

Funding Commitment Report for Application Number: 256403

Funding Request Number 642460 SPIN 143008103

Service Provider Inter-Tel NetSolutions, Inc

Contract Number LAN404325

Services Ordered TELCOMM SERVICES

Site Identifier

Billing Account Number 714-543-5437

Adjusted Funding Commitment \$0 00

Funds Disbursed to Date \$14,456 59

Funds to be Recovered \$14,456 59

Funding Commitment Adjustment Explanation

After thorough investigation it has been determined that Fran Older is associated with LW Associates (5319 University Drive, Irvine CA 92612, SPIN 143009275), a service provider Fran Older is also the contact person on the Form 470 that is referenced for this funding request The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder As a result of the competitive bidding violation, the SLD is rescinding the amount committed to this funding request in full, and will seek recovery of any funds that have been disbursed



Inter-Tel, Incorporated
1615 S. 52nd Street
Tempe, Arizona 85281
Telephone (480) 449-8900
Facsimile (480) 449-8910
www.inter-tel.com

March 28, 2003

Universal Service Administrative Company
Schools & Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981
VIA e-mail (w/o attachment) and facsimile to: 973 599-6542

Re: APPEAL
By Service Provider Inter-Tel Technologies, Inc.
To your Commitment Adjustment Letter dated 1-31-2003
Applicant Name: Approach Learning & Assessment Centers
Form 471 Application Number: 256403
Funding Year: 2001 – 2002
Funding Request Number: 641908

Dear Sir or Madam

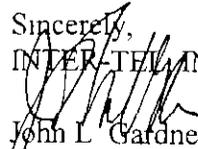
Inter-Tel Technologies, Inc. (“Technologies”) hereby appeals the funding commitment adjustment required in the above-named Funding Commitment Report, which seeks full rescission of the commitment amount of \$21,186 00 on the basis of a competitive bidding violation, or more specifically that the designated contact person created a conflict of interest

The customer, Approach Learning Assessment Centers, provided Technologies with the contact person’s name, Fran Older, in a written communication, a copy of which is attached hereto. The contact person was not an employee of the Service Provider

Technologies regrets this unfortunate incident. Although the alleged violation occurred without Technologies’ knowledge, the company welcomes your suggestions on how to rectify situation

Per your request, please note the following contact information

- 1 John L Gardner, General Counsel of Inter-Tel, Incorporated
- 2 1615 South 52nd Street, Tempe, Arizona 85281
- 3 Tel 480 449 8881
- 4 Fax 480 449 8929
- 5 e-mail John_Gardner@inter-tel.com

Sincerely,

INTER-TEL INCORPORATED
John L Gardner
General Counsel
JLG/ys



Universal Service Administrative Company

Schools & Libraries Division

Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

COMMITMENT ADJUSTMENT LETTER

January 31, 2003

Kimberly Herrera
Inter-Tel Technologies, Inc
120 N 44th St , Suite 300
Phoenix, AZ 88034 2965

Re COMMITMENT ADJUSTMENT

Funding Year 2001-2002

Form 471 Application Number 256403

Applicant Name APPROACH LEARNING & ASSES

Contact Person Fran Older

Contact Phone 949-786-1785

Dear Service Provider Contact

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules

In order to be sure that no funds are used in violation of program rules, SLD must now adjust these funding commitments. The purpose of this letter is to inform you of the adjustments to these funding commitments required by program rules

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the FRNs from the application for which adjustments are necessary. The SLD is also sending this information to applicant, so that you may work with them to implement this decision. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. The amount is shown as Funds to be Recovered. We expect to send you a letter describing the process for recovering these funds in the near future, and we will send a copy of the letter to the applicant. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount.

TO APPEAL THESE FUNDING COMMITMENT DECISIONS

If you wish to appeal the Funding Commitment Decision(s) indicated in this letter, your appeal must be made in writing and RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE DATE AT THE TOP OF THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Commitment Adjustment Letter you are appealing. Your letter of appeal must include the applicant name and the Form 471 Application Number from the top of this Commitment Adjustment Letter.
3. Identify the particular Funding Request Number(s) (FRN) that is the subject of your appeal. When explaining your appeal, include the precise language or text from the Commitment Adjustment Letter that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, you will enable us to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to Letter of Appeal, Schools and Libraries Division, Box 125- Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site www.sl.universalservice.org or by calling the Client Service Bureau at 1-(888)-203-8100. We encourage the use of either the e-mail or fax filing options to expedite filing your appeal.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket Nos. 96-45 and 97-21 on the first page of your appeal to the FCC. Your appeal must be RECEIVED BY THE FCC WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, www.sl.universalservice.org or by calling the Client Service Bureau at 1-(888)-203-8100. We strongly recommend that you use either the e-mail or fax filing options because of continued substantial delays in mail delivery to the FCC. If you are submitting your appeal via United States Postal Service, send to FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each funding request from your application for which a commitment adjustment is required. We are providing the following definitions:

