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Before the
Federal Communications Commission
Washington, D.C.

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In the Matter of:

Application for Review of Decisions	)	
of the Schools and Libraries Division	)	
of the Universal Service Administrative	)	
Company for Norfolk Public Schools	)	Application Numbers
Norfolk, Virginia	)	160951, 200284, 167137, 200506,
	)	164284, 165013,164087, 164154
	)	161342, 165388, 200277, 200292
	)	203603
Joint Board on Universal Service	)	CC Docket No. 02-6

Application for Review by Norfolk City Public Schools, Norfolk, Virginia Billed Entity Number 126527, and 197129, Form 471 Application Numbers listed above and funding requests associated with those applications.

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In accordance with the Code of Federal Regulations Title 47, Part 57, Section 54.719, Norfolk Public Schools (NPS) hereby requests the Federal Communications Commission (Commission) review the decisions of the Universal Service Administrative Company (Administrator) captioned above.

Norfolk Public Schools

Norfolk Public Schools (NPS) is one of the largest school divisions in the Commonwealth of Virginia with 49 campuses serving 35,000 students. Our E-Rate discount rate is one of the highest in the state because of the large number of students eligible for the national School Lunch Program.

Norfolk Public Schools requests modest E-Rate funding for a division of our size and discount rate. We have never attempted to waste program resources, abuse program rules, or defraud the program. We request funding only for eligible services that were necessary for effective education of our students. We submit applications in accordance with program rules in effect at the time, and attempt to comply with those rules to the best of our ability. The requested discounts for the applications here under appeal totaled less than $60 per student for the year. This compares with the stated goal of discounts up to $1,000 per student from service providers targeting school divisions of our size and economic situation. Clearly, waste, fraud, or abuse of E-Rate resources is not an issue in our case.

E-Rate funding has enabled the district to advance technology in ways that would not have been possible without it. Funding over the years has enabled the district to provide each school with electronic networking resources, which includes Internet resources that support students and teachers. The Internet has enabled teachers and

students to have access to electronic resources such as on-line data bases, encyclopedias, multimedia video of historic events, etc., and the infrastructure serves as a vital component supporting the state of Virginia's on-line student assessment initiative.

Summary

The Year Three (YR2000 – 2001) administrative communications between NPS and the Administrator has resulted in an unfortunate potential economic tragedy; i.e., jeopardizing over a million dollars of E-Rate discount funding authorized by the Administrator and spent by NPS for services. The Administrator was inconsistent in its application of policies and incorrect in its interpretation of clear Commission regulation.

In this appeal, we will provide evidence that the Administrator improperly and contrary to regulations, issued several commitment adjustments against service providers for NPS, who were properly funded under federal regulations enacted in the Telecommunications Act of 1996 (Act). We will show that in Year Three of the E-Rate program, we were properly funded by the Administrator for discounts associated with contracts for Cox Communications, Electronic Systems, and Verizon Virginia, Inc (Bell Atlantic Virginia, Inc at the time). We will show that Administrator improperly revoked those commitments. We will show that we had sufficient resources budgeted to pay not only our non-discounted E-Rate eligible telecommunication services, but actually paid the *full* price for specific telecommunications services initially denied in Year Three. We will show that the Administrator was made aware of our funded requests and failed to act at the time; rather, the Administrator improperly ordered retroactive denial long after services were rendered and service providers paid. The Administrator issued a commitment adjustment, or retroactive denial, two years after we were funded for

Universal Service E-Rate discounts for a contract with Electronic Systems, Inc. We will show that when we addressed the initial denial, the Administrator discovered other allegedly improper funded requests and, three years after the initial decision, retroactively denied discounts for Cox Communications and Verizon Virginia, Inc. Finally, we will show that the Administrator was using the incorrect dollar amount when conducting its "Item 25" review, resulting in the Administrator seeking verification of budgets totaling the entire amount of funding, rather than the percentage NPS was required to pay, based on the E-Rate discount.

Background

During the Year Three E-Rate filing window, NPS submitted applications for E-Rate discounts on services for Norfolk students. While completing the SLD online Form 471, we experienced severe technical difficulties. These technical difficulties were well documented by the Administrator during the filing window. Because of the technical difficulties and the uncertainty of successful submission of our online applications, we were encouraged by SLD to submit duplicate applications on paper, under a different Billed Entity Number. We submitted applications under Billed Entity numbers 197129 and 126527. (This was a widespread, not a local, problem which the SLD acknowledged.)

