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 Disbursed Funds Recovery Letters	)	
Funding Year: 2000-2001	)	
Form 471 Application Number: 202704	)	
Applicant: Education Serv. Ctr.-Region 1	)	

REQUEST FOR REVIEW AND/OR WAIVER BY
SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company ("SWBT") hereby appeals the May 14, 2004, Disbursed Funds Recovery Letter from the Universal Service Administrative Company (USAC) to SWBT. *See* Letter of USAC to E-Rate Service Center, Southwestern Bell Telephone Company, attached hereto as Exhibit 1 (" Recovery Letter"). In that letter, USAC states that it is seeking recovery of $4,148.25 in funds for telecommunications services delivered by SWBT to the Education Service Center Region #1 (the "Applicant") during funding year 2000-2001 on the ground that such funds were disbursed for ineligible services.[1] The Applicant here sought reimbursement from USAC using the BEAR process, and, according to its response to USAC's audit, failed "to segregate ineligible items from eligible items [because of] the amount of time that would be needed to devote to this task."[2]

There is no suggestion that SWBT is responsible in any way for the Applicant's failure to comply with the e-rate rules, nor is there any claim that SWBT should have, or even could have,

[1] *See* Exhibit 1 at 5

[2] KPMG Audit No. SL2003BE042, Attachment A at A-12 (attached hereto as Exhibit 2).

been aware of or prevented the Applicant's submission of requests for reimbursement for ineligible services.[3] Yet, under existing procedures, USAC seeks to recover funds erroneously disbursed only from service providers, regardless of whether the service provider was responsible for the disbursement or could have done anything to prevent the error. These procedures are inequitable and inefficient, and undermine service providers' incentives to participate in e-rate projects. For these reasons, SWBT has urged the Commission to develop new COMAD procedures that focus on the party or parties that are responsible for, or benefited from, e-rate funds, and thus promote accountability and incentives for all parties to comply with e-rate rules.[4] In the meantime, where, as here, a service provider already has disbursed e-rate funds to the applicant, and is in not responsible for the erroneous disbursement of funds, the Commission should, to the extent necessary, waive existing procedures, and instruct USAC to seek reimbursement directly from the applicant.

I. BACKGROUND

On May 14, 2004, USAC sent SWBT a Disbursed Funds Recovery Letter, notifying SWBT that USAC was seeking recovery of $4,148.25 in e-rate funding committed to the Applicant pursuant to FRN 488016 due to non-compliance with the e-rate rules.[5] USAC's sole explanation for seeking recovery was:

> After a thorough investigation it has been determined that funds were disbursed in error on this FRN in the amount of $4,148.25. During an audit, it was determined that the applicant had included charges totaling a pre-discount amount of $4,768.10 for late fees, call forwarding, speed calling, call return, call waiting, and caller ID on a BEAR form. Since these items were not eligible for funding

[3] As discussed below, when an applicant uses the BEAR process, it is responsible for properly invoicing USAC; the service provider merely certifies that it promptly will remit back to the applicant any reimbursement funds disbursed by USAC. The service provider is not responsible for policing the form to ensure that the Applicant has complied fully with the Commission's rules.

[4] Comments of SBC Communications Inc., CC Docket No. 02-6 (filed Mar. 11, 2004) (SBC Comments). SWBT is a wholly-owned subsidiary of SBC.

[5] *See* Exhibit 1 at 5.

from the Schools and Libraries Support Mechanism, the SLD must seek recovery of the $4,148.25 that was disbursed for the ineligible services.[6]

II. DISCUSSION

In 1999, the Commission first required USAC to adjust commitments for e-rate funding disbursed in violation of the 1996 Act, and directed it to develop a plan for recovering funding improperly or erroneously disbursed.[7] In a companion order, the Commission waived recovery of funds disbursed or committed in violation of four Commission rules on the ground that affected applicants or service providers may have reasonably relied on the funding commitments by USAC.[8] The following year, the Commission approved USAC's recovery plan, which generally provided for USAC to recover improperly disbursed e-rate funds from service providers, rather than applicants.[9] The Commission justified seeking recovery from service providers solely on the ground that "service providers actually receive disbursements of funds from the universal service support mechanism."[10] But, even then, the Commission acknowledged that these general procedures (*i.e.*, recovering funds from service providers) would not necessarily apply in all cases, "emphasiz[ing]" that these procedures would not apply in cases where the applicant "has engaged in waste, fraud, or abuse."[11]

Application of the general Disbursed Funds Recovery procedures where, as here, service providers have complied with the e-rate rules exalts form over substance; is inequitable and

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[6] *Id.*

[7] *Changes to the Board of Directors of the Nat'l Exchange Carrier Ass'n; Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, FCC 99-291 (rel. Oct. 8, 1999) (*Comad Order*).

[8] *Changes to the Board of Directors of the Nat'l Exchange Carrier Ass'n; Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, 15 FCC Rcd 7197, para. 7 (1999) (*Waiver Order*).

[9] *Changes to the Board of Directors of the Nat'l Exchange Carrier Ass'n; Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, 15 FCC Rcd 22975 (2000) (*Comad Implementation Order*).

[10] *Id.* at para. 8. The Commission stated that, in cases of applicant error, it expected service providers to recover from applicants any funds recovered from the service provider by USAC.

