

DOCKET FILE COPY ORIGINAL

In the matter of: Request for Review by the Bald Eagle Area School District of Decision of Universal Service Administrator.

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FCC Docket Nos. 97-21
96-45

JUN 10 1999

FCC MAIL ROOM

I. Statement of Interest:

The Bald Eagle Area School District requests a review of the USAC's decision of appeal in the case of:

Billed Entity Number 125637
Application Number 10478
Funding Request Number 7302

II. Statement of Relevant Facts:

The Administrator's Decision on Appeal was received on May 11, 1999. The administrator's decision to deny our request was based on the assumption that we categorized the services as priority two services not as priority one services. We were erroneously instructed to use this category (Internal Connections) by the SLC Help Desk. The inaccurate and erroneous information provided by the SLC Help Desk caused this problem.

The other issue is that the provider of the service, TCI Network Solutions, Inc. is not recognized as an eligible provider of telecommunications service relating to the leased WAN under the program rules. TCI Network Solutions, Inc. is an eligible telecommunications provider SPIN # 143003835.

Supporting Documents enclosed:

Copy of USAC Decision on Appeal
Copy of B.E.A.S.D. Letter of Appeal
Copy of Letter sent to Ms. Debra Kriete prior to funding commitments.
Copy of Contract for service in question

III. Question for Review:

The Fourth Order of Reconsideration CC Docket # 96-45 states that WAN services are eligible when "a wide area network leased from a telecommunications carrier, however, may be eligible for discounts as part of telecommunications service. [Footnote 585]." Our question concerns the decision to deny our appeal due to the fact that we did not classify the service properly when we were instructed to do so by the SLC Help Desk. The SLC Help Desk advised us to classify that service as an internal connection not a telecommunications service. If the SLC help desk gives out advice that is erroneous then should we be penalized for following that advice?

IV. Relief Sought:

The Bald Eagle Area School District wants to have the service in question classified as a priority one telecommunications service and receive funding for the service.

Please contact me with your decision:

William J. Corkill
Bald Eagle Area High School
751 South Eagle Valley Road
Wingate, PA 16823

Phone 1-814-355-4868 x 119

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If you feel further examination of your application is in order, you may file an appeal with the Federal Communications Commission, Office of the Secretary, 445 12TH Street, SW, Room TW-A325, Washington, DC 20554. Before preparing and submitting your appeal, please be sure to review the FCC rules concerning the filing of an appeal of an Administrator's Decision, which are posted to the SLD Web Site at <www.sl.universalservice.org >. You must file your appeal with the FCC no later than 30 days from the date of the issuance of this letter, in order for your appeal to be timely filed.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Letter Of Appeal:

Contact: William J. Corkill
Address: Bald Eagle Area School District
751 South Eagle Valley Road
Wingate, PA 16823
PH: 1-814-355-4868 x 119
FX: 1-814-355-2146
E-mail: bcorkill@eagle.beasd.k12.pa.us
FCD Letter:
Applicant Name: Bald Eagle Area School Dist
Form 471 application number: 10478
Billed Entity Number: 125637
Funding Request # 00007302

Explanation of Appeal:

This funding request was erroneously listed as an internal connection on the form 471 application # 00010478. This connection serves as a leased, telecommunications/internet access from an eligible carrier. The carrier is TCI Network Solutions, Inc (spin # 143003835). I was advised by the SLC Help Line to file this connection as an internal connection on the form 471 in question. Some months later, I received a call from the problem response team (David) and he questioned the submission as an internal connection. I explained the fact that I was originally advised by the SLC help person to file this service as an internal connection on my form 471. I explained the details of the service to him and he told me that it should be a telecommunications/internet service. I told the problem response person (David) that I did not think at the time that the SLC help was correct but I wanted to follow the rules for submission as established by the SLC. The problem response person did not ask me to submit a change for the original submission of the 471 but indicated that he understood the error because it was the fault of the SLC help person who provided the information to me. He told me that some of the help persons were not properly informed. I assumed that he had made the correction since it was the fault of the SLC help itself. In September of 1998, I sent a letter to the SLC regarding my concerns about this issue.