- **FUNDING REQUEST NUMBER (FRN)** A Funding Request Number is assigned by the SLD to each request in Block 5 of your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.
- **SPIN (Service Provider Identification Number)** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs.
- **SERVICE PROVIDER** The legal name of the service provider.
- **CONTRACT NUMBER** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.
- **SERVICES ORDERED** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER** The Entity Number listed in Form 471 for "site specific" FRNs.
- **BILLING ACCOUNT NUMBER** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.
- **ADJUSTED FUNDING COMMITMENT** This represents the adjusted total amount of funding that SLD has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.
- **FUNDS DISBURSED TO DATE** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- **FUNDS TO BE RECOVERED** This represents the amount of Funds Disbursed to Date that exceed the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- **FUNDING COMMITMENT ADJUSTMENT EXPLANATION** This entry provides a description of the reason the adjustment was made.

Funding Commitment Report for Application Number: 256403

Funding Request Number 641657 SPIN 143022581

Service Provider Inter-Tel Technologies, Inc

Contract Number LAN404322

Services Ordered INTERNAL CONNECTIONS

Site Identifier

Billing Account Number 714-543-5437

Adjusted Funding Commitment \$0 00

Funds Disbursed to Date \$84,889 24

Funds to be Recovered \$84,889 24

Funding Commitment Adjustment Explanation

After thorough investigation it has been determined that Fran Older is associated with LW Associates (5319 University Drive, Irvine CA 92612, SPIN: 143009275), a service provider Fran Older is also the contact person on the Form 470 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation, the SLD is rescinding the amount committed to this funding request in full, and will seek recovery of any funds that have been disbursed.

Funding Request Number 641908 SPIN 143022581

Service Provider Inter-Tel Technologies, Inc

Contract Number LAN404323

Services Ordered INTERNAL CONNECTIONS

Site Identifier

Billing Account Number 714-543-5437

Adjusted Funding Commitment \$0 00

Funds Disbursed to Date \$21,186 00

Funds to be Recovered \$21,186 00

Funding Commitment Adjustment Explanation

After thorough investigation it has been determined that Fran Older is associated with LW Associates (5319 University Drive, Irvine CA 92612, SPIN: 143009275), a service provider Fran Older is also the contact person on the Form 470 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation, the SLD is rescinding the amount committed to this funding request in full, and will seek recovery of any funds that have been disbursed.

Confirmation Report - Memory Send

Page : 001
Date & Time: Mar-28-03 04:22pm
Line 1 : 4804498929
Machine ID : Legal department

Job number : 398
Date : Mar-28 04:14pm
To : 19735996542
Number of pages : 005
Start time : Mar-28 04:10pm
End time : Mar-28 04:16pm
Pages sent : 005
Status : OK

Job number 398

*** SEND SUCCESSFUL ***



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March 28, 2003

Universal Service Administrative Company
Schools & Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981
VIA e-mail (w/o attachment) and facsimile to: 973.599-6542

Re: **APPEAL**
By Service Provider Inter-Tel Technologies, Inc.
To your Commitment Adjustment Letter dated 1-31-2003
Applicant Name: Approach Learning & Assessment Centers
Form 471 Application Number: 256403
Funding Year: 2001 - 2002
Funding Request Number: 641908

Dear Sir or Madam:

Inter-Tel Technologies, Inc. ("Technologies") hereby appeals the funding commitment adjustment required in the above-named Funding Commitment Report, which seeks full rescission of the commitment amount of \$21,186.00 on the basis of a competitive bidding violation, or more specifically that the designated contact person created a conflict of interest.

The customer, Approach Learning Assessment Centers, provided Technologies with the contact person's name, Fran Older, in a written communication, a copy of which is attached hereto. The contact person was not an employee of the Service Provider.

Technologies regrets this unfortunate incident. Although the alleged violation occurred without Technologies' knowledge, the company welcomes your suggestions on how to rectify situation.

Per your request, please note the following contact information:

1. John L. Gardner, General Counsel of Inter-Tel, Incorporated
2. 1615 South 52nd Street, Tempe, Arizona 85281
3. Tel. 480.449.8881
4. Fax 480.449.8929
5. e-mail: John.Gardner@inter-tel.com.