[11] *Id.*at para. 13.

inefficient; undermines incentives for Applicants to comply with the rules; and would discourage participation in the program. First, the mere fact that service providers, rather than applicants, "actually receive disbursement of funds" is irrelevant. Regardless of whom funds are "actually disbursed" to, it is the applicant, not service providers, to which e-rate funds are committed and which receives the benefits of such funds. Even if funds are disbursed to a service provider, the service provider cannot retain them, but rather must pass them through to the applicant through reimbursements or discounts. Service providers thus are merely conduits for the delivery of funds to the applicant. As such, it is the applicant, not a service provider, that owes a debt to the United States if funds are erroneously disbursed (except where a service provider itself has failed to comply with the e-rate rules). USAC therefore should seek recovery of such funds (either through demand or referral to the Justice Department) directly from the applicant where, as here, such funds were improperly disbursed due to applicant error.

Second, requiring SWBT to repay USAC for the disbursed funds in this context would be inefficient and patently inequitable. USAC does not assert, nor could it, that SWBT was in any way at fault for the Applicant's requests for reimbursement for ineligible services, or that SWBT could have done anything to prevent the Applicant's errors. Indeed, the errors identified are utterly beyond SWBT's control, and SWBT had no way to identify (much less correct or prevent) these errors, nor would it even have learned of these errors had USAC not sent the Disbursed Funds Recovery Letter. Where, as here, an applicant uses the BEAR process to obtain reimbursement from USAC, it alone is responsible for invoicing USAC. The service provider is required only to certify that it promptly will remit back to the applicant any reimbursement funds disbursed by USAC. The service provider does not review the charges included on an applicant's BEAR form prior to its submission, and does not know whether the applicant has sought reimbursement for ineligible services, nor is the service provider capable of preventing the applicant from doing so. As a consequence, there was no way that SWBT could have prevented the erroneous disbursement of funds to the Applicant or taken steps to remedy the Applicant's error.

Requiring SWBT to repay the erroneously disbursed funds would force it either to try to recover the funds from the Applicant (which likely would be costly and time-consuming, and might be impossible), or absorb the loss. Either way, recovery from SWBT will increase costs for all concerned, and unfairly punish SWBT (which reasonably relied on the Applicant's certifications of compliance with e-rate requirements) for the mistakes of the Applicant. And, if SWBT cannot recover the funds from the Applicant, the Applicant will receive a windfall to which it was not entitled.

Third, seeking reimbursement from SWBT also would fail to provide proper incentives for the Applicant, and other applicants, to ensure that they have complied fully with e-rate program requirements. As noted above, requiring SWBT to refund e-rate monies improperly disbursed due to applicant error would force SWBT to seek recovery from the applicant. But obtaining such recovery from an applicant often has proven difficult because a service provider's only recourse, if an applicant fails to reimburse the provider for such funds, is to threaten to cut off service, which, of course, is unrealistic in light of the public interest implications of such action. Only by seeking refunds directly from applicants, and denying future e-rate funding if an applicant fails to repay improperly disbursed funds, will the Commission provide appropriate incentives for all program participants to comply with the rules. Particularly in light of the circumstances of this case, where the Applicant's sole excuse for failing to comply with the rules and segregate ineligible from eligible items in submitting invoices to USAC was that it was too much trouble,[12] the Commission should require the Applicant to refund the erroneously disbursed funds to USAC to ensure that it complies with the rules in future.

Finally, requiring service providers to repay e-rate funds where, as here, the applicant has failed to comply with the e-rate rules will reduce service providers' incentives to bid on e-rate projects, which, in turn, will reduce competition for e-rate contracts. In the end, both consumers

[12] Exhibit 2 at A-12 ("The reason given for the failure to segregate ineligible items from eligible items was the amount of time that would be needed to devote to this task.").

and applicants will suffer as e-rate costs increase and e-rate funding (which is capped) fails to be used as productively as it otherwise would.

III. CONCLUSION

For the foregoing reasons, the Commission should waive recovery of disbursed funds altogether. But, if the Commission nevertheless deems recovery appropriate in this case, it should (to the extent necessary) waive existing procedures and direct USAC to recover funds directly from the Applicant.

Respectfully submitted,

/s/ Christopher M. Heimann

CHRISTOPHER M. HEIMANN
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PAUL K. MANCINI

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July 13, 2004

Exhibit 1

Universal Service Administrative Company
Schools & Libraries Division

RECOVERY OF ERRONEOUSLY DISBURSED FUNDS

May 14, 2004

E-Rate Service Center
Southwestern Bell Telephone Company
406 North Carancahua, Room 450
Corpus Christi, TX 78401 2233

Re:
Funding Year 2000 -2001
Form 471 Application Number: 202704
Applicant Name EDUCATION SERV CTR-REGION 1
Contact Person: REGINO LOPEZ, III
Contact Phone: 956-984-6053

Dear Service Provider Contact:

Reviews of Schools and Libraries Program disbursements occasionally reveal that funds were disbursed in error. Such discoveries may arise out of our periodic audits, attempts by applicants to reduce a funding commitment below the amount already disbursed, or other investigations resulting from our program compliance procedures. For example, funds may be disbursed in error when:

- Services were billed but were not delivered
- Services were billed in excess of the services delivered
- Services were returned but an appropriate refund to SLD was not made

The SLD has determined that the funds detailed on the attached FUNDING DISBURSEMENT SYNOPSIS were disbursed in error. This synopsis includes the specific funding requests, amounts, and reasons for recovery by Funding Request Number (FRN). The SLD must now recover the amount that was disbursed in error.