Once an application is submitted to the Administrator, it undergoes review by temporary personnel with limited training. These employees must evaluate funding requests for compliance with a myriad of ever changing policies, and eligibility requirements using a policy manual that has never been made public. Some applications are selected for what is known as an "Item 25" review, named for Item 25 of the Form

471, where applicants certify that they have resources to effectively use discounted services for that single application.[1] Applications associated with one Billed Entity Number were selected for review, while applications associated with another Billed Entity Number were not.

Smear Test

Several Form 471 applications (200284, 200292, and 203603) were rejected because the certification page failed what the Administrator euphemistically called a "smear test" at its Kansas operation. Apparently, the Administrator was concerned that a number of certification pages it received were actually copies of signatures rather than original ink signatures, required under a policy of the period. The Administrator would rub a substance on the signature. If the signature failed to "smear," the application was deemed a copy and rejected for failure to meet minimum processing standards. The stated reason for rejection was that "the form 471 signature in Block 6 Item 34 is not the signature of the authorized person listed in Block 6, Item 36."

We appealed this decision after it was publicized that numerous schools and libraries across the nation had applications improperly rejected, because original signatures were made with ink that failed to smear when the Administrator applied the substance. The Administrator issued a decision that our appeal had "brought forth persuasive information", and our application would be entered and that "SLD will issue the Funding Commitment Decision Letter as soon as possible" (Attachment 1). We did

[1] Form 471 Item 25 certification language: "The entities listed on this application have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections, necessary to make effective use of the services purchased, as well as to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. I certify the Billed Entity will pay its non-discount portion of the cost of the goods and services to the service provider(s).

not receive subsequent correspondence regarding any of these applications until September 17, 2003, after reminding the Administrator of the missing applications.

Billed Entity 197129

One request for voice services (471 Form 200284) from Verizon (Bell Atlantic at that point in time) was rejected for "failure to meet minimum processing standards". We appeal this rejection, as mentioned above. On April 12, 2000, we were notified that "our appeal brought forward persuasive information that your application should be data entered and considered for funding" (Attachment 1). No action was taken on this funding request, until it was rejected some two and half years later, after the Administrator belatedly rediscovered the initial appeal. It should be noted here that the services under appeal were for what are considered basic telephone services for NPS, and covered under a signed and executed contract. We paid the 100% for these services, as our application was unaccountably lost somewhere in the Administrator's bureaucracy. The discounted portion for basic telephone service (18%) was close to the entire non-discounted portion for which the Administrator sought verification. Obviously, we had sufficient resources to pay the non-discounted portion of our funding requests, as we were forced to pay 100 percent of our basic telephone service due to the rejected application under the smear test. This application should be remanded to the Administrator for further processing for the reasons stated herein.

Item 25 Certification

On May 8, 2000, the Administrator asked for documentation of our ability to pay the non-discounted portion of our funding requests (471 Forms 161342 - $540, 167137 - $6,480, 165388 - $90,000, 160951 – $215,860 [consisting of Compaq, Novell, Electronic

Systems], 200277 - $117,126). We responded that the school board had not set our budget for 2000-2001 and we provided the Administrator with a copy of our 1999-2000 budget. On May 30, the Administrator asked for a statement, signed by a school official, indicating funds were set aside for Year Three applications. We responded on June 5 that we had set aside sufficient funds for paying the non-discounted portion of our funding requests. In another letter, we supplied additional information that was requested regarding technology in the district. In the letter, NPS documented that all telecommunications costs are budgeted at 100% (Attachment 2). The Administrator responded on June 5 with a request that we provide a statement on school letterhead, signed by a school official that we would be able to meet the E-Rate commitment of $1,959,118 under Billed Entity 197129. This figure was the total pre-discount funding request for the entire school division, not the discounted amount. There has been no regulation requiring that we document the budgetary commitment to fund the entire portion of services requested. We responded on June 12 that we had sufficient funding to cover the amount that we would be required to pay, i.e., the non-discounted portion. On June 23, the Administrator changed the signature requirement from a "school official", to a request for a statement signed by either the superintendent or chief financial officer. On June 27, we provided the Administrator with an Item 25 certification worksheet for Billed Entity Number 197129, which documented our budget to support the requests (Attachment 3). The Item 25 worksheet clearly documented our ability to pay the non-discounted portion of ALL of our requests. The Administrator omits this important fact in its denial decision. On August 2, Dr. Frank Sellew, Deputy Superintendent of Operations, documented our budgets for the non-discounted portion of funding requests

