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FCC - MAILROOM

TO: Federal Communications Commission
FROM: Greg Ennes(genes@nohum.k12.ca.us)
Arcata Elementary School District
1435 Buttermilk Ln., Arcata CA. 95521
707-822-5988 FAX 707-822-7002
RE: CC DOCKET NO. 96-45 & 97-21

On May 24,2002, the Arcata School District received notification from the SLD that our funding request(FRN:738714) had been denied. The letter gave the following explanation for the denial; "30% or more of this FRN includes a request for one-time charges outside the funding year for installation, which is an ineligible service based on program rules."

As a result of discussions with SLD officials who reviewed our request, we are appealing directly to the FCC as the SLD does not currently have a policy to deal with our situation and thus would have to deny any appeal we might make to them.

It is our contention that both the recurring and non-recurring charges in this FRN are eligible and that the reason for the original denial was not based on current policy, but rather on a misapplication of the existing "greater than 30% of FRN is ineligible services" policy.

The discussion that follows outlines the main points we believe justify the appeal of the SLD decision and thus the subsequent approval of the FRN 738714 in its entirety.

BACKGROUND: The original project we entered into with Cox California Telcom required Cox to install fiber optic lines and network electronics equipment on each of 4 sites in the Arcata School District. The goal was to create a Wide Area Network between our sites that could facilitate video conferencing and distance learning opportunities to our rural setting. The total cost for this work was $40,000. For budget reasons, we chose to pay for and seek e-rate discounts for $10,000 of that cost in the first year of the contract, and the remainder in a subsequent year.(This was agreed upon by both parties) The original e-rate funding was approved (with $10,000 NRC) and we then submitted the current FRN 738714 for a total of $78,000, comprised of $48,000 in recurring charges and $30,000 for the remainder of the first year non-recurring charges. The complete FRN was denied in May, 2002 and thus we are writing this letter to appeal that decision.

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POINT 1: The Funding Commitment Decision Explanation is unclear:
If we interpret it to mean that the installation is ineligible because it occurs outside of the relevant funding year, then this contradicts the "greater than $500K" amortization rule. This rule states that for any contract that has non-recurring charges of more than $500,000, the applicant must amortize those payments over a period of at least three years. Our understanding is that this ruling was implemented so that the fund was not overly burdened by one-time, nonrecurring charges in any one particular funding year. If the intent of the ruling is to minimize the payment of non-recurring charges so that funds can be more equitably spread among applicants, then an applicant who voluntarily chooses to spread payment of non-recurring charges over a period of years, in agreement with the service provider, should not be penalized. The end result of the applicant's decision is the same as that of the amortization rule – it reduces the amount of non-recurring charges paid in any given funding year. Our agreement with Cox clearly correlates to the intent of this ruling by spreading our non-recurring payments over multiple funding years.

POINT 2: This is NOT an eligibility issue, but simply a billing issue. It was, and continues to be, our understanding that both the SLD and FCC did not want to involve themselves in payment and billing arrangements between entities. Since the agreement to postpone some of the monies for the installation was agreed to by both parties, we thought this would not be issue. We believed that because the portion of the non-recurring charges for which we were requested discounts in the first year of the contract were eligible, and the service provider was taking the risk of undertaking the work before getting paid for it, we could recover the remaining portion of the non-recurring charges in a subsequent year. In our discussion with SLD official Ellen Wolfhagen(see attached), it is clear that the SLD has no policy regarding this specific situation. It is our contention that the 30% rule, found in the reference area of the SLD web site under ELIGIBILITY OF SERVICE REQUESTS, does not refer to non-recurring charges but rather to recurring charges. In fact, we do not see any written policy regarding the recovery of non-recurring charges outside of the funding year. Therefore, we believe that the reason for the denial of FRN 738714 was based on a current policy that does not really apply to this situation. Thus it appears to us that a policy covering this specific situation is necessary.

POINT 3: We contend that what we were asking for in terms of discounts through the e-rate program were legitimate, forthright and in accordance with the rules of the program as we understood them. Our intentions have always been to seek the support of the e-rate program, as without it there would be no way to we could afford to bring the services we are requesting to our small, rural, high poverty area.