Our School District is part of a consortium consisting of four other member schools that have individual leases for this service from the same telecommunications provider TCI Network Solutions Inc. Each member school has its' own individual lease agreement and each member individually filed a form 471 with the SLC for the service. They were instructed by the help desk to file as telecommunications or internet access. I was instructed to file it as an internal connection! This same connection was funded by the SLC for all of the other members of our consortium. For example, I contacted one of the consortium members, the Keystone Central Area School District, and they provided me with this FRN# 00108325 that corresponds to the same service and provider. They received funding for this leased telecommunications service FRN# 00108325. I provide this information to you in order for you to check that this is an eligible service and that the service was funded for another entity.

The help that I received from the SLC Help Line was the cause of this item not being listed properly. It is a telecommunications service. I had submitted several other requests and have no problem with the fact that they were not funded. This form 471 application number 10478 was not my error. I will be happy to provide any other information or supporting documentation necessary to help remedy this problem. This funding is very important to our school district. I anticipate your response.

Sincerely,



William J. Corkill

Ms. Debra Kriete
SLC Fund
Washington, DC
September 30, 1998

Dear Ms. Kriete,

My name is William J. Corkill and I am writing this correspondence to you because of a problem with a form 470 and 471 USCN 42107000073158 filed by me on behalf of the Bald Eagle Area School District. I have spoken to Julie Tritt, of the Pennsylvania Department of Education, about this problem and she suggested I write you this appeal. I submitted forms 470, 471 on an existing contract for my Wide Area Network Access Contract. Prior to filing I called the SLC and was instructed to submit this contract as an internal connection. I called three times and received the same instructions each time. I questioned this but was told that the fourth order indicated that I should file under this category (Internal Connection). Our school district is a member of a consortium of five school districts on the same leased Wide Area Network with the same provider (TCI Network Solutions). I discussed this issue with the other consortium members. The other members said that it could not be right and so they filed under both categories (Internet Access and Internal Connections). They said that they would let the problem response team resolve the problem. I filed as instructed by The SLC. Later, I was contacted by a representative of the SLC problem response team who questioned this item on forms 470 and 471 USCN 42107000073158. I am greatly concerned that the category was not changed because the representative questioned the submission under that category and I explained the WAN connection to him but I do not know if a change was made to my form. I was not asked by the representative to submit a problem response form change at that time. The other members of our consortium are expecting funding for this submission under the Internet Access Category and our school district may not receive funding because of this omission.

I would appreciate anything that you could do to help me with this matter. I had called the SLC, after attending a Pa. Dept of Education E-rate Workshop in July, but the representative indicated to me that no changes could be made at this time. I called a second time and was told that I would be able to amend this form if it had not been taken care of when the funding letters were distributed. Can you help with this issue?

Sincerely,



William J. Corkill

THIS AGREEMENT is entered into as of May 1, 1997 by and between Bald Eagle Area School District (known as "Customer"), whose address is: 751 South Eagle Valley Road, and whose telephone number is: (814) 355-4860, and TCI of Pennsylvania (a corporation, as "Company"), whose address is: 2437 East College Ave Suite 1, State College, PA 16801, and whose telephone number is: (814) 238-1585.

The Company wishes to install a Fiber Optic Network ("Network"), along with related equipment necessary to make available telecommunication services to the Customer. The Customer wishes to grant to the Company the non-exclusive right to install and maintain the Network and such equipment, subject to all the terms and conditions of this Agreement.

Therefore, in consideration of the mutual covenants herein contained,

THE PARTIES AGREE AS FOLLOWS:

1. GRANT OF RIGHT. Subject to all the terms and conditions of this Agreement, the Customer hereby grants to the Company the non-exclusive right to construct, install, own, operate, maintain, repair, disconnect, replace, and remove the equipment necessary to make available Telecommunication Services at the Customer building.

