

functionality built by the same manufacturer. Analysis of recent sales and/or asking prices of comparative computer assets are the basis used to establish market values for current fair market value of used equipment.

In the market approach or sometimes also called the "sales comparison" approach, recent sales and offering prices of exact copies and/or similar assets are gathered to arrive at an indication of the most probable selling price of the asset being appraised. The basic procedure is to gather data, determine the features to be compared, and apply the results to the subject. Along with this data and historical data about the same product, a depreciation curve can be established to predict a residual value for this and similar products.

The market approach is considered to be the best method to estimate the current and future value of computer assets, especially when an actual secondary market exists and there is data available to provide a good indicator of value for the asset. There is enough data available from marketplace to provide a good basis for defining value for the assets under question.

Appropriate Method - Methodology

Of the various "Approaches to Value" available, the *Market Approach is the appropriate method* of valuing this portfolio of equipment.

The Income Approach considers value in relation to the present worth of future benefits of ownership. It is not usually applied to individual items of equipment since it is difficult, if not impossible, to identify individual income streams. If you assemble a group of individual machines to produce a product, in aggregate, they generate income for the business. So by using an income approach, we could value the aggregation of assets that generate this income. However, it is very difficult to gather and isolate the appropriate information needed for this type of appraisal.

The Cost Approach is based on the proposition that the informed purchaser would pay no more for a property than the cost of reproducing a substitute property from the same manufacturer with the same utility as the subject property. It considers that the maximum value of a property to a knowledgeable buyer would be the amount currently required to construct purchase a new asset of equal utility. This approach should not be used because the cost to Reproduce and/or to develop and re-engineer an exact Replacement would be more than a unit purchased in the secondary marketplace, plus the identification of the specific percentages to apply for physical, functional and economic depreciation.

March 2003

DMC Consulting Group

About Cisco Equipment

Cisco is the dominant player in the network communications arena with equipment servicing a broad spectrum of companies from the small business LAN networks to the backbone of the Internet and the Internet Service Providers. From their web site: "Cisco service provider products and solutions enable service providers to increase revenue by offering compelling data and managed services to enterprises, small/medium business, and residential customers. In its aim to be the preferred partner for profitable services, Cisco offers three advantages to its service provider customers: industry-leading technology and solutions, expertise in creating products that support new services, and the ability to identify and influence business demand for service provider offerings."

I was president of Daley Marketing Corporation from 1980 to 2001 and I have been publishing the DMC Network Communications Report since 1996. I used the DMC Network End-User reports from March 1999 and July 1999 to determine the opinion of value. I obtained the values for my report from the publications below plus information from brokers/dealers and lessors around the country. Information is available from:

- The Processor
- Compu-Mart
- Telecom Manager
- Computer Manager
- Various web sites

DMC Fair Market Value Report Analysis

The data used by Daley Marketing for the reporting of current market values for the computer industry has come from various brokers and lessors within the industry. The Daley Marketing reports have been an integral part of the computer marketplace since 1985 with the first publication of the IBM Market Value Report. Daley Marketing Corporation was a computer lessor from 1980 to 1985 prior to entering into the publishing business. The DMC Fair Market Value reports are published monthly to the end-user and brokerage community.

The use of the computer broker information as opposed to end-user information is used to avoid reporting on hidden costs that could be included in a quote from an end-user and distort the real fair market value. Sales reports from different end-users may include different soft costs that can distort the end-user fair market value. Because the marketplace allows one broker to sell a machine to another broker without soft costs such as free rent, systems help and/or software, this has become the basis for the Daley Marketing reports.

Daley Marketing Corporation utilizes the broker information as the basis for its reports and then adds a gross margin to arrive at an End-User FMV. The gross margin is derived from conversations with computer brokers, dealers, lessors and past experience with Daley Marketing Corporation. The gross margin can vary depending on the equipment and the cost of the equipment but represents what can be expected by the sale of equipment from a broker, dealer or lessor to an end-user.

