

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of:)
)
Request for Waiver and)
Request for Review)
) CC Docket No. 02-6
by)
)
St. Mary School)
Cleveland, OH)

TO: Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

St. Mary School (“St. Mary”) respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) grant it a Waiver of the deadline requiring appeals be filed within sixty days of the date of the Funding Commitment Decision Letter, which was dated August 7, 2015. If the Commission grants such Waiver, St. Mary then requests the Commission review a USAC Funding Commitment Decision for FRN 2864702. The Request for Waiver is made pursuant to 54.719 through 54.723 of the Commission’s rules.¹

Basic Information:

Billed Entity Number:	47367
FCC Form 471 Application Numbers:	1017186
Funding Request Number Appealed:	2864702
Date of Funding Commitment Decision Letter:	August 7, 2015

¹ 47 C.F.R. §§ 54.719–54.723

Contact Information: Courtney Cikach
Educational Funding Group, Inc.
CRN 16043587
Consultant to St. Mary School
26650 Renaissance Parkway, Suite 2
Cleveland, OH 44128
Tel. 216-831-2626
Fax: 216-831-2822
courtney.cikach@naa.com

BACKGROUND

By and through its E-rate consultant, Educational Funding Group, Inc. (“EFG”), (CRN 16043587), St. Mary School finds it necessary to seek a Waiver of section 47 C.F.R. § 54.720 of the 60-day period for filing a Request for Review relative to FRN 2864702, which, due to an ongoing family medical emergency situation is being filed ten (10) days past the 60-period for filing an appeal. The issue for which review is requested is that a timely submitted Program Integrity Assurance (“PIA”) review response was not properly processed, resulting in the FRN not being funded based on “insufficient documentation”. St. Mary’s LOA to EFG is attached as Exhibit A.

USAC’s Funding Commitment Decision Explanation DR stated: “Applicant has not provided sufficient documentation needed to determine the eligibility of the following item(s): vendor’s document supporting the requested amount of \$11,435.99 one-time charge”.

STATEMENT IN SUPPORT OF WAIVER

Sometime during the second week of August 2015, EFG received a Funding Commitment Decision Letter (“FCDL”) dated August 7, 2015 for Form 471 Application #1017186. Only when EFG received the letter did it first become aware that an error had been made during PIA processing that resulted in the unwarranted “not funded” status for FRN 2864702.

Unfortunately, shortly thereafter, and on and off continuing to the present time, a close family member became gravely ill and was admitted to the ICU and/or hospital for several weeks at a time. This stressful and time-consuming situation is what caused the 60-day filing deadline to be missed.

The Commission has repeatedly reiterated its authority under 47 C.F.R. §1.3 to waive rules for good cause shown and has routinely waived compliance for violations when the record contains no evidence of intent to defraud or abuse the E-rate program and where the public interest is better serviced by granting a waiver:

The Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. (footnotes omitted)²

St. Mary has abided by all substantive E-rate program rules and believes that the special circumstances described above are sufficient to meet the Commission's criteria to be granted a Waiver.

STATEMENT IN SUPPORT OF REQUEST FOR REVIEW

On July 9, 2015 St. Mary received a PIA inquiry from Program Integrity Assurance ("PIA") reviewer Isidro Jacinto. The PIA requested documentation supporting the Internet Access funding request applied for in FRN 2864702; the response deadline was July 24, 2015.

On July 17, 2015 St. Mary emailed its response, which included the requested copy of the vendor contract. The response also included a request to correct a clerical/ministerial error

² See *Request For Review of Decision of the Universal Service Administrator by Bishop Perry Middle School*, DA No. 06-54; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

and reduce the pre-discount amount from \$11,435.99 to \$9,741.05. No follow up questions were asked on this application. Nonetheless, despite St. Mary's timely submitted response, the information was not properly processed, and the FCDL issued on August 7, 2015 with the funding commitment for FRN 2864702 unwarrantedly denied for failing to submit supporting documentation. A copy of the July 17, 2015 PIA response, together with the email read receipt from Mr. Jacinto are attached as Exhibit B.

CONCLUSION

Throughout its application process St. Mary School demonstrated compliance with E-rate program rules and regulations. It followed all core E-rate program requirements and intended no fraud, abuse or waste of E-rate funds. It provided PIA all requested information and documentation and did so in a timely manner. However, due to a processing error made by USAC, the funding that St. Mary's is entitled to receive for FRN 2864702 was not awarded.

St. Mary feels it has provided sufficient special circumstances to justify a waiver of the time period for submitting its Request for Review which is being filed ten (10) days after the deadline. Further, the kind of PIA error for which review is requested has become only too common in the rush to fund FY2015 applications by a targeted date and should be rectified.

