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July 14, 2004

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **CC Docket No. 02-6;**
Petition for Review and/or Waiver of Commitment Adjustment [Recovery of Funds]

Dear Ms. Dortch:

On July 12, 2004, Ameritech Advanced Data Services, Inc. (AADS) filed a petition for review and/or waiver, appealing the May 12, 2004 Commitment Adjustment Letter from the Universal Service Administrative Company (USAC) to Ameritech Advanced Data Services, Inc. rescinding funding due to actions by the applicant. SBC inadvertently failed to include the exhibit referred to in its petition. SBC resubmits herewith its petition, together with the exhibit. SBC requests that the Bureau substitute the attached documents for the petition filed on July 12.

SBC regrets any confusion the inadvertent failure to attach the exhibit may have caused. Please contact me (202-326-8909) if you have any questions concerning the foregoing.

Sincerely,

/s/ Christopher M. Heimann

Attachment

**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: 2000-2001)	
Form 471 Application Number: 190856)	
Applicant: St. Lorenz Lutheran School)	

**REQUEST FOR REVIEW AND/OR WAIVER BY
AMERITECH ADVANCED DATA SERVICES, INC**

Ameritech Advanced Data Services, Inc. (“AADS”) hereby appeals the May 12, 2004, Commitment Adjustment Letter from the Universal Service Administrative Company (“USAC”) to AADS. *See* Letter of USAC to Mary Ann Imurgia, AADS (“Comad Letter”), attached hereto as Exhibit 1. In that letter, USAC states that it is rescinding funding for telecommunications services provided by AADS to St. Lorenz Lutheran School (the “Applicant”) during funding year 2000-2001 on the grounds that an audit found that the applicant did not have an approved technology plan at the time the Form 486 was submitted. Exhibit 1 at 4.

There is no suggestion that AADS is responsible in any way for the Applicant’s failure to comply with the e-rate rules, nor is there any claim that AADS should have, or even could have, been aware of the Applicant’s breach of the rules when AADS obtained reimbursement from USAC for services rendered to the Applicant. Yet, under existing procedures, USAC seeks to recover funds erroneously or improperly 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, AADS 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.¹ In the meantime, where, as here, a service provider already has disbursed e-rate funds to the applicant, and is not responsible for the erroneous or improper 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 12, USAC sent AADS the Commitment Adjustment Letter, notifying AADS that USAC was rescinding in full the e-rate funding committed to the Applicant pursuant to FRN 404628 due to non-compliance with the e-rate rules.² USAC's sole explanation for rescinding funding is:

After a thorough investigation, it was determined that this funding request will be rescinded in full. An audit found that the applicant did not have an approved technology plan at the time the Form 486 was submitted. FCC rules require that entities receiving services other than basic telephone service are covered by an individual and/or higher level technology plan, and that the technology plan is approved prior to the submission of the FCC Form 486. Since the Technology Plan was not approved at the time of submission of the FCC Form 486, the SLD has rescinded the commitment for the service requiring a technology plan. Since this is not a request for Basic Local or Long Distance Service an approved technology plan was required. Accordingly the funding request has been rescinded in full.

Comad Letter at 4. USAC further informed AADS that USAC soon would seek to recover from AADS all of the funds disbursed and distributed to the Applicant (which were \$801.92) for telecommunications services provided by AADS approximately three years ago.³

¹ Comments of SBC Communications Inc., CC Docket No. 02-6 (filed Mar. 11, 2004) (SBC Comments). AADS is a wholly-owned subsidiary of SBC.

² Commitment Adjustment Letter at 4.

³ *Id.* at 1, 4.

II. DISCUSSION

The Commission should require USAC to seek reimbursement of the funds at issue directly from the Applicant and, to the extent necessary, waive any procedures that might provide for recovery of such funds from AADS. 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.⁴ 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.⁵ 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.⁶ 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."⁷ 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."⁸

⁴ *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*).

⁵ *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*).

⁶ *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*).

⁷ *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.

⁸ *Id.* at para. 13.

