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FAX COVER SHEET

To: Office of the Secretary	**From:** Chris Webber
School/Business: FCC	**Fax Number:** (918) 445-0049
Fax Number: 202.418.0187	**Phone number:** (918) 445-0048
Date: Fri, Jun 13, 2003	
Number of pages: 12 **Including this page.**	

RE: UNIVERSAL SERVICE FUND - SLD FUNDING APPEAL, CC Docket No 96-45 and 97-21

To Whom It May Concern:

Please find with this cover page an 11 page appeal letter for the Universal Service Fund, School's and Libraries Division.

Contact information for this appeal letter, which covers 16 Form 471 applications, is as follows:

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June 13, 2003

Federal Communications Commission
Office of the Secretary
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Washington, DC 20554
VIA FACSIMILE: 202-418-0187

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CC Docket Nos. 96-45 and 97-21

RE: Universal Service Fund – School and Libraries Division, Letter to Appeal Administrator's Decision on Appeal

To Whom It May Concern:

This letter is intended to appeal several decisions by the Universal Service Administrative Company, Schools and Libraries Division (SLD) to deny funding for all Funding Request Numbers (FRNs) associated with sixteen (16) different Form 471 applications. The list of all FRNs and Form 471 application numbers being appealed under this letter is attached as "Appendix A."

The circumstances for the appeal of all 16 Form 471 denials are exactly the same. Indeed, the reasons for the denials, the funding commitment letters "Further Explanation of Administrator's Funding Decision Letter (Explanation Letter), and the Administrator's Decision on Appeal (Appeal Decision) from the SLD are identical for all applicants taking action in this appeal letter.

In essence, the SLD denied these applications because of an apparent relationship that existed between the Applicant's consultant and a service provider that appeared on the Form 471. That relationship, the SLD contends, tainted the competitive bidding process enough that potential bidders could have been inhibited, or chilled, from providing bids to the applicants.

Background:

I, Chris Webber, was formerly employed by MasterMind Internet Services, Inc. On September 5th, 2000, I resigned from MasterMind (see Termination Letter – Attachment B). The SLD acknowledges the fact that I emailed the SLD on September 14th, 2000 to inform them that I had resigned from MasterMind in their Administrator's Decision letter. Shortly after September 5th, 2000 I started my consulting business. I thought that it was important to distinguish myself from my

former employer, and decided to name the company CRW Consulting LLC, based upon my own name (Christopher Robert Webber). I have had no affiliation with MasterMind, other than filing some Form 471 for my customers who had awarded their bids, since the time that I resigned from MasterMind. In E-rate year 2002, CRW Consulting LLC filed applications on behalf of our 92 customers. 8 of those customers chose to include MasterMind as a vendor on their Form 471.

On January 11th, 2002 while looking at some of the recently added data to the SLD's SPIN page (for the first time you could actually view the SPIN numbers of companies instead of just their contact information) I noticed that my name was still being used by MasterMind as the official contact person for the company. That day, I emailed Ellen Wolfhagen, Director of Service Provider Support & Contact at the SLD and informed her of the erroneous information. On that same day, Ms. Wolfhagen emailed Ron Gates, the President of MasterMind Internet Services to inform him that he should immediately send in a revised Form 498 to change the contact person from Chris Webber to a current employee. Ms. Wolfhagen copied myself, Chris Webber, on the email to Ron Gates. The SLD acknowledges this email in their Appeal Decision Letter. I have no idea if any SLD employee followed up on this matter after the initial email from Ms. Wolfhagen.

We believe the SLD's decision to deny funding is incorrect, and should be reversed for the following reasons:

I. No Competitive Bidding Violation Existed at the Time: Potential Vendors Were Not Inhibited From Placing Bids

The SLD denied funding for these applicants because their RFP, (which was properly noted on their Form 470), was hosted at a web site (CRW Consulting, LLC – www.crwconsulting.com) for which there was a "relationship" to a service provider who was awarded a bid and listed on the Form 471. SLD is correct that these RFPs were hosted on CRW Consulting's web site, and SLD is also correct that persons browsing the web site could have determined that Chris Webber owned CRW Consulting, LLC. At the same time, apparently, the SLD's web site had Chris Webber listed as the contact person for MasterMind Internet Services, Inc. – SPIN 143006149.

