

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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: 204440)
Applicant: Oswego Unified School)
District 504)

**APPEAL OR, IN THE ALTERNATIVE, REQUEST FOR WAIVER OF
SPRINT LOCAL TELEPHONE DIVISION**

Sprint Local Telephone Division (“Sprint”), pursuant to Section 54.719 of the Commission’s Rules, hereby respectfully appeals the above-referenced Commitment Adjustment (“COMAD”) request letter dated May 21, 2004 from the Universal Service Administrative Company (USAC) to Sprint Local Telephone.¹ In this letter, USAC has requested that Sprint return \$2177.64 in Internet Access funds, and \$4934.88 in telecommunications services funds, that USAC claims were disbursed in error. According to USAC, a competitive bidding violation occurred because Denise Bodensteiner, an individual associated with Southeast [Kansas] Educational Service Center, a service provider, was also the contact person on the applicant’s Form 470. Sprint was served with this COMAD request because we provided the telecommunications and Internet access services associated with these funding requests.

¹ The May 21 letter is included as Attachment 1.

As shown below, Sprint's appeal of this COMAD request should be granted for two reasons. First, Sprint was in no way responsible for the competitive bidding violation which is alleged to have occurred, and it is unreasonable to hold Sprint responsible for repayment of the committed amounts when responsibility for the alleged violation lays elsewhere. Second, the Commission's COMAD repayment policy arguably does not even place Sprint in the position of repaying the E-rate funds that were allegedly disbursed in error here. To the extent that an E-rate violation occurred, recovery of any erroneously disbursed funds should be sought directly from the parties involved and responsible for the violation, with no involvement by Sprint in the recovery process.

1. Sprint Is Not Responsible for the Alleged Competitive Bidding Violation, and Holding Sprint Responsible for the COMAD Payment Is Unreasonable.

USAC rules forbid service providers participating in the competitive bidding process as a bidder from completing an applicant's Form 470.² As noted above, USAC determined that because Ms. Bodensteiner was both a service provider employee and the applicant contact person for FRNs 478409 and 478411, a competitive bidding violation occurred. Sprint has no information about what may have transpired between Oswego Unified School District and Ms. Bodensteiner, and thus cannot comment on the merits of the alleged violation. However, there is absolutely no evidence of wrong-doing on Sprint's part, and no allegation that Sprint or any of its representatives acted improperly.

² See, e.g., Form 470 Information for FY2004 Applicants, www.sl.universalservice.org/reference/470info2004.asp.

Rather, USAC is questioning the relationship between Ms. Bodensteiner of Southeast Kansas Educational Service Center, and Oswego Unified School District 504.

Sprint is not affiliated in any way with Southeast Kansas Educational Service Center; Ms. Bodensteiner is not an employee or representative of Sprint; and Sprint did not have any contact with Ms. Bodensteiner in regard to this Form 470. No Sprint employee or representative assisted the applicant, Oswego Unified School District 504, in the preparation or filing of its Form 470, and Sprint did not even see the applicant's Form 470 before it was posted to the USAC website. Further, the COMAD request does not raise any question regarding the eligibility of the telecommunications or Internet access services provided by Sprint to the applicant in association with these FRNs. Because there is no allegation or evidence to suggest that Sprint acted inappropriately in providing service to this customer under these FRNs, and because any violation which may have occurred was entirely outside Sprint's knowledge and control, it is clearly unreasonable to hold Sprint responsible, even indirectly, for the recovery of funds that were allegedly disbursed in error. To the extent that a violation did occur, the erroneously disbursed funds should be recovered directly from the party or parties responsible for the alleged violation.

2. FCC Rules or Policies Do Not Render Sprint Responsible for Repaying the Erroneously Disbursed Funds.

The Commission has previously waived certain of its competitive bidding rules and declined to require repayment of E-rate funds disbursed in error to "...protect the service providers involved..." since it was "unlikely that these providers could have informed themselves about the status of an applicant's compliance with applicable regulations absent notification by USAC, thus constituting special circumstances..."

justifying a waiver of our rules....”³ Although the Commission emphasized that this waiver was “one-time” and “limited” (*id.*, para. 1), the circumstances here are quite similar: a competitive bidding violation is alleged to have occurred as the result of applicant action (possibly error) that was outside the knowledge and control of the carrier providing the Priority 1 service. Although Sprint does not suggest here that the Commission’s competitive bidding rules should be waived (instead, to the extent necessary, Sprint is requesting a waiver of any Commission policy or rule which holds the service provider directly responsible for recovery of E-rate funds disbursed in error through no fault of the service provider), similar justification for grant of relief is present here: protection of a service provider which will otherwise be collaterally damaged by a competitive bidding violation allegedly committed by other parties.