Application of the general Comad procedures where, as here, the service provider has complied with the e-rate rules exalts form over substance; is inequitable and 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 the service provider, to which e-rate funds are committed and which receives the benefits of such funds. Even if funds are disbursed to the service provider, the service provider cannot retain them, but rather must pass them through to the applicant through reimbursements or discounts. The service provider thus is merely a conduit for the delivery of funds to the applicant. Consequently, it is the applicant, not the service provider, that owes a debt to the United States if funds are erroneously disbursed (except where the 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 such funds were improperly disbursed due to applicant error or malfeasance.

Second, requiring AADS to repay USAC for the disbursed funds in this context would be inefficient and patently inequitable. USAC does not assert, nor could it, that AADS was in any way at fault for the Applicant’s failure to comply with the e-rate rules or that AADS could have done anything to prevent it. In fact, the failure identified is utterly beyond AADS’s control, and AADS had no way to identify (much less correct) this failure when it delivered discounted services three years ago, nor would it have learned of these failures had USAC not sent the Comad Letter. Obtaining approval of a technology plan from an authorized approver is solely the responsibility of the applicant – indeed, AADS and other service providers are prohibited from preparing or approving an applicant’s technology plan under the e-rate rules. Like USAC, AADS was forced to rely entirely on the applicant’s certifications that it had complied with this (and other) e-rate program requirements. As a consequence, there was no way that AADS could have prevented the disbursement of funds to the Applicant or taken steps to remedy the

Applicant's non-compliance with the e-rate rules in this case before providing discounted service three years ago.

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

Third, seeking reimbursement from AADS 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 AADS to refund e-rate monies improperly disbursed due to applicant error would force AADS to seek recovery from the applicant. But obtaining such recovery likely will be difficult because AADS's only recourse, if the Applicant fails to reimburse AADS for such funds, is to threaten to cut off service, which, of course, is unrealistic in light of the public safety and 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.

Finally, requiring AADS and other 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 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 direct USAC not to seek reimbursement of funds from AADS in this case. Rather, if the Commission determines that recovery of funds is appropriate here, it should (to the extent necessary) waive existing procedures and instruct USAC to look directly to the Applicant for reimbursement.

Respectfully submitted,

/s/ Christopher M. Heimann

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July 12, 2004



The FCC Acknowledges Receipt of Comments From ...
SBC COMMUNICATIONS ON BEHALF OF AMERITECH
ADVANCED DATA SERVICES INC
...and Thank You for Your Comments

Your Confirmation Number is: **'2004712526613'**

Date Received:	Jul 12 2004
Docket:	02-6
Number of Files Transmitted:	1

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updated 02/11/02

Exhibit 1



Universal Service Administrative Company
Schools & Libraries Division

COMMITMENT ADJUSTMENT LETTER

May 12, 2004

Mary Ann Imburgia
Ameritech Advanced Data Services, Inc.
SBC E-Rate Center, 444 Michigan Avenue, 2nd Floor
Detroit, MI 48226 1038

Re: COMMITMENT ADJUSTMENT

Funding Year 2000 -2001

Form 471 Application Number: 190856

Applicant Name ST LORENZ LUTHERAN SCHOOL

Contact Person: Perry Bresemann

Contact Phone: 517-652-6141

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: 190856

Funding Request Number 404628 SPIN: 143005375
Service Provider: Ameritech Advanced Data Services, Inc.
Contract Number: T
Services Ordered: TELCOMM SERVICES
Site Identifier: 56334 ST LORENZ LUTHERAN SCHOOL
Billing Account Number: 517-752-3886 59 9
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$801.92
Funds to be Recovered: \$801.92

Funding Commitment Adjustment Explanation:

After a thorough investigation, it was determined that this funding request will be rescinded in full. An audit found that the applicant did not have an approved technology plan at the time the Form 486 was submitted. FCC rules require that entities receiving services other than basic telephone service are covered by an individual and/or higher level technology plan, and that the technology plan is approved prior to the submission of the FCC Form 486. Since the Technology Plan was not approved at the time of submission of the FCC Form 486, the SLD has rescinded the commitment for the services requiring a technology plan. Since this is not a request for Basic Local or Long Distance Service an approved technology plan was required. Accordingly the funding request has been rescinded in full.