



**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Petition for Reconsideration or Waiver of a |) | |
| Decision by the Telecommunications |) | |
| Access Policy Division, Wireline |) | |
| Competition Bureau for |) | |
| |) | |
| Orleans Parish School Board |) | File Nos. SLD-139084 |
| New Orleans, LA |) | |
| |) | |
| Schools and Libraries Universal Service |) | CC Docket No. 02-6 |
| Support Mechanism |) | |
| |) | |

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|-------------------------------------|-----------------------------|
| Appellant Name: | Orleans Parish School Board |
| Decision being addressed: | DA 16-472 |
| Form 471 Application Number: | 139084 |
| Billed Entity Number: | 139223 |
| Funding Year: | 1999 |
| FRNs: | See chart below |

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| 214629 | 214749 | 214800 | 214831 | 214930 | 214972 | 215022 | 216022 | 216047 |
| 214654 | 214753 | 214801 | 214849 | 214939 | 214975 | 215025 | 216025 | 216048 |
| 214655 | 214756 | 214803 | 214860 | 214944 | 214982 | 215026 | 216026 | 274783 |
| 214657 | 214761 | 214804 | 214873 | 214948 | 214985 | 215030 | 216027 | 274798 |
| 214660 | 214764 | 214805 | 214890 | 214953 | 214989 | 215032 | 216030 | 274805 |
| 214665 | 214770 | 214812 | 214902 | 214957 | 214993 | 215033 | 216037 | 274807 |
| 214668 | 214787 | 214815 | 214907 | 214960 | 214996 | 215035 | 216038 | 274809 |
| 214695 | 214792 | 214817 | 214909 | 214962 | 215005 | 215036 | 216039 | 278561 |
| 214715 | 214796 | 214820 | 214911 | 214966 | 215008 | 216020 | 216044 | 278567 |
| 214724 | 214799 | 214828 | 214913 | 214969 | 215014 | 216021 | 216046 | |

May 27, 2016

Dear Ms. Dortch:

Pursuant to 47 CFR 1.106 the Orleans Parish School Board ("OPSB" or the "District") files this Petition for Reconsideration of the adverse decision issued in DA 16-472. Should the Commission deny the Petition for Reconsideration, the District requests a waiver of 47 CFR 54.520, and all other applicable rules, for the reasons cited below.

In DA 16-472 the FCC found that OSPB's January 10, 2011 Request for Review was not timely filed in violation 47 CFR 54.520, which requires filing within 60-days of the adverse decision. Therefore, the merits of the appeal were not considered.¹ The District asks that the Commission consider the merits of the arguments made in this Petition as well as the January 10, 2011 Request for Review. In its decision the FCC stated:

"The record shows that Orleans Parish School Board (Orleans Parish) was notified of both: (1) a Recovery of Erroneously Disbursed Funds (RIDF) addressed to Petitioner and dated June 20, 2003; and (2) a USAC decision dated August 2, 2006 finding that Petitioner, not the service provider, is the party responsible for the recovery sought by the RIDF (Responsible Party Determination). Orleans Parish did not challenge either action. Orleans Parish's Request for Review filed in response to the Demand Payment Letters issued by USAC in 2010 is, therefore, time-barred. *See Request for Waiver and/or Review of Decisions of the Universal Service Administrator by Baltimore County Public Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 9043, 9043-44, para. (WCB 2012) (noting that the appeal filing deadline is based on the initial adverse decision date

¹ See Attachment 1 for a copy of the January 10, 2011 Request for Review filed by the district.

and not the date of subsequent actions taken by USAC). Because the deadlines for Orleans Parish to challenge the RIDF and Responsible Party Determination have passed, its arguments regarding its lack of records to assert such challenges are irrelevant.”

We respectfully disagree with this decision for the following reasons (that will be further explained below):

- FCC 04-190 clearly states that a letter demanding recovery of funds is appealable and the District filed an appeal of the demand for payment in a timely manner.
- The June 20, 2003 decision directed the recovery towards the service provider and not the applicant.
- The decisions issued on August 2, 2006, were not directed at the District, but instead were directed at the vendor.
- USAC erred in its processing by not sending the decision to a responsible party at the District despite having this information.
- The August 2, 2006 correspondence was mailed to an address that was not available to the District after Hurricane Katrina, instead of the correct address that USAC has in its system.
- USAC erred in its decision to direct recovery towards the applicant in its decision dated August 2, 2006, because the Katrina Order waived record retention requirements for the District.
- Processing delays of 16 years by both USAC and the FCC justify approval of this Petition.
- Seeking recovery of these funds would cause an undue hardship on the District.

