Company

Schools and Libraries Division

**FUNDING COMMITMENT DECISION LETTER**
(Funding Year 2012: 07/01/2012 - 06/30/2013)

ICTS
JUL 2 2 2013
RECEIVED

July 5, 2013

Lisa Connelly
ORANGE COUNTY SCHOOL DISTRICT
445 W AMELIA ST
ORLANDO, FL 32801

**Re: Form 471 Application Number: 869250**
**Billed Entity Number (BEN): 127681**
**Billed Entity FCC RN: 0011598141**
**Applicant's Form Identifier: FY12 - MBIA-INTERNET**

Thank you for your Funding Year 2012 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, $264,384.00 is "Approved."
- The amount, $358,686.00 is "Denied."

Please refer to the Report following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file FCC Form 486, Receipt of Service Confirmation Form. A guide that provides a definition for each line of the Report is available in the Reference Area of our website.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full
- Review technology planning approval requirements
- Review CIPA requirements
- File Form 486
- Invoice USAC using the Form 474 (service provider) or Form 472 (Billed Entity applicant) - as products and services are being delivered and billed

TO APPEAL THIS DECISION:

You have the option of filing an appeal with the SLD or directly with the Federal Communications Commission (FCC).

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
   - Appellant name,
   - Applicant name and service provider name, if different from appellant,
   - Applicant BEN and Service Provider Identification Number (SPIN),
   - Form 471 Application Number 869250 as assigned by USAC,
   - "Funding Commitment Decision Letter for Funding Year 2012," AND

- The exact text or the decision that you are appealing.

3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.

4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.

5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to USAC by fax, fax your appeal to (973) 599-6542.

To submit your appeal to USAC on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted in the Reference Area of our website. 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.

OBLIGATION TO PAY NON-DISCOUNT PORTION

Applicants are required to pay the non-discount portion of the cost of the products and/or services to their service provider(s). Service providers are required to bill applicants for the non-discount portion. The FCC stated that requiring applicants to pay their share ensures efficiency and accountability in the program. If USAC is being billed via the FCC Form 474, the service provider must bill the applicant at the same time it bills USAC. If USAC is being billed via the FCC Form 472, the applicant pays the service provider in full (the non-discount plus discount portion) and then seeks reimbursement from USAC. If you are using a trade-in as part of your non-discount portion, please refer to our website for more information.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division
Universal Service Administrative Company

FUNDING COMMITMENT REPORT
Billed Entity Name: ORANGE COUNTY SCHOOL DISTRICT
BEN: 127681
Funding Year: 2012

Comment on RAL corrections: The applicant did not submit any RAL corrections.

Form 471 Application Number: 869250
Funding Request Number: 2383707
Funding Status: Funded
Category of Service: Internet Access
Form 470 Application Number: 157630000995011
SPIN: 143016611
Service Provider Name: Bright House Networks, LLC
Contract Number: 11123123
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2012
Service End Date: N/A
Contract Award Date: 03/13/2012
Contract Expiration Date: 03/14/2015
Shared Worksheet Number: 1492752
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: $352,512.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: $.00
Pre-discount Amount: $352,512.00
Discount Percentage Approved by the USAC: 75%
Funding Commitment Decision: $264,384.00 - FRN approved as submitted
Funding Commitment Decision Explanation: MR1: The discount for entity LAKEMONT ELEMENTARY SCHOOL - 35972 and HILLCREST ELEMENTARY SCHOOL - 36001 was decreased from 80% to 60%. The applicant failed to supply documentation to support the requested discount. As a result of this action, the shared discount was decreased from 76% to 75%. <><><><><><> MR2: In consultation with the applicant, this FRN was split to conduct an independent review of the respective product(s)/service(s)being provided under the FRN. The new FRN is 2554137. The remaining services in the FRN are Internet Circuits for 1 Gbps. The entities remaining in the original FRN can be located in the FCC Form 471 Block 4 worksheet number 1492752.

FCDL Date: 07/05/2013
Wave Number: 050
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2014
Consultant Name:
Consultant Number (CRN):
Consultant Employer:

FUNDING COMMITMENT REPORT
Billed Entity Name: ORANGE COUNTY SCHOOL DISTRICT
BEN: 127681
Funding Year: 2012

Comment on RAL corrections: The applicant did not submit any RAL corrections.

Form 471 Application Number: 869250
Funding Request Number: 2554127
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 157630000995011
SPIN: 143016611
Service Provider Name: Bright House Networks, LLC
Contract Number: 11123123
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2012
Service End Date: N/A
Contract Award Date: 03/13/2012
Contract Expiration Date: 03/14/2015
Shared Worksheet Number: 1492752
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: $478,248.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: $.00
Pre-discount Amount: $478,248.00
Discount Percentage Approved by the USAC: 75%
Funding Commitment Decision: $0.00 - Split FRN Denial
Funding Commitment Decision Explanation: This is a new FRN. It was split from FRN 2383707. The FRN is denied because product(s)/service(s)being requested are ineligible items and cannot receive funding. This FRN contains the following ineligible product(s)/service(s):Internet Circuit for 1000 Mbps to Data Center in Atlanta, Cisco Firewall with VPN to Support Redundant Internet, Intrusion Prevention Systems for Inside and Outside Filtering and Traffic Shaping Devices to Support Redundant Internet.

FCDL Date: 07/05/2013
Wave Number: 050
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2014
Consultant Name:
Consultant Number (CRN):
Consultant Employer: