Tyrone Keys, Jr.
Associate Director
Federal Regulatory Advocacy

1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2545
Fax 202 336-7922
tyrone.e.keys@verizon.com

May 6, 2005

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Request for Review of Decision of the Schools and Libraries Division of the Universal Service Administration Company; Appeal of Notification of Improperly Disbursed Funds Letter, CC Docket No. 02-6**

Dear Ms. Dortch:

Verizon Northwest Inc. ("Verizon") hereby appeals two Notification of Improperly Disbursed Funds Letters, dated March 9, 2005, (the "Notification Letters") issued by the Schools and Library Division ("SLD" or "Administrator"), regarding the following funding requests:

SPIN:	143004786
Funding Year:	2002
Form 471 Application Number:	294057
Billed Entity Number:	145189
Funding Request Numbers	775910 and 775920
Applicant Name:	Lake Washington Sch. Dist. 414
Applicant Contact Person:	Dr. Chip Kimball

The justification set out in the Notification Letters is not only factually incorrect, it is contrary to the findings of USAC's own auditor, who absolved Verizon of any liability.

The Notification Letters identify $1513.56 in funds that they state were "improperly disbursed." In particular, the Funding Disbursement Reports attached to the letters identify $441.23 and $1072.33, respectively, that were improperly disbursed for ineligible services and equipment and disbursements "in excess of services delivered." The letters state that "USAC has determined the service provider is responsible for all or some of the program rule violations.

Therefore, the service provider is responsible to repay all or some of the funds disbursed in error." Notification Letters at 1. However, the Notification Letters contain no facts that show any rule violation on the part of Verizon. Moreover, when USAC's auditors examined both these transactions and all of Verizon's schools and libraries reimbursements for this period, it found no problems which would justify any liability on the part of Verizon.[1] The USAC audit letters are attached.

The Commission recently ordered that "recovery actions should be directed to the party or parties that committed the rule or statutory violation in question. We do so recognizing that in many instances, this will likely be the school or library, rather than the service provider." *Federal-State Joint Board on Universal Service*, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, ¶ 10 (2004). As the Commission stated, "in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may well be totally unaware of any violation." *Id.*, ¶ 12.

The Commission further noted that,

> The school or library is the entity that undertakes the various steps in the application process, and receives the direct benefit of any services rendered. The school or library submits to USAC a completed FCC Form 470, setting forth its technological needs and the services for which it seeks discounts. ... The school or library is the entity that submits FCC Form 471, notifying the Administrator of the services that have been ordered, the service providers with whom it has entered into agreements, and an estimate of the funds needed to cover the discounts to be provided on eligible services.

Id., ¶ 11.

Here, as alleged in the Funding Disbursement Reports, SLD disbursed funds for certain ineligible services. One of the Reports also states that funds were disbursed "in excess of services delivered" but fails to provide any details regarding that allegation. However, as the Commission pointed out, invoicing to the SLD via FCC Form 472, Billed Entity Applicant Reimbursement ("BEAR") Form, is entirely the responsibility of the applicant, and Verizon had no involvement in the preparation or submission of that form. Although the process requires the SLD to send the reimbursement check to Verizon, Verizon is then required to transmit the payment to the applicant – and there is no allegation in the Notification Letters that Verizon retained any payments for ineligible services or services it failed to deliver. Accordingly, there is no valid claim that Verizon retained any payment for such services and, as the Commission instructed, no reason Verizon should have been sent the Notification Letters.

However, the Funding Disbursement Reports also contain the general statement that "both the applicant and the service provider made the certifications on the BEAR Form listed below indicating that the services and/or equipment had [in one letter] been provided to the

---

[1] Verizon expresses no opinion on the accuracy of the factual allegations contained in the Notification Letters.

applicant [and in the other letter] were eligible for funding." The SLD specifically cites the certification at Block 3, Item A of the BEAR Form in support of this allegation. Block 3, however, is the *applicant certification block*. The *service provider* certifications are contained in Block 4, and those do not contain any certification as to the eligibility of services, the delivery of services, whether the applicant filled out the form correctly, or whether the information provided by the applicant is accurate. Rather, Verizon certified only that it would remit the discount amount authorized by the SLD to the applicant within the required timeframe and that it would not tender or make use of its reimbursement check from the SLD until after it remitted the discount to the applicant, and SLD makes no allegation that Verizon violated any of those certifications.

Even *USAC's own auditor* confirms this limited scope of the service provider's certification. *See* Audit Report on Verizon Northwest, Inc., at 3 ("We noted that SLD's BEAR process does not require or compel service providers to validate amounts claimed on the BEAR form. Service providers certify only that they will provide reimbursement to the applicant within 20 calendar days of receiving payment from SLD"). In addition, in auditing the Lake Washington transactions, USAC's auditor examined Verizon's BEAR form certifications and found no errors. *See* Audit Report on Lake Washington School District at 3. Accordingly, contrary to the SLD's allegation, Verizon did not make the claimed certifications and cannot be held responsible for any certifications made by the applicant.

Verizon is also deeply concerned that the SLD has apparently requested that both Verizon and the applicant repay the total amount in question. Verizon compared the letters it received to the copies of very similar letters sent to the applicant. The amounts shown on the "Funds to be Recovered from Service Provider" lines in Verizon's Funding Disbursement Reports are the total amounts that the SLD believes to have been "disbursed in error." Yet, the same amounts are listed on the "Funds to be Recovered from Applicant" lines in the applicant's Funding Disbursement Reports as on the "Funds to be Recovered from Service Provider" lines in Verizon's Funding Disbursement Reports. Thus SLD is not only improperly seeking recovery from Verizon, it is trying to obtain *double recovery* for amounts it believes were improperly disbursed. Accordingly, even if the Notification Letters were to state a valid claim against Verizon, which they do not, there is no justification for SLD to attempt to recover the full amount of the claim against both parties.

In sum, regardless of whether the SLD determines that funds were disbursed in error, there is no evidence that any error is attributable to Verizon. Thus, any demand for Verizon to repay these funds is contrary to the Commission's clear directive, and the Notification Letters to Verizon should be cancelled.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Attachments

cc: Schools and Libraries Division
Universal Service Administrative Company
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981
FAX: 973-599-6542

Universal Service Administrative Company

To: Mr. George McDonald, Vice President, Schools and Libraries Division

From: Internal Audit Division

Date: November 22, 2004

Re: **Schools and Libraries Beneficiary Audit Report – Lake Washington School District (USAC Audit No. SL2004BE022)**

Introduction

The Internal Audit Division of the Universal Service Administrative Company performed an audit of the Schools and Libraries Support Mechanism application of Lake Washington School District located in Redmond, WA, Billed Entity Number 145189, for Funding Year 2002. Chris Lenhardt, Senior Internal Auditor – Fraud Specialist, conducted the audit in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

Purpose and Scope

The following procedures were performed solely for the purpose of determining whether Lake Washington School District is complying with Schools and Libraries Support Mechanism rules and FCC regulations.

Lake Washington School District received the following commitments and funding for the audit period:

Service Type	Amount Committed	Amount Disbursed
Internal Connections	$0.00	$0.00
Internet Access	0.00	0.00
Telecommunications	255,685.39	182,460.95
TOTALS:	**$255,685.39**	**$182,460.95**

The committed total represents one Form 471 application with three funding request numbers. We selected two of the funding requests to perform the procedures enumerated below with respect to Funding Year 2002 application submitted by Lake Washington School District.

Conclusion

Based on the results of our review and test work, the Internal Audit Division has concluded that Lake Washington School District is generally compliant with the Schools and Libraries Support Mechanism program requirements for the funding year reviewed. A summary of our audit procedures, findings, and responses thereto are included below.

Audit Procedures, Findings and Responses

A. General Procedures

We obtained and reviewed the following documents:

1. Form 470 (Description of Services Requested and Certification Form)
2. Form 471 (Services Ordered and Certification Form)
3. Funding Commitment Decision Letter (FCDL)
4. Program Integrity Assurance (PIA) review notes related to application

B. Understanding the Business

We spoke with the Webmaster of Lake Washington School District to gain a detailed understanding of the processes related to the administration of the Schools and Libraries Support Mechanism. We discussed the results of any communications with the Schools and Libraries Division (SLD) regarding the application process and any differences between the application submitted and approved. This discussion included the process for creating and validating the technology plan, completing the application forms, the application structure, the controls over the expenditure of approved funds, and the procedures established to monitor claims submitted to the SLD via the Billed Entity Applicant Reimbursement Form (BEAR Form 472). No exceptions were noted.