Sincerely,

INTERTEL INCORPORATED
John L. Gardner
General Counsel
JLG/ys



Inter-Tel, Incorporated
1615 S 52nd Street
Tempe, Arizona 85281
Telephone (480) 449-8900
Facsimile (480) 449-8919
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March 28, 2003

Universal Service Administrative Company
Schools & Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981
VIA e-mail (w/o attachment) and facsimile to: 973.599-6542

Re: **APPEAL**
By Service Provider Inter-Tel Technologies, Inc.
To your Commitment Adjustment Letter dated 1-31-2003
Applicant Name: Approach Learning & Assessment Centers
Form 471 Application Number: 256403
Funding Year: 2001 – 2002
Funding Request Number: 641657

Dear Sir or Madam:

Inter-Tel Technologies, Inc. (“Technologies”) hereby appeals the funding commitment adjustment required in the above-named Funding Commitment Report, which seeks full rescission of the commitment amount of \$84,889.24 on the basis of a competitive bidding violation, or more specifically that the designated contact person created a conflict of interest.

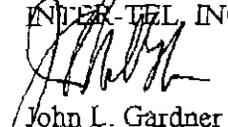
The customer, Approach Learning Assessment Centers, provided Technologies with the contact person’s name. Fran Older, in a written communication, a copy of which is attached hereto. The contact person was not an employee of the Service Provider.

Technologies regrets this unfortunate incident. Although the alleged violation occurred without Technologies’ knowledge, the company welcomes your suggestions on how to rectify situation.

Per your request, please note the following contact information:

1. John L. Gardner, General Counsel of Inter-Tel, Incorporated
2. 1615 South 52nd Street, Tempe, Arizona 85281
3. Tel. 480 449.8881
4. Fax 480. 449.8929
5. e-mail: John.Gardner@inter-tel.com.

Sincerely,
INTER-TEL INCORPORATED


John L. Gardner
General Counsel
JLG/ys



Inter-Tel, Incorporated
1615 S 52nd Street
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March 28, 2003

Universal Service Administrative Company
Schools & Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981
VIA e-mail (w/o attachment) and facsimile to: 973.599-6542

Re: LETTER OF APPEAL
By Service Provider Inter-Tel NetSolutions, Inc.
To your Commitment Adjustment Letter dated 1-31-2003
Applicant Name: Approach Learning & Assessment Centers
Form 471 Application Number: 256403
Funding Year: 2001-2002
Funding Request Number: 642460

Dear Sir or Madam:

Inter-Tel NetSolutions, Inc. ("NetSolutions") hereby appeals the funding commitment adjustment required in the above-named Funding Commitment Report, which seeks full rescission of the commitment amount of \$14,456.59 on the basis of a competitive bidding violation, or more specifically that the designated contact person created a conflict of interest.

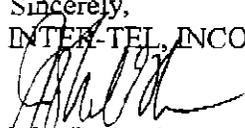
The customer, Approach Learning Assessment Centers, provided NetSolutions with the contact person's name, Fran Older in a written communication, a copy of which is attached hereto. The contact person was not an employee of the Service Provider.

NetSolutions regrets this unfortunate incident. Although the alleged violation occurred without NetSolutions' knowledge, the company welcomes your suggestions on how to rectify the situation.

Per your request, please note the following contact information:

1. John L. Gardner, General Counsel of Inter-Tel, Incorporated
2. 1615 South 52nd Street, Tempe, Arizona 85281
3. Tel. 480 449.8881
4. Fax 480. 449.8929
- 5 e-mail: John_Gardner@inter-tel.com

Sincerely,
INTER-TEL, INCORPORATED



John L. Gardner
General Counsel
JLG/ys



Administrator's Decision on Appeal - Funding Year 2001-2002

July 16, 2003

John L. Gardner
Inter-Tel, Incorporated
1615 S. 52nd Street
Tempe, AZ 85281

Re. Approach Learning & Assessment Centers

Re: Billed Entity Number: 158862
471 Application Number: 256403
Funding Request Number(s): 641657, 641908, 642460
Your Correspondence Dated: March 28, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2001 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 641657, 641908, 642460
Decision on Appeal: **Denied in full**
Explanation:

- In your letter of appeal, you state that the customer, Approach Learning Assessment Centers, provided you with Fran Older as the contact person's name. You also indicate that the contact person was not an employee of Inter-Tel and the violation occurred without your knowledge. You would welcome suggestions on how to rectify the situation.
- Upon review of the appeal it was determined that the applicant's Form 470 #928540000331464 included service provider contact information in Block 1, Item 6 and Block 6, item 16. This information includes the name of Fran Older, located at 2130 E Fourth Street, Suite 200, Santa Ana CA 92705, with the phone # 949-786-1785. Fran Older was validated by SLD as the contact person for LW.

Associates, 5319 University Drive, Irvine CA 92612, SPIN: 143009275. Program rules require the applicant to provide a fair and open competitive bidding process. Per the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's consultant/contact person is also the contact person for a service provider from whom the applicant is requesting services, all FRN's that are associated with this Form 470 must be denied as required by program rules. Consequently, the appeal is denied.

- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids¹ FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.² In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeals decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.³ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁴ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address.
- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage⁵ A competitive bidding violation and conflict of interest exists when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.

¹ See 47 C F R §§ 54.504(a), 54.511(a)

² See 47 C F R § 54.504(a), (b)(2)(vi)

³ See *In re MasterMind Internet Services, Inc.*, CC Docket 96-45, ¶ 9 (May 23, 2000)

⁴ See *id.*

⁵ See e.g., 48 C F R § 9.505(a), (b)

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be **POSTMARKED** within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

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

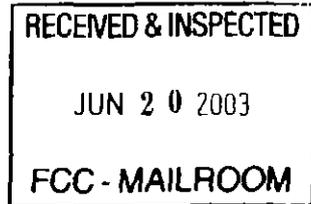
Schools and Libraries Division
Universal Service Administrative Company

DOCKET FILE COPY ORIGINAL

Bob Morrow



103 Weatherstone Drive
Suite 720
Woodstock, GA 30188
(770) 592-4698 ext 107
FAX (770) 592-4693
Toll Free: (888) 249-1661



June 20, 2003

FCC Appeal of SLD Denial of Appeal

CC Docket Nos. 96-45 and 97-21

Contact Information

Robert A Morrow
Compliance Manager
E-rate Consulting
103 Weatherstone Drive
Suite 720
Woodstock, GA 30188
888-249-1661
FAX. 770-592-4693
bmorrow@erateconsulting.com

Note: Letter of Agency to act on behalf of Approach Learning and Assessment Centers is attached

Name of Entity:

Approach Learning and Assessment Centers (158862)

SLD Action Being Appealed:

Administrator's Decision on Appeal – Funding Year 2002-2003
Dated April 22, 2003 (attached)

471 Application Involved: #297762

(FRNs 764315, 764324, 764333, 764340, 764341, 764346, 764350, 764353, 764355)

Case for Appeal

The issue in this case is straightforward

Does a simple error constitute a violation of the Schools and Libraries Division's (SLD) ban on vendor involvement in the competitive bidding process, even though no bidding violation was found after several exhaustive reviews by Program Integrity Assurance (PIA) agents. Based on the facts of this case, the answer is an unequivocal "no".

As explained to SLD, and in the appeal to the Universal Services Administrative Company (USAC), the facts are straightforward. Approach Learning and Assessment Centers ("Applicant") engaged the services of Fran Older as an independent E-rate consultant to support the Applicant's E-rate application and documentation. She was paid by Applicant on a monthly basis for the services she rendered. **She was not at any time an employee, agent, officer, director or owner of a service provider and was not paid by a service provider.**

The USAC denied the Applicant's appeal because (1) USAC determined that there was a contradiction between Ms. Older's Statement of Facts and Congresswoman Sanchez's letter, and (2) Ms. Older was listed when the application was reviewed as the service provider's contact person, which would constitute a conflict of interest. Finally in support of their conflict of interest claim, USAC cites the *MasterMind Internet Services, Inc* decision wherein the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.

When the contact information was discovered incorrect, the applicant attempted to determine how the incorrect contact information was list on the SLD database and not the USAC database as there was no record of a Form 498 submitted to authorize Ms. Older as the contact person.

The Applicant has assumed that the incorrect information on the databases resulted from the Service Provider misinterpretation of the Form 473 guidelines. In 1998, through a bidding process, LW Associates (Service Provider) was selected as the approved service provider. The Service Provider mistakenly listed Ms. Older, the Applicant's contact, in the space intended for the Service Provider's contact. When the error was discovered, the service provider filed the necessary documents (Form 498) to correct the oversight.

On appeal to USAC, the Applicant provided a Statement of Facts and Certification from Ms. Older wherein she certifies that there was an "honest mistake" regarding the misuse of her name on the Form 473 and that it was "immediately corrected." Further, she verifies that she is not and has "never been a consultant to LW Associates" and that she contacts service providers "only when it pertains to e-Rate matters on behalf of applicants." Ms. Older's Statement of Fact is attached as Exhibit "A".

The Applicant also provided a Statement of Facts and Certification from James Carter of LW Associates confirming that listing Fran Older was an "honest mistake" and that she has never been a consultant to LW Associates. Finally, the Applicant submitted a letter from Congresswoman Loretta Sanchez confirming that there was a misunderstanding on completing

the forms Mr Carter's Statement of Fact and Representative Sanchez's letter are attached as Exhibits "B" and "C", respectively.