Discussion:

The District has no record of receiving either the June 20, 2003 or August 2, 2006 decision. Of course, after 13 years and 10 years respectively, the District cannot determine when or if this correspondence was ever received. If the mail was delivered it is very possible it did not get routed to the party

responsible for the handling of the E-rate process since the correspondence was addressed to an individual no longer employed at the District.

Regardless of whether or not these letters were received, the District believes the reasons below demonstrate that the District's January 10, 2011, appeal should have been considered and recovery should not be sought.

Per FCC Order a Demand for Recovery of Funds is an Appealable Event

In the Fifth Report and Order the FCC clearly stated, "Parties are already free today to challenge any action of USAC – including the issuance of a demand for recovery of funds – by filing a request for review with this Commission pursuant to section 54.722 of our rules."² Therefore, OPSB was within its rights to appeal the December 20, 2010, demand for payment and it is clear that the appeal of this demand was filed within 60-days from issuance. The District is not aware of any decision issued by the FCC after the Fifth Report and Order indicating that only the initial notification of the demand is appealable. Because the District did file a timely appeal of the December 20, 2010, demand letter we request that the Commission grant our Petition.

June 20, 2003 Decision Directed Recovery Towards the Service Provider

In FCC 99-291 the FCC stated "We will seek repayment from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds from the universal service support mechanism."³ As indicated below, the District has no record of receiving the June 20, 2003 letter, but regardless of whether this decision was received or not the District was not directly an aggrieved party. Based on the FCC rules in place at

² See FCC 04-190 at paragraph 40.

³ See FCC 99-291 at paragraph 8.

the time of issuance of the demand, any obligation to repay the funds rested with the service provider and not the District.

It is not reasonable for the FCC to penalize the District because it did not file a timely appeal of a decision that ultimately impacted the service provider. We do agree that the District did have the option to appeal the decision, but in no way was it obligated to appeal a decision that ultimately impacted the service provider. We, therefore, respectfully disagree with the FCC's determination that the District's clock to appeal began on June 20, 2003. The District's opportunity to appeal the decision began when USAC first sent the demand notice to a responsible party at the District at an accurate address and this did not occur until December 20, 2010.

August 2, 2006 Letter was Addressed to Service Provider and Not the District

In DA 16-472 the FCC also states that the District missed this second opportunity to appeal because the request was not filed within 60-days of the Decision Letter issued on August 2, 2006.⁴ We disagree with this claim also because this decision was not directed to the District, but instead was directed to the vendor, Bell South. As shown in Attachments 3, the District was not the addressee on the letter, but instead District was sent a copy of the letter. While it may be argued that the copy served as notice to the District, it seems unreasonable for the FCC to start the District's appeal clock based on a letter that was addressed to the service provided and not the district.

We are of the opinion that the District's clock to appeal began on December 20, 2010, when USAC first sent a letter addressed to a responsible party at the District. The record demonstrates that the District did file a timely appeal of this decision.

⁴ See Attachment 3 for a copy of the August 2, 2006 correspondence that was provided to OPSB's consultant by Mrs. Cyndi Beach of USAC on May 13, 2016.

USAC Process was Deficient by not Sending Correspondence to a Current Contact

The June 20, 2003, and August 2, 2006, letters were mailed to Ms. Sharon McCoy Bell at 3510 General DeGaulle Drive, New Orleans, LA 70114-6715.⁵ Ms. McCoy Bell handled the E-rate process for the District in 1999 as of . USAC was aware that Ms. McCoy Bell was no longer responsible for the E-rate process because after 1999 she never again appeared as the contract person or signatory on the FCC Form 471. One would expect that when the recovery of funds is an issue, every reasonable effort would be made to ensure that all critical communication would reach the responsible party at the District.

USAC realized and corrected the deficiency in their process at some point in time after August 2, 2006. We reach that conclusion because the letter dated December 20, 2010, was sent to the District's E-rate consultant, George McDonald of E-Rate Central, along with Ms. McCoy Bell.

Obviously USAC decided it was important to send the December 20, 2010, letter to the current Funding Year's authorized contact on the FCC Form 471, in addition to the contact on the originally filed Funding Year 1999 FCC Form 471. The December 20, 2010 correspondence is the first correspondence, relating to this demand, the District has record of receiving. It is this letter that was ultimately appealed to the FCC and dismissed as untimely filed. The District appealed the first letter it received within 21 days of receipt, well within the required 60-days.

