

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application for Review of Decision of	)	CC Docket No. 02-6
the Schools and Libraries Division	)	
of the Universal Service Administrative	)	
Company	)	
	)	
Appeal of Commitment Adjustment	)	
Funding Year: 2002-2003	)	
Form 471 Application Number: 306545	)	
Applicant: Queen of Peace High School	)	

**REQUEST FOR REVIEW AND/OR WAIVER BY VERIZON NEW JERSEY INC.**

**Introduction**

This appeal is from the November 20, 2003 letter from Universal Service Administrative Company (“USAC” or “the Administrator”) to Verizon New Jersey, Inc. (“Verizon”). *See* Nov. 20, 2003, Commitment Adjustment Letter, from USAC to Mary Eells, Verizon New Jersey Inc., (“Commitment Adjustment Letter”), attached hereto at Exhibit A. In the letter, USAC states that it is rescinding funding because “[a]n investigation revealed that the entities receiving service were not in compliance with the guidelines set forth by [the Children’s Internet Protection Act (‘CIPA’)] when these services began.” Exhibit A, at 4.

There is no suggestion that Verizon is in any way at fault; indeed, it has no role in the CIPA compliance process. However, under current procedures, USAC seeks repayment of E-rate funds from the service provider rather than the applicant, regardless of whether the service provider was at fault, or could have prevented the error. When the service provider has already disbursed the funds to the applicant, and there is no

suggestion that the service provider committed any errors or engaged in waste, fraud, or abuse of E-rate funds, the Commission should direct USAC to seek repayment from the applicant.

## **I. Background**

Verizon received a Commitment Adjustment Letter stating that USAC was rescinding a portion of E-rate funds that had been distributed to the applicant, because it had determined that “the entities receiving service were not in compliance with the guidelines set forth by CIPA when these services began.” *See* Commitment Adjustment Letter, at 4. The entire description of the basis for USAC’s decision is as follows:

After a thorough review, it has been determined that this funding request will be rescinded in the amount of \$1,036.27. An investigation revealed that the entities receiving service were not in compliance with the guidelines set forth by CIPA when these services began. In accordance with the rules of the Schools and Libraries Division Support Mechanism, entities receiving discounts on Internet Access or Internal Connections must be in compliance with the appropriate requirements of CIPA on or before the date services begin. On the Form 486 it was indicated that services began on 7/1/02. However, during the course of review it was determined that the appropriate CIPA requirements were not met until 01/14/03. Therefore, SLD is unable to provide discounts for services delivered prior to 01/14/03. Accordingly, the SLD has rescinded funding in the amount of \$1,036.27 (Commitment amount \* (# of days of non-compliance with CIPA/365 days)).

Exhibit A, at 4.

Since Funding Year 4 (beginning July 2001), USAC has required schools and libraries with Internet access to certify that they are complying with CIPA, as a prerequisite to receiving E-rate discounts. *See* USAC SLD website, “Specific CIPA Guidance for Year 4 ‘Undertaking Actions’ Certification,” May 18, 2001, *available at*

<http://www.sl.universalservice.org/whatsnew/MISC/CIPA051801.asp>.<sup>1</sup> Verizon has no role in certifying applicants' compliance with CIPA, and there is no suggestion by USAC that Verizon is at any way at fault for any erroneous disbursement.

The Commitment Adjustment Letter informs Verizon that USAC may seek to “recover some or all of the funds disbursed.” Exhibit A, at 1. According to current USAC practices, USAC is likely to ask the “service provider” (*i.e.*, Verizon) to repay any funds it believes were disbursed in error. *See Order, Changes to the Board of Directors of the National Exchange Carrier Association*, 15 FCC Rcd 22975, ¶ 6 (2000) (“Commitment Adjustment Implementation Order”); *see also*

<http://www.sl.universalservice.org/reference/COMAD.asp>.

## **II. The Commission Should Direct USAC to Change Its Procedures So That Service Providers Are Not Asked To Repay E-rate Funds When They Already Have Been Distributed To the Applicant, and the Service Provider Is Not At Fault**

The Commission should direct the Administrator to change its processes so that it does not seek to recover E-rate funds from service providers who are not responsible for any errors in disbursement. In initially approving USAC's plan for recovering E-rate funds that have been disbursed in error, the Commission explained why it would be appropriate to ask the service provider to recover any previously disbursed amounts as an offset against continued E-rate funding. *See Commitment Adjustment Implementation Order*, ¶ 13. However, nowhere did the Commission explain any policy reason why it makes sense to attempt to recover these funds from the service provider, rather than the

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<sup>1</sup> *See also Federal-State Joint Board on Universal Service; Children's Internet Protection Act*, Report and Order, 16 FCC Rcd 8182, ¶ 3, 20-21 (2001); *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, Order, 18 FCC Rcd 16072, ¶¶ 5-6 (2003).

applicant, when the funds have already been disbursed to the applicant and there are no continuing E-rate funds against which to offset the recovery. As the Commission recently reaffirmed, although E-rate funds “flow to the applicant *through* the service provider,” any funds that are “disbursed” to the service provider must be promptly given to the applicant.<sup>2</sup> Even though the service provider is a conduit for any award, it is the applicant, rather than the service provider, that receives the direct benefit of E-rate funds. Thus, when the Administrator determines that a discount was improper only after the funds have been given to the applicant, absent any showing of wrongdoing on the part of the service provider, USAC should look to the applicant for any repayment of those funds.