Conclusions of Value - Summary

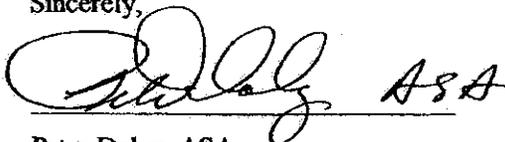
The portfolio consisted of Cisco Catalyst 5000, 2820 and 1900 Switches and Router equipment. I used the information presented in the DMC Market Value Reports to arrive at my opinion of value. The following represents a summary of conclusions from Exhibit B.

	Riverside County Exported Invoice Price	End-User Fair Market Value March 1999	End-User Fair Market Value July 1999
Cisco Portfolio	\$2,643,383	\$1,859,321	\$1,316,159

Figure 1. Summary of Conclusions March 1999 and July 1999.

The information contained in this desktop letter appraisal is to be used as a guide in formulating Fair Market Values for the Cisco equipment listed. All estimates of value presented in this report are the appraisers considered opinion. Should you need additional information, please call.

Sincerely,



Peter Daley, ASA
 Accredited Senior Appraiser
 DMC Consulting Group
 61 Wentworth
 Newport Beach, CA 92660
 949-737-7780

Assumptions and Limiting Conditions

I certify that, in the preparation of this report and to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal and unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

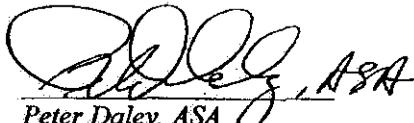
My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Practice.

No one else has provided significant professional assistance in the preparation of this report.

This valuation report is prepared solely for the purpose stated herein and is accurate to best of my knowledge and belief. No other purpose is intended or should be inferred.

DMC renders no opinion as to the legal owner of the equipment and is not aware of any tax liens or encumbrances of the property

I understand that I may be called upon to offer expert testimony regarding this independent valuation opinion.


Peter Daley, ASA
Accredited Senior Appraiser
DMC Consulting Group

Date March 12, 2003

Exhibit A. Curriculum Vita for Peter Daley

Peter Daley
61 Wentworth
Newport Beach, CA 92660

EDUCATION:

Bachelor of Science, Business Administration
Cal State Northridge - 1965
Masters of Business Administration
Pepperdine University -1991
Accredited Senior Appraiser
American Society of Appraisers -1999

BUSINESS:

IBM Corporation, Marketing Representative. Marketed mid-range computer systems and peripherals in the Southern California area. Received Regional Managers Award and two District Managers Awards for competitive wins. Qualified for three hundred percent clubs.

Intel Corporation, Marketing Representative. Re-marketed the IBM System/360 portfolio to customers in Southern California, Hawaii, Colorado and Arizona. Qualified for three hundred percent clubs.

Saddleback Marketing Corporation, President. Brokered and leased used IBM equipment to customers in the western United States. Sales volume varied between \$3 and \$5 million per year.

1980-2001 - Daley Marketing Corporation. President. From 1980 to summer of 1985, brokered and leased IBM equipment in the Western United States. In 1981 began to market an IBM Computer Price List and in June of 1985 sold existing leasing business and created the market value and residual value publications that are sold worldwide today.

1994-Present - DMC Consulting Group. President. From 1994 to present Mr. Daley has been writing computer appraisals and reports for Fortune 500 customers. He received his Accredited Senior Appraisal certificate in April 1999 from the American Society of Appraisers.

2001-Present - Computer Economics. President. Mr. Daley acquired CEI on January 1, 2001. CEI is an IT Consulting company that deals with economics of running and managing an Information Technology department. It publishes FMV and Residual Values for the computer equipment as well as salary and demographic information.

Appraiser Qualifications

PETER DALEY, Accredited Senior Appraiser

Professional Overview

Mr. Daley is an ASA (Accredited Senior Appraiser) for the discipline of Machinery and Equipment with a specialty in High-Tech for the valuation of computer equipment.

