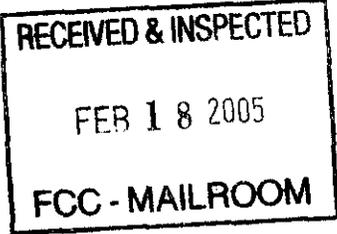


# GREEN AND GROSS, P.C.

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PETER A. PENCZER

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February 10, 2005

## CERTIFIED, RETURN RECEIPT

FCC  
Office of the Secretary  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

**Re: CC Docket No. 02-6  
Bassick High School  
Billed Entity Number: 6060  
471 Application Number: 201728  
Funding Request Number(s): 448171**

Dear Sir/Madam:

Enclosed please find a copy of the Administrator's Decision on Appeal for the above-referenced 471 application and an appeal (including exhibits) for appeal of the administrator's denial.

Please let me know if you desire any additional information.

Very truly yours,

Paul A. Sobel

PAS/pt  
Enclosure

No. of Copies rec'd 0  
List ABCDE



Administrator's Decision on Appeal - Funding Year 2000-2001

December 15, 2004

Paul A. Sobel  
Green and Gross, P.C.  
1087 Broad Street  
Bridgeport, CT 06604

**RECEIVED**  
DEC 18 2004  
GREEN & GROSS, P.C.

Re: Bassick High School

Re: Billed Entity Number: 6060  
471 Application Number: 201728  
Funding Request Number(s): 448171  
Your Correspondence Dated: August 2, 2004 and September 17, 2004

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2000 Recovery of Erroneously Disbursed Funds Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 448171  
Decision on Appeal: **Denied in full**  
Explanation:

- \* Your law firm is appealing on behalf of Mercury Communications, Inc., the Service Provider. You assert that Mercury Communications, Inc. was not aware of the audit activities nor was given an opportunity for any input as such you dispute the audit findings. In regards to the allegations, you provide the following explanation:

1. Regarding the 2-Port Fiber Uplink Modules and the 12 Port 100 BaseFX, at the time of the audit the equipment had been replaced with new equipment.
2. Regarding the video drops, the reason they were not considered operational is because the video monitors were not permanently installed

to each video drop. The manner that the video drops were used is that the school maintains television monitors on wheeled stands which are wheeled from classroom to classroom and ultimately hooked up to the video for that location.

- After a thorough review of the appeal and all relevant documentation, it was determined that during the audit the Bassick High School was requested to produce verification that the equipment funded by the SLD program exists in the locations noted on the FCC Form 471 application and it was fully functional in accordance with the SLD guidelines. The audit team noted that all three of the 2-Port Fiber Uplink Modules and two of the 12 Port 100 BaseFX that was purchased with E-rate funds was not installed and operational. In addition the audit team also noted that 82 out of 82 video cable drops that were purchased with E-rate funds were not installed and operational. During the audit the school was given an opportunity to explain these findings. A representative of the school stated that the equipment referenced above was not installed because it had been replaced with newer and more network compatible equipment. Regarding the video drops the school offered the following response:

“The video cabling was done at the same time as the voice and data drops. The long-range plan in Bridgeport has always been to make use of the video to benefit our students, and it was determined to be cost effective to cable for all communication modes at one time rather than bringing the cabling firm back. Currently, Bridgeport has an RFP posted for the 2004-05 year for a sophisticated video system to make use of the cabling.”

- In its guidelines, the SLD stresses that services must be used for educational purposes and services which lay dormant are not eligible for discount. On appeal, you affirm that the cable drops were operational; the school maintains monitors on wheeled stands which is wheeled to the particular location and hooked up to the video drop for that location. This is considered new information on appeal which was not offered by the applicant at the time of the audit. Program rules do not permit the SLD to accept new information on appeal except where an applicant was not given the opportunity to provide information during the audit or an error was made by the SLD. Consequently, the appeal is denied and the SLD will seek recovery for the entire amount disbursed.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the Federal Communications Commission (FCC). For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the 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 the electronic filing options.