The SLD reasoned that a potential vendor could have browsed CRW Consulting's web site and determined that Chris Webber owned the site (although this information was posted at a separate page from which the RFPs were posted), and then searched the SLD's web site for MasterMind (there is no way under the SLD's web site to just search for contact persons) and determined that Chris Webber was listed as MasterMind's contact person, and thus was inhibited from placing a bid. CRW Consulting, LLC finds this prediction of a chilling effect based upon loosely-linked information highly dubious.

First, in all instances an employee at the school district was listed as the contact person on both the Form 470, and the RFP. **Because an employee of the school district, or applicant, was always listed as the contact person, potential vendors should have had a reasonable level of comfort, and worked under the assumption, that an open and fair bidding process was taking place.** To the best of our knowledge, no potential vendor complained to any governing body about the possibility of an "association" that would have tainted the competitive bidding process (including SLD so called "whistleblower" or "code 9" calls). To take the stance that a vendor would have researched (please remember, this actually would have had to have happened in order for the SLD's decision to make sense) both the CRW Consulting, LLC web site to find Chris Webber's name, and researched the SLD's web site to find Chris Webber's name as the contact person for MasterMind, and then decided not to place a bid **even though an employee of the applicant was listed on the Form 470 and RFP** seems to fly in the face of the nature of any competitive business. Any vendor who had entered the marketplace to compete would have gone ahead and made the bid.

Second, in reality, no vendor was inhibited from placing a bid. How can we be so confident that vendors would have placed bids? Rarely is an applicant able to positively affirm that competitive bidding took place when the SLD makes a "chilling" argument. How can an applicant show that there were no vendors inhibited from bidding? Because of the unique nature of a consultant, we believe that we can affirm that no vendors were inhibited to bid on these RFPs. In E-rate year 2002, CRW Consulting, LLC assisted in filing for 56 applicants in the state of Oklahoma. Of these 56, 8 applicants chose MasterMind. Because all of our customers send us the bids that they have received (in some cases after the 28 day bidding period, after they have awarded a bid so that we may assist in documenting competitive bidding on part of the applicant) we can see general patters of bidding. CRW Consulting, LLC attests that there were no discrepancies from the 56 other schools that we filed for, and the 8 that chose MasterMind. In fact, the schools that chose MasterMind generally received **MORE** bids than schools that did not (the normal bids that other schools in the same area received, plus a MasterMind bid).

The core of the SLD's decision to deny funding rests on the premise that actual prospective vendors were chilled from placing bids because they found a tenuous link between CRW Consulting, LLC and MasterMind. While we doubt that any potential vendor would have even noticed this fact, vendors should have had a reasonable level of comfort to place a bid because an employee of the applicant was listed as the contact person. Additionally, the SLDs assertion that this chilling effect occurred does not match the facts – MasterMind customers actually received the same bids from the usual bidders in the state plus a MasterMind bid, and each MasterMind customer received more bids than those that did not choose MasterMind.

II. Web Hosting Does Not Equate to a Competitive Bidding Violation – The SLD Interpreted the MasterMind Decision Too Broadly

The SLD, in their Appeal Decision Letter, states that "While the Form 470 itself **did not contain direct contact information for Chris Weber**, [sic] the Form 470 is tainted by its association to Chris Weber [sic] through the posting of the related RFP to the CRW web site" (emphasis added). SLD identifies the critical link in the "tainting" process as the "posting of the related RFP to the CRW web site."

Of course, had the service provider (in this specific case MasterMind) hosted the RFPs on its web site the 470 process, under the SLD's current interpretation, would have been even more tainted (there would have been no need for the linkage from one person to another, the undue relationship would be the web hosting by the selected service provider). This kind of reasoning would invalidate hundreds, if not thousands, of RFPs and Form 470s that have fully complied with the SLD's competitive bidding requirements and have previously been funded. Additionally, the SLDs current interpretation labels the process as tainted when in fact all aspects of competitive bidding were observed.