Therefore, for the reasons contained herein, for good cause shown, and to better serve the public interest and the interests of the students of St. Mary School, respectfully requests that the Commission:

1. Find sufficient cause to waive the 60-day requirement for filing the within Request for Review;
2. Grant the within Request for Waiver and/or Review;

3. Remand FRN 2864702 to USAC for re-processing, taking into consideration the documentation provided on July 17, 2015, so that applicant may receive the full funding commitment to which it is entitled;
4. Direct USAC issue a Revised Funding Commitment Decision Letter for FRN 2864702 for an annual pre-discount amount of \$9,741.05.
5. As necessary, waive any procedural rules.

Thank you for your consideration.

/s/ Courtney Cikach

Courtney Cikach
Educational Funding Group, Inc.
E-rate Consultant to St. Mary School

EXHIBIT A



**St. MARY'S
CATHOLIC SCHOOL**

265 Baker Street
Berea, Ohio 44017
440.243.4555

Website: www.smsberea.org

To: Schools and Libraries Division of the
Universal Service Administrative Company

Re: Letter of Agency: complete E-rate Funding Year 18 (2015-16)
 complete E-rate Funding Year 19 (2016-17)
 complete E-rate Funding Year 20 (2017-18)
and all other open E-rate Funding Years

Please check off all years which apply to your signed agreement.

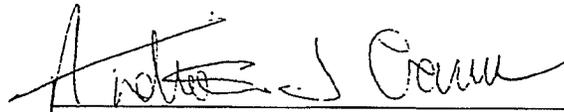
LETTER OF AGENCY (LOA)

The undersigned, on behalf of ST. MARY'S CATHOLIC SCHOOL, hereby expressly authorizes the personnel and authorized agents of Educational Funding Group, Inc., ("EFG") to act as our Agent(s) with the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) regarding all matters involving our E-rate funding application(s) for the Funding Years noted above.

This authorization relates to the filing of FCC Form 470, FCC Form 471 and all other E-rate forms necessary to complete each year's funding process. This authorization further extends to all other phases of the application process, including, but not limited to, responding to Program Integrity Review inquiries and the filing of appeals.

This authorization shall remain in full force and effect until all work associated with each of the Funding Years authorized above has been completed.

ST. MARY'S CATHOLIC SCHOOL
USAC APPLICANT NAME


Signature of Authority

Date: January 26, 2015

Andrew J. Carner
Printed Name

Principal
Title

EXHIBIT B

Courtney Cikach

From: Erate Support <erate@naa.com>
Sent: Friday, July 17, 2015 11:04 AM
To: 'Jacinto, Isidro'
Cc: courtney.cikach@naa.com; erate@naa.com
Subject: RE: FY2015 application 1017186_ST MARY SCHOOL_mJxW
Attachments: St. Mary's Catholic (Berea) - Internet Svcs Agmt - FY16 renewal option to FY20 - Executed_yNQs.pdf

Follow Up Flag: Follow up
Flag Status: Completed

SourceCpu: cpu309

Hi Sid,

I have attached a copy of our vendor agreement for FRN 2864702. The attached contract only supports an annual pre-discount amount of \$9,714.05. When we were completing the application, we misunderstood an FCC ruling and assumed that a(n) USF surcharge would be applied to this service which is why we asked for about 17% more money. We were incorrect about that. PLEASE REDUCE FRN 2864702 FROM AN ANNUAL PRE-DISCOUNT AMOUNT OF \$11,435.99 TO AN ANNUAL PRE-DISCOUNT AMOUNT OF \$9,741.05.

Thank you for your attention to our application.
Courtney Cikach

Based on the review of your Funding Year 2015 FCC Form 471 1017186 for FRN 2864702, your Item 21 was not sufficient to allow us to determine the eligibility of your request.

Questions

To assist us in the review of your application, we need the following information:

- 1. Vendor documentation which supports the funding request amount of \$11,435.99 one-time charge?*

Please keep the following items in mind when provide vendor documentation:

- a. Any vendor documentation provided should clearly identify any ineligible charges that were cost allocated out of your request. Examples of supporting documentation include contracts, vendor quotes, vendor bills, invoices, etc.*
- b. If you do not have vendor documentation that supports the total amount requested, please explain the difference between the amount you requested on the FRN and the amount shown on the documentation you provide.*
- c. If you are requesting additional dollars to accommodate expected growth or increased usage, please indicate how you estimated this amount. Please also provide any relevant documentation that you used when determining the estimate for expected growth or increased usage.*