USAC stressed that there was a contradiction between Ms. Older's Statement of Facts and the letter from Congresswoman Sanchez. The likely reason that such emphasis was placed on this alleged contradiction is to try and show that Ms. Older lacked credibility.

According to USAC, the alleged inconsistent statements come from Ms. Older's Statement of Fact wherein she supposed alleges that an internal SLD error was responsible for her name, address and phone number appearing as contact for the service provider. Ms. Older clearly states in her Statement of Fact that "identifying me as the Contact Person was an honest mistake in the interpretation of instructions." She never attributes the error to SLD. Similarly, Congresswoman Sanchez, in her October 30, 2002 letter to George McDonald of USAC, attributes the error to a misunderstanding of program rules. Based on the actual language, it is incomprehensible as to how USAC concluded that Ms. Older was attributing the error to SLD, as alleged by USAC. What is evident is that there is no contradiction between Ms. Older's Statement of Fact and Congresswoman Sanchez's statement that "LW Associates misunderstood the instructions..." [and named] "Ms. Older [as] the contact person..."

In the appeal denial, the USAC stated, " *at this time this [Form 471] application was reviewed, the SLD's records indicated that Fran Older was the contact person for LW Associates. Therefore, the SLD could only conclude that the contact person for the applicant was connected to the service provider, LW Associates. Program rules require applications to provide a fair and open competitive bidding process.*" This justification for denial simply repeats the assertion made in the original funding denial, apparently without considering the Statements of Fact from Ms. Older and James Carter of LW Associates submitted in the appeal. As noted above, in these Statements of Fact, Ms. Older and Mr. Carter certified that Ms. Older has no business association with LW Associates and that her listing as a contact for LW Associates was an error made by the vendor when filing for a SPIN number.

Perhaps the most crucial issue is whether or not a conflict of interest existed. In support of their conclusion that a conflict of interest existed, and as noted above, USAC relied upon *MasterMind*. However, there is a clear and obvious factual distinction between *MasterMind* and the instant matter. In *MasterMind*, MasterMind not only participated in the competitive bidding process, but it was also one of the service providers. Therefore, it listed one of its own employees as the contact person. MasterMind argued that there was no rule specifically prohibiting a service provider from being involved in the competitive bidding process. The FCC held that "an applicant violates the Commission's competitive bidding requirements when it surrenders control of the bidding process to a service provider that participates in that bidding process." *In re MasterMind Internet Services, Inc*, CC Docket 96-45 ¶12 (May 23, 2000).

In this instance, the Applicant *never* surrendered control of the bidding process to the service provider. Rather, the only issue was that the Applicant's consultant was erroneously listed as the service provider's contact person. Therefore, USAC's reliance on *MasterMind* is misguided.

Furthermore, in 2002, SLD, guided by the *MasterMind* decision, posted warnings and clarifications for denials that prohibited service provider contacts from being the same as the contact person shown in Form 470. As noted above, the Applicant's forms were filed in 1998,

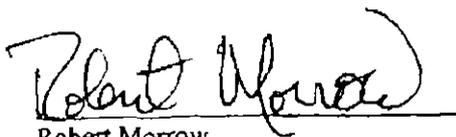
four years before the *MasterMind* decision and long before SLD posted its warnings. Despite the foregoing fact, and despite the fact that the error, once discovered, was corrected by filing Form 498 with USAC, and despite the fact that USAC had the correct contacts listed on its computers and despite the fact that the Applicant received funding for funding years 1-4, the SLD, and USAC in its denial of the Applicant's appeal, still found that the honest mistake constituted a "conflict of interest" Yet, by its own definition, and the definition in *MasterMind*, no conflict existed because Ms. Older was not an employee or agent of the service provider.

In conclusion, both the Applicant and the service provider have provided adequate evidence to show that (1) no conflict of interest existed between Ms. Older and the service provider, (2) the *MasterMind* decision is not applicable in this instance to support a claim of a conflict of interest, and (3) the bidding process was approved by SLD during its own Item 25 Selective Review. Therefore, the Applicant asks that the FCC rescind the funding denial.

In the alternative, if the FCC determines that year 5 funding denial is warranted, the Applicant requests that the denial be applied only to the alleged offending service provider's funding requests and not to all funding requests associated with that Form 470. This would be consistent with the recent recommendations of the Task Force on the Prevention of Waste, Fraud and Abuse which states in pertinent part:

Do not automatically deny all of an applicant's funding requests on a Form 471 that cited a particular Form 470 if procurement or contract problems related to the Form 470 posting are identified with a specific funding request or a specific vendor. The Task Force believes that the FCC's current policy has led to the denial of some applicant's funding requests that were not subject to vendor manipulation, simply because the applicant filed a single Form 470 application

Respectfully submitted,



Robert Morrow
Compliance Manager

Enclosures

cc: Ms. Fran Older
Mr. James Carter
Rep. Loretta Sanchez
Daniel Barbra, Senior Legislative Assistant
to Congresswoman Loretta Sanchez
Ruben Smith, Esq.
Thomas Zeigler, Esq.