WE THANK YOU FOR YOUR TIMELY REVIEW OF THIS APPEAL AND AWAIT YOUR DECISION WITH GREAT ANTICIPATION.

Subject: FW: one-time charges
Date: Wednesday, May 8, 2002 6:15 AM
From: Norton, Matthew (CCI-Atlanta) <Matthew.Norton@cox.com>
To: <gennes@nohum.k12.ca.us>, "Hulsebus, Ann (CCI-Eureka)" <Ann.Hulsebus@cox.com>
Cc: "Duff, Bridget (CCI-Atlanta)" <Bridget.Duff@cox.com>

Well, I finally rec'd a response from Ellen Wolfhagen (below) and this is how I understand the situation. She states that this situation has never occurred before and, consequently, there is no relevant policy. Her suggestion is to appeal directly to the FCC because our initial appeal to the SLD would probably be rejected anyway due to lack of a policy.

As stated previously, you have 60 days to submit an appeal after the FCDL has been issued (4/24/02), which should give you until 6/24/02. Remember that this is NOT the postmark date, but the date of receipt.

In your appeal, concentrate on the fact that the postponement of the $30K was agreed upon by both the applicant and service provider. Please let us know if you have any questions and good luck.

Matthew Norton
National Sales Support Coordinator
Government & Education
Cox Business Services
404-269-7243 work
404-269-2547 fax

-----Original Message-----
From: serviceprovider [mailto:serviceprovider@universalservice.org]
Sent: Tuesday, May 07, 2002 4:10 PM
To: Norton, Matthew (CCI-Atlanta)
Subject: RE: one-time charges

Matt: Actually, this is a question (whether installation that occurs in Year X can be paid for in Year X+1 [i.e., after the service has been delivered] because that's what the contract between the applicant and service provider calls for) that we have not had to deal with specifically yet. My best advice is that the applicant should file an appeal (it is still within the 60 day time frame, I take it). The applicant should probably appeal directly to the FCC, since if it came to us, we would be unlikely to grant as it would be a policy question (and we don't make policy).

I apologize for any confusion about this.

Ellen Wolfhagen

-----Original Message-----
From: Norton, Matthew (CCI-Atlanta) [mailto:Matthew.Norton@cox.com]
Sent: Tuesday, May 07, 2002 1:46 PM
To: Ellen Wolfhagen (E-mail)
Subject: FW: one-time charges

Ellen,
I just wanted to check in and see if you have a response to this email. I don't want to seem impatient, so just let me know when you get a chance. Thanks and I'll talk to you soon.

Matthew Norton
National Sales Support Coordinator
Government & Education
Cox Business Services
404-269-7243 work
404-269-2547 fax

-----Original Message-----
From: Norton, Matthew (CCI-Atlanta)
Sent: Thursday, May 02, 2002 10:16 AM
To: Ellen Wolfhagen (E-mail)
Subject: FW: one-time charges

Ellen,
We touched on this issue at the start of the year but I don't seem to have any documentation regarding your answer to the 1st issue on the previous email below.

"During the 1st year of the contract they were only charged $10K and consequently only requested reimbursement for that amount. They are in the process of filing the 471 for FY5 and will request reimbursement for the remaining $30K. Is this acceptable?"

As I understand it, if the applicant and service provider agree, or there contract states, that $10K is to be paid in the first year and $30K in a subsequent year, that $30K is eligible in that subsequent year. Apparently, one of our schools has rec'd notice that the SLD is "NOT GOING TO FUND ANY OF IT BECAUSE MORE THAN 30% OF THE REQUEST WAS FOR ONE TIME CHARGES FROM A PREVIOUS YEAR". There seems to be some sort of contradiction here.

You stated below that, "if this year they are paying $10K, that's the limit they could request on their Form 471. Next year, the applicant could ask for the $30K (and indicate that it's a continuation of the contract from the "first" year.)" Am I interpreting this correctly? Any suggestions? I appreciate your help on this.

Matthew Norton
National Sales Support Coordinator
Government & Education
Cox Business Services
404-269-7243 work
404-269-2547 fax

-----Original Message-----
From: Norton, Matthew (CCI-Atlanta)
Sent: Wednesday, January 09, 2002 6:48 PM
To: 'serviceprovider'
Subject: RE: one-time charges