

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Request for Review by Sprint Local of Decision)
of the Schools and Libraries Division of the)
Universal Service Administrative Company) CC Docket No. 02-6
)
Administrator's Decision on Appeal)
Funding Year 2001-2002)
Re: Pitt County School District, Greenville, NC)
Form 471 Application Number: 254432)
Billed Entity Number: 126888)
Funding Request Number: 630896)

APPEAL OF SPRINT LOCAL TELEPHONE COMPANIES

Sprint Local Telephone Companies, pursuant to Section 54.719 of the Commission's Rules, hereby respectfully submits an appeal of the decision of the Administrator of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) regarding the above-referenced Funding Request Number (FRN)).¹ As described below, the Pitt County School District did not receive its updated funding commitment decision letter (FCDL) when it was issued and thus did not meet the deadline for filing its Form 486. Because it did not have notice of the Form 486 due date for the FRN at issue here, USAC's decision to adjust the service start date and to reduce the funding commitment amount should be reversed.

¹ The *USAC Appeal Decision* dated January 22, 2004 is included as Attachment 1.

1. Background

USAC's decisions to adjust the service start date for this FRN and to deny Pitt County's appeal of the adjusted service start date were based on what was, according to USAC's records, a missed due date. Sprint acknowledges that Pitt County's Form 486 was late filed based on USAC's records. However, as is clear from the following sequence of events, it is not appropriate to compute the Form 486 filing due date based solely on USAC's records.

In 2001, Pitt County, a 90% discount school, submitted a request for E-rate funding for inside wiring (internal connections) and eligible Priority One services and equipment, with Sprint as the service provider. USAC approved funding for the telecommunications services and equipment, but inadvertently and incorrectly denied funding for the internal connections portion of the request. Because the Priority One services and equipment would not function without the internal connections infrastructure upgrade, Sprint performed all of the wiring and equipment installation work that was the subject of the RFP beginning in July 2001,² and completed and billed Pitt County for this work in April 2002. Once these installations were complete, Sprint began providing the approved services.

On September 6, 2001, Pitt County filed an appeal of the denial of its internal connections funding request. USAC issued a Decision on Appeal letter granting Pitt County's appeal in full on December 12, 2001, stating that "SLD will issue a new Funding Commitment Decision Letter to you [the applicant] as soon as possible."

On July 8, 2002, USAC issued an updated FCDL approving Pitt County's \$104,499.90 internal connections funding request. Although the updated FCDL was

² Projects of this nature are often done during the summer, when school is not in session.

purportedly mailed to Pitt County on this date, Pitt County did not receive a copy of this letter. Pitt County placed “numerous” phone calls to USAC about the status of this FCDL, but remained unaware that the updated FCDL had been issued until June 4, 2003, when a USAC representative (in response to a call from Pitt County) advised Pitt County that its FCDL had been issued on July 8, 2002.³ USAC mistakenly faxed the original (not the updated) FCDL to Pitt County on June 6, 2003; Pitt County had not received a copy of the updated FCDL until June 16. That same day, Pitt County filed its Form 486 – well within the 120 day filing deadline based on its actual receipt of the updated FCDL.

On July 9, 2003, USAC issued a notification letter advising Pitt County that the service start date had been adjusted to February 16, 2003 (Form 486 receipt date minus 120 days), because the Form 486 was “late” based on the July 8, 2002 updated FCDL. By adjusting the service start date, Pitt County’s funding was proportionately reduced from the level originally approved. On August 19, 2003, Pitt County filed an appeal of the July 9, 2003 USAC notification letter which adjusted the service start date (*see* Attachment 2). USAC denied Pitt County’s appeal in full on January 22, 2004, stating that its records did not indicate any problem with any FCDLs issued on July 8, 2002 (*see* Attachment 1). It is this decision which is the subject of the instant appeal.

2. Relief Requested

As an initial matter, Sprint does not dispute the validity or the need for administrative rules establishing deadlines for paperwork submissions. Given the volume of applications and other forms submitted, it is obvious that the E-rate program cannot be efficiently administered without a schedule of prescribed due dates. The instant case is

³ *See* August 19, 2003 letter from Rejeanor Scott, Pitt County Schools, to SLD, included as Attachment 2, and Ms. Scott’s Declaration, included as Attachment 3. The original of Ms. Scott’s Declaration will be filed with the Commission by early next week.

unusual, however, in that a key event (issuance of the updated FCDL) which would have “started the clock ticking” for the Form 486 submission deadline, was not timely received by the applicant.