Web hosting is a normal service for Internet Service Providers to offer, and in fact, the SLD recognizes this on their Eligible Services List. Web Hosting, as described on the eligible services list on the SLD's web site, while not itself eligible, is eligible if it is part of "bundled services" under Internet access, as long as there is no separate charge for the service.

A district that contracts with any ISP to host their web pages, and uses that hosting service to post their RFPs has now committed a competitive bidding violation under the SLD's current interpretation. Web hosting is often provided as a service by ISP in which applicants are allotted a certain amount of "space" or hard-drive memory in which to post their web pages (for example, a standard web hosting service would provide 10 megabits of hosting space). Customers use this space for their home pages and in other ways as they see fit. An example of a school's URL, or web site address, using web hosting services from ABC company would be: www.abc.com/anyschool. Under the SLD's current interpretation, RFPs hosted at this site (such as: www.abc.com/anyschool/ErateRFP) would create a competitive bidding violation in which ABC could not be awarded a bid, because of a perceived "association" between the applicant and the service provider. The SLD contents that merely noticing that a potential vendor hosts an applicant's RFP would prevent other vendors from ever bidding on that RFP. We believe the SLD has over-reached when it claims that web hosting relationships create associations that taint the competitive bidding process.

Additionally, the SLD's interpretation of the MasterMind decision (FCC 00-167, re MasterMind Internet Services, Inc. CC Docket 96-45, May 23, 2000) goes beyond the scope of what the FCC actually ordered. The MasterMind decision was directed solely at applicants who had listed an employee of a service provider who was awarded a bid as the contact person on the 470 or RFP. To construe this order to cover web hosting services between the applicant and service provider is ludicrous.

III. The Circumstances Surrounding These FRNs Necessitate a Waiver of the Year 2002 Funding Window For Affected Applicants

The only reason that the applicants in Appendix A were denied funding was because of vendor irregularities by MasterMind. It was MasterMind's responsibility to keep their SPIN contact information up to date and to file a revised Form 498 when I left MasterMind. Because of this, the applicants have been prejudiced by the inaction of their proposed service provider and should thus be granted a waver for the Year 2002 filing window.

As noted above, I informed the SLD that I had resigned from MasterMind shortly after the fact. According to the SLD's web site, it is solely MasterMind's responsibility, in this situation to change the contact person (see: SLD's web site (www.universalservice.org/forms/498faq.asp) USAC states the following:

> **2. Who is authorized to change contact information?**
>
> Only the general contact on file with USAC or a company officer is permitted to revise existing information on the Form 498. **In many cases the general contact has left the company. In this case, the new contact may fill out the form, but must state in the certification letter whom the previous contact was, that they have left the company, and whom the new contact is. Again, an officer of the company must sign the certification letter if the previous contact is no longer with the company. This is due to stringent security requirements; all revisions submitted without the appropriate signature will be returned.**

In FCC 00-260 (re MasterMind Internet Services, August 11, 2000) the commission stated that when applicants are prejudiced by the actions of their service provider, then a waiver of the filing window is appropriate. The order states:

> Since the affected applicants may have been unwilling prejudiced by the actions of their proposed service provider during the application process, the public interest compels us to waive the Year 3 filing window for the affected applicants to allow them to re-submit their applications for support.

Applicants taking action by this letter find themselves in exactly the same situation (and with the same service provider). Had MasterMind followed SLD procedure and kept their contact information up to date, there would have been no association to Chris Webber. According to the SLD's procedure for changing the contact person for a SPIN, the applicants could not have requested such a change, nor could Chris Webber have effectuated such a change. Only MasterMind, through an officer of the company, could have changed their contact person.

