

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: 2003-2004)
Form 471 Application Number: 357055)
Applicant: Youngstown Youth Academy)

APPEAL OF SPRINT SPECTRUM, L.P.

Sprint Spectrum, L.P. (“Sprint”), pursuant to Section 54.719 of the Commission’s Rules, hereby respectfully appeals the above-referenced Commitment Adjustment (“COMAD”) request letter dated July 21, 2004 from the Universal Service Administrative Company (USAC) to Sprint Spectrum, L.P.¹ In this letter, USAC has requested that Sprint return \$1,503.58 in telecommunications services funds that USAC claims were disbursed in error. According to USAC, a violation occurred because the applicant did not timely or completely respond to an information request from USAC regarding the applicant’s ability to pay the non-discounted portion of its funding request. Sprint was served with this COMAD request because we provided the telecommunications services associated with this funding request.

Sprint’s appeal of this COMAD request should be granted for two reasons. First, Sprint was in no way responsible for the violation which is alleged to have occurred, and

¹ The July 21 letter is included as Attachment 1.

it is unreasonable to hold Sprint responsible for repayment of the committed amounts when responsibility for the alleged violation lays elsewhere. As the Commission found in its recent *COMAD Reconsideration Order*, recovery of funds disbursed in error should be “directed at whichever party or parties has committed the statutory or rule violation.”² Second, even if the applicant did fail to respond to USAC’s information request in a timely or comprehensive manner, the violation is, to a great degree, irrelevant by this point, since the applicant has been paying Sprint for the services received.

1. Because Sprint Is Not Responsible for the Alleged Violation, There Is No Basis for Recovering Any Erroneously Disbursed Funds from Sprint.

On July 30, 2004, the Commission released an order on reconsideration in which it modified its COMAD policy to recover erroneously disbursed E-rate funds from “whichever party or parties has committed the statutory or rule violation” (*COMAD Reconsideration Order*, para. 1). Among other things, the Commission recognized that “the school or library is likely to be the entity that commits an act or omission that violates...the obligation to pay the appropriate non-discounted share” (*id.*, para. 15). Because the alleged violation centers on the applicant’s apparent failure to demonstrate its ability to pay the non-discounted share of its E-rate bill, it is clearly inappropriate to seek recovery of the COMAD funds from Sprint. But for the timing of the release of the instant COMAD letter (which was dated only 9 days before release of the *COMAD*

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Order on Reconsideration and Fourth Report and Order*, FCC 04-181, released July 30, 2004, para. 1 (“*COMAD Reconsideration Order*”).

Reconsideration Order), recovery of the disputed funds would have been sought from Youngstown Youth Academy rather than from Sprint.

USAC's administrative requirements specify that applicants must respond fully to an information request within 7 calendar days after the date of follow-up confirmation of a successful contact between USAC and the applicant.³ Sprint does not dispute the need to establish deadlines to help ensure the timely and efficient processing of funding requests. However, compliance with the information request was under the control of the applicant, not Sprint. There is no allegation that Sprint acted improperly and no question about the eligibility of the telecommunications services provided by Sprint to the applicant in association with this FRN. Thus, 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 responsible for the alleged violation.

The Commission has authority to suspend, waive, or amend its rules for good cause,⁴ and Courts have held that good cause exists to waive a Commission rule if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.⁵ Given Sprint's complete lack of involvement in the information request process at issue here, and given the Commission's current policy on recovery of funds as set forth in the *COMAD Reconsideration Order*, the Commission should waive any rule or policy which seeks recovery of the disputed COMAD funds from Sprint.

³ See, e.g., www.sl.universalservice.org/reference/deadline.asp.

⁴ 47 C.F.R. Section 1.3.

⁵ 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).

2. The Applicant Has Been Remitting Payment to Sprint for the Telecommunications Services Received.

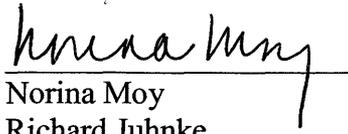
There is no dispute that USAC needs complete information from an applicant in order to determine whether its funding request should be granted or not. Sprint is not in a position to judge whether the information provided by Youngstown Youth Academy was sufficient to meet USAC's application review needs. However, this COMAD involves a case in which the theoretical harm to the program has been disproven by actual events. Even if Youngstown did not demonstrate its ability to pay its portion of the funding request to USAC's satisfaction during the review process, Sprint's records indicate that Youngstown has in fact been remitting payment for services received under this application, and that its account is currently active. Therefore, rescinding Youngstown's funding commitment in full elevates form over substance. Rescinding its funding over an apparent technicality would impose a significant financial hardship on the applicant, and could jeopardize its ability to pay any portion of its bills for E-rate services rendered.

* * * * *

For the reasons cited above, Sprint requests that the Commission excuse Sprint from any role in the recovery of the funds at issue in the instant COMAD request, and direct USAC to serve the COMAD request – to the extent that recovery of these funds is even in the public interest – on the party responsible for the alleged violation.

Respectfully submitted,

SPRINT SPECTRUM, L.P.

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

Norina Moy

Richard Juhnke

401 9th St., NW, Suite 400

Washington, DC 20004

(202) 585-1915

September 17, 2004

ATTACHMENT 1



Universal Service Administrative Company
Schools & Libraries Division

COMMITMENT ADJUSTMENT LETTER

July 21, 2004

Doris Rivera
Sprint Spectrum, L.P.
151 Southhall Ln, FLMTDD0401-4128
Overland Park, FL 32751-7176

Re: COMMITMENT ADJUSTMENT

Funding Year 2003 -2004

Form 471 Application Number: 357055

Applicant Name YOUNGSTOWN YOUTH ACADEMY

Contact Person: LOCK P. BEACHUM Contact Phone: 330-747-1080

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: 357055

Funding Request Number 964104 SPIN: 143006742
 Service Provider: Sprint Spectrum, L.P.
 Contract Number: MTM
 Services Ordered: TELCOMM SERVICES
 Site Identifier: 233241 YOUNGSTOWN YOUTH ACADEMY
 Billing Account Number: 330-518-3484/330548-
 Adjusted Funding Commitment: \$0.00
 Funds Disbursed to Date: \$1,503.58
 Funds to be Recovered: \$1,503.58

Funding Commitment Adjustment Explanation:

SLD reviews Form 471 applications and makes funding commitment decisions in compliance with FCC rules. To conduct these reviews, SLD has put in place administrative measures to ensure the prompt resolution of applications. One such measure is that applicants are required to respond to SLD requests for additional information necessary to complete their application within 7 days of being contacted. Id.; SLD Website, Reference Area, Deadline for Information Requests, <http://www.sl.universalservice.org/reference/deadline.asp> This procedure is necessary to prevent undue delays during the application review process. If applicants do not respond within this time period, SLD reviews the application based on the information before it. During the review of the Form 471, SLD sought additional information from the applicant regarding their ability to pay the non-discounted portion of this request and notified the applicant that this information needed to be provided within 7 days. The applicant did not provide this information within 7 days, or the information that they provided was insufficient to complete the Form 471 application. Consequently, SLD was unable to determine if the applicant has sufficient resources to make effective use of the discounts requested. Therefore, the commitment has been rescinded in full.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appeal of Sprint Spectrum, LP was delivered by electronic mail on this 17th day of September 2004 to the parties listed below.


Sharon Kirby

VIA ECFS

Ms. Marlene Dortch
Secretary
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