Delays of well over a year between the time an appeal is granted and the date a responsive funding letter is received are common. Thus, the fact that Pitt County had not received an updated FCDL for some months after its appeal was granted would not necessarily have been cause for alarm. Nonetheless, Pitt County placed numerous telephone calls to SLD prior to July 8, 2002 requesting the updated FCDL, and was consistently (and correctly) told that the updated FCDL would be forthcoming. It was not until June 2003 (almost a year later) that Pitt County finally received a duplicate copy of the July 8, 2002 updated FCDL, provided to Pitt County at its request in the course of yet another call regarding the status of its FCDL.⁴ Because the updated FCDL was not sent by registered or certified mail, there is no way to determine whether the letter was actually delivered and received by Pitt County. However, Ms. Scott has filed a declaration (Attachment 3) stating that to the best of her knowledge, neither she nor any other Pitt County School District representative received a copy of the July 8, 2002 updated FCDL until June 2003. Confusion regarding the updated FCDL was compounded by the fact that USAC does not send electronic notification of appeal letters; thus, unlike original FCDLs (for which both USPS and electronic notification is provided), there was no double-check receipt confirmation for a FCDL issued on appeal.

The Commission has authority to suspend, waive, or amend its rules for good cause,⁵ and Courts have held that good cause exists to waive a Commission rule if special

⁴ See Scott Declaration, paragraph 3.

⁵ 47 C.F.R. Section 1.3.

circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁶ As explained above, good cause exists in this case –the applicant did not receive a timely copy of the updated FCDL due to an apparent fluke in the notification process and/or mail delivery system (neither of which is under the applicant’s control), and the applicant did make a good faith effort to ascertain with USAC whether an updated FCDL had been issued. Because of these special circumstances, the due date for the Form 486 should have been triggered by the first date on which the applicant was informed that the updated FCDL had been issued.

Grant of this appeal is in the public interest. Sprint performed the service at issue here in good faith in the expectation that it would be paid for the services rendered. Pitt County’s financial resources are extremely limited, and it is not clear to Sprint whether funds to pay the outstanding \$104,500.00 bill are available. Even if Pitt County is able to remit payment to Sprint for this bill, it is likely that such payment will come at the expense of some other project intended to improve the educational environment for its students. The Commission should therefore reverse the *USAC Appeal Decision*, and direct USAC to approve E-rate funding for FRN 630896.

⁶ See *WAIT Radio V. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

Respectfully submitted,

SPRINT LOCAL TELEPHONE CO.

A handwritten signature in cursive script, appearing to read "Norina Moy", written over a horizontal line.

Norina Moy
Richard Juhnke
401 9th St., NW, Suite 400
Washington, DC 20004
(202) 585-1915

March 19, 2004

Attachment 1



Universal Service Administrative Company
Schools & Libraries Division

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

January 22, 2004

Rejeanor Scott
Pitt County Schools
1717 West Fifth Street
Greenville, NC 27834

Re: Billed Entity Number: 126888
471 Application Number: 254432
Funding Request Number(s): 630896
Your Correspondence Dated: August 19, 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 Form 486 Notification Letter 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: 630896
Decision on Appeal: Denied in full
Explanation:

- In your appeal letter, you are appealing the adjusted Service Start Date (SSD). You stated that you previously submitted an appeal that was approved, but you and your service provider, Sprint, never received the Appeal Funding Commitment Decision Letter (FCDL). Therefore, you could not file the Form 486 within the 120-day deadline. You request SLD to grant the Form 486 and approve the billing for the requested services so that Sprint can receive compensation.
- After thorough review and investigation of all relevant facts, the SLD determined that you should have filed the Form 486 for this funding request within 120 days calculated from the issuance date of the Appeal FCDL or the SSD indicated on the Form 486, whichever is later. In your appeal letter, you stated that you and your service provider, Sprint, did not receive the Appeal FCDL. SLD's records

Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, New Jersey 07981
Visit us online at: <http://www.sl.universalservice.org>

Jan. 30 2004 02:04PM P.2

FAX NO. 252.838.1277

FROM 'DANNR KEEL TECH DEPT

01/30/2004 02:18PM

show that an Appeal FCDL dated on 7/8/2002 was sent to you. It is SLD's reasonable assumption that you did receive the Appeals FCDL, since SLD has no record that the letter was undeliverable or returned due to any mailing problems. Therefore, this does not constitute grounds for a waiver of the Form 486 filing deadline. It is the responsibility of the applicant to ensure that all Forms are submitted to the SLD in a timely and correct manner. Consequently, the change in the Service Start Date to 2/16/2003 is upheld and the appeal is denied.

- Your Form 486 must have been received or postmarked no later than 120 days after the date of your Funding Commitment Decision Letter or no later than 120 days after the Service Start Date reported on your Form 486, whichever is later. The date of your Appeals Funding Commitment Decision Letter for FCC Form 471 # 254432 was 7/8/2002. The Service Start Date reported on your FCC Form 486 was 7/1/2001. The postmark date of your FCC Form 486 was 6/16/2003. Since your FCC Form 486 was postmarked more than 120 days after your Service Start Date or the date of your Funding Commitment Decision Letter, whichever is later, the SLD has revised your Service Start Date to the date 120 days before your FCC Form 486 postmark date and reduced your funding commitment amount based on the revised Service Start Date. The SLD does not have the authority to waive the Form 486 filing deadline, consequently your appeal is denied.
- FCC rules provide that FCC Form 486 certifications must be provided to the Administrator in accordance with existing program guidelines established by the Administrator. See 47 C.F.R. § 54.520(g). Existing program guidelines are explained in the Funding Commitment Decision letter. Your Funding Year 2001 Funding Commitment Decision letter notified you that "[I]f your services start after October 28, 2001, your Form 486 must be postmarked no later than 120 days after the Service Start Date or 120 days after the date of the Funding Commitment Decision Letter, whichever is later, in order for discounts to be paid retroactively to the Service Start Date. Failure to meet this filing deadline will result in reduced funding." See Funding Commitment Decision Letter (Funding Year 2001: 07/01/2001 - 06/30/2002), page 2. Since your FCC Form 486 was postmarked more than 120 days after the Service Start Date you indicated on your FCC Form 486, SLD has reduced your funding.