Mr. Daley has been in the computer business since 1965, first with IBM as a computer broker/lessor and then with Daley Marketing Corporation (DMC), a firm he founded in July 1980 to publish reports about computer equipment, including "Market Value Reports" and "Residual Value Reports." In January 2001 Mr. Daley acquired Computer Economics, (CEI), and recently merged DMC into CEI. CEI is an independent research organization founded in 1979 devoted to helping IT executives control and manage IT costs. CEI has an on-line subscription based IT consulting web site and advisory service as well as a number of monthly and quarterly print newsletters. Today, the combination of CEI and DMCs published and online reports and services cover all segments of the secondary computer markets. These reports are used extensively by Fortune 500 companies in the preparation of IT budgets. Mr. Daley directs the company's research and the publication of its reports. Additionally, Mr. Daley remains president of DMC Consulting Group, a separate company that specializes in writing Appraisals, Portfolio Analysis and Property Tax Valuation from Fair Market Value (FMV) to Residual Value (RV) valuations.

Mr. Daley has developed a database of "Fair Market Value" equipment values from 1989 to the present, utilizing a variety of reports and publications along with the DMC Market Value Reports. This database has been successfully used in the valuation of computer equipment in the settlement of a number of Virginia tax cases. He has also previously testified in California, Minnesota, Michigan, New York and the Virginia Courts as an expert in the field of valuation of computer equipment.

Lectures/Seminars/Presentations

Equipment Leasing Associations Management Conference - Residual Value Forecasting, Tuscon, AZ, February 1997.

American Society of Appraisers Machinery Conference - Determining Fair Market Values and Residual Value Forecasting, Chicago, IL, October 2001.

Panelist at the fall Comdex - Orderly Disposition of Computer Assets. Las Vegas, November 2001.

American Society of Appraiser's International Conference - Residual Value Forecasting for the Computer Industry, San Diego, CA, August 2002.

Mr. Daley has testified in Federal and Tax Courts in the following cases:

United States v. Knutson and Harper
United States District Court for the Eastern District of New York
97-CR-957 (ILG)
May 1998
Brooklyn, NY

EDS v. Flint Township
Local Property Tax Court
March 2003

DMC Consulting Group

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Lansing, Michigan
October 1998

Andantech, LLC v. Commissioner of IRS
No. 15532-98, 4277-00, 6348-00
U.S. Tax Court
October 2000
St. Paul, MN

Nicole Rose v. Commissioner of IRS
No. 1967-00
U.S. Tax Court
December 2000
New York, NY

Central Funding Inc v. CompuServe Interactive Services, Inc.
Case No. 01CVH05-4019
May 10, 2002
Columbus, Ohio

CMA Consolidated, Inc and Subsidiaries, Inc. v. Commissioner of IRS
No. 12746-01
U.S. Tax Court
October 2002
San Francisco, CA

Mr. Daley has been deposed in the following cases:

Fogler v. Motorola; Adv 94-939
ComNet Technologies, Inc. 93-113243-PHx-GBN
U.S. Bankruptcy Court, District of Arizona
Phoenix, AZ.
February 3, 1998

Central Funding Inc v. CompuServe Interactive Services, Inc.
Case No. 01VH05-4019
Santa Ana, CA
April 23, 2002

Magnetek v. United States
Case No. 3-00-0925
Los Angeles, CA
July 16, 2002

Long Term Capital Holdings v United States
Case No. 8176
Santa Ana, CA
February 19, 2003

Background

The mission statement of Computer Economics is: to be the recognized leader in capturing today's information and to disseminate that information in a quality and timely service to companies around the world; to provide pertinent and timely information that benefits companies to make business decisions that allow them to obtain the greatest amount of profit from each transaction; and to use the latest technology to publish and transmit information to our customers in a timely manner.

Market values are obtained from brokerage and leasing companies across the United States. The information is compiled and these values then become an integral part of the Market Value Reports published monthly.

Computer Economics publishes four different Residual Value reports that cover everything from Hubs, Routers, PC's, to midrange and mainframe products. These reports cover the future value of over 1,000 pieces of equipment. Besides the normal reports, Computer Economics does independent residual forecasting for a number of clients.

The Computer Economics Computer Price List reports on the description, feature code, and purchase and maintenance prices of current machines marketed by IBM. This report supplements the market value reports and keeps the broker/dealer up to date with IBM list prices.

The Computer Economics reports are distributed in hard copy and over the Internet. Computer Economics subscription list consists of some of the largest end-users, broker/dealers and lessors in the world. Computer Economics also markets its' products in 15 countries around the world.