filed under Billed Entity Number 197129. By that time, we had been funded for our duplicate application for Cox Communications under Billed Entity Number 126527, and indicated our desire to the Administrator that the duplicate request be cancelled. In the August 2, letter (Attachment 4), we clearly indicated to the Administrator that the request 200277 was a duplicate and the Administrator had funded the other request. Therefore, we wished to withdraw that duplicate funding request. As such, the Administrator was put on notice during the review that our application for Cox Communications services had been funded. The Administrator had the opportunity to link that funding request with the other requests at that time, but failed to do so. By failing to act at the time, the Administrator in fact concurred with the review of approved request and allowed the commitment to stand.

Norfolk had also determined, independent of E-Rate funding considerations and absolutely not the result of an Item 25 review, that the contract with Ambassador would not be executed (471 Form 161342). We indicated that we had sufficient funding to satisfy the non-discounted portion of the remaining funding request numbers (160951, 165388, 167137). On November 28, 2000, the Administrator issued a Funding Commitment Decision Letter denying all Funding requests associated with Billed Entity Number 197129 (Attachment 5). On December 7, 2000, we appealed the rejection for the funding requests, which had not been covered by our duplicate request or the one request we wished not to execute (Attachment 6). This appeal again asserted the district's ability to pay our portion, the non-discounted amount, and was signed by the Chief Financial Officer. The Administrator did not act upon the appeal until September 17, 2003, and only after we had brought it to the Administrator's attention.

Billed Entity 126527

With the exception of several Form 471 applications that were rejected early in 2000 due to signature problems, funding requests under this Billed Entity number proceeded smoothly through application review. The Administrator contacted us on several occasions with requests for information and we provided that information to the Administrator. We received Funding Commitment Decision Letters on several occasions for these services (Attachment 7). We secured services funded under these requests and received E-Rate discounts for those eligible services and paid all bills associated with the requests.

Retroactive Denials

In correspondence dated October 28, 2002, we received "Commitment Adjustment Letters" from the Administrator (Attachment 8). The letters indicated that because our applications associated with the failed Selective Review were denied, funding for Electronic Systems (Application Number 164284 Funding Request Number 387892) and funding for Hampton Roads Educational Telecommunications Association, Inc. (Application Number 165013 Funding Request Number 329360) must also be denied. Because service had been rendered and payment made to both companies, the Administrator demanded repayment of $566,480 from Electronic Systems and $4,483.35 from Hampton Roads Educational Telecommunications Association, INC. These requests were approved under Billed Entity Number 126527.

On December 19, 2002, we appealed this decision (Attachment 9), and provided the Administrator with thorough documentation of not only our ability to pay our non-discounted share of services, but clearly demonstrated that all necessary resources were

in place to effectively use the award. In the appeal, we noted that we had submitted to the Administrator an appeal of the initial Selective Review denial on December 7, 2000, concerning Application Number 160951, under Billed Entity Number 197129. We also noted a positive decision by the Administrator on the December 7, 2000 appeal would make the Commitment Adjustment unnecessary.

We contacted the state E-Rate coordinator from the Virginia Department of Education, Mr. Greg Weisiger, requesting assistance in the matter. Mr. Weisiger arranged a conference call between Mr. George McDonald, Vice President of the Schools and Libraries Division and Norfolk. During the call on August 12, 2003, Mr. Weisiger explained the situation to Mr. McDonald and opined that the Commitment Adjustment was improperly issued because it lacked due process. During the call, Mr. McDonald said that because we had brought the issue to their attention, another funding commitment, Form 471 application number 200506 Funding Request Number 439621 for Cox Communications was also improperly funded, and those funds would have to be returned also. This is the same funding request we had noted to the Administrator in August 2000 that had already been funded. Almost three years later the Administrator reviewed the funding request and demanded that funding be returned.