Requiring the service provider to compensate the universal service fund for losses due to E-rate funds or discounts that have already been disbursed to the applicant, means the service provider must either attempt to recover the funds from the applicant (which may be difficult, if not impossible, to do), or suffer the loss associated with the repaid funds. Attempting to collect funds from the service provider in such instances would unfairly punish it for the mistakes of the applicant (or the Administrator), and give the applicant a windfall of an E-rate discount to which it was not entitled. This will reduce incentives for all carriers to bid on E-rate work, thereby reducing competition for E-rate contracts.

In this case, there is no suggestion that Verizon is at fault for any error in disbursement. When an applicant requests E-rate funding, Verizon (like USAC) must

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<sup>2</sup> *Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 9202, ¶¶ 42-51 (2003).

rely on the applicant to certify that it has complied with any applicable requirements, including those set forth by CIPA. Because the E-rate funds at issue were already disbursed to the applicant, and Verizon was not at fault for any error in disbursement, it should not be required to repay USAC for the disbursed funds.

The Commission has issued a further notice of proposed rulemaking that invites comment on whether there are any circumstances in which it would be appropriate not to seek to recover erroneously disbursed funds from the service provider. *See Schools and Libraries Universal Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, FCC 03-323, ¶¶ 78-85 (rel. Dec. 23, 2003). It has already recognized that in cases where the applicant has engaged in waste, fraud, and abuse, the normal process for recovering such funds – *i.e.*, from the service provider – does not apply.<sup>3</sup> The Commission should further clarify that USAC should not recover funds from the service provider that have already been forwarded to the applicant when there is no evidence that the service provider was at fault for the erroneous disbursement.

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<sup>3</sup> The Commitment Adjustment Letter does not indicate that the applicant engaged in waste, fraud and abuse of E-rate funds, and Verizon does not have any facts to suggest that was the case. However, to the extent any applicant has engaged in such wrongdoing, the Commission has recognized that as an independent reason not to seek the typical remedies against the service provider. *See Commitment Adjustment Implementation Order*, ¶ 13 (“We also emphasize that the proposed [commitment adjustment] recovery plan is not intended to cover the rare cases in which the Commission has determined that a school or library has engaged in waste, fraud, or abuse. The Commission will address those situations on a case-by-case basis”).

**Conclusion**

The Commission should direct USAC not to seek recovery of E-rate funds from Verizon in this case. In addition, it should direct USAC to change its processes so that it does not seek recovery of funds from service providers when such funds have already been disbursed to the applicant and the service provider is not at fault.

Respectfully submitted,



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Attorney for  
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January 16, 2004



Universal Service Administrative Company  
Schools & Libraries Division

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COMMITMENT ADJUSTMENT LETTER

November 20, 2003

Verizon Customer Service South  
Verizon - New Jersey, Inc.  
Attn: Mary Eells, 1717 Arch Street, 22nd Floor (s)  
Philadelphia, PA 19103 6014

Re: COMMITMENT ADJUSTMENT

Funding Year 2002 -2003

Form 471 Application Number: 306545

Applicant Name QUEEN OF PEACE HIGH SCHOO

Contact Person: George Schlitt

Contact Phone: 201-997-0700

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 THIS DECISION:

If you wish to appeal the Funding Commitment Decision indicated in this letter, 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. 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 Billed Entity Name, the Form 471 Application Number, and the Billed Entity Number from the top of your letter.
3. When explaining your appeal, copy the language or text from the Commitment Adjustment Letter that is at the heart of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. 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 or by contacting the Client Service Bureau. We encourage the use of either the e-mail or fax filing options.

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. 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.

## 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: 306545

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Funding Request Number 814848                      SPIN: 143001362  
Service Provider: Verizon - New Jersey, Inc.  
Contract Number: MTM  
Services Ordered:            INTERNET ACCESS  
Site Identifier: 6645                      QUEEN OF PEACE HIGH SCHOOL  
Billing Account Number: 201 V06-0656-172-79  
Adjusted Funding Commitment:                      \$883.73  
Funds Disbursed to Date:                              \$0.00  
Funds to be Recovered:                                \$0.00

### Funding Commitment Adjustment Explanation:

After a thorough review, it has been determined that this funding request will be rescinded in the amount of \$1,036.27. An investigation revealed that the entities receiving service were not in compliance with the guidelines set forth by CIPA when these services began. In accordance with the rules of the Schools and Libraries Division Support Mechanism, entities receiving discounts on Internet Access or Internal Connections must be in compliance with the appropriate requirements of CIPA on or before the date services begin. On the Form 486 it was indicated that services began on 7/1/02. However, during the course of review it was determined that the appropriate CIPA requirements were not met until 01/14/03. Therefore, SLD is unable to provide discounts for services delivered prior to 01/14/03. Accordingly, the SLD has rescinded funding in the amount of \$1,036.27 (Commitment amount\*(# of days of non-compliance with CIPA/365 days)).