FUNDING DISBURSEMENT SYNOPSIS

On the pages following this letter, we have provided a Funding Disbursement Synopsis for the Form 471 application cited above. The enclosed report includes a list of the FRNs from this application for which recovery of erroneously disbursed funds is necessary. Immediately preceding the Funding Disbursement Report, you will find a guide that defines each line of the Report. The SLD is also sending this information to the applicant named above.

TO APPEAL THIS DECISION

If you wish to appeal the decision indicated in this letter, your appeal must be RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) 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 Recovery Of Erroneously Disbursed Funds you are appealing. Indicate the funding request number and date of the Disbursed Funds Recovery letter. Your letter of appeal must also include the applicant name, the Form 471 Application Number, and the Billed Entity Number from the top of your letter.

3. When explaining your appeal, include the precise language or text that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, the SLD will be able 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 or by calling the Client Service Bureau. 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 No. 02-6 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 or by calling the

Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options because of 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.

Schools and Libraries Division
Universal Service Administrative Company

A GUIDE TO THE FUNDING DISBURSEMENT SYNOPSIS

Attached to this letter will be a report for each funding request from the application cited at the top of this letter for which a Recovery of Erroneously Disbursed Funds 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 applicant and the service provider. This will be present only if a contract number was provided on the Form 471.

• SERVICES ORDERED: The type of service ordered from the service provider, as shown on
Form 471.

• SITE IDENTIFIER: The Entity Number listed on Form 471 for "site specific" FRNs.

• BILLING ACCOUNT NUMBER: The account number that was established for billing purposes. This will be present only if a Billing Account Number was provided on the Form 471.

• FUNDING COMMITMENT: This represents the total amount of requested funding that the SLD committed to this FRN.

• FUNDS DISBURSED TO DATE: This represents the total funds that have been paid to you for this FRN.

• FUNDS TO BE RECOVERED: This represents the amount of Erroneously Funds Disbursed to Date. These erroneously disbursed funds will have to be recovered.

• DISBURSED FUNDS RECOVERY EXPLANATION: This entry provides a description of the reason SLD is seeking the recovery.

Funding Disbursement Synopsis for Application Number: 202704

Funding Request Number 488016 SPIN: 143004662

Service Provider: Southwestern Bell Telephone Company

Contract Number: T

Services Ordered: TELCOMM SERVICES

Site Identifier:

Billing Account Number: 956-984-6000

Funding Commitment:	$316,109.35
Funds Disbursed to Date:	$308,905.93
Funds to be Recovered:	$4,148.25

Disbursed Funds Recovery Explanation:

After a thorough investigation it has been determined that funds were disbursed in error on this FRN in the amount of $4,148.25. During an audit, it was determined that the applicant had included charges totaling a pre-discount amount of $4,768.10 for late fees, call forwarding, speed calling, call return, call waiting, and caller ID on a BEAR Form. Since these items were not eligible for funding from the Schools and Libraries Support Mechanism, the SLD must seek recovery of the $4,148.25 that was disbursed for the ineligible services.

Exhibit 2

Universal Service Administrative Company

To: Mr. George McDonald, VP – Schools and Libraries Division

From: Internal Audit Division

Date: November 15, 2003

Re: **Executive Summary - Schools and Libraries Beneficiary Audit Report – Education Service Center Region #1 (Audit No. SL2003BE042)**

The Internal Audit Division of the Universal Service Administrative Company and KPMG LLP performed an audit of the Schools and Libraries Support Mechanism application of the Education Service Center Region # 1 located in Edinburg, TX, Billed Entity Number 141644 for Funding Year2000. KPMG was engaged on December 19, 2002, to perform agreed upon procedures audits based on a sample of beneficiaries and audit procedures developed by the Federal Communications Commission (FCC) Office of Inspector General (OIG).

The procedures in the attached report were performed for the purpose of assisting USAC in determining whether the Education Service Center Region # 1, as a recipient of support from the Schools and Libraries Support Mechanism of the Universal Service Fund, is complying with certain support mechanism rules and regulations established by the FCC. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and *Government Auditing Standards* (GAS) issued by the Comptroller General (GAS 1994 revision, as amended).

For the audit period, Education Service Center Region # 1 received the following commitments and the following disbursements were made on its behalf:

	Amount Committed	Amount Disbursed	Service Type
	4,245,791.61	4,011,418.53	Internal Connections
	298,197.42	156,736.93	Internet Access
	474,881.60	355,002.68	Telecommunications
TOTALS:	**$5,018,870.63**	**$4,523,158.14**	

Based on the results of the review and test work, the Internal Audit Division has concluded that the Education Service Center Region # 1 is generally compliant with the Schools and Libraries Support Mechanism program requirements for the funding year reviewed. The results of the audit disclosed apparent non-compliance with Schools and Libraries Support Mechanism regulations and/or procedures in the following areas:

- The applicant applied for reimbursement of ineligible equipment.