Peter Daley is a member of the ASA (American Society of Appraisers).

Computer Economics, Inc.

Partial Customer List

Accenture
BankAmerica Leasing & Capital
Boeing Computer Services
Charles Schwab & Company
Commonwealth Capital Corp
Compaq Capital Corp
Copelco Capital Corp
Dreamworks Interactive
E-Systems
EMC Corporation
FLC Partnership
Fleet Credit Corporation
Forsythe Solutions Group
G.E. Capital Corporation
Gartner Group
GTE Service Corporation
Hewitt & Associates
Hewlett Packard
Hitachi Data Corporation
IBM Corporation
Information Leasing Corp.
Internal Revenue Service
KPMG Peat Marwick
Leasing Technologies Int'l
Meridian Leasing Corporation
Price Waterhouse
Pacific Gas & Electric
Ratheon - E Systems
Sanwa Business Credit Corporation
StorageTek Corporation
Sun Data Inc.
United Computer Capital
Wisconsin Gas

DMC Publications History

The following is a breakdown of reports conceived and marketed by Daley Marketing Corporation and now part of Computer Economics:

PRODUCT	STARTED	DESCRIPTION
Manufacturer's Price Lists		
IBM Computer Price Lists	1981	Mfr's List Price, Maintenance Prices
Market Value Reports - Broker and End-User Reports		
IBM/PCM Market Value Report	1985	Market Values for Amdahl, IBM, EMC, HDS, Memorex, STK . From Mainframes to Midrange to I/O Equipment
DEC Market Value Report	1991	Market Values for DEC I/O Equipment, VAX, MicroVAX
Workstation/PC Market Value	1992	Market Values for DEC, HP, IBM, SGI, SUN, Compaq etc.
Network Communications	1995	Market Values for over 25 mfrs. Bridges, Hubs, Routers, Switches
Residual Value Reports		
Mainframe/Midrange Report	1987	Mainframe Residuals for Amdahl, HDS, HP, IBM and Stratus
Disk/Tape/Miscellaneous I/O Report	1987	Residual Values on DASD, printers, controllers and tape Subsystems for Amdahl, EMC, HDS, IBM, HP & StorageTek.
Workstation & PC Report	1994	Residual Values for DEC, HP, IBM, SGI, SUN, Compaq etc.
Network Communications Report	1995	Residual Values on Bridges, Hubs, Routers, Switches, etc.

The above subscriber products are available either hard copy, on-line or email.

Exhibit B. Portfolio Analysis – Detail

Spectrum Communications

Cisco Portfolio

					March 1, 1999	July 1, 1999
Model Number	Description	Total Units	Original Unit Price	Original Extended Price	End-User Fair Market Value/Extended Price	End-User Fair Market Value/Extended
WS-C5000	Cisco 5 Slot Core Switch Management Module w/2 FX SC	36	2,097	75,474	2,500	57,360
WS-X5006	Ports	33	6,297	207,785	2,500	157,916
WS-X5009	Management Module w/2 TX Ports	5	4,897	24,483	3,700	18,607
WS-X5213A	C5000 Fast Ethernet Switching (10/100BaseTX, 12port)	35	6,997	244,878	2,500	186,107
WS-X5010	Amphenol Module C5000 Fast Ethernet Switching	26	3,497	90,909	2,500	69,091
WS-X5011	(10BaseFX, 12port)	4	6,997	27,988	2,500	21,269
WS-C5008B	Catalyst 5000/5505AC Power Supply	72	1,397	100,548	2,500	76,416
WS-X5111	12 port 100baseFX Switching Module	8	13,997	111,972	2,500	85,099
WS-C2822-A	Switch 2820 24 port 10base-T	239	2,797	668,364	2,500	227,244
WS-X2824	4 port 100 FX Module for 2822	269	2,097	563,959	2,500	191,746
WS-X2821	1 port 100 FX Module for 2822	1	837	837	2,500	284
WS-C1912A	12 port 10base-T Switch w/2 100base TX ports Ent Ed Upgradable	54	1,747	94,311	2,500	56,587
WS-C1900C	24 port 10base T Switch with 1 100base TX port and 1 100 base FX port	183	2,360	431,880	2,500	168,433
Total				\$2,643,383	\$1,859,321	\$1,316,159