2. INSTALLATION.

a. Company shall provide, install, maintain, repair, operate and control any equipment, cable or facilities associated with or connected to the Network ("System Equipment"). Company shall pay the cost of purchasing and installing all System Equipment and such System Equipment shall be and remain the property of the Company.

b. Installation by the Company shall comply with all applicable local and state laws, regulations, ordinances, and other orders of all regulatory authorities having jurisdiction thereof.

c. Company shall have no obligation to maintain or repair Customer-provided equipment. In the event that Company, in responding to a Customer-initiated service call, determines that the cause of such service call is a failure, malfunction or inadequacy of Customer-provided equipment, Customer shall compensate Company, for such service call at the then prevailing rate.

d. If Company is restricted by Customer in managing the utilization of its employees or subcontractors, or if asbestos or any other hazardous materials exists at Customer's Building, Company may increase the non-recurring installation fee to reflect only actual increased out-of-pocket costs and extend the time of performance to reflect reasonable additional time required to adjust for unanticipated activities. If the presence of asbestos or other hazardous materials exists, Customer must, at its own expense, have the materials removed or notify Company to install the applicable portion of the Network in areas at Building not containing such material.

3. PROVISION OF SERVICES. The Company agrees to make available: Network communications services utilizing a multi-protocol transport system engineered with modular backbone switches to provide transparent connections, which are limited to, data, video, and audio signals to the Building for Customers use in its operations and the operations of its affiliates; One (1) shared IEEE 8022 "AUI" or RJ-45 10 Base-T connection; One (1) dedicated 1.544 DS-1 connection; and a shared video feed consisting of One (1) origination channel and three (3) receive channels will be delivered to the Customer main distribution frame. This shared service will be delivered to the Customer through TCI's private fiber optic network.

In consideration of the Service to be provided to the Customer, the Customer agrees to pay the Company a monthly payment, payable in advance on the first day of every month until the expiration/termination of this Agreement. The amount of monthly payment will be \$2,595 (two thousand five hundred and ninety-five dollars) and will be due on May 1, 1997. The monthly payments will remain at this amount until the expiration of this 120 month Agreement.

For a monthly payment that is received by the Company after the 10th day of the applicable month, a late payment processing fee of \$200 will be assessed to the next monthly payment. For monthly payments that are more than 30 days overdue, interest will accrue on the outstanding balance at the statutory post-judgment interest rate applicable in the State of Pennsylvania.

The Company will be responsible for and shall forever hold the Customer harmless from paying any pole line attachments, essential access fees and sales taxes assessed in connection with the Service provided to the Customer hereunder.

All initial services agreed to by the Customer, which are provided to the Customer by the Company, are included within the monthly payment. Additional services, including customer modifications, re-configuration's and incremental expansion to the Network will be subject to additional costs and limited to the manufacturer's applicable published technical specifications.

EXPENSES.

- a. Without charge therefor to the Company, the Customer shall provide conditioned space which is suitable for electronics and telecommunication equipment within the Building, access in accordance with the terms of this Agreement, and adequate electricity as required for construction, installation, operation, and maintenance of the Network, and provision of services in accordance with this Agreement and the approved plans, drawings, and specifications.
- b. Installation of the Service by the Company shall be at no cost to the Customer.

5. TERMINATION OF SERVICE. Company may terminate Service if a material breach hereunder is not corrected by Customer within 30 days following written notification thereof. Termination for cause by Company or repudiation by Customer shall not relieve Customer of liability incurred prior to such termination or for liquidated damages equal to 100% of the monthly charges due over the remainder of the Initial Term.