The Commission has recognized that recovery of erroneously disbursed funds from service providers is not necessarily appropriate in cases that do not involve service provider error. For example, in its order adopting a general policy to govern recovery of erroneously disbursed E-rate funds, the Commission “emphasize[d]” that the service provider-based 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.”⁴ It is not clear

³ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 15 FCC Rcd 7197, 7201-02 (para. 11) (1999). This waiver was issued for funding commitments disbursed in error in the first year of the E-rate program.

⁴ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, and *Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, 15 FCC Rcd 22975, 22980 (para. 13) (2000).

whether competitive bidding violations such as allegedly occurred here should be classified waste, fraud or abuse. However, it seems reasonable to at least defer any repayment demand from Sprint in this case until a Commission finding on the nature of the applicant's and Southeast Kansas Educational Service Center's actions can be made. The Commission has also recognized that "in instances of applicant error, the applicant will [presumably] be responsible for the balance" under the contract between the applicant and service provider (*id.*).⁵ Surely it is more reasonable and efficient to seek recovery for any erroneously disbursed funds directly from the party or parties whose actions gave rise to the alleged violation, than to involve a middleman such as Sprint, in the COMAD process.

Sprint's appeal of the COMAD letter and request that we be relieved of any obligation to directly refund any erroneously disbursed funds is clearly justified. However, if the Commission declines to grant this relief, Sprint requests a waiver of any informal, uncodified policy which requires that recovery of the COMAD funds at issue here be effected through the service provider.⁶ The Commission has authority to suspend, waive, or amend its rules for good cause,⁷ and Courts have held that good cause exists to waive a Commission rule if special circumstances warrant a deviation from the

⁵ Recovery of erroneously disbursed funds from the applicant under the contract is problematic, and Sprint is generally averse to cutting off service to public schools because of public safety and community interest reasons. Sprint also would note that the payments at issue here were made via BEAR checks, which were promptly flowed through to the applicant as required by program rules. Thus, Sprint did not retain control over any of these E-rate payments and cannot threaten to withhold any future BEAR payments as a "stick" for inducing applicant repayment of COMAD amounts.

⁶ Insofar as Sprint is aware, there is no Commission rule codifying recovery of COMAD funds directly from service providers.

⁷ 47 C.F.R. Section 1.3.

general rule, and such a deviation will serve the public interest.⁸ As explained above, special circumstances and good cause exist in this case, because the alleged violation was outside Sprint's knowledge or control, and the case arguably involves applicant error which the Commission has said would be considered on a case-by-case basis. Requiring refunds from the service provider in cases such as this one would discourage carriers from active participation in the E-rate program and would thereby harm the public interest. To the extent that waiver of any informal policy is required in this case, such waiver is justified and warranted.

Respectfully submitted,

SPRINT LOCAL TELEPHONE DIVISION


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July 20, 2004

⁸ 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).

ATTACHMENT 1



Universal Service Administrative Company
Schools & Libraries Division

COMMITMENT ADJUSTMENT LETTER

May 21, 2004

Doris Rivera
Sprint Local Telephone Division
151 Southhall Ln FLMTDD0401-4128
Maitland , FL 32751-7176

Re: COMMITMENT ADJUSTMENT

Funding Year 2000 -2001

Form 471 Application Number: 204440

Applicant Name OSWEGO UNIFIED SCHOOL DIST 504

Contact Person: DENISE BODENSTEINE Contact Phone: 316-724-6281

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: 204440

 Funding Request Number 478409 SPIN: 143019614

Service Provider: Sprint Local Telephone Division

Contract Number: MTM

Services Ordered: INTERNET ACCESS

Site Identifier:

Billing Account Number: NA

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$2,177.64

Funds to be Recovered: \$2,177.64

Funding Commitment Adjustment Explanation:

After thorough investigation it has been determined that Denise Bodensteiner is associated with Southeast Educational Service Center, a service provider. Denise Bodensteiner is also the contact person on the Form 470: 774980000274415 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when a SP associated with the Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation the SLD is rescinding the committed amount in full.

 Funding Request Number 478411 SPIN: 143019614

Service Provider: Sprint Local Telephone Division

Contract Number: T

Services Ordered: TELCOMM SERVICES

Site Identifier:

Billing Account Number: NA

Adjusted Funding Commitment: \$0.00

Funds Disbursed to Date: \$4,934.88

Funds to be Recovered: \$4,934.88

Funding Commitment Adjustment Explanation:

After thorough investigation it has been determined that Denise Bodensteiner is associated with Southeast Educational Service Center, a service provider. Denise Bodensteiner is also the contact person on the Form 470: 774980000274415 that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violation occurs when a SP associated with the Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation the SLD is rescinding the committed amount in full.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **APPEAL, OR IN THE ALTERNATIVE, REQUEST FOR WAIVER OF SPRINT LOCAL TELEPHONE DIVISION** was filed electronically on this the 20th day of July, 2004 to the below-listed parties.


Christine Jackson

July 20, 2004

William Maher, Chief
Wireline Competition Bureau
Federal Communications Commission
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