→ \$1,859,321

ROOF
 Exhibit G
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Exhibit 4

Price, John

From: Ed Falkowitz [efalkowitz@universalservice.org]
Sent: Monday, March 03, 2003 7:56 AM
To: 'Price, John'
Cc: Robert Rivera; George McDonald
Subject: Riverside (Ben 143743) FY 1999 - Equipment Traded-In

We have received guidance from the FCC regarding trade-in values. Their guidance is that the presumption is that equipment traded-in had a useful life of 3 years when originally purchased and that the value of the equipment declines in a straight line basis. This is a rebuttable presumption and SLD is to consider evidence to support a different fair market value. In the case of the equipment purchased by Riverside County (BEN 143743) for funding year 1999, this guidance is analyzed on the attached spreadsheet. I would appreciate your review of the attached. Let me know in the next couple of days if you have any comment on the analysis. Also, let me know if you have any additional evidence to support the fair market value of the equipment other than what you have already supplied.

Thanks,

Ed Falkowitz
Schools and Libraries Division
Phone: 202-263-1620
Fax: 202-776-0080

10/14/2003

RCOE
Exhibit G
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Applicant	Service Provider	Amount Paid	Amount Approved	Year	School	Other	Trade-In Value	Paid In Cash	Applicant Commitment	Refund Due
143743 BEN	471 FRRN	\$190,018.55	\$190,018.55	1999	Alford	27	\$24,338.28	\$24,338.28	\$195,680.27	\$74,708.00
143743 BEN	289376 R O P	\$103,272.47	\$103,272.47	1999	Banning	1	\$13,083.35	\$13,083.35	\$28,593.17	\$1,875,993.61
143743 BEN	289374 R O P	\$82,254.87	\$82,254.87	1999	Beaumont	15	\$45,438.68	\$45,438.68	\$36,816.19	\$28,908.25
143743 BEN	289374 R O P	\$174,888.16	\$174,888.16	1999	Coronita	\$	\$66,137.92	\$66,137.92	\$108,750.24	\$24,180.09
143743 BEN	289366 R O P	\$335,988.71	\$335,988.71	1999	Corona Norco	4	\$165,478.14	\$165,478.14	\$170,510.57	\$34,123.55
143743 BEN	289399 R O P	\$18,528.39	\$18,528.39	1999	Desert Center	\$	\$8,138.88	\$8,138.88	\$10,389.51	\$29,980.08
143743 BEN	289370 R O P	\$213,831.82	\$213,831.82	1999	Desert Sands	4	\$154,922.99	\$154,922.99	\$58,907.83	\$229,879.89
143743 BEN	289365 R O P	\$212,053.73	\$212,053.73	1999	Hemet	2	\$28,778.85	\$28,778.85	\$183,274.88	\$229,879.89
143743 BEN	289372 R O P	\$217,582.53	\$217,582.53	1999	Juniper	4	\$107,157.68	\$107,157.68	\$110,424.85	\$229,879.89
143743 BEN	289373 R O P	\$184,509.78	\$184,509.78	1999	Lake Elsinore	1	\$12,473.20	\$12,473.20	\$172,036.58	\$229,879.89
143743 BEN	289387 R O P	\$184,509.78	\$184,509.78	1999	Manifae	2	\$23,728.11	\$23,728.11	\$160,781.67	\$229,879.89
143743 BEN	289382 R O P	\$385,188.80	\$385,188.80	1999	Morongo Valley	5	\$199,581.19	\$199,581.19	\$185,607.61	\$229,879.89
143743 BEN	289381 R O P	\$125,307.65	\$125,307.65	1999	Murietta	5	\$51,893.80	\$51,893.80	\$73,413.80	\$229,879.89
143743 BEN	289354 R O P	\$39,052.78	\$39,052.78	1999	Murview	1	\$27,728.81	\$27,728.81	\$11,323.97	\$229,879.89
143743 BEN	289355 R O P	\$173,482.15	\$173,482.15	1999	Palm Springs	2	\$18,278.79	\$18,278.79	\$155,203.36	\$229,879.89
143743 BEN	289378 R O P	\$66,748.08	\$66,748.08	1999	Palm Springs	2	\$22,508.81	\$22,508.81	\$44,239.27	\$229,879.89
143743 BEN	289378 R O P	\$44,070.38	\$44,070.38	1999	Palo Verde	1	\$23,455.87	\$23,455.87	\$20,614.51	\$229,879.89
143743 BEN	289353 R O P	\$66,748.08	\$66,748.08	1999	Partis Elementary	0	\$4,881.18	\$4,881.18	\$61,866.90	\$229,879.89
143743 BEN	289378 R O P	\$66,748.08	\$66,748.08	1999	Partis High	0	\$4,881.18	\$4,881.18	\$61,866.90	\$229,879.89
143743 BEN	289353 R O P	\$66,748.08	\$66,748.08	1999	Riverside USD	5	\$35,818.49	\$35,818.49	\$30,929.59	\$229,879.89
143743 BEN	289353 R O P	\$248,431.28	\$248,431.28	1999	Riverside USD	26	\$35,818.49	\$35,818.49	\$212,612.79	\$229,879.89
143743 BEN	289353 R O P	\$38,581.58	\$38,581.58	1999	Romoland	7	\$4,271.04	\$4,271.04	\$34,310.54	\$229,879.89
143743 BEN	289358 R O P	\$75,728.49	\$75,728.49	1999	San Jacinto	0	\$	\$	\$75,728.49	\$229,879.89
143743 BEN	289378 R O P	\$79,000.95	\$79,000.95	1999	Temecula	2	\$38,164.65	\$38,164.65	\$40,836.30	\$229,879.89
143743 BEN	289361 R O P	\$312,608.79	\$312,608.79	1999	Val Verde	1	\$153,870.48	\$153,870.48	\$158,738.31	\$229,879.89
143743 BEN	289378 R O P	\$23,568.78	\$23,568.78	2000	Switch	2	\$	\$	\$23,568.78	\$229,879.89
143743 BEN	289378 R O P	\$610.15	\$610.15	2000	Switch	1	\$	\$	\$610.15	\$229,879.89