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 received or 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

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Visit us online at: <http://www.sl.universalservice.org>

Jan 30 2004 02:04PM P.3

FRX NO: 252 752 1277

FROM: DONNA KEEL TECH DEPT

4000703770 02:18PM

Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

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

Schools and Libraries Division
Universal Service Administrative Company

Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, New Jersey 07981
Visit us online at: <http://www.sluniversal.com>

Jan 30 2004 02:05 PM P. 4

FAX NO.: 252 752 9249

FROM: DONNA KEEL, TECH DEPT

01/30/2004 02:18 PM

Attachment 2



Pitt County Schools

1717 West Fifth Street
Greenville, North Carolina 27834
<http://schools.esstact.ecu.edu/pitt/>

TEL: 252-830-4200
FAX: 252-830-4239

Michael D. Priddy, Ed.D.
Superintendent

August 19, 2003
Appeal of 486 Notification Letter
Pitt County School District, Greenville, NC
FRN 630896
Application Number: 254432
SPIN: 143 01 9614

To the SLD:

We are appealing the date of our 486 Change Indicator for the Service Start Date on FRN 630896. While we received our Administrator Decision Letter granting our appeal, we never received the Funding Commitment Letter so we couldn't file our 486 in a timely manner. Our Service Provider, Sprint, also did not receive a copy of the Funding Commitment Letter. Here is a synopsis of this issue:

1. Pitt County appealed a decision and received an Administrator Decision Letter granting the appeal.
2. The Funding Commitment Decision Letter (FCDL) didn't come; numerous phone calls in spring-summer 2002 requesting FCDL
3. Sprint installed based on appeal decision but never billed to SLD, awaiting FCDL.
4. Recently, we researched further and found that SLD "sent" FCDL July 2002 but both Pitt County and Sprint's E-Rate Service Center did not receive a copy.
5. In July, 2003, Pitt County submitted 486 with the attached cover letter explaining that we hadn't received an FCDL but SLD did not read or respond to the letter.
6. SLD changed Service Start Date to February 16, 2003, based on FCDL and submission of 486. Sprint payment request will not match.

We would like you to grant our 486 and approve the billing for this installation (billed April 2002) so that Sprint can receive compensation for this work. The issues with this FRN have been dragging on for over a year and we would like a quick response. We have discussed this case with John Noran, Cynthia Schultz, Mick Kraft, and Bradley Scott and are awaiting your prompt reply.

Thank you for your attention to this matter.

Rejeanor Scott
Director - Media & Technology

Attachment 3



1717 West Fifth Street Michael D. Priddy, Ed.D.

Greenville, North Carolina 27834 Superintendent

<http://schools.eastnet.ecu.edu/pitt/>

TEL: 252-830-4200

FAX: 252-830-4239

DECLARATION of REJEANOR SCOTT

My name is Rejeanor Scott. I am Director of Media and Technology for the Pitt County School District. In this capacity, I am responsible for handling the applications and forms associated with Pitt County's E-rate projects.

Copies of USAC's Funding Commitment Decision Letters (FCDL) regarding Pitt County's E-rate requests are routinely routed to me. I did not receive a copy of the FCDL for Funding Request Number 630896 dated July 8, 2002 on or around that date. To the best of my knowledge, no other individual in the Pitt County School District received this FCDL on or around July 8, 2002.

I did not receive a copy of this FCDL until June 2003, after speaking with a USAC representative regarding the status of Pitt County's funding request. At my request, USAC was to have faxed me a duplicate copy of this FCDL. This was the first occasion on which I was made aware that this FCDL had been issued.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge.

Rejeanor Scott

March 19, 2004

I, Joyce Powers, notary for Pitt County of NC witness Rejeanor Scott signature.

My Commission Expires May 14, 2006

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Dec 19 2004 2/19/04

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPEAL OF SPRINT LOCAL TELEPHONE COMPANIES** was filed by electronic mail on this the 19th day of March, 2004 to the below-listed parties.


Christine Jackson

March 19, 2004

William Maher, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Narda Jones, Esq.
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Qualex International
445 12th Street, SW
Washington, DC 20554

Rejeanor Scott
Pitt County Schools
Educational Programs & Services
1717 W. 5th Street
Greenville, NC 27834