Patrick M. Vitone, Program Integrity Specialist

Educational Funding Group (USAC CRN 16043587)
26650 Renaissance Parkway, #2
Cleveland, Ohio 44128
V: 216-831-2626
F: 216-831-2822
M: 330-283-2577
E: pvitone@naa.com

A happy life consists not in the absence, but in the mastery of hardships. -- Helen Keller, 1933

From: Jacinto, Isidro [mailto:Isidro.JACINTO@sl.universalservice.org]
Sent: Friday, July 17, 2015 9:53 AM
To: 'Courtney Cikach@1-(216) 8312822'
Cc: courtney.cikach@naa.com; 'Lorrie.Germann@education.ohio.gov'
Subject: FY2015 application 1017186_ST MARY SCHOOL_HPcM

Courtney,

Please reply to the attached letter latest by due date of 07/24/15.

Thanks

Sid Jacinto
PIA Reviewer
Program Integrity Assurance
USAC, Schools and Libraries Division
Phone: 973-581-5027
Fax: 973.599.6579
Email: sjacint@sl.universalservice.org

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SERVICE PROVIDER CONTRACT INTERNET SERVICE

This agreement for providing Internet services ("Agreement") is entered into _____ (date) between the North Coast Council ("Provider") and the **St. Mary – Berea** ("Customer"), as verified by the signatures on the signature page below.

WHEREAS, Provider is a regional computer services provider organized by the State of Ohio to provide communications and other technology services, and;

WHEREAS, the Customer is a School District or School certified for instruction by the State of Ohio, and;

WHEREAS, the Provider through its technology center desires to provide to Customer and Customer desires to secure from Provider the services detailed in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound, agree as follows:

I. DEFINITIONS:

As used in this Agreement the following terms shall be defined as follows:

"*Customer*" shall mean a public or private school or school district that has agreed to the terms and conditions of this Agreement.

"*Provider*" shall mean the regional computer services provider.

"*Services*" shall mean all of the duties and ministrations affirmatively checked in Article III Performance of this Agreement.

"*User*" shall mean a school or person authorized by a school to make use of the data services or equipment secured by Customer from Provider by this Agreement.

II. TERM AND RENEWAL

This Agreement shall be for the period beginning July 1, 2015 and ending June 30, 2016, with the option for four annual renewals terminating June 30, 2020.

III. PERFORMANCE

Provider shall furnish Customer Internet access services with the following terms and conditions.

Charges will be incurred for only those Services for which a rate is shown and/or a charge is itemized.

Services will be rendered for the period of the Agreement, unless otherwise stated below. Any additional services will be billed monthly as incurred.

1. Services and Charges

Charges will be incurred for only those services for which a rate is shown and/or a charge is itemized. Services will be rendered for the period of the Agreement, unless otherwise stated below.

INTERNET ACCESS SERVICES	ANNUAL CHARGE
1) Transport Cost	
50 (Mb)	\$9,741.05

Upgrades

Upgrades during the initial contract or renewal period are allowable pending final acceptance by NCC and the contracted transport provider.

Additional Charges

Customer agrees to pay the Provider for any installation costs, if incurred, as a result of providing Services to Customer.

2. Provider's Obligations

- a) Provider will provide sufficient training of Customer's personnel to permit Customer to perform all functions and procedures associated with the Internet Access connection.
- b) Provider will plan and coordinate all activities incidental to the implementation of the Internet access connection.
- c) Provider will assume all responsibilities for the physical Internet access system excluding the customer's internal network.
- d) Provider shall provide support for its services during its normal business hours, defined as 7:30 a.m. EST to 4:30 p.m. EST, Monday through Friday exclusive of holidays as established by the Educational Service Center of Cuyahoga County.
- e) Upon request from the Customer, Provider may provide service and support outside normal business hours. Such service shall be provided at the sole discretion of the Provider and at an additional cost to the Customer agreed upon in writing prior to the service being provided.
- f) Provider shall make every effort to maintain a minimum network availability of 98% during regular business hours. Provider shall make every effort to maintain network availability of 90% outside of regular business hours exclusive of regularly scheduled maintenance and backup.
- g) Provider shall complete system maintenance, system upgrades and system installations affecting system availability outside normal business hours unless any such maintenance, upgrade or installation is necessary because of an unexpected system failure caused by events beyond Provider's control, or supporting vendors are not available outside normal business hours. Notification of every planned system outage shall be made at least twenty-four (24) hours in advance of the outage. Notice of system maintenance, system upgrades and system installations affecting system availability is available on the NCC website.
- h) If requested by the District in writing, NCC shall plan and coordinate the District's ordering and installation, at the District's cost, of proper equipment and telephone lines, and shall provide information to the District to assist in obtaining necessary forms.
- i) Quality of service shall be determined by an overall customer satisfaction of 80% or greater. Provider shall evaluate the quality of service via any of the following:

1. Quarterly Advisory and Board of Director meetings;
2. Periodic customer surveys;
3. Training evaluation forms;
4. Other methods as determined appropriate.