Quantity Traded-In

RCOE
EXHIBIT H

COPY

BEST BEST & KRIEGER LLP

A CALIFORNIA LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

INDIAN WELLS
(760) 569-2611
ONTARIO
(909) 989-8584

LAWYERS
3750 UNIVERSITY AVENUE
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RIVERSIDE, CALIFORNIA 92502-1028
(909) 686-1450
(909) 686-3083 FAX
BBKLAW.COM

SAN DIEGO
(619) 525-1300
ORANGE COUNTY
(949) 263-2600
SACRAMENTO
(916) 325-4000

RINA M. GONZALES

October 1, 2004

BY UPS NEXT DAY AIRMAIL

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: In the Matter of Request for Review of Decision of the Universal Service Administrator by Spectrum Communications Cabling Systems, Inc.
CC Docket No. 02-6
Billed Entity Name: Riverside County Office of Education
Billed Entity Number: 143743
E-Rate Funding Year 1999-2000
FCC Form 471 Application Number: 148309
Schools and Libraries Division letter dated: October 3, 2003

To Whom It May Concern:

Best, Best & Krieger LLP represents the Riverside County Office of Education ("RCOE") in the above-referenced matter and is writing this letter on RCOE's behalf. This letter is related to the appeal filed on or about August 30, 2004 by Spectrum Communications, Inc. ("Spectrum") with your office. Spectrum's appeal concerns the letter sent to Spectrum and RCOE on October 3, 2003, from the Universal Service Administrative Company, Schools and Libraries Division ("USAC/SLD") which requested recovery of approximately \$700,000 in allegedly erroneously disbursed funds.