Due to the technical problems, we were advised by the Administrator to submit multiple 471 forms for voice services to ensure that one would be processed. This recommendation was dictated by the fact that our contract for voice services expired during the year and a replacement contract would not be in place by the deadline for 471 filling. Therefore, one Form 471 application was submitted under Billed Entity number 126527 to cover the costs for the entire year and was listed as a tariffed service (form

200292). The second request consisted of a two Form 471s: one for the contract period (200284 filed under Billed Entity number 197129) and the remainder of the year filed as a tariffed service (Form 471 #164087 filed under Billed Entity Number 126527). Forms 471 #200292 and #200284 were rejected early in 2000, and appealed. In correspondence dated September 17, 2003, the Administrator also denied funding for request 200284 that had previously failed the "smear" test, which was approved for data entry on May 4, 2001, and then vanished (Attachment 10). The Administrator explained that because Norfolk Public Schools had failed the Item 25 review for Billed Entity Number 197129; therefore, this request also failed the Item 25 review. Since the application was rejected and under appeal, the district paid the full cost for these services, as they were considered basic telephone service for Norfolk Public Schools. Form 471 #164087 was approved on April 21, 2000. Since 471 Forms 200284 and 164087 duplicate services requested for 200292, the district requests that 471 Form 200284 be remanded to the Administrator for review and funded retroactively.

As mentioned earlier, NPS received several Commitment Adjustment letters for approved and awarded services under Billed Entity 126527 (Form 471s: 200506, 164087, 164154) on Sept 17,2003 (Attachment 11). The adjustment rationale was that funds were committed in violation of program rules—a premise with which we disagree. As stated earlier, these requests were reviewed, awarded, and all expenses paid by NPS.

Discussion

As stated at the outset, our Year Three applications for E-Rate discounts were subject to a series of rule changes and imperfect communications with a major economic impact on NPS and the service providers supplying NPS with necessary services eligible for E-Rate

funding. At issue here is whether the Administrator properly attempted to COMAD the applications associated with Billed Entity Number 126527, and whether the Administrator properly linked all applications under the two Billed Entity Numbers for NPS.

The Administrator believes it did properly link the two Billed Entity Numbers based on a decision by the Commission in United Talmudical Academy.[2] In that decision, the Commission supported the Administrator's contention that applications subject to Item 25 reviews should be considered in their totality, rather than on a request-by-request basis. Further, all Forms 471 for a given funding year are evaluated together for compliance with an Item 25 review. This creates an all-or-nothing proposition for applicants seeking E-Rate discounts when facing an Item 25 review. In our case, the request that ultimately led to denial of all funding requests was apparently our omission of our budget certification for services from Electronic Systems under Application Number 160951 from our August 2 letter (Attachment 4). The Administrator failed to consider our Item 25 worksheet, which indeed verified sufficient budgetary resources for all requests including Electronic Systems services (Attachment 3). We provided the Administrator with budget certification for Compaq, which was one of three funding requests on that application. We provided additional documentation in our December 7, 2000 and December 19, 2002 appeals, which was not considered or reviewed by the Administrator.

The United Talmudical Academy decision upholds the Administrator's approach of linking all Form 471 applications and FRN for an all-or-nothing funding. The Commission notes at 16: "In effect, SLD would be required to determine which set of

discounted services an applicant would have requested had it been cognizant of the necessary resources problems in the funding requests it actually made. We find that SLD should not be placed in a position of making such choices on behalf of applicants." In this instance, because budget was the single issue in the Item 25 Review and we provided itemized affirmation of sufficient budget for specific FRNs, the Administrator would not be placed in a position of determining which FRNs should or should not be funded. We provided a roadmap for the Administrator with our documentation, as to which FRNs should be funded. If budget was the sole determinant for failure of the Item 25 Review, which was apparently the case, and we provided FRN by FRN assurance that budget resources were in place, the Administrator should have funded the FRN which had sufficient documentation for budget.

The information we provided on appeal "will not be considered because during the course of initial review for Billed Entity 127129, you were given the opportunity to provide such documentation and failed to do so," according to the September 17, 2003 denial letter (Attachment 12). The Administrator defended its COMAD decision saying that all applications for both Billed Entity numbers "by definition" failed the Item 25 review. We disagree with this assertion. The United Talmudical Academy Order speaks about applications in review, not applications already funded. By definition, applications that have had funding commitments issued are no longer "in review." At such time the applicant may appeal the Administrator's decision or the Administrator may conduct a post commitment audit. Allowing the Administrator to conduct Item 25 reviews long after a funding commitment has been issued, leaves virtually all applications in a state of uncertainty and potentially subject to endless review. The Commission established a

[2] United Talmudical Academy Order, FCC 00-2, Released January 7, 2000.

mechanism for dealing with post commitment funding with the Commitment Adjustment order, discussed below.