Detailed audit findings and responses are discussed in the attached report.

This report is intended solely for the use of USAC and the FCC and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of those procedures for their purposes. However, this report is a matter of public record and its distribution is not limited.

cc: Ms. Cheryl Parrino, USAC Chief Executive Officer
Mr. Scott Barash, USAC Vice President and General Counsel

8200 Greensboro Drive
Suite 400
McLean, VA 22102

Independent Accountants' Report
on Applying Agreed-Upon Procedures
USAC Report Number SL2003BE042

Ms. Cheryl Parrino
Chief Executive Officer
Universal Service Administrative Company
583 D'Onofrio Drive
Suite 201
Madison, WI 53719

We have performed the procedures enumerated in Attachment A, which were agreed to by the management of Universal Services Administrative Company (USAC), with respect to the 2000 Funding Year Applications submitted by Education Service Center, Region One under Beneficiary No. 141644. These procedures were performed solely for the purpose of assisting you in determining whether Education Service Center, Region One, as a recipient of support from the Schools and Library Support Mechanism (the "S&L Support Mechanism" or the "Support Mechanism") of the Universal Service Fund, as administered by the Schools and Libraries Division ("SLD") of USAC pursuant to the Federal Communications Commission ("FCC") regulations, is complying with certain Support Mechanism rules and regulations, in accordance with the FCC regulations. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and *Government Auditing Standards*, issued by the Comptroller General (GAS 1994 revision, as amended) (GAS). The sufficiency of these procedures is solely the responsibility of USAC. Consequently, we make no representation regarding the sufficiency of the procedures described in Attachment A either for the purpose for which this report has been requested or for any other purpose.

Specific procedures and related results have been enumerated in Attachment A to this report.

We were not engaged to, and did not, conduct an examination, the objective of which would be the expression of an opinion on Education Service Center, Region One's compliance with S&L Support Mechanism rules and regulations. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the management of USAC and is not intended to be and should not be used by any parties other than the management of USAC.

KPMG LLP

May 30, 2003

KPMG LLP. KPMG LLP, a U.S. limited liability partnership, is a member of KPMG International, a Swiss association.

Attachment A outlines the agreed-upon procedures for Education Service Center, Region One ("Beneficiary"), the associated results, and any management responses obtained in relation to exceptions.

APPLICATION PROCESS

The following procedures are associated with the USAC E-Rate application process for Education Service Center, Region One associated with its Funding Year ("FY") 2000 Application. The procedures, the associated results, and any management responses obtained in relation to exceptions are documented in the following tables.

Procedure 1	Result(s)
Conduct Beneficiary Entrance Conference.	On March 26, 2003, KPMG conducted an entrance conference with the following Beneficiary personnel: the Associate Director; Executive Director; Associate Director, Instructions; Lead Specialist, Technology Support; Technology Integration Specialist; Director of Technology Integration; Network Services Manager; Network Specialist; Risk Manager; Lead Specialist for Accounting; CFO, (Business Office). In general, KPMG provided an overview of the process and discussed how results would be communicated with the Beneficiary.

Procedure 2	Result(s)
Obtain the following documentation from the Beneficiary related to its FY 2000 Application for the purposes of completing the procedures enumerated throughout this document: a. Technology Plan and related approval letter (note: request related Technology Plan(s) for individual schools within the school district and the capital budgets supporting the Technology Plans, if applicable). b. Fiscal year 2000 and 2001 technology budgets and/or school appropriations related to the E-Rate program for FY 2000. c. Copies of U.S. Office of Management and Budget (OMB) Circular A-133 report for fiscal years 2000 and 2001, if Beneficiary is required to have a Single Audit. d. Copies of fiscal year 2000 and 2001 financial statements e. Basis for discount calculation on FCC Form 471 (i.e., rural vs. urban	KPMG obtained the listed documentation made available by USAC and the Beneficiary.

Procedures	Results
classification, number of students eligible for the National School Lunch Program, or other eligibility method). f. Overview of Beneficiary's Service Provider selection process. g. List of all contracts with Service Providers (including all related sub-contractor agreements) covering FY 2000 E-Rate program services. h. General description of the Beneficiary's information technology ("IT") environment and a high-level IT network diagram. i. General description of how E-Rate program funding for internal connections is being used in the Beneficiary's IT environment. j. General description of the process in place (if any) to ensure removal of ineligible services and/or products prior to billing. k. General description of the billing process for the E-Rate program in FY 2000. l. General description of Beneficiary's E-Rate program inventory, change/field orders process and how the Beneficiary's total E-Rate program funding is affected, and how excess E-Rate program inventory is accounted for. m. Copies of local and/or state procurement regulations applicable to the Beneficiary as they relate to contracting for the purchases of internal connections, telephone service and internet access. n. General description of the organization of the Beneficiary's E-Rate program team, including roles and responsibilities of all personnel involved in the administration of the E-Rate program. o. Correspondence with USAC related to extensions or appeals granted for FY 2000.	