As background, in December 2003, both RCOE and Spectrum filed separate appeals with USAC/SLD regarding the issues raised in the October 3, 2003 letter. On about July 6, 2004, our office received a copy of the USAC Administrator's Decision on Appeal for Funding Year 1999-2000 ("Administrator's Decision"). A copy of the Administrator's Decision is attached hereto as Exhibit "A." The Administrator's Decision is addressed to Spectrum and states that the appeal was denied in full, specifically finding that the factual background of this matter supported the SLD's decision and SLD appropriately valued the equipment at issue using the July 1, 1999 valuation date. The Administrator's Decision explains that the Federal Communications Commission has provided that repayment of erroneously disbursed funds will be sought "from service providers rather than schools and libraries because [] service providers actually receive

RCOE
Exhibit H
Page 1 of 14

Federal Communications Commission

October 1, 2004

Page 2

disbursements of funds from the universal service support mechanism.” (See Exhibit A at p. 2.) RCOE understands the Administrator’s Decision to provide that USAC will seek reimbursement from Spectrum, not RCOE.

On behalf of RCOE, our office contacted a USAC attorney in Washington D.C., to verify our understanding of the Administrator’s Decision. The USAC attorney confirmed that USAC will only be seeking recovery from Spectrum. She also indicated that she understood RCOE’s letter to ask for confirmation that recovery of the allegedly erroneously disbursed funds would be sought from Spectrum, as the service provider, and not from RCOE. Because RCOE’s letter was not considered a true “appeal,” the USAC attorney stated that USAC/SLD would not provide a decision letter to RCOE. Because USAC confirmed our understanding, we did not pursue the matter further.

Recently, RCOE received a copy of Spectrum’s appeal to the FCC. One argument in that appeal requests that liability be imposed on RCOE. Spectrum argues that, if the FCC concludes that funds were disbursed in error, then it should also conclude that RCOE “is responsible for any unpaid monies that are the result of its not paying the non-discounted portion of the E-rate services it purchased.” (Spectrum Appeal at pp. 20-21.) A footnote to that statement requests that, if the FCC agrees with the USAC determination, RCOE should immediately be given an “opportunity” to pay an invoice from Spectrum for the alleged “shortfall in matching funds.” (Spectrum Appeal at fn. 39.) That is, Spectrum is seeking to shift the USAC/SLD request for recovery onto RCOE, and to recover additional payment for itself at the same time.

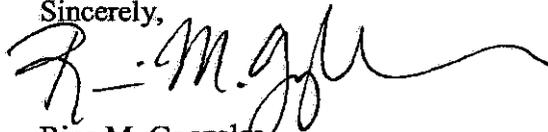
This argument is the first assertion by Spectrum, of which RCOE received notice, that RCOE should be liable for the allegedly erroneously disbursed funding. RCOE denies that it is liable for any of the allegedly erroneously disbursed funding, as set forth in RCOE’s letter dated December 2, 2003 to USAC/SLD. A copy of that letter is attached hereto as Exhibit “B.” If the FCC is considering taking a position contrary to that previously represented by the USAC to RCOE and holding RCOE liable for a portion of the allegedly erroneously disbursed funding, RCOE requests that it be afforded the opportunity to brief the issues before any decision is reached. It would be prejudicially unfair and a denial of due process to consider Spectrum’s argument without allowing RCOE to address this issue when RCOE relied on the Administrator’s Decision that recovery would be sought directly from Spectrum.

We are aware that the appeals process regarding USAC/SLD issues is an extended process. Unfortunately, Spectrum’s recent appeal to the FCC was the first time it advanced allegations that recovery should be sought from RCOE. If the FCC determines that additional briefing is necessary on the issue of who is responsible for repayment of allegedly erroneously disbursed funding, RCOE is prepared to brief the issue promptly to avoid any undue delay in finalizing this process.

Federal Communications Commission
October 1, 2004
Page 3

If your office has any questions regarding this matter, please do not hesitate to contact our office at (951) 686-1450 or via e-mail at <Rina.Gonzales@bbklaw.com>. Thank you for your consideration in this matter.

Sincerely,



Rina M. Gonzales
for BEST BEST & KRIEGER LLP

Exhibit "A" – Administrator's Decision dated July 1, 2004
Exhibit "B" – RCOE December 2, 2003 letter to USAC/SLD



Administrator's Decision on Appeal - Funding Year 1999-2000

July 1, 2004

Pierre F. Pendergrass
Spectrum Communications Cabling Services, Inc.
226 North Lincoln Avