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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the matter of:

Request for Review of Decisions of the Universal Service Administrator	)))	Docket Nos. 97-21 and 96-45

Ref.: Applicant Names: East Rockaway Union Free School District and Locust Valley Central School District
Entity Numbers: 123820 and 123842
Form 471 Application Numbers: 328918 and 329734
Funding Request Numbers: 886678 and 889952

In this appeal, East Rockaway UFSD and Locust Valley CSD, through its E-rate coordinator E-Rate Central, ask the Commission to review two appeal decisions of the Schools and Libraries Division ("SLD" or "Admistrator") that confirmed denials of cellular telephone service funding for the 2002-2003 funding year.

Background:

East Rockaway's and Locust Valley's Form 471 applications €or FY 2002 contained requests for E-rate discounts on portions of their cellular telephone service. In both cases, careful attempts were made by the applicants to differentiate between eligible and ineligible users using proportional cost-allocation calculations. Additionally, in the Locust Valley situation, equipment charges were also excluded in the elgibility allocation. In its initial funding decisions and subsequent appeal decisions, the

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Administrator rejected both funding requests in their entirety, invoking the SLD's "30% Rule." Specifically:

a) In the East Rockaway case, the SLD determined that one of the three users treated as eligible by the applicant was in fact ineligible. Since one-third is greater than 30%, the FRN was denied.

b) In the Locust Valley case, the SLD accepted the applicant's determination of user eligibility, but rejected the applicant's proportional allocation calculation. The SLD substituted instead an actual usage calculation based on one sample bill that the applicant had submitted as an indication of total monthly service levels. The additional usage by ineligible users in that month exceeded 30% of the applicant's eligible allocation and the FRN was denied.

Issues and ***Arguments:***

The eligibility of cellular service for various school personnel, based on an "educational purposes" criteria, has long been problematic. The FCC's own Notice of Proposed Rule Making and Order, adopted January 16, 2002, specifically requests comments on the advisability of broadening the eligibility criteria for wireless services and on whether the wireless rules need to be modified to be consistent with the principle of competitive neutrality with wireline services.

The SLD's own definitions of eligible wireless users and its eligibility review procedures are constantly evolving. The Eligible Services Lists, provided for applicant guidance, have typically indicated certain school titles or functions that are clearly eligible or ineligible for wireless service discounts, but leave large grey areas in between. The SLD's Program Integrity Assurance reviewers are purportedly provided with more detailed list of eligible and ineligible wireless users, but these distinctions are not provided to applicants and cannot be deduced until well after the application window closes.

As a general rule, we have long supported the SLD's administrative use of its "30% Rule" to deny hnding on any FRN for which more than 30% of the requested amount is subsequently determined to be ineligible.

Because of the lack of clarity and the evolving nature of cellular eligibility, however, blind adherence to the "30% Rule" often leads to unfair funding denials, particularly in cases in which the applicant has made a good faith (and maybe even proper) attempt to separate eligible and ineligible usage and in instances in which the purported classification of one user might make the difference between partial funding or full denial.

The specific issue in the East Rockaway case is the eligibility of just such one user, the Director of Finance & Operations. As a general rule, senior non-teaching administrative personnel such as superintendents, assistant superintendents, and principals have been deemed to be eligible cellular users. We further understand that the SLD's own internal guidelines for FY 2002 application review classified personnel with "Director" titles as eligible as well.

As indicated in East Rockaway's SLD appeal, there was admittedly some confusion during PIA review when the individual's position was referred to as "Business Manager," but her formal title of "Director of Finance & Operations" was clearly listed in the Item 21 attachment for the cellular FRN and was further buttressed in the appeal itself. The same appeal also noted that, as the district's senior finance official, the Director position in East Rockaway is equivalent to an Assistant Superintendent title in a larger district. As such, we believe that East Rockaway's Director of Finance & Operations was properly classified in its application as an eligible cellular user.

Should the Commission not agree with this argument, we would ask the Commission to reexamine the SLD's use of its "30% Rule." In the East Rockaway case, there were five cellular users in total, two of which were deemed ineligible by district itself. While questionable user represented 33% of the users deemed eligible by the district, that user represented only 20% of the total users. To give credit to the good faith effort of the applicant to separate eligible and ineligible users, the possible misclassification of one user should be, at worst, be viewed as a 20% error. As such, the funding request should be reduced another 20% (on top of the 40% reduction included in the original request), rather than be denied in full.

In the Locust Valley case, the issue is not eligibility or ineligibility of users, but rather it is the proper and/or acceptable allocation of usage between eligible and ineligible users. For allocation purposes in its

application, Locust Valley chose to proportion recumng monthly charges based on the number of eligible (8) and ineligible (3) users. The SLD's own rules on cost allocations involving both eligible and ineligible services, as indicated in the Reference Area of the SLD Web site, state that "[t]he cost allocation method employed must be based on tangible criteria, and provide a realistic result." This rule does not require a specific allocation scheme, but clearly permits an applicant a degree of choice between alternative methods. While we agree that the allocation method used by the SLD in its review could be deemed a valid alternative, we submit that the proportional method used by Locust Valley is allowable under SLD rules, is "based on tangible criteria," and provides "a realistic result." The applicant's choice in this matter is further supported by the Administrator's decision in the East Rockaway case that states "[y]ou were given an opportunity during PIA review to specifically identify the amounts associated with each user but chose the proportional method" (emphasis added).

***Appeal** request:*

By this appeal, E-Rate Central asks the Commission to review the eligibility of cellular service for East Rockaway's Director of Finance & Operations and the acceptability of Locust Valley's use of a proportional allocation of eligible cellular charges. In the event that the Commission rejects these eligibility arguments, E-Rate Central asks the Commission to review the applicability of the SLD's "30% Rule" as applied to both applicants' good faith efforts to properly allocate eligible and ineligible cellular charges in the absence of clear and consistent SLD guidelines.

Respectfully submitted,

By: _____

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