Procedure 3	Result(s)
If the Beneficiary is a private school, determine by reference to the Beneficiary's financial statements if it had endowments exceeding $50 million during FY 2000.	Education Service Center, Region One is not a private school; therefore, this procedure is not applicable.

Procedure 4	Result(s)
If the Beneficiary is required to file an OMB Circular A-133 report, read the report(s), which included FY 2000 and note if any material deficiencies were reported. If a material deficiency was reported, identify and list those deficiencies that may impact the Schools and Libraries Universal Services Program funds in FY 2000.	KPMG obtained and read the OMB Circular A-133 reports for the years ended August 31, 2000 and 2001 for the Beneficiary and the following entities included in the Beneficiary's consortium (region) to determine if any material deficiencies were reported: - Los Fresnos Consolidated Independent School District - Sharyland Independent School District - La Villa Independent School District - Harlingen Consolidated Independent School District *No material deficiencies were noted in any of the aforementioned OMB Circular A-133 reports for the years ended August 31, 2000 or 2001, which may have impacted the Beneficiary's Schools and Libraries Universal Services Program funds in FY 2000.*

Procedure 5	Result(s)
Read the information regarding the Beneficiary's Technology Plan approval in Block 4, Line 8 on FCC Form 486 for FY 2000. Determine that the approver listed on this Form, is included on the SLD certified "Technology Plan Approvers" list for FY 2000, that the Technology Plan includes a signature documenting the approval, and that the Technology Plan was consistent with USAC requirements.	KPMG read the information in Block 4, Line 8 on FCC Form 486 for the Beneficiary, which indicated that the Texas Education Agency approved the Technology Plan. This party was identified by USAC as an authorized approver. KPMG obtained a copy of the Beneficiary's Technology Plan and noted it was approved by the party identified above and was consistent with USAC requirements. At the request of USAC, KPMG also obtained and reviewed for consistency with USAC requirements related Technology Plans for the following individual school districts included in the Beneficiary's consortium (region) and the capital budgets supporting the Technology Plans: ▪ Los Fresnos Consolidated Independent School District ▪ Sharyland Independent School District

Procedure	Result(s)
	▪ La Villa Independent School District ▪ Harlingen Consolidated Independent School District KPMG noted the following exceptions with the Sharyland Independent School District Technology Plan (which was also approved by the Texas Education Agency): 1) *The Plan does not include an assessment of the telecommunications services, hardware, software, and other services that will be needed to improve education or library services.* 2) *The Plan does not provide for a sufficient budget to acquire and maintain the hardware, software, professional development, and other services that will be needed to implement the strategy for improved education or library services.* 3) *The Plan does not include an evaluation process that enables the school district to monitor progress toward the specified goals and make mid-course corrections in response to new developments and opportunities as they arise.*
	Management Response The Beneficiary stated that Education Service Center, Region One would work with Sharyland Independent School District and the Texas Education Agency to address the problems identified.

Procedure	Result(s)
Identify the basis used to calculate the Beneficiary's discount percentage on FCC Form 471. Compare this basis to the E-Rate approved basis for FY 2000. Also, haphazardly select a sample of ten (10) individual schools included in the Beneficiary's consortium to recalculate the discount percentage calculation.	KPMG compared the basis used to perform the claim discount calculation on FCC Form 471 to the students eligible for participation in the National Student Lunch Program. In addition, KPMG recalculated the discount rates for a sample of 10 schools included in the Beneficiary's consortium (region) and agreed to USAC documents. *No exceptions were noted.*

SERVICE PROVIDER SELECTION AND ELIGIBILITY

The following procedures are associated with the USAC E-Rate program process that Education Service Center, Region One utilized related to its FY 2000 to select and determine the eligibility of potential and contracted Service Providers. The procedures, the associated results, and any management responses obtained in relation to the exceptions are documented in the following tables.

Procedure	Result(s)
Gain an understanding of the Beneficiary's Service Provider selection process by reviewing documents provided by the Beneficiary and through inquiry. Determine whether the Beneficiary's Service Provider selection process included competitive bidding and cost/benefit analysis in FY 2000 as recommended by USAC.	KPMG gained an understanding of the Service Provider selection process, the bidding procedures, and any cost-benefit analysis techniques used by the Beneficiary by reviewing documents provided by the Beneficiary and through inquiries of Beneficiary personnel. KPMG was unable to determine that the Beneficiary's process included competitive bidding and cost/benefit analysis in FY 2000. KPMG noted the following exception: *The Beneficiary was unable to provide information necessary to verify a competitive bidding process was used prior to awarding the Dell Marketing contract related to FRN 450750. The Beneficiary did state that they were under the belief that the matter was handled appropriately given the State of Texas procurement regulations and guidelines which must be followed.* *Although this was consistent with State procurement rules obtained in 2.m above, it does not appear to be consistent with USAC's recommendation for a competitive bidding process.*