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

Schools and Libraries Division  
Universal Service Administrative Company

Cc: Wayne Browning  
Mercury Communications, Inc.  
300 Avon Street  
Stratford, CT 06497

Lou Engeldrum  
Bassick High School  
1181 Fairfield Avenue  
Bridgeport, CT 06605

RECEIVED & INSPECTED  
FEB 18 2005  
FCC - MAILROOM

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Request for Review of the Decision of the ) Date of Request:  
Universal Service Administrator ) February 10, 2005  
 )  
Mercury Communications, Inc. - )  
Bassick High School )  
Bridgeport, Connecticut )  
 )  
Schools and Libraries Universal Support )  
Mechanism ) CC Docket No. 02-6

**REQUEST FOR REVIEW**

1. Mercury Communications, Inc. ("Mercury") requests review of the denial of its appeal to the Universal Services Administrative Company ("USAC") regarding the Form 471 Application identified as follows:

Funding Year: 2000-2001  
Form 471 Application Number: 201728  
Applicant Name: Bassick High School, Bridgeport, Connecticut  
Service Provider: Mercury Communications  
Contact Person for Applicant: Lou Engeldrum - tel. (203) 576-7379  
Contact Person for Service Provider (on the appeal): Paul Sobel - tel. (203) 335-5141

The circumstances of the recovery of funds sought by USAC, Mercury's appeal to USAC, and USAC's denial of the appeal are explained below.

2. USAC issued a letter to Mercury dated June 3, 2004 (the "Recovery Letter") seeking the recovery of erroneously disbursed funds for the above Form 471 funding.<sup>1</sup>

<sup>1</sup> The Recovery Letter is attached hereto as Exhibit 1.

3. The Recovery Letter sought recovery in the amount of \$111,801.69,<sup>2</sup> itemized as follows:

(a) \$4,916.70 for three 2-Port Uplink Modules alleged to have not been installed and operational.

(b) \$10,791.00 for two 12 Port 100 BaseFX alleged to have not been installed and operational.

(c) \$67,502.65 because it was alleged that 82 out of 82 video drops were not operational.

4. Mercury filed an appeal of the Recovery Letter by appeal letter dated August 2, 2004, which was supplemented by letters dated September 2 and September 17.<sup>3</sup>

5. After the Recovery Letter was issued, the Commission issued its Fourth Order and Report. In the Fourth Order and Report, the Commission changed its prior policy whereby USAC was to seek recovery of erroneously disbursed funds from the service provider, to a new policy whereby USAC is to direct its recovery efforts to the party or parties responsible for the alleged statutory or rule violation. The Commission further ordered that the new recovery policy is to apply on a going forward basis to all matters for which USAC had not yet issued a demand letter and to all matters under appeal to USAC or the Commission.<sup>4</sup>

---

<sup>2</sup> The three listed items (a), (b) and (c) below total \$83,210.35. The \$111,801.69 total sought in the Recovery Letter is infected by an arithmetic error, as it \$28,591.34 more than the \$83,210.35 sum of components (a), (b) and (c). As explained below, this was raised in the appeal at the USAC level but not considered by USAC in its denial letter.

<sup>3</sup> The Mercury August 2, September 2 and September 17 letters are attached hereto as Exhibits 2, 3 and 4, respectively. A USAC September 8 letter acknowledging receipt of the Mercury September 2 letter is attached as Exhibit 5.

<sup>4</sup> The Fourth Order and Report, ¶ 10, provides: "recovery actions should be directed to the party or parties that committed the rule or statutory violation in question. . . . [And] this revised recovery approach shall apply on a going forward basis to all matters for which USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency [the FCC]." (emphasis added). This aspect of the Fourth Order and Report and the quoted language were cited and explained in the Mercury September 2 letter to USAC. Additionally, ¶ 26 of the Fourth Order and Report, ordered by the Commission to be effective pursuant to ordering ¶ 31 of the report, directs "that recovery of funds disbursed to schools and libraries in violation of the Communications Act, or of a program rule, be sought from whichever party or parties have committed the violation."