6. INDEMNITY.

a. The Company and the Customer shall indemnify the other with respect to any third party claim and hold each other harmless for any damage to the Building or other property or for any cost, expense, liability, or claim, including reasonable attorneys' fees, arising from or relating to the construction, installation, operation, or removal of the network, provision of services in connection therewith, the acts of its employees, agents, contractors, officers, and authorized vendors, or any claim from any third party arising from any of the foregoing, including any utility company or other service provider with facilities located in the Building, except where caused by the negligence or willful misconduct of the Customer, its employees and/or agents or any utility company, its employees and/or agents.

b. Company will maintain insurance coverage of a type and limit sufficient to protect its interest in any equipment, cable, services or facilities provided to the Customer in acceptance with this agreement.

SPACE/ACCESS. Customer shall provide, at its own expense, space at its location and all power required for any System equipment and remote diagnostic telephone line that Company may deem necessary to provide at Customer's location in order to properly provide the Service. Company shall have reasonable access to the conduit, to Customer's space and to its System Equipment and may remove or replace its System Equipment at any time.

8. TERM. The term of this Agreement shall be for a period of 120 months from the date of completion of the Network. After the initial term, this Agreement shall continue on a month-to-month basis until either party provides 30 days' written notice of termination.

9. ENTIRE AGREEMENT. This Agreement supersedes any and all other agreements between the parties relating to the subject matter hereof with respect to the Building, either oral or in writing, and incorporates all the terms and conditions thereof.

10. ASSIGNMENT. This Agreement shall not be assigned by either party without the prior written consent of the other, except the Company may assign, upon written notice, its rights under this agreement to any entity which succeeds to all or substantially all the assets and operations of the Company pursuant to any merger, consolidation, sale of assets, or similar transaction, and the Customer may assign this Agreement, upon written notice, to any successor Customer of the building.

11. ATTORNEY'S FEES. In the event of a default by either party or in the event of any suit or action out of this Agreement, the prevailing (or non-defaulting) party shall be entitled to recover its costs and expenses, including reasonable attorney's fees, in connection therewith.

12. TITLE. The parties agree that the Company shall retain ownership of all equipment supplied by the Company. The Customer agrees that it shall take no action which may directly or indirectly impair the Company's title to any of the Company's equipment or expose the Company to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing, by the parties. The Customer agrees that it shall not inhibit, in any way, the Company from removing all of its equipment in the event that the Customer terminates this Agreement.

13. FORCE MAJEURE. The obligations of the parties are subject to force majeure, and neither party shall be in default under this Agreement if any failure or delay in performance is caused by strike or other labor problems, acts of God, fire, flood, adverse weather

conditions, materials or facility shortages or unavailability not resulting from such party's failure to timely place orders therefor, lack of transportation, governmental codes, ordinances, laws, rules, regulations or restrictions, condemnation or exercise of rights of eminent domain, war or civil disorder, or any other cause beyond the reasonable control of either party.

LIABILITY DISCLAIMER.

a. The Company's liability for errors, omissions, interruptions, delays, or defects in transmission (other than those caused by force majeure or by the Customer) occurring in the course of engineering, installation, and operation of the Network or the provision of the Service, shall in no event exceed the charges paid by the Customer for the period of time during which such errors, omissions, interruptions, delays, or defects in transmission occurred.

b. In no event shall the Company be liable for any special, consequential, or incidental damages.

15. NO JOINT VENTURE. No agency, employment agreement, joint venture, or partnership is created between the parties by this Agreement and neither party shall be deemed to be an agent of the other nor shall either party have the right, power, or authority to act for the other in any manner or to create any obligations contracts, or debts binding upon the other party.

16. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania.

17. NOTICES. Any notices required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at their addresses set forth above, or to such other address as either party may designate by notice given in like manner, or sent by facsimile or commercial overnight delivery. Unless written notice of a change of address is given, notices and other written and oral communications shall be delivered as follows:

a. If to Company:

Mr. Jon Newcomb
TCI Great Lakes
111 Pfingsten, Suite 400
Deerfield, IL 60015

with a copy addressed to:

Mr. Samuel Samicke
TCI Network Solutions
Four Parkway Center, Suite 310
Pittsburgh, PA 15220

with a copy addressed to:

Mr. Chuck Horner
TCI of Pennsylvania, Inc.
2437 East College Ave
Suite 1
State College, PA 16801

b. If to Customer:

Mr. Daniel F. Fisher
Bald Eagle Area School District
751 South Eagle Valley Road
Wingate, PA 16823

3. MAINTENANCE SERVICE. Maintenance Service consists of the repair or replacement, at the Company's option, of malfunctioning Network and related service equipment and the correction of malfunctioning Network software.