Procedure	Results
	Management Response The Beneficiary raised the following relevant points: • Before E-Rate FY 2000, the Beneficiary had standardized on Dell servers and therefore used the State of Texas General Service Commission (GSC) Qualified Information Systems Vendor (QISV) purchasing program to procure the Dell servers. • According to the Attorney General (AG) of the State of Texas' *Brief of AG's Opinion DM-350*, "A local government that participates in the cooperative purchasing program established under sections 271.082 and 271.083 of the Local Government Code satisfies otherwise applicable competitive bidding requirements when it makes a purchase through the catalogue purchasing procedures established by 2157.067(a), (b) of the Texas Government Code." (available at http://www.gsc.state.tx.us/stpurch/25dm350.html) • Using a single QISV vendor quote was, and continues to be, a common procurement method in Texas for technology-related items for E-Rate and non E-Rate projects since this is a legal procurement method in Texas. Even though QISV is a legal purchasing method in Texas, since E-Rate FY 2000, the Beneficiary has moved to a more formal procurement process for E-Rate. In addition to posting the FCC Form 470, which satisfies the advertising requirement of the SLD, the Beneficiary now advertises its Request for Quote (RFQ) in the local newspapers, provides a formal RFQ that contains detailed specifications (including servers), and makes a recommendation to the Board of Trustees to award projects to the appropriate vendors. The Beneficiary keeps a "bid list" of vendors that contact it and sends the RFQ to these vendors.

Procedure	Result(s)
For the three (3) Service Providers used in FY 2000, obtain the applicable FCC Forms 498 (Service Provider Registration Form) and FCC Forms 473 (Service Provider Annual Certification Form) and determine if those forms were completed in accordance with USAC requirements.	KPMG selected the three (3) Service Providers for FY 2000 and verified each Service Provider had completed the required FCC Form 498 or FCC Form 473. KPMG reviewed the Service Provider forms to verify that all information had been completed per USAC requirements. *No exceptions were noted.*

Procedure	Result(s)
Based on a USAC provided summary of FY 2000 committed/disbursed E-Rate program funds for the Beneficiary, select two (2) Funding Request Numbers (FRN), obtain the contracts for which the Beneficiary sought reimbursement and perform the following:	Based on a USAC provided summary of FY 2000 committed/disbursed E-Rate program funds for Education Service Center, Region One, KPMG selected the following two (2) FRNs for which the Beneficiary sought reimbursement: - Dell Marketing – FRN 450750 - Southwestern Bell – FRN 488016
a. Compare the selected contracts' services and/or products to the FY2000 E-Rate program "Eligible Services List" dated December 29, 2000 ("ESL"). Identify any services and/or products for which reimbursement was sought by the Beneficiary that were identified as ineligible in the ESL.	KPMG compared the selected contracts' services and/or products to the FY 2000 E-rate program "Eligible Services List" dated December 29, 2000 ("ESL"). *KPMG did not identify any services and/or products, per the contracts, for which reimbursement was sought by the Beneficiary that were identified as ineligible.*
b. Compare the information in Block 2, Summary Description of Needs or Services Requested, of FCC Forms 470 to the description of services and/or products in the selected contracts.	KPMG compared the information in Block 2, Summary Description of Needs or Services Requested of FCC Forms 470 to the description of services and/or products in the selected contracts. *No exceptions were noted.*
c. Compare the information in Block 5, Discount Funding Request(s), of the FCC Forms 471 to the selected contracts.	KPMG compared the information in Block 5, Discount Funding Request of the FCC Form 471 to the selected contracts. Block 5 contains the Service Provider SPIN number and name, the eligible service start date, allowable contract date, the eligible monthly amount, and the discount percentage. *No exceptions were noted.*
d. For any selected contracts, which were awarded on or before July 10, 1997, determine whether the contract was voluntarily extended beyond the original contract termination date. If so, determine whether the contract extension was subject to a competitive bidding process and was	The contract with Southwestern Bell related to FRN 488016 was awarded before July 10, 1997. KPMG determined that the contract was voluntarily extended beyond the original contract termination date and that the contract extension was subject to a competitive bidding process and was initiated by posting a FCC Form 470 in accordance with SLD

Procedure 9	Result(s)
initiated by posting a FCC Form 470, in accordance with SLD program guidelines.	program guidelines. *No exceptions were noted.*

Service Provider Selection and Eligibility Summary	One (1) exception was noted.

REIMBURSEMENT PROCESS

The following procedures are associated with the USAC E-Rate program process that Education Service Center, Region One utilized related to its FY 2000 Application to ensure the eligibility of Telecommunications, Internet Access and Internal Connections. The procedures, associated results, and any management responses obtained in relation to the exceptions are documented in the following tables.

Procedure 10	Result(s)
Gain an understanding of the Beneficiary's reimbursement process by reviewing documents provided by the Beneficiary and through inquiry. Determine whether the Beneficiary's reimbursement process included tracking of E-Rate related expenditures and status of work performed in FY 2000.	KPMG obtained an understanding of the Beneficiary's reimbursement process by reviewing documents and inquiries of Beneficiary personnel. KPMG determined that the Beneficiary's process included tracking of E-Rate related expenditures and status of work performed in FY 2000.