See also the Commission's blanket remand order on CC Docket No. 02-6 released January 18, 2005 (attached as Exhibit 10) as precedent for the Commission's remand to USAC to determine responsible party status pursuant to the Fourth Order and Report.

6. Mercury's August 2 and September 17 letters argued the auditor's conclusions on the merits. Mercury's September 2 letter raised the issue of the Fourth Order and Report and explained that if there were statutory or rules violations, Mercury performed all of the work it was contracted to perform by the applicant school, and the circumstances alleged by USAC as statutory and/or rules violations were the responsibility of the applicant school and not Mercury.

7. By letter dated December 15, 2004 (the "Denial Letter"), USAC denied Mercury's appeal in full.<sup>5</sup>

8. Prior to issuance of the Denial Letter, USAC, acting by Cynthia Beach, Manager of Audit Response, issued a November 23, 2004 letter to Mercury (the "Non Compliance Letter"),<sup>6</sup> requesting that Mercury address the issues raised in the audit of the subject Form 471 funding. Mercury replied with a December 3, 2004 letter<sup>7</sup> explaining that Mercury performed all of the work it was hired to perform, and if equipment was replaced or not operational,<sup>8</sup> these conditions were the responsibility of the applicant school and not Mercury. Upon investigation of the points raised in Mercury's December 3 letter, Ms. Beach determined that Mercury was not at fault and issued a January 5, 2005 letter withdrawing the Non Compliance Letter as to Mercury (the "USAC Withdrawal of Non Compliance").<sup>9</sup>

9. USAC's denial of Mercury's appeal should be reversed for one or more of the following reasons:

---

<sup>5</sup> The Denial Letter is attached as Exhibit 6.

<sup>6</sup> The Non Compliance Letter is attached as Exhibit 7.

<sup>7</sup> The Mercury December 3 letter response to the USAC Non Compliance letter is attached as Exhibit 8.

<sup>8</sup> The three 2-Port Uplink Modules and two 12 Port 100 BaseFX were alleged to have not been installed and operational because they were not in use at the time of the audit, February 2003. The school responded to the auditor's inquiry by explaining that the equipment had been installed and used, and was therefore operational, but it was replaced with newer equipment prior to the auditor's inspection, which would have been at least approximately two years after the equipment was installed. The school also explained that the initially installed and used equipment was on site and available for the auditor's inspection. See the auditor's Detailed Exception Worksheet #2 attached to the Recovery Letter (the Recovery Letter is attached as Exhibit 1 of this request for review). It is believed that for the funding year in question there was no minimum time for which equipment was required to remain in use pursuant to statute or rule.

The video drops alleged to have not been installed and operational were installed but held to be not operational because video monitors were not permanently connected to the drops at the time of the auditor's inspection. See the auditor's Detailed Exception Worksheet #2 attached to the Recovery Letter (Exhibit 1 of this request for review). In its response to the auditor's inquiry, the school explained that it determined that it would be cost effective to cable the building at one time for all modes of communication. *Id.* In its response, the school did not mention that the video drops were being used with portable monitors on wheeled carts. Mercury was not given notice of, or an opportunity to provide input to, the auditor's inquiries. Once Mercury was notified of the matter through the Recovery Letter, Mercury explained in its appeal that the video drops had been used with portable video monitors and were therefore operational. In its Denial Letter (Exhibit 6 of this request for review), USAC precluded Mercury from explaining that the video drops were operational for the reason that Mercury's explanation constituted new information not provided at the audit level. But Mercury never had notice or the opportunity to provide any information or explanation at the audit level.

<sup>9</sup> The January 5, 2005 letter for the USAC Withdrawal of Non Compliance is attached as Exhibit 9.

(a) USAC did not consider the Mercury September 2 letter raising the issue of the Fourth Order and Report and that Mercury is not the party responsible for the alleged statutory or rule violations.

(b) In view of the Fourth Order and Report, USAC did not remand the matter or otherwise provide for USAC to determine whether Mercury was responsible for the alleged statutory of rule violation.