The Administrator was made aware of our duplicate applications, while conducting its Item 25 review only for Billed Entity number 197129, and chose not to link them at that time. By failing to act during review, the Administrator could not link the two Billed Entity numbers under the United Talmudical Order, after a funding commitment was issued. The Administrator improperly concluded that applications funded under Billed Entity Number 126527 retroactively failed the Item 25 review. Because applications under Billed Entity Number 126527 had been reviewed and approved by the Administrator, the Administrator may not conduct an Item 25 review or post hoc link funded applications with a failed review. In such cases, the Administrator must conduct a post commitment audit of the funded applications rather than jumping to the conclusion that "by definition" those applications failed the Item 25 review.

An additional issue is that of timely processing of our appeals. Appeals for denial of authorized signature were not processed for over two and half years, and then only after we reminded the Administrator of their open status. The Dec 2000 appeal of rejected items under Billed Entity 197129, documents the district's ability to pay for the non-discounted amount of the requests (Attachment 6). If the Administrator had reviewed this information and acted within a reasonable time frame, NPS would have awarded the requested services, and no approved funding would have been rescinded.

Application number 200284 which failed the "Smear Test" was never reviewed for Item 25 compliance, and simply denied before data entry. We paid full price for all services associated with this application while our application was awaiting data entry

during the ensuing three years; lack of budget was not an issue. This request was for contracted voice services. This application should be reviewed and funded retroactively for the requested amount of $135,300.

The Commitment Adjustment

Occasionally, an applicant is funded for discounts on services that are not eligible for E-Rate funding. With a confusing eligible services list and limited training for the temporary employees charged with reviewing applications, a certain number of ineligible requests will be funded. In addition, the funding of telecommunications services is limited to telecommunications common carriers. Occasionally, telecommunications services will be funded for non-common carriers.

On the other hand, the Administrator will often not discover ineligible funding before the service provider has been paid. With the exception of Year One of the E-Rate program, when improperly funded applicants were granted a waiver by the Commission,[3] the Administrator must request service providers to repay funds that have already been disbursed for services rendered. Post commitment audits have uncovered a number of these situations. Both applicants and service providers are wary of the possibility that E-Rate discounts are never guaranteed years after the work has been completed, sub-contractors paid, taxes paid, and profits reported. Some service providers have refused to participate in the program or have begun demanding clauses in contracts that applicants will be held liable if E-Rate discounts are retroactively denied. On September 30, 2003 BellSouth petitioned the Commission for assurance that it would not be subject to COMAD should it act as "Good Samaritan" for the state of Tennessee.

[3] FCC 99-292, Released October 8, 1999

The COMAD Waiver Order, FCC 99-292, recognized the fact that this is an exceedingly complex program where funding mistakes will happen. However, the Commission acknowledged that applicants in Year One had not been put on notice, that the Administrator would seek to recoup funds improperly dispersed.[4] The waivers in this instance were given to applicants who had violated competitive bidding rules, were funded for ineligible services, or were funded in violation of the Rules of Priority to name but a few. The Commission held that applicants and service providers should have been given notice that funding could be rescinded. Consequently the following language was added in fine print to certification forms in Year Two:

> Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the universal service mechanisms for schools and libraries. FCC Form 471 Applicants who have received funding commitments continue to be subject to audits and other reviews that SLD or the Commission may undertake periodically to assure that funds have been committed and are being used in accordance with all such requirements. If the SLD subsequently determines that its commitment was erroneously issued either due to action or inaction, including but not limited to that by SLD, the Applicant, or service provider, and that the action or inaction was not in accordance with such requirements, SLD may be required to cancel these funding commitments and seek repayment of any funds disbursed not in accordance with such requirements. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC) may pursue enforcement actions and other means of recourse to collect erroneously disbursed funds.
> The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.[5]

While the new language was relatively broad in scope, it provides specific guidance for post commitment procedures. "Applicants who have received funding commitments continue to be subject to audits and other reviews that SLD or the

[4] FCC 99-292 at 7.

Commission may undertake periodically to assure that funds have been committed and are being used in accordance with all such requirements."