The District believes that fairness and equity dictate that the December 20, 2010, demand letter should be utilized to determine whether the appeal was timely filed. It is not in the public interest to seek

⁵ See Attachment 4 for a copy of the August 2, 2006 correspondence that was provided to OPSB's consultant by Mrs. Cyndi Beach of USAC on May 18, 2016.

recovery of funds from the District when the Administrator sent critical communication to incorrect addresses, former employees, or directed the letter to the service provider.

USAC Mailed the Letters to a Building No Longer Used After Hurricane Katrina

An additional explanation for why the August 2, 2006, letter was likely not received by the District is because USAC mailed the letter to an address that was uninhabitable after Hurricane Katrina. Over 80% of the District's buildings were not habitable after Hurricane Katrina.

When USAC mailed the August 2, 2006 letter, USAC should have known the address of the building being used as the administrative offices of the District. In its Funding Year 2006 Form 471 the District listed 1111 Milan Street, New Orleans, LA 70115 as the address for the District and the contact person as Kimberly LaGrue. USAC should have mailed the letters to the District's then-current contact person at its then-current address. Had USAC followed this process, as USAC did with the December 20, 2010 correspondence, the District would have received the correspondence and acted in a timely manner.

The Commission should consider whether USAC acted prudently given the status of New Orleans in 2016 when USAC mailed the August 2, 2006 letter. The District believes that USAC did not act in a reasonable manner and, therefore, the Commission should approve this Petition.

Katrina Order Waived Record Keeping Requirements

In DA-05-2484 at paragraph 3, the FCC stated "we waive the recordkeeping requirements pertaining to those entities and such missing records will not be considered a violation of our recordkeeping requirements." Because the FCC waived the recordkeeping requirements it seems unreasonable for USAC to initiate a recovery action against the District when the recovery was related to records that the FCC acknowledged the District would not likely have.

Given the FCC Waiver, it is unclear why USAC determined it was appropriate to initiate a recovery action against the District. Apparently USAC had concerns with initiating such a recovery given the four year delay between the 2006 and 2010 letters.

Processing Delays of Over 16 Years by USAC and the FCC Warrant Approval

It is hard to imagine that resolution of these issues is occurring almost 16 years after the end of Funding Year 1999. The delays in the processing of these decisions materially impact the District's ability to refute the claim. A review of the timeline shows that there were significant delays in processing by both USAC and the FCC.⁶ In total, the issues at hand were "in process" at USAC or the FCC for a total of 5,761 days, almost 16 years. The District filed its appeal within 21 days of receiving the first adverse decision from USAC. Processing delays of 16 years are neither reasonable nor acceptable and this fact alone warrants a waiver of the 47 CFR 54.520.

Seeking Recovery will Create an Undue Hardship on the District

Finally, ordering the District to repay \$96,165.81, more than 15 years after funding was disbursed, will create an undue hardship on the District. For the current fiscal year, the State of Louisiana has a \$70 million budget shortfall and for the next fiscal year the State is facing \$750 million shortfall. These budget shortfalls will no doubt drastically impact K-12 education in Louisiana and reduce funding to OPSB.

Additionally, OPSB is not the same district it was in 1999. Currently the District has only six OPSB Network Schools and 18 OPSB Charter Schools. In 1999 the district served roughly 87,000 children. Today the District serves approximately 14,000 students. The financial impact to the District should be

⁶ See Attachment 2 for a timeline showing the various events involved in this decision.

a consideration as the Commission decides whether to grant relief for errors that may have been made in the second year of the E-rate program. We believe these facts show that a waiver is in the public interest.

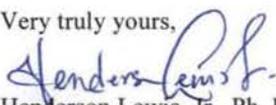
In accordance with 47 CFR 1.3, Commission rules may be waived if good cause is shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

As the Commission has noted in deciding E-rate requests for waivers, simple “mistakes do not warrant the complete rejection” of E-rate applications. Further, the Commission has noted, “rigid adherence to certain E-rate rules and requirements that are ‘procedural’ in nature does not promote the goals of section 254 of the [Telecommunications] Act . . . and therefore does not serve the public interest.”

Conclusion:

The District request your thoughtful consideration of the arguments raised above. We trust that we have demonstrated that the myriad of processing errors by USAC, the significant processing delays by USAC and the FCC, and the impact of Hurricane Katrina warrant approval of this Petition on its merits or a waiver of FCC rules.

If you need additional information, please do not hesitate to contact us.

Very truly yours,

Henderson Lewis, Jr., Ph. D.
Superintendent of Schools