FCC 00-260 continues: "As a matter of fundamental fairness, therefore, we are compelled to take action to restore the affected applicants to the position they would have been but for the evidence of possible irregularities by Mastermind..." We ask that the Commission provide the same relief to these affected applicants and put them in the position they would have been but for the inaction of MasterMind. Because, at the time of filing this appeal, Year 2002 expires in approximately two weeks, we also ask that the Commission demonstrate how affected applicants can receive discounts for eligible services such as local phone service used during the course of Year 2002.

We ask that the SLD's decision to deny funding be reversed, or if the Commission finds arguments for reversal unpersuasive, we ask that a waiver for the Funding Year 2002 window for the affected applicants be granted and the applicants allowed to reapply and be in the position they would have been but for the inaction of their service provider.

Respectfully Submitted on Behalf
of the Affected Applicants,

By: Chris Webber

Chris Webber
CRW Consulting, LLC
P.O. Box 701713
Tulsa, OK 74170-1713
chris@crwconsulting.com
918.445.0048
Fax: 918.445.0049

APPENDIX A

	Entity Number	471 Number	FRN	Service Category	Service Provider
Dewar Indep School	140176	306785	794012	Internet	MasterMind
Dewar Indep School	140176	306755	793877	Telecom.	Southwestern Bell
Dewar Indep School	140176	306755	793884	Telecom.	NTS Communications, Inc.
Dewar Indep School	140176	306755	793911	Telecom.	Ron McAfee and Associate
Dewar Indep School	140176	306755	793925	Telecom.	Western Wireless
Dewar Indep School	140176	306755	793930	Telecom.	SBC Advanced Solutions,
Healdton Indep Sch	139855	303203	780021	Telecom.	SBC Adv. Solutions, Inc.
Healdton Indep Sch	139855	303203	780037	Telecom.	Southwestern Bell
Healdton Indep Sch	139855	303203	780063	Telecom.	NTS Communications, Inc.
Healdton Indep Sch	139855	303203	780081	Telecom.	SWBell Wireless, Inc.
Healdton Indep Sch	139855	303203	798236	Telecom.	Southwestern Bell
Healdton Indep Sch	139855	303203	798250	Telecom.	AT&T Corp.
Healdton Indep Sch	139855	303283	780206	Internet	MasterMind
Henryetta Public	140186	307124	796193	Internet	MasterMind
Henryetta Public	140186	297420	796075	Telecom.	Southwestern Bell
Henryetta Public	140186	297420	796101	Telecom.	SBC Adv. Solutions, Inc.
Henryetta Public	140186	297420	796106	Telecom.	AT&T Corp.
Henryetta Public	140186	297420	796117	Telecom.	Southwestern Bell
Henryetta Public	140186	297420	796174	Internal Conn.	Presidio Corporation
Henryetta Public	140186	297420	796178	Internal Conn.	Presidio Corporation
Henryetta Public	140186	297420	796181	Internal Conn.	Presidio Corporation
Henryetta Public	140186	297420	796183	Internal Conn.	Presidio Corporation
Lone Wolf Indep	139939	306762	793901	Telecom.	SWBell Telephone
Lone Wolf Indep	139939	306762	793908	Telecom.	SWBell Telephone
Lone Wolf Indep	139939	306762	793926	Telecom.	SBC Adv. Solutions