Clearly, the intention here is to treat post-commitment reviews differently from pre-commitment reviews. In the post commitment scenario, the Administrator must audit the applicant or initiate some "other review" to determine if funds have been committed in error. In our case, the Administrator relied on its pre-commitment Item 25 review to COMAD our funded applications rather than to audit or initiate "other reviews" of our applications and did not consider information supplied in our appeal of December 2000.

The intent of additional COMAD restrictions on the Administrator should be self-evident. Applicants would not begin a project while a discount application was under review, as the applicant may have insufficient funds to complete the project or engage the services without financial assistance through the E-Rate discount mechanism. Once a funding commitment has been issued, applicants can begin to obtain services with assurance that the discounted portion will be paid, provided the services were eligible, telecommunications services were provided by a common carrier, and the applicant did not engage in fraudulent or illegal practices to obtain funding. The test for post commitment COMAD should necessarily be very restrictive on the Administrator, lest the applicant community be subject to COMAD for any number of reasons years after services were rendered and service providers paid.

Seeing the potential for disaster with widespread demands for return of funds, the Commission was very specific and limiting with instructions to the Administrator with its authority to adjust funding commitments. According to the COMAD Order,[6] the

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[5] FCC 99-292 footnote 19.

[6] FCC COMAD Order, FCC 99-291, Released October 8, 1999.

Administrator is limited to adjusting funding commitments to: (1) applications seeking discounts for ineligible services;[7] and (2) applications seeking discounts for telecommunications services to be provided by non-telecommunications carriers.[8] It was not necessary for the Commission to include COMAD of commitments obtained through fraud, as those commitments should be revoked as a matter of criminal law.

Funding requests in question under this Request for Review do not meet these limited tests. The services we requested were clearly eligible and telecommunications services were provided by telecommunications common carriers. Our applications were reviewed by the Administrator and properly funded. The Administrator was aware of their existence during its Item 25 review and chose to fund them. The Administrator was not authorized to COMAD these funding requests under the Commission's COMAD Order.

Administrative "review" should not be limited to linking failed Item 25 Review with funded applications. "Review" in such cases could be in the form of a post-commitment audit to determine whether discounted services were actually used effectively.

Conclusion

Norfolk Public Schools reiterates that the E-Rate applications here under appeal were reasonable and for appropriate and eligible services. Contracts were competitively bid and provided exceptional value for Norfolk schools and the E-Rate program. We had sufficient budget to pay not only our non-discounted share, but also the full amount for

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7 *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9002 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Erratum, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (*Universal Service Order*).

telecommunications – as we did in the case of the rejected application failing the smear test. This fact was brought forward during Item 25 review as well as in the appeals, but ignored by the Administrator.

We believe in this appeal that we documented inconsistent application of polices and interpretation of Commission regulation. The Administrator improperly linked an Item 25 review for one Billed Entity number to previously funded requests that were approved for eligible services under another Billed Entity number. The Administrator was notified of a duplicate award and failed to act at that time to link the other requests.

NPS clearly had sufficient budget to support the requests; a fact documented in our appeal and the Item 25 worksheet provided to the Administrator during review. This fact was very clear for telecommunications expenses, when the district paid full cost for these services.

The Administrator was delinquent in processing our appeals. The appeal dated Dec 2000 was never processed. Our appeals regarding denial due to signature problems were not acted upon until we reminded the Administrator over two years later. It has been frustrating that documentation provided in appeals is ignored and dismissed summarily.

Repayment of over one million dollars in Year Three funding will produce a grave hardship on the service providers NPS selected to provide E-Rate discounted services. It will also damage the relationships we have developed with our service providers over the years. Forcing our service providers to repay previously committed funds will also discourage them from further participation in the E-Rate program, without assurance from applicants that they will be repaid should funding be retroactively revoked.

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[8] 47 U.S.C. § 254(h)(1)(B).

The services were obtained through proper competitive bidding and complied with all regulations and policies in effect at the time. There was no attempt to defraud the program or waste program resources.

We ask that the Commission reiterate the difference between pre and post-commitment reviews and reverse the Administrator's decision. We also ask that the "Smear Test" application be remanded to SLD for further review.

In the alternative and in the public interest, we ask that the Commission waive COMAD in this instance as repayment of services rendered several years ago would cause undue hardship on our service providers and there was no violation of specific COMAD regulations.

Respectfully submitted this 31st day of October, 2003 ,

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