C. Technology Plan

We obtained and reviewed Lake Washington School District's 1998-2002 Technology Plan for adequacy. We verified that it established clear goals and strategies (including professional development) for using information technology to improve education. We also verified that the Technology Plan was certified by the Office of Superintendent of Public Instruction, a SLD certified Technology Plan Approver. However, we noted that Lake Washington School District's 1998-2002 Technology Plan does not include a budget, a SLD requirement.

Applicant Response:
We concur with the finding.

SLD Response:
Applicant Action:
As stated above the applicant's Technology Plan did not have a budget, however, their Technology Plan was certified by an SLD certified approver and they did have sufficient funds to pay their non-discount portion. No recovery required.

Programmatic Action:
On the SLD website under References, Technology Planning, applicants are provided with a list of the five elements for a Technology Plan; having a budget is one of the criteria. Beginning in 2004, pursuant to the FCC 5th Report and Order, all

Technology Plans are required to have the five elements implemented. Should the applicant fail to comply with this criteria it is considered a rule violation and SLD would seek full recovery of funds disbursed.

In addition, through outreach SLD provides an annual Train-the-Trainer Seminar where aspects of the E-rate program including Technology Plan criteria are reviewed.

IAD also inspected Lake Washington School District's budget for 2002-2003 and verified that it had sufficient funds available to pay its non-discounted portion of the services and equipment obtained through the program and the acquisition of other equipment and services required to make effective use of E-rate discounts. No exceptions were noted.

D. Competitive Bid Process

We obtained understanding of the School's competitive bidding (service provider selection) process to determine its adequacy and whether the process has been established to select the most cost effective service provider.

According to Lake Washington School District no bids were received as a result of the posted Form 470. Therefore, Verizon Northwest, tariffed telecommunications provider approved by the Washington Utilities and Transportation Commission, was chosen to provided the requested services. No exceptions were noted.

E. Supported Payments

We compared the service provider bills sent to the District with the BEAR Form 472 and performed the following:

1. We reviewed the BEAR form for accuracy and completeness. No exceptions were noted.

2. We examined the BEAR form for the service provider's authorization. No exceptions were noted.

3. We verified the equipment and services that support the amounts claimed on the BEAR forms were consistent with the service provider bills sent to the School, the terms and specifications of the vendor contracts and the Item 21 attachment to Form 471.

   We determined that Lake Washington School District over-invoiced SLD for ineligible items totaling $1,257.95.

   Applicant Response:
   We concur with the findings.

   SLD Response:
   Applicant Action
   SLD will seek recovery for ineligible items totaling $1,257.95.

Programmatic Action
The eligible services list is posted on the SLD website to give applicants guidance regarding what equipment/services are eligible. In addition, SLD continues to education applicants thru outreach. In September 2004, SLD hosted a Train-the-Trainer workshop where aspects of the E-rate program were discussed including a discussion of eligible services. SLD has initiated a pilot EPD (Eligible Products Database) where service providers submit their product list to SLD. SLD reviews and post these products giving applicants guidance as to which products and services are eligible for E-rate funding.

4. We traced the BEAR forms to the corresponding service provider invoices.

   We determined that Lake Washington School District over-invoiced SLD by $255.61. This was calculated by comparing the amounts invoiced to SLD on the BEAR form with the amounts billed to Lake Washington School District by Verizon Northwest.

   Applicant Response:
   We concur with the findings.

   SLD Response:
   Applicant Action
   SLD will seek recovery of the $255.61 which was over-invoiced to SLD.

   Programmatic Action
   Through outreach SLD offers an annual Train-the Trainer Seminar where aspects of the E-rate program are reviewed, this includes educating applicants to ensure that service provider customer bills match the Form 472 (BEAR) submitted for payment.

5. We recalculated the discounted amount reflected on the BEAR forms using the approved discount percentage noted on the FCDL. No exceptions were noted.

6. We ensured that the total amount disbursed via the BEAR forms agreed to the disbursement data maintained by SLD and that the amounts did not exceed the total amount committed per the FCDL. No exceptions were noted.

7. We examined the District's disbursement records to verify that the School paid its non-discounted portion for services as required. No exceptions were noted.