(c) USAC did not address a simple mathematical error in that the amounts for each component undiscounted payment itemized in the audit letter do not add up to the total claimed in the Recovery Letter.<sup>10</sup>

(d) USAC should have credited Mercury with the argument that the 2-Port Uplink Modules and two 12 Port 100 BaseFX did meet applicable operational requirements for the 2000-2001 funding year because they had been installed and used until they were replaced prior to the audit, and they were still on site for examination by the auditor.

(e) USAC should have credited the explanation of the video drops as being operational through use of portable video monitors, or remanded for further information, rather than deny Mercury the ability to make that argument and submit information in support of it. Mercury, as the service provider, was never given the opportunity for a response to the auditor's preliminary findings, as distinguished from input from the applicant that was sought by USAC and submitted by the applicant school with no notice to and without the knowledge of Mercury.

10. The applicability of the Fourth Order and Report and the issues raised in subparagraphs 9(a) and (b) of this request for appeal were ruled on by the Commission in a blanket remand order on CC Docket No. 02-6 released January 18, 2005 (the "January 18, 2005 Order"), ordering a remand to USAC on fifty-three separate SLD files, for USAC to reconsider its commitment adjustment decisions in a manner consistent with the Commission's Fourth Order and Report.<sup>11</sup>

---

<sup>10</sup> This point was raised in the Mercury August 2, 2004 letter (Exhibit 2).

<sup>11</sup> A copy of the January 18 Order is attached as Exhibit 10.

11. In view of the above, Mercury requests the Commission to grant its request for review and appeal of the Denial Letter and order the following relief:

(a) Issue an order determining that Mercury is not liable for the reimbursement of funds pursuant to the Recovery Letter and withdrawing the Recovery Letter as to Mercury.<sup>12</sup>

(b) If the Commission does not dispose of the matter at the Commission level by granting the relief requested in subparagraph (a), order remand of the matter to USAC and direct it to make a determination regarding whether Mercury is a responsible party pursuant to the Fourth Order and Report and proceed in a manner consistent with the Fourth Order and Report.

(c) If the matter is remanded pursuant to subparagraph (b) and is not disposed of through USAC determination of responsibility pursuant to the Fourth Order and Report, order that USAC proceedings on remand be consistent with the following:

[i] If equipment was installed and used but later replaced, as set forth in the auditor's Detailed Worksheet #2, there was no statutory or rule violation as a result of the equipment having been replaced;

[iii] Mercury's submissions regarding use of the video drops with portable video equipment are to be allowed and considered, and if the video drops had been so used, there was no statutory or rule violation for the reason that the video drops were not operational because they were not permanently hooked up to video monitors but were used with portable video monitors; and

---

<sup>12</sup> It is respectfully submitted that there is sufficient information in the record to conclude that the circumstances giving rise to the allegation of statutory or rules violations were the responsibility of the school and not Mercury. The auditor's Detailed Worksheet #2 (at the back of Exhibit 1) specifically states that the reason for the alleged violations was equipment that was determined to be not in use because it was replaced after its initial installation and because video drops were not operational. Regarding the video drops, it is apparent that they were considered as not operational because video monitors were not hooked up to them at the time of the auditor's inspection, and USAC has already determined that if this constituted a statutory or rules violation, Mercury did not commit it and Mercury was not at fault. This issue was raised in the Non Compliance Letter (Exhibit 7), addressed by Mercury in its December 3, 2004 response (Exhibit 8), and resolved in Mercury's favor in the USAC January 5, 2005 Withdrawal of Non Compliance (Exhibit 9)

It is respectfully submitted that: (a) It is apparent from the record that Mercury is not a responsible party; (b) pursuant to the Commission's Fourth Order and Report, recovery efforts for the alleged statutory and/or rules violations should not be directed to Mercury; and (c) the resources of the Commission and USAC would be conserved by disposing of the matter with a ruling on this request for review, rather than having further resources expended in proceedings on remand.

[iv] The total sought in the Recovery Letter is infected with an arithmetic error, and the correct total is \$83,210.35.