Procedure 11	Result(s)
If the Beneficiary filed any FCC Billed Entity Applicant Reimbursement (BEAR) forms (Form 472) for FY 2000, select one (1) completed BEAR form and verify that it was signed by the Service Provider.	KPMG selected the BEAR Form related to FRN 488016 (Southwestern Bell) and verified that it was signed by the Service Provider. *No exceptions were noted.*

Procedure 12	Result(s)
Obtain information about the Beneficiary's reimbursement process to determine that eligible and ineligible items are properly segregated prior to submitting invoices to USAC for reimbursement.	KPMG obtained information about the Beneficiary's reimbursement process through inquiries of Beneficiary personnel to determine that eligible and ineligible items are properly segregated prior to submitting invoices to USAC for reimbursement. KPMG noted the following exception: *The Beneficiary did not have a process in place to segregate eligible items from ineligible items on invoices submitted for reimbursement to USAC. For telecommunications service specifically, KPMG noted that, neither the Beneficiary nor the Service Provider (Southwestern Bell - FRN 488016) properly segregated eligible and ineligible items prior to submitting invoices to USAC for reimbursement.*

Procedure 12	Result(s)
	Management Response The Beneficiary acknowledged that no mechanism existed to segregate ineligible and eligible items on invoices submitted to USAC. The reason given for the failure to segregate ineligible items from eligible items was the amount of time that would be needed to devote to this task.
a. Select seven (7) invoices from 3 FRNs and compare invoices to contract terms and billing.	KPMG selected seven invoices from the following three (3) FRNs and compared invoices to contract terms and billing. - Netigy – FRN 488013 - Southwestern Bell – FRN 488016 - Dell Marketing – FRN 450750 *No exceptions were noted.*

Procedure 13	Result(s)
Judgmentally select four (4) completed reimbursement forms (BEARS and/or FCC Forms 474, Service Provider Invoice Forms ("SPI")) from the USAC provided file of all FY 2000 Beneficiary requests for payment, and perform the following:	KPMG selected four (4) completed reimbursement forms (consisting of three (3) SPI Forms and one (1) BEAR Form) related to the following FRNs upon which the agreed-upon procedures were performed: - Netigy – FRN 488013 - Southwestern Bell – FRN 488016 - Dell Marketing – FRN 450750
a. Compare the Beneficiary's records to support that the Service Provider's bill to the Beneficiary was processed (reviewed and paid) in accordance with the Beneficiary's standard procedures.	KPMG compared the Beneficiary's records, typically the Service Provider's invoice, to support that the Service Provider's bill to the Beneficiary was processed (reviewed and paid) in accordance with the Beneficiary's standard procedures.

Procedure 15	Results
	KPMG noted the following exception: *The Beneficiary received three separate shipments of hub equipment from Netigy totaling an undiscounted amount of $665,960.76. The Beneficiary's payments to Netigy for the nondiscounted portion did not have a one-to-one relationship with Netigy's charges. Netigy included three separate charges on Form 474 #3017. The invoices listed below from Netigy to the Beneficiary for its portion of the charges totaled $86,574.90.*

Invoice Date	*Invoice #*	*Undiscounted*	*Nondiscounted*
6/11/01	*50001*	*$13,950.00*	*$1,813.50*
6/12/01	*50002*	*$50,000.00*	*$6,500.00*
6/13/01	*50003*	*$602,010.76*	*$78,261.40*
TOTAL		*$665,960.76*	*$86,574.90*

The Beneficiary's attempted to make payments to Netigy totaled $86,574.90, as detailed below, but only one check was cashed by the Service Provider, leaving $75,089.70 not paid.

Check	*Date*	*Amount*	*Status*
25156	*9/21/01*	*$11,485.20*	*Paid in full*
22617	*7/19/01*	*$8,313.50*	*Stopped payment*
43914	*8/30/01*	*$66,776.20*	*Still outstanding*
TOTAL		*$75,089.70*	

Procedure	Results
	Management Response The Beneficiary acknowledges that it made a good faith effort to pay their 13% share of the project by issuing a check for $66,776.20 to Netigy. KPMG was provided with a copy of this check. The Beneficiary further acknowledged that although it was aware that Netigy had filed for bankruptcy, it was contacted by three different companies regarding the bankruptcy of E-Rate Funding Year 3 vendors and had issued new checks to these companies as it verified that the companies had a rightful claim to the funds. The Beneficiary has the funds available for the check in question in anticipation that at some point, perhaps when the Court has resolved the bankruptcy, someone will claim these funds with proper documentation. Because of the bankruptcies and the three firms, this has been a complicated endeavor.
b. Verify that supporting documentation exists for the approval of the invoice in accordance with the Beneficiary's standard procedures.	KPMG verified that supporting documentation (typically an invoice bearing an authorized signature) exists for the approval of the invoices. *No exceptions were noted.*
c. Compare the discount percentage as submitted on the reimbursement forms to the discount percentage documented in the related Funding Commitment Decision Letter issued by USAC and verified that it was applied appropriately.	KPMG compared the discount percentage as submitted on the reimbursement forms to the discount percentage documented in the related Funding Commitment Letter issued by USAC. *No exceptions were noted.*