3. Customer's Obligations

- a) Customer will assume all responsibilities for all local area networks (LAN) connected to an Internet access connection. These responsibilities include, but are not limited to, Customer-owned communications equipment/cabling, LAN software, and LAN hardware.
- b) Customer will provide surge suppression for all devices either directly or indirectly connected to the Internet access connection. The surge suppression must meet UL1449 rating.
- c) Customer will make its personnel and records available to the extent necessary to facilitate the planning, training and implementation process of the Internet access connection.
- d) Customer will provide the Provider with appropriate and sufficient space and electrical power to facilitate the Internet access connection installation.
- e) Customer agrees not to connect any of its local area networks to alternative Internet service providers without the Provider's written approval.
- f) Customer agrees not to resell any Internet access services provided by the Provider.
- g) The Customer shall participate in quality of service measuring activities as outlined previously, including but not limited to, Advisory meetings, periodic customer surveys and training evaluation forms.
- h) The Customer shall contact Provider personnel or representatives in the following order as needed regarding service issues:
 1. Provider's designated Support Personnel via e-mail or telephone;
 2. Provider's designated Coordinator responsible for the Service Area via e-mail or telephone;
 3. Provider's designated Assistant Director responsible for the Service Area or NCC's Technology Director via e-mail or telephone;
 4. Provider's Executive Director via e-mail or telephone; and
 5. Provider's Chairman of the Board of Directors via e-mail or telephone.

IV. CHARGES AND PAYMENT

Customer agrees to be solely responsible to Provider for all charges billed by Provider for Services provided to customer under this Agreement. Charges for the Services provided under this Agreement will be billed to Customer on or about July 1 and January 1 of each year.

Payment of all invoices sent shall be due within 30 days of the send out date on the Customer's receipt invoice. Provider may at its sole discretion terminate or suspend the Services to any Customer whose payments are in arrears by more than sixty (60) days. Such suspension shall not be deemed a waiver of other legal or equitable rights the Provider may have for full payment. If the Customer is suspended, there may be a reconnection fee to cover the administrative cost of reconnection. The reconnection charge shall be in addition to amounts due for unpaid balances and/or the above described service charges.

V. WARRANTIES AND LIMITATIONS ON LIABILITY AND INDEMNIFICATION

- A.** Providers shall be liable to Customer for failure to provide Services, but only if such failure(s) is due to the negligence of Provider and not excused by either of the following: 1) Provider shall not be liable for any damages incurred as a result of the errors, omissions or negligence of Customer, its personnel, employees, agents or users. 2) Provider shall not be liable for failure to perform if such failure is caused by acts of God, winds, fires, landslide, floods, droughts, famines, acts of public enemies, insurrection, military action, sabotage, riots, or civil disturbances, failure of a utility or utility type service which is essential to the Provider's Service or other event(s) not reasonably within the control of the Provider.
- B.** Customer may utilize the Services provided for educational and educational administrative related activities only. Where the Services provided include access to the Internet networks, Provider does not warrant that the functions of the Internet network will meet any specific Customer or user requirements, or that Services provided will be error free or uninterrupted; nor shall Provider be liable for any actual damages or any indirect, incidental, special or consequential damages (including as a result of loss of data or misinformation) sustained in connection with the use, operation, or inability to use the Provider Services by Customer or its users. Further, Customer understands and agrees that Provider will exercise no control over the information that Customer and users may transmit and access as a result of the provision of Services by Provider and that, therefore, Customer will make no claim against Provider for the Internet service uses, including transmission, downloading or uploading of information that is offensive, a violation of the law, or the actionable violation of others' rights. Unless special arrangements are made and appended to this Agreement, Provider will not routinely monitor Customer's activities or pupil access to any of the interconnected systems. Any filters or screening devices are limited to those in existence at the date of this Agreement or for which Provider subsequently installs. Provider is not under any duty to install or modify filters or screening programs. Provider does not warrant the accuracy or appropriateness of any information contained in the interconnected systems. Some material contained in the interconnected systems may be inappropriate for school aged pupils.
- C.** Customer, directly or through its agents, permitting pupil access to the interconnected computer system(s) of the Internet through Provider assumes full responsibility for any and all access to and usage of information contained on the interconnected computer system(s) of the Internet.
- D.** CUSTOMER AGREES TO INDEMNIFY AND HOLD PROVIDER, ITS GOVERNING BOARD MEMBERS, OFFICERS, MEMBERS, EMPLOYEES AND/OR AGENTS HARMLESS FROM ANY CLAIMS, SUITS, LIABILITY, LOSS, EXPENSES AND/OR DAMAGES, INCLUDING ALLEGED COPYRIGHT AND OTHER INTELLECTUAL PROPERTY CLAIMS, SUSTAINED BY ANY PERSON BY REASON OF ANY ACT OF CUSTOMER OR ITS USERS IN THEIR ACTIVITIES INVOLVING USE OF PROVIDER'S NETWORK.