Respectfully submitted,

Mercury Communications, Inc.

by 

Paul A. Sobel, its attorney  
Green and Gross, P.C.  
1087 Broad Street  
Bridgeport, CT 06604  
tel: (203) 335-5141  
fax: (203) 367-9964  
email: psobel@gglaw.net

## **APPENDIX**

### **List of Exhibits**

USAC Recovery Letter dated 6/3/04 .....	1
Mercury letter dated 8/2/04 .....	2
Mercury letter dated 9/2/04 .....	3
Mercury letter dated 9/17/04 .....	4
USAC letter dated 9/8/04 .....	5
USAC Denial Letter dated 12/15/04 .....	6
USAC Non Compliance Letter dated 11/23/04 .....	7
Mercury letter dated 12/3/04 .....	8
USAC letter dated 1/5/05 re. withdrawal of non compliance .....	9
Order dated January 18, 2005 .....	10





Universal Service Administrative Company  
Schools & Libraries Division

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RECOVERY OF ERRONEOUSLY DISBURSED FUNDS

June 3, 2004

Wayne Browning  
Mercury Communications Inc.  
300 Avon Street  
Stratford, CT 06497

RECEIVED  
JUN - 7 2004

Re:

Funding Year 2000 -2001  
Form 471 Application Number: 201728  
Applicant Name BASSICK HIGH SCHOOL  
Contact Person: LOU ENGELDRUM  
Contact Phone: 203-576-7379

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.

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

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 Request Number 448171      SPN: 143004497

Service Provider: Mercury Communications Inc.

Contract Number: NOT PROVIDED

Services Ordered: INTERNAL CONNECTIONS

Site Identifier: 6060      BASSICK HIGH SCHOOL

Billing Account Number: N/A

Funding Commitment:                      \$137,905.11

Funds Disbursed to Date:                      \$249,706.80

Funds to be Recovered:                      \$111,801.69

Disbursed Funds Recovery Explanation:

After a thorough investigation, it has been determined that \$111,801.69 was erroneously disbursed. During an audit, the auditors noted that three of three 2-Port Fiber Uplink Modules, two of two 12 Port 100 Base FX, and 82 out of 82 video cable drops that were purchased with E-Rate funds were not installed and operational. Therefore, the equipment was not being used for educational purposes. Accordingly, the SLD must seek recovery of \$111,801.69 that was disbursed for the aforementioned equipment.

**Bassick High School  
Detailed Exception Worksheet # 2  
Funding Year 2000**

**Background:**

E-rate funds permit most schools and libraries the opportunity to obtain affordable telecommunications and Internet access.

**Condition:**

We conducted an inventory tour of the facilities to document whether the E-rate funded equipment was installed and operational.

**Finding:**

During our inventory tour, we noted that all three of the 2-Port Fiber Uplink Modules that were purchased with E-rate funds were not installed and operational. The total cost amount to \$5,463.00, of which SLD's 90% undiscounted portion paid amounted to \$4,916.70. In addition, both of the 12 Port 100 BaseFX were not installed and operational. The total cost amount to \$11,990.00, of which SLD's 90% undiscounted portion paid amounted to \$10,791.00.

We also noted that 82 out of 82 video cable drops were installed but not operational. The total cost of these inoperable video drops amount to \$75,002.94, of which SLD's 90% undiscounted portion paid is \$67,502.65.

**Governing Regulation:**

Physical site verifications may be necessary to verify that the supported services exist, are operational, and are being used in accordance with requirements.

**Applicant Response:**

The equipment mentioned above as not being installed, had been replaced by the time of the audit with newer, more network compatible equipment. The older equipment was left on-site to assure the USAAC of its previous acquisition and employment.

The video cabling was done at the same time as the voice and data drops. The long-range plan in Bridgeport has always been to make use of video to benefit our students, and it was determined to be cost effective to cable for all communication modes at one time rather than bringing the cabling firm back.

Currently, Bridgeport has an RFP posted for the 2004-05 year for a sophisticated video system to make use of the cabling.