A defect or failure that has a substantially adverse effect on the Network shall be deemed an emergency. If Company is unable to remotely correct the defect or failure, it shall dispatch a technician to the Customer site within 2 hours of the Customer's request for maintenance service, without regard to the time of day or day of the week. Maintenance service for a defect or failure of the system

that is not an emergency shall be performed by the Company between 8:00 a.m. and 5:00 p.m., local time, Monday through Friday, except holidays. If Company is unable to remotely correct a non-emergency defect or failure, Company will dispatch a technician to the Customer site within 24 hours for a non-emergency situation, except when the request for non-emergency service is made on or before a weekend day or holiday in which case a technician will be dispatched by Company on the next business day. Customer must provide Company with access necessary to perform maintenance service. A report of a defect or failure of the system and request for maintenance services may be made by the Customer 24 hours a day, 7 days a week.

19. MISCELLANEOUS.

a. Any provisions in this Agreement to the contrary notwithstanding, this Agreement shall become effective only upon execution by an authorized officer of the Company.

b. The terms and provisions of this Agreement may only be waived, modified, or changed by an amendment in writing signed by both parties. No failure by either party to insist upon any performance of the other party's obligation under this agreement shall constitute a waiver of such obligations or a waiver of future obligations under this Agreement.

c. If legal proceedings are instituted to enforce any provision hereof by either party, in addition to any other relief awarded by a court, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs.

d. The parties agree that the terms of this Agreement are confidential and may not be disclosed except as may be required by law and except as may be mutually agreed upon, in writing, by the parties; provided, however, that the terms of this Agreement may be disclosed by the parties to their respective attorneys, accountants, and financial institutions, which or who shall be directed by the parties to maintain the confidentiality of such information. If this Agreement must be disclosed pursuant to a request as per the Public Right to Know Law, 65 Pa. C.S. §§ 66.1- 66.4, the Customer will notify the Company of such request and will provide the Company with the opportunity to challenge such disclosure.

e. If any provision of this agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect.

f. Agreement is contingent upon the acceptance of the Mutual Covenant contained within this agreement and participation of all Link to Learn Testbed facilities including: Lock Haven University, Keystone Central School District, Bald Eagle Area School District, State College Area School District, Penns Valley Area School District, Tyrone Area School District, Centre County Vo-Tech School and the Bellefonte Area School District.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

_____, a _____ (Partnership/Corporation)
BALD EAGLE AREA SCHOOL DISTRICT
By: Betty A. Park
Name: Betty A. Park
Title: Board Secretary

TCI Network Solutions Inc., a Delaware (Partnership/Corporation)
By: [Signature]
Name: [Signature]
Title: [Signature]

SLC Funding Notification Synopsis for Application Number: 00010478

Funding Request Number:00007302 Funding Status: Unfunded or Denied
SPIN: 143003835 Service Provider Name: TCI Network Solutions, Inc.
Provider Contract Number: 00306
Services Ordered: Internal Connections (Shared)
Effective Date of Discount: 05/01/1998 Contract Expiration Date: 05/11/2007
Estimated Total Annual Pre-discount Cost: \$18,560.00
Discount Percentage Approved by SLC: N/A
Funding Commitment Decision: \$0.00 - Srvc/Discnt will NOT be funded
Funding Commitment Decision Explanation: Funding cap will not provide for Internal
Connections less than 62% discount to be funded. Please see WWW.SLCFUND.ORG What's
New Area for further details.