- E. Provider reserves the right to discontinue Customer's access to the Provider's Service and/or seek other legal or equitable relief for use of the Services that Provider deems to be in violation of the rules and regulations of the State Board of Education; or in violation of this Agreement; or violate state and federal law; or are uncivil. For purposes of this Agreement, uncivil conduct includes but is not limited to: 1) transmitting offensive or harassing statements; 2) developing and/or transmitting offensive or unlawful graphics; 3) transmitting sexual or ethnic slurs explicitly or as part of a joke; 4) soliciting or encouraging others to engage in sexual, offensive or unlawful acts; or 5) permitting or encouraging unauthorized access to the Providers network and public networks including access to the Internet.
- F. Customer understands and agrees that Provider shall have no responsibility for Customer's or its users' accessing or transmitting offensive or unlawful information, interference or unlawful access to others' information or networks, or other offensive or unlawful activity in which Provider's Service is used.
- G. Although Provider does not have a duty to monitor Customer or its Users' transmissions, it shall not be prohibited from monitoring.

VI. PROPERTY

- A. All written procedures and similar items utilized or developed in connection with this Agreement, residing with Providers, are not to be considered the property of Customer.

VII. CONFIDENTIALITY OF INFORMATION

- A. Provider shall exercise ordinary care in preserving and protecting the confidentiality of information and materials furnished by Customer.
- B. Except as required by law, Provider agrees not to disclose any materials, information, or other data relating to Customer's operations, to other individuals, corporate entities, districts, or governmental agencies, without prior written consent from Customer.
- C. Except as required by law, Customer agrees not to disclose any information or documentation obtained from Provider.

VIII. NOTICES

A. All notices permitted or required to be given to either of the parties to this Agreement shall be in writing and shall be deemed given or delivered when: (a) delivered by hand or (b) mailed, if sent by regular mail or other express delivery service (receipt requested), in each case to the appropriate addresses set forth below (or to such other addresses as the party may designate by notice to the other party hereto):

1. If to Provider:

Name: John W. Mitchell
Executive Director
North Coast Council
Address: 5700 West Canal Road
City/State/Zip: Valley View, Ohio 44125
Phone: 216-520-6900
Facsimile: 216-520-6969
E-mail: John.Mitchell@nccohio.org

2. If to Customer:

Name: _____
Title: _____
Organization: **St. Mary – Berea** _____
Address: _____
City/State/Zip: _____
Phone: _____
Facsimile: _____
E-mail: _____

B. GENERAL PROVISIONS

1. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.
2. **Waiver, Discharge, etc.** This Agreement may not be released, discharged, changed or modified in any manner, except by an instrument in writing signed by both parties. The failure of either party to enforce at any time any of the provision(s) of this Agreement shall not be construed to be a waiver of any provision(s), nor in any way to affect the validity of this Agreement or any part hereof or the right of either party hereto to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Furthermore, the term of any purchase order, invoice or like document issued in conjunction with the Service to be provided herein shall not serve to add to or modify the terms of this Agreement.
3. **Captions.** The captions in this Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.
4. **Rights of Persons Not Parties.** Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto.

READ RECEIPT

Courtney Cikach

From: Jacinto, Isidro <Isidro.JACINTO@sl.universalservice.org>
To: Erate Support
Sent: Sunday, July 19, 2015 4:48 PM
Subject: Read: RE: FY2015 application 1017186_ST MARY SCHOOL_HvWB
SourceCpu: server02

Your message

To: Jacinto, Isidro
Subject: RE: FY2015 application 1017186_ST MARY SCHOOL_HPcM
Sent: Friday, July 17, 2015 11:04:06 AM (UTC-05:00) Eastern Time (US & Canada)

was read on Sunday, July 19, 2015 4:47:36 PM (UTC-05:00) Eastern Time (US & Canada).

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