For use by the Internal Audit Department ONLY:

Audit Report

Oral Comment

Exception Waived



GREEN AND GROSS, P.C.  
LAW OFFICES

BERNARD GREEN  
ERIC M. GROSS  
SAMUEL T. ROST  
JOEL Z. GREEN  
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August 2, 2004

**CERTIFIED, RETURN RECEIPT**

Letter of Appeal  
Schools and Libraries Division  
Box 125 - Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

**Re: Funding Year 2000-2001**  
**Form 471 Application Number: 201728**  
**Applicant Name: Bassick High School**  
**Service Provider: Mercury Communications, Inc.**  
**Contact Person: Lou Engeldrum (for Applicant) - tel (203) 576-7379**  
**Paul Sobel (for Service Provider) - tel (203) 335-5141**

Dear Sir or Madam:

This is an appeal from the determination set forth in your June 3, 2004 letter to Mercury Communications, Inc. A copy of your June 3 letter and Detailed Exception Worksheet # 2 are attached hereto.

I represent Mercury Communications, Inc. Mercury Communications is the service provider for the above Form 471 Application. I am the contact person for Mercury Communications. I understand that Lou Engeldrum is the contact person for the applicant. My name, address, telephone number, facsimile number and e-mail address are indicated above.

Your June 3 states two reasons for the requested refund:

1. The fact that three of three 2-Port Fiber Uplink Modules and two of two 12 Port 100 BaseFX were not installed and operational at the time of the audit.

# GREEN AND GROSS, P.C.

LETTER OF APPEAL  
SCHOOLS AND LIBRARIES DIVISION  
Form 471 Application No. 201728  
August 2, 2004  
Page 2

2. The fact that 82 out of 82 video drops were allegedly not operational at the time of the audit.

Before reaching the merits of each of these issues, it appears that there is a mathematical discrepancy in the refund request. The amount of the refund request stated on page 5 of your June 3 letter is \$111,801.69. However, the amounts for these items on Detailed Exception Worksheet #2 is:  $\$4,916.70 + 10,791.00 + \$67,502.65 = \$83,310.35$ . The total refund requested on page 5 of your letter is \$28,591.34 higher than the total of the itemized amounts listed on Worksheet #2.

Regarding, the 2-Port Fiber Uplink Modules and 12 Port 100 BaseFX, I am advised that this equipment had been installed and used for educational purposes. However, I am further advised that the audit took place a long period of time after the installation, and by that time, the equipment in question had been replaced with new equipment. I am also advised that the original equipment was kept on site and exhibited to the auditor.

Regarding the video drops, I believe the video drops were not considered by the auditor to be operational because video monitors were not permanently installed to each video drop. Contrary to the audit finding, I am advised by the applicant that the drops were operational and were used for educational purposes from and after their installation. I am advised that the manner in which the drops were used is that the school maintains television monitors on wheeled stands. As and when it is desired to utilize a television monitor in a particular location, the monitor is wheeled to the particular room and hooked up to the video drop for that location.

Based on the funds recovery letter provided to Mercury, it appears that the auditor solicited and received input from the applicant. Mercury was not aware of the audit activities and was not given an opportunity for any input until receipt of the June 3 letter. Accordingly, Mercury is still in the process of seeking information from the school district applicant and would like to reserve its right to supplement this appeal by additional written submission to be made within thirty days from the date of this letter.

Very truly yours,

/s/

Paul A. Sobel



\*\*\*\*\* WELCOME TO \*\*\*\*\*  
 BRIDGEPORT MPO  
 BRIDGEPORT, CT 06602-9998  
 08/02/04 04:27PM

Store USPS Trans 115  
 Wkstn sys5006 Cashier KWHKJ6  
 Cashier's Name RAMON  
 Stock Unit Id SIARAMON  
 PO Phone Number 203-332-5342  
 USPS # 0833690604

1. First Class 4.65  
 Destination: 07981  
 Weight: 1.90oz  
 Postage Type: PVI  
 Total Cost: 4.65  
 Base Rate: 0.60  
 SERVICES  
 Certified Mail 2.30  
 70031680000003512176  
 Return Receipt 1.75

Subtotal 4.65  
 Total 4.65

Personal/ Business Check 4.65

Number of Items Sold: 1

Thank You  
 Please come again!