APPENDIX A

	Entity Number	471 Number	FRN	Service Category	Service Provider
Lone Wolf Indep	139939	306762	793938	Telecom.	Intermedia Comm. Inc.
Lone Wolf Indep	139939	306762	793963	Telecom.	Western Wireless Corp db:
Lone Wolf Indep	139939	306780	793990	Internet	MasterMind
Maple School	139746	306825	794243	Internet	MasterMind
Maple School	139746	306825	794274	Internet	MasterMind
Maple School	139746	306794	794067	Telecom.	SBC Adv. Solutions, Inc.
Maple School	139746	306794	794129	Telecom.	Southwestern Bell
Maple School	139746	306794	794140	Telecom.	AT&T Corp.
Marquette School	84688	307131	796229	Telecom.	MCI Communications Corp
Marquette School	84688	307131	796242	Telecom.	AT&T Wireless Services of
Marquette School	84688	307131	796260	Internet	AT&T Corp.
Marquette School	84688	307131	796263	Telecom.	Southwestern Bell
Marquette School	84688	307131	796277	Internet	SWBell Internet Services
Marquette School	84688	307131	796308	Telecom.	Southwestern Bell
Marquette School	84688	307131	796312	Telecom.	SBC Adv. Solutions, Inc.
Marquette School	84688	307169	796465	Internet	MasterMind
Marquette School	84688	307169	796469	Internet	MasterMind
Picher-Cardin Ind	140147	307734	799768	Telecom.	Southwestern Bell
Picher-Cardin Ind	140147	307734	799776	Telecom.	ionex dba Feist Long
Picher-Cardin Ind	140147	307734	799782	Telecom.	US Cellular Telephone Co.
Picher-Cardin Ind	140147	307734	799792	Telecom.	SBC Adv. Solutions, Inc.
Picher-Cardin Ind	140147	307734	799802	Internal Conn.	Presidio Corporation
Picher-Cardin Ind	140147	307734	799815	Internet	SWBell Internet Services
Picher-Cardin Ind	140147	307734	799821	Telecom.	SBC Adv. Solutions, Inc.
Picher-Cardin Ind	140147	307734	799823	Internet	SBC DataComm

APPENDIX A

	Entity Number	471 Number	FRN	Service Category	Service Provider
Picher-Cardin Ind	140147	307759	799912	Internet	MasterMind
Ryal School District	140188	297425	762832	Telecom.	Southwestern Bell
Ryal School District	140188	297425	762835	Telecom.	AT&T Corp.
Ryal School District	140188	297425	762838	Telecom.	NTS Communications, Inc.
Ryal School District	140188	297425	762849	Telecom.	SBC Adv. Solutions, Inc.
Ryal School District	140188	297425	762850	Internal Conn.	Presidio Corporation
Ryal School District	140188	297434	762870	Internet	MasterMind
Ryal School District	140188	297434	762872	Internet	MasterMind

Attachment B

September 12, 2000

Personal and Confidential

Mr. Christopher R. Webber
1389 East 45th Place
Tulsa, OK 74134

Re: Termination of Employment

Chris:

This letter will confirm your termination of employment due to resignation from MasterMind Internet Services, Inc. or its applicable division, subsidiary, or affiliate (the "Company"), effective as of the close of business on September 5, 2000.

If you are currently covered under the Company's health insurance plan, you will continue to receive your current level of group insurance benefits at the current rate through September 5, 2000. You can obtain a further extension of these benefits under COBRA rules at your own expense. A separate notice regarding benefits allowed under COBRA will be mailed to your residence.

You are responsible for and must reimburse the Company for any outstanding loans or advances. If you have outstanding expenses on behalf of the Company for which you have not been reimbursed, you must declare these expenses and submit a request for reimbursement through expense report by September 15, 2000.

You must return all documents and other property relating to your employment with the Company, including, without limitation, all files, security access cards, passwords, training materials, policies and procedures, notebooks, handbooks, customer lists, mailing lists, account information, credit cards, phone cards, cellular phones, computers, automobiles and all other tangible or intangible property belonging to the Company.

Regional Headquarters
1217 East 48th Street
Tulsa, OK 74105
918.743.6161
Fax 918.743.0204
www.mmind.net

Furthermore, you hereby reaffirm your covenants and acknowledgments of the directives outlined in the Company's employee handbook.

Regular payment will also be made of the following items:

1. Distribution from the Company profit sharing and 401(k) accounts as soon as administratively possible following the receipt of your distribution request and pursuant to options available according to the Plan document. The paperwork required for this request will be mailed to your home.

2. Unused, accrued vacation time of 60 hours.

Sincerely,

Suzanne E. Shepherd

Suzanne E. Shepherd
Director of Human Resources/Training

/ses
Attachments

Received this 12th day of September, 2000, by

Enclosure