EXHIBIT A

STATEMENT OF FACTS
And
CERTIFICATION
To
USAC/SLD
Pertaining to e-Rate Program
Funding Years 1998, 1999, 2000, 2001, 2002

I certify that the information provided on FCC Forms 473 to USAC and/or SLD on any and all e-Rate program funding years identifying me as the Contact Person was an honest mistake in the interpretation of instructions as to whom correspondence and questions should be directed. The Service Provider, LW Associates, misinterpreted the instructions to mean that it should be the Applicant's contact person most familiar with questions pertaining to e-Rate forms.

Be advised that as soon as this mistake was brought to my attention in connection with Funding Year 2003 (FY5), it was reported to the Service Provider who then immediately corrected the error in both databases at USAC and SLD by filing a Form 498 with USAC. On July 23, 2002, USAC verified the change was completed and my name was removed from both databases.

Be further advised that the Private Mail Box set up at 5319 University Drive, PMB #416, Irvine, CA, 92612 was opened only for the purpose of expeditious handling of e-Rate time-sensitive correspondence and a safe harbor for e-rate checks from the US Treasury. It was not until the later years in the e-rate program that SLD started pre-notification to Applicants and Service Providers that checks were in the mail. Be assured that all mail directed to me at the address was immediately re-directed to James Carter, the CTO of LW Associates. James Carter is the person authorized on Form 498 as the official contact person for LW Associates. It was simply an honest mistake that is now corrected in your records by filing the Form 498. The address is no longer used by LW Associates and at no time was it the physical address for LW Associates. I will continue to use the address on behalf of the Applicant, Approach Learning and Assessment Centers for e-Rate related correspondence. Be assured that it was never the physical address of my office, and further, at no time has my office been associated with LW Associates.

Be further advised that I am not, and have never been, a consultant to LW Associates. I am an independent consultant serving e-Rate Applicants (Approach Learning and Assessment Centers in Santa Ana, CA for Funding Years 1998 through 2002; the West Fresno School District in Fresno, CA for Funding Years 2001 and 2002; the Highland Park School District in Detroit, MI for a Good Samaritan Review). I contact Service Providers only when it pertains to e-Rate matters on behalf of Applicants.

Attached is documentation to support the above-referenced Statement of Facts.

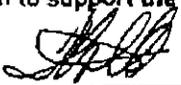
Signature: 
Printed Name: Frances B. Older
Company: Fran Older
Title: Consultant
Date: March 20, 2003

EXHIBIT B

STATEMENT OF FACTS
And
CERTIFICATION
To
USAC/SLD
Pertaining to e-Rate Program
Funding Years 1998, 1999, 2000, 2001, 2002

I certify that the information provided on FCC Forms 473 to USAC and/or SLD on any and all e-Rate program funding years identifying Ms. Fran Oider as the Contact Person was an honest mistake in the interpretation of instructions as to whom correspondence and questions should be directed. It was my interpretation of the instructions that it should be the Applicant's contact person most familiar with questions pertaining to forms.

Be advised that as soon as this mistake was brought to my attention in connection with Funding Year 2003 (FY5), I corrected the error in both databases at USAC and SLD by filing a Form 498 with USAC. On July 23, 2002, USAC verified the change was completed.

Be further advised that the Private Mail Box set up at 5319 University Drive, PMB #416, Irvine, CA, 92612 was opened only for the purpose of expeditious handling of e-Rate time-sensitive correspondence and a safe harbor for e-rate checks from the US Treasury. It was not until the later years in the e-rate program that SLD started pre-notification to Applicants and Service Providers that checks were in the mail. Be assured that all mail directed to Ms. Fran Oider at the address was immediately re-directed to me for processing. This was an honest mistake that is now corrected in your records by filing the Form 498. The address is no longer used by LWAssociates and at no time was it the physical address for LW Associates.

Be further advised that Ms. Fran Oider is not now, and has never been, a consultant to LW Associates. Ms. Oider is a consultant to the Applicant, Approach Learning and Assessment Centers, Santa Ana, CA. (BEA 158862), and, when necessary, contacts this office as it pertains to e-Rate matters only on behalf of the Applicant.