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Postage	\$ 0.60	UNIT ID: 0604
Certified Fee	2.30	Postmark Here
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Restricted Delivery Fee (Endorsement Required)		08/02/04
<b>Total Postage &amp; Fees</b>	<b>\$ 4.65</b>	

Sent To: Schools & Libraries Division  
 Street, Apt. No., or PO Box No. 80 South Jefferson Rd  
 City, State, ZIP+4 Whippany, NJ 07981

PS Form 3800, June 2002

See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
Schools & Libraries Div.  
Box 125 - Correspondence  
Unit  
80 South Jefferson Rd  
Whippany, NJ 07981

2. Article Number  
 (Transfer from service label)

7003 1680 0000 0351 2176

PS Form 3811, August 2001

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature [Signature]  Agent  
 Addressee

B. Received by (Printed Name) \_\_\_\_\_ C. Date of Delivery 8/4/04

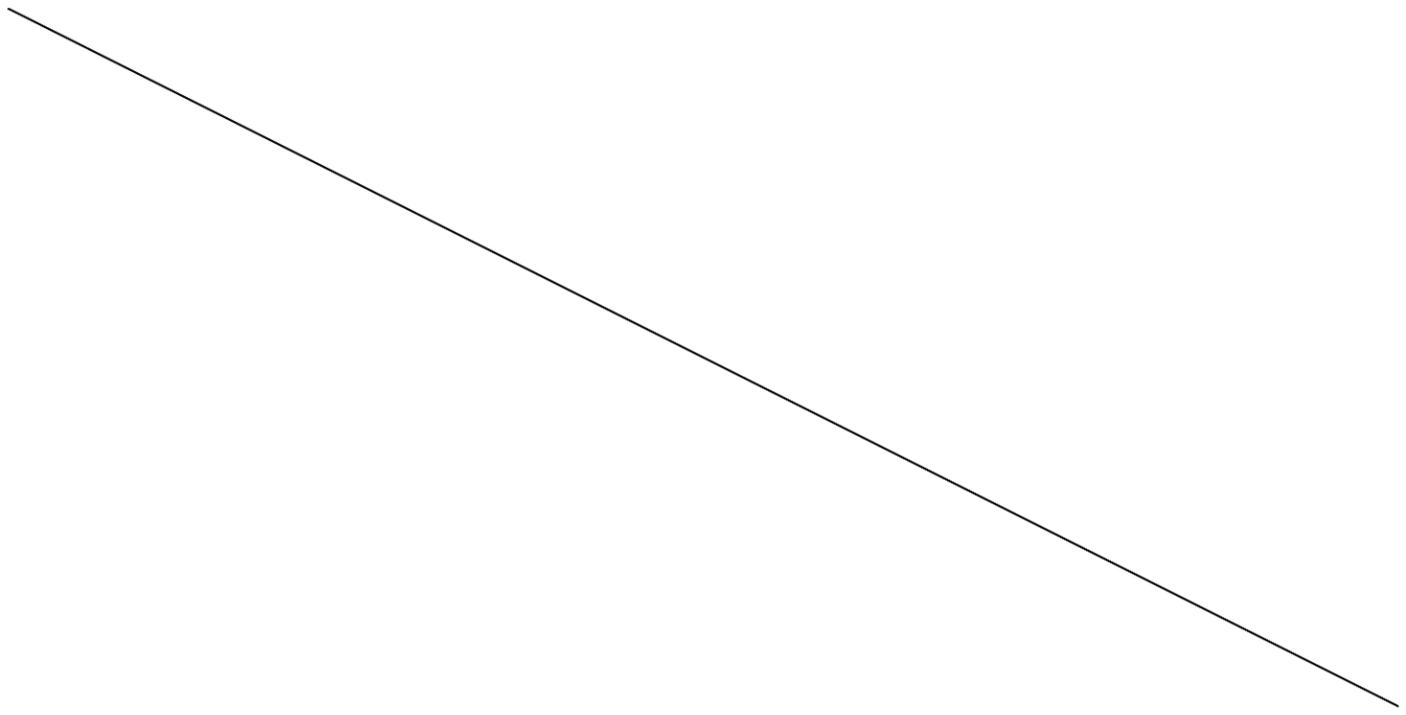
D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

Domestic Return Receipt

102595-02-M-1540



# GREEN AND GROSS, P.C.

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September 2, 2004

## CERTIFIED, RETURN RECEIPT

Supplement to Letter of Appeal  
Schools and Libraries Division  
Box 125 - Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

*Re: Funding Year 2000-2001  
Form 471 Application Number: 201728  
Applicant Name: Bassick High School  
Service Provider: Mercury Communications, Inc.  
Contact Person: Lou Engeldrum (for Applicant) - tel (203) 576-7379  
Paul Sobel (for Service Provider) - tel (203) 335-5141*

Dear Sir or Madam:

An appeal to you has been taken in this action by letter dated August 2, 2004 and received by you on August 4, 2004. Within days before the date of the appeal letter, the Federal Communications Commission, in the matter of 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 and Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, issued its Order on Reconsideration and Fourth Report and Order adopted July 23, 2004 and released July 30, 2004 (the "Fourth Report and Order"). The Fourth Report and Order affects this appeal, and the service provider therefore supplements its appeal with this letter.

Paragraph 10 of the Fourth Report and Order provides that "recovery actions should be directed to the party or parties that committed the rule or statutory violation in question." Paragraph 10 further provides that "this revised recovery approach shall apply on a going forward basis to all matters for which USAC has not yet issued a demand letter as of the effective date of this order, *and to all recovery actions currently under appeal to either USAC or this agency* [the FCC]." (emphasis added). This action is a recovery action currently under appeal to you. For the reasons set forth below, the alleged rule or statutory violations, if proven, would be rule or statutory violations committed by the applicant and not the service provider.

# GREEN AND GROSS, P.C.

## SUPPLEMENT TO LETTER OF APPEAL

### SCHOOLS AND LIBRARIES DIVISION

Form 471 Application No. 201728

September 2, 2004

Page 2

In the instance of the subject appeal, the reasons alleged for the recovery of funds are stated to be:

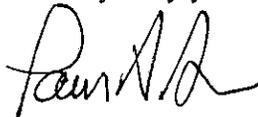
1. That three of three 2-Port Fiber Uplink Modules and two of two 12 Port 100 BaseFX were not installed and operational at the time of the audit.
2. That 82 out of 82 video drops were allegedly not operational at the time of the audit.

Regarding, the 2-Port Fiber Uplink Modules and 12 Port 100 BaseFX, I am advised that this equipment had been installed and used for educational purposes and was kept on site and viewed by your auditor. I am further advised that the equipment was replaced after its initial installation by the service provider but before the audit, and because it was not in use at the time of the audit, it was deemed to not be in use for educational purposes. Regardless of whether the length of use for the equipment qualifies it for eligibility, the equipment the service provider was contracted to provide was provided and installed, and the use or non-use was the decision and responsibility of the applicant and not the service provider.

Regarding the video drops, I am advised by the applicant that the auditor did not consider them to be operational because video monitors were not permanently installed to each video drop. Contrary to the audit finding, I am advised by the applicant that the drops were operational and were used for educational purposes from and after their installation in that the manner in which the drops were used is that the school maintains television monitors on wheeled stands. As and when it is desired to utilize a television monitor in a particular location, the monitor is wheeled to the particular room and hooked up to the video drop for that location. Regardless of the manner in which the drops were used, the service provider installed the equipment it was contracted to install, and the use of the drops for educational purposes was the responsibility of the applicant and not the service provider.

Please consider the above in addition to the information already on file in this appeal.

Very truly yours,



Paul A. Sobel

PAS/pas