F. Physical Inspection
No physical inspection was deemed necessary because Lake Washington School District only applied for Telecommunications during Funding Year 2002.

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

cc: Lisa Zaina, USAC Chief Executive Officer
Scott Barash, USAC Vice President and General Counsel

Universal Service Administrative Company

To: Mr. George McDonald, Vice President, Schools and Libraries Division

From: Internal Audit Division

Date: December 16, 2004

Re: **Schools and Libraries Beneficiary Audit Report – Verizon Northwest, Inc. (USAC Audit No. SL2004BE025)**

Introduction

The Internal Audit Division of the Universal Service Administrative Company performed an audit of the Schools and Libraries Support Mechanism applications of Verizon Northwest, Inc. located in New York, New York, Service Provider Identification Number 143004786, for Funding Year 2002. Chris Lenhardt, Senior Internal Auditor – Fraud Specialist, Christina McCrone, Senior Internal Auditor – Fraud Specialist, and Larissa Goodin, Staff Internal Auditor, conducted the audit in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

Purpose and Scope

The following procedures were performed solely for the purpose of determining whether Verizon Northwest, Inc. is complying with the Schools and Libraries Support Mechanism requirements.

Verizon Northwest, Inc. received the following commitments and funding for the entities reviewed in the sample for our audit period:

Service Type	Amount Committed	Amount Disbursed
Internal Connections	$217,682.33	$198,831.50
Internet Access	69,833.59	69,073.39
Telecommunications	1,174,911.98	1,017,341.33
TOTALS:	**$1,462,427.90**	**$1,285,246.22**

The committed total represents 18 Form 471 applications with 53 funding request numbers for 15 applicants (billed entities). We selected 34 of the funding requests to perform the procedures enumerated below with respect to Funding Year 2002 applications that received service from Verizon Northwest, Inc.

Conclusion

Based on the results of our review and testwork, the Internal Audit Division has concluded that Verizon Northwest, Inc. is compliant with the Schools and Libraries

Support Mechanism program requirements for the funding year reviewed. A summary of our audit procedures, findings, and responses to the findings are included below.

Audit Procedures, Findings and Responses

A. General Procedures

We obtained and reviewed the following documents:

1. Form 470 (Description of Services Requested and Certification Form)
2. Form 471 (Services Ordered and Certification Form)
3. Funding Commitment Decision Letter (FCDL)
4. BEAR Forms 472
5. SPI Forms 474
6. Forms 498 and 473 for the sampled service provider
7. Program Integrity Assurance (PIA) review notes related to application

B. Understanding the Business

We spoke with the Associate Director, Federal Regulatory Advocacy, of Verizon to gain a detailed understanding of the processes related to the administration of the Schools and Libraries Support Mechanism. We discussed the results of any communications with the Schools and Libraries Division (SLD) regarding the application process and any differences between the applications submitted and approved. This discussion included the process for contacting applicants and the controls over the application of approved funds, and the procedures established to monitor claims submitted to the SLD via the Billed Entity Applicant Reimbursement Form (BEAR Form 472) and Service Provider Invoice Form (SPI Form 474). We noted that the BEAR process does not require or compel service providers to validate the amounts claimed. Service Providers certify only that they will provide reimbursement to the applicant within 20 days of receiving payment from SLD. No exceptions were noted.

C. Competitive Bid Process

We obtained an understanding of Verizon Northwest, Inc.'s process to respond to posted Forms 470. No exceptions were noted.

D. Supported Payments

We obtained an understanding of Verizon Northwest's process for tracking reimbursements through the Service Provider Invoice (SPI) and Billed Entity Applicant Reimbursement (BEAR) processes. No exceptions were noted.

We noted that SLD's BEAR process does not require or compel service providers to validate the amounts claimed on the BEAR form. Service providers certify only that they will provide reimbursement to the applicant within 20 calendar days of receiving payment from SLD.

E. Tariffs

We reviewed copies of applicable tariffs pertaining to the services provided to ensure that the proper amounts were charged to the applicants and reimbursed by the E-rate program. No exceptions were noted.

The audit did not disclose any findings; therefore, no management action is required.

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

cc: Lisa Zaina, USAC Chief Executive Officer
Scott Barash, USAC Vice President and General Counsel