Procedure	Results
d. Verify that Beneficiary source documents support the services and/or products billed and that the Beneficiary documented review and approval for products and services being billed to determine that the Service Provider only applied discounts to services and/or products included in the ESL.	KPMG agreed the services and/or products listed on the Service Provider invoices for which discounts were taken to the ESL. The following exception was noted: *The Beneficiary included ineligible items, in the total amount of $4,768.10, on BEAR Form # SWB-00-3 dated July 12, 2001 (Southwestern Bell – FRN 488016). The ineligible items were late fees ($4,711.85), and call forwarding, speed calling, 3-way calling, call return, call waiting and caller ID (collectively, $56.25). The Beneficiary was reimbursed $4,148.25 by USAC related to these items.*
	Management Response The Beneficiary acknowledged that no mechanism existed to segregate ineligible and eligible items on invoices submitted to USAC. The reason given for the failure to segregate ineligible items from eligible items was the amount of time that would be needed to devote to this task.
e. Identify any substitute services or products and compare these products or services to the FY 2000 ESL.	KPMG was informed that there were no substitute products or services for the Beneficiary.
f. Determine by reference to supporting documentation that non-discounted costs (Beneficiary's share) were paid timely and in accordance with contract and/or invoice terms.	As noted in the results to Procedure 13 a. above, the non-discounted costs related to the Netigy invoices was not fully paid. For the remaining selected items, KPMG determined that the non-discounted costs (Beneficiary's share) were paid timely and in accordance with contract and/or invoice terms.
g. Compare the SPIs to the Service Provider's bill to the Beneficiary. Verify that the total billed costs (to the Universal Service Fund (USF) program and Beneficiary) do not exceed the total cost of the eligible products and services delivered under the FRN and that the Service Provider is only seeking reimbursement of eligible costs and applied the approved discount rate.	KPMG compared the SPIs to the Service Provider's bill to the Beneficiary and verified that the total billed costs did not exceed the total cost of eligible products and services delivered under the FRN and that the Service Provider is only seeking reimbursement of eligible costs and applied the approved discount rate. KPMG noted the following exception: *Dell Marketing submitted $2,785 of ineligible items (printer cartridges) on FCC Form 474 #566046124; furthermore, it was noted that the Beneficiary overpaid Dell Marketing by $422 related to the same FCC Form 474.*

Procedure 13	Results
	Management Response The Beneficiary acknowledged the exception reported.
h. For BEAR transactions, verify that the Beneficiary paid all amounts to the Service Provider and is only seeking reimbursement of eligible paid costs and applied the approved discount rate.	As noted in the results to Procedure 13 d. above, the Beneficiary sought reimbursement for ineligible items, though it did apply the approved discount rate.
i. Compare the Beneficiary's asset/inventory records to selected invoices to verify that the billed equipment is listed on the inventory (including make, model and serial number).	KPMG compared equipment purchases indicated on selected Service Provider invoices to the Beneficiary's asset/inventory records, including make, model, and serial number. *No exceptions were noted.*
j. Identify eligible equipment or services listed on the asset records that are located in non-classroom buildings or library facilities that do not directly serve patrons by inquiry of the Beneficiary or review of other supporting information. For any such equipment or services, verify that the building(s) are "conditionally eligible" for USF support.	KPMG identified eligible equipment or services listed on the asset records that are located in non-classroom buildings, and determined, through inquiry of the Beneficiary and review of pertinent documentation, that this equipment directly serves students. KPMG verified that the building is "conditionally eligible" for USF support. *No exceptions were noted.*

Procedure 14	Result(s)
Perform site visits to the Service Provider(s).	KPMG and USAC agreed not to perform Service Provider site visits at this time.

Procedure 15	Result(s)

Procedure 15	Results
Select ten (10) individual schools and one (1) administrative site for a site visits and perform the following:	KPMG selected and performed ten (10) individual schools and one (1) administrative site for site visits. The following locations were selected: - Harlingen High School - Harlingen High School South - Bowie Elementary - Crocket Elementary - Laureles Elementary - Los Fresnos High School - Sharyland Junior High School - Garza Elementary - La Villa Junior High School - La Villa High School - Edinburg Education Service Center, Region One
a. For selected sites, compare equipment approved and listed on FCC Form 471 to the Beneficiary's asset records. Also, determine that all equipment for the selected building is installed and operational. *(Note: The verification should include comparing the make, model and serial number of the equipment to the asset list.)*	KPMG compared equipment approved and listed on FCC Form 471 to the Beneficiary's asset records. We determined that all equipment for the selected buildings is installed and operational. *No exceptions were noted.*
b. Obtain a description of the use of the equipment selected in Procedure 15 a. Compare the description of use to the approved Technology Plan.	KPMG obtained a description of the equipment selected in Procedure 15 a. and compared description of use to the approved Technology Plan. *No exceptions were noted.*
c. Select at least two (2) systems installed in a classroom or library and test it by accessing the internet, LAN, or intranet.	KPMG selected at least two (2) computer systems installed in a classroom or library at each location and tested them by accessing the internet. *No exceptions were noted.*
d. If any of the selected buildings are administrative buildings, compare assets acquired to the ESL. (Note: If services are provided to administrative buildings, ensure they are part of a network of shared learning that connects to classrooms or library facilities available to the public.).	For the selected administrative building, KPMG compared assets acquired to the ESL. KPMG ensured that services provided to administrative buildings are part of a network of shared learning that connects to classrooms or library facilities available to the public. *No exceptions were noted.*

Reimbursement Process Summary	Four (4) exceptions were noted.
Overall Total Exceptions Summary	Eight (8) exceptions were noted.