Be further advised that LW Associates has made every effort to uphold the rules and regulations of the e-Rate program in all funding years. The attachments will support the facts mentioned above and will also support the fact that LW Associates refunded \$9,539.10 to USAC/SLD under Contract No. LWA008127 on June 26, 2002 and also refunded the Applicant their 10% share of costs on the same Contract, the same date, in the amount of \$1,059.90. This evidence is provided to make known to USAC/SLD that LW Associates has cooperated with and applied due diligence to the understanding and implementation of the e-Rate program to the best of our ability.

Signature



Printed Name

JAMES CARTER

Company/
Organization

LW ASSOCIATES / SPIN 143009275

Title

CTO

Date

26 MAR 03

LORETTA SANCHEZ
18TH DISTRICT, CALIFORNIA

COMMITTEE ON
EDUCATION AND THE WORKFORCE

SUBCOMMITTEES
EDUCATION REFORM
WORKFORCE PROTECTIONS
SELECT EDUCATION

COMMITTEE ON ARMED SERVICES

SUBCOMMITTEES
MILITARY RESEARCH AND DEVELOPMENT
MILITARY PERSONNEL
SPECIAL OVERSIGHT PANEL ON TERRORISM

EXHIBIT C



Congress of the United States
House of Representatives
Washington, DC 20515-0546

REPLY TO:
 WASHINGTON OFFICE
1220 LONGWORTH BUILDING
WASHINGTON, DC 20515-0546
(202) 225-2966
(202) 225-5899 FAX

DISTRICT OFFICE
12317 LEWIS STREET, SUITE 101
GARDEN GROVE, CA 92640-4606
(714) 621-0102
(714) 621-0401 FAX
www.house.gov/sanchez
LORNETS@FBI.HOUSE.GOV

October 30, 2002

Mr. George McDonald
Vice-President, Schools and Libraries Division
Universal Service Administrative Company
P O Box 7026
Lawrence, KS 66044-7026

Dear Mr. McDonald:

I am writing to request your assistance with an urgent matter involving one of my constituents. Due to a miscommunication with the Universal Service Administrative Company (USAC), Approach Learning Centers (ALAC), part of Olive Crest in Santa Ana, was denied Year 5 e-rate funding. Students at this center qualify at the 90 percent range under the National School Lunch Program. E-Rate funding plays a critical role in preparing students in low-income areas like Santa Ana, California to compete in a technology-based economy. I respectfully request that you review the following information and re-consider ALAC's e-Rate funding request.

Fran Older, a consultant working with ALAC, has informed me of a problem with FCC Form 473 which had her as a contact person for the Service Provider, LW Associates. In 1998 when the form was filed, LW Associates misunderstood the instructions to mean that the contact on the form should be the same person who handled the correspondence and questions for the applicant. Ms. Older was the contact person handling these matters for ALAC.

In 2002, the Schools and Libraries Division (SLD) of USAC, guided by the FCC's MasterMind decision (Order FCC 00-167, released May 23, 2000), posted warnings and clarifications for denials that prohibited Service Provider contacts being the same as the contact person shown on Form 470. Since the initial forms were submitted in 1998 and ALAC received funding through checks that were sent to the official contact person and not Fran Older for Funding Years 1-4, it is difficult to comprehend why monies for FY 5 are being denied for not complying with regulations that were not clearly established when the applications were originally due.

Moreover, a conflict of interest did not take place in this situation. Ms. Older is an independent e-Rate consultant and is not paid or connected with any service provider, including LW Associates. ALAC and LW Associates have submitted documentation correcting this discrepancy on their paperwork in preparation for Year 6 funding. Mr. Mel Blackwell, Vice

President of External Communications and Rural Health Care, confirmed with my staff that the paperwork was in order for future grant requests.

I am aware that appeals are reviewed by SLD on a first-come, first-serve basis. I am also aware that the SLD reserves funds to cover appeals that may be granted. Since ALAC received funding from USAC during Funding years 1-4, it is my hope that they will be able to continue their programs with Year 5 funding.

I appreciate your taking the time to look into this matter. For your reference, ALAC's entity number is 158862. Should you have any questions, feel free to call Daniel Barba of my staff at 202-225-2965. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Loretta Sanchez". The signature is written in a cursive, flowing style.

Loretta Sanchez
Member of Congress

cc: Fran Older
Cheryl L. Parrino
Mel Blackwell

FUNDING COMMITMENT REPORT

Form 471 Application Number: 297762
 Funding Request Number: 764315 Funding Status: Not Funded
 Services Ordered: Internal Connections
 SPIN: 143009275 Service Provider Name: LW Associates
 Contract Number: LWA011211SC
 Billing Account Number: N/A
 Earliest Possible Effective Date of Discount: 07/01/2002
 Contract Expiration Date: 06/30/2003
 Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$377,000.00
 Pre-Discount Amount: \$377,000.00
 Discount Percentage Approved by the SLD: N/A
 Funding Commitment Decision: \$0.00 - Bidding Violation
 Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 764324 Funding Status: Not Funded
 Services Ordered: Internal Connections
 SPIN: 143009275 Service Provider Name: LW Associates
 Contract Number: LWA011211IC
 Billing Account Number: N/A
 Earliest Possible Effective Date of Discount: 07/01/2002
 Contract Expiration Date: 06/30/2003
 Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$940,016.15
 Pre-Discount Amount: \$940,016.15
 Discount Percentage Approved by the SLD: N/A
 Funding Commitment Decision: \$0.00 - Bidding Violation
 Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 764333 Funding Status: Not Funded
 Services Ordered: Telecommunications Service
 SPIN: 143018559 Service Provider Name: Inter-Tel Netsolutions, Inc.
 Contract Number: NTM
 Billing Account Number: 024109344
 Earliest Possible Effective Date of Discount: 07/01/2002
 Contract Expiration Date: 06/30/2003
 Annual Pre-discount Amount for Eligible Recurring Charges: \$38,286.12
 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
 Pre-Discount Amount: \$38,286.12
 Discount Percentage Approved by the SLD: N/A
 Funding Commitment Decision: \$0.00 - Bidding Violation
 Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 764340 Funding Status: Not Funded
 Services Ordered: Internet Access
 SPIN: 143022581 Service Provider Name: Inter-Tel Technologies, Inc.
 Contract Number: LAN404000
 Billing Account Number: N/A
 Earliest Possible Effective Date of Discount: 07/01/2002
 Contract Expiration Date: 06/30/2003
 Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$52,041.60
 Pre-Discount Amount: \$52,041.60
 Discount Percentage Approved by the SLD: N/A
 Funding Commitment Decision: \$0.00 - Bidding Violation
 Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) email information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

FUNDING COMMITMENT REPORT

Form 471 Application Number: 297762
 Funding Request Number: 764341 Funding Status: Not Funded
 Services Ordered: Internal Connections
 SPIN: 143022581 Service Provider Name: Inter-Tel Technologies, Inc.
 Contract Number: LAN404002
 Billing Account Number: N/A
 Earliest Possible Effective Date of Discount: 07/01/2002
 Contract Expiration Date: 06/30/2003
 Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$957,599.01
 Pre-Discount Amount: \$957,599.01
 Discount Percentage Approved by the SLD: N/A
 Funding Commitment Decision: \$0.00 - Bidding Violation
 Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) email information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 764346 Funding Status: Not Funded
 Services Ordered: Internal Connections
 SPIN: 143022581 Service Provider Name: Inter-Tel Technologies, Inc.
 Contract Number: LAN404001
 Billing Account Number: N/A
 Earliest Possible Effective Date of Discount: 07/01/2002
 Contract Expiration Date: 06/30/2003
 Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$1,811,308.08
 Pre-Discount Amount: \$1,811,308.08
 Discount Percentage Approved by the SLD: N/A
 Funding Commitment Decision: \$0.00 - Bidding Violation
 Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) email information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 764350 Funding Status: Not Funded
 Services Ordered: Telecommunications Service
 SPIN: 143002665 Service Provider Name: Pacific Bell
 Contract Number: MTR
 Billing Account Number: N/A
 Earliest Possible Effective Date of Discount: 07/01/2002
 Contract Expiration Date: 06/30/2003
 Annual Pre-discount Amount for Eligible Recurring Charges: \$152,256.00
 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
 Pre-Discount Amount: \$152,256.00
 Discount Percentage Approved by the SLD: N/A
 Funding Commitment Decision: \$0.00 - Bidding Violation
 Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.

Funding Request Number: 764353 Funding Status: Not Funded
 Services Ordered: Telecommunications Service
 SPIN: 143000237 Service Provider Name: Pacific Telesis Mobile Service
 Contract Number: MTR
 Billing Account Number: N/A
 Earliest Possible Effective Date of Discount: 07/01/2002
 Contract Expiration Date: 06/30/2003
 Annual Pre-discount Amount for Eligible Recurring Charges: \$10,797.60
 Annual Pre-discount Amount for Eligible Non-recurring Charges: \$180.00
 Pre-Discount Amount: \$10,977.60
 Discount Percentage Approved by the SLD: N/A
 Funding Commitment Decision: \$0.00 - Bidding Violation
 Funding Commitment Decision Explanation: Associated Form 470 contains service provider (SP) contact information. Competitive bidding violation occurs when SP associated with Form 470 participates in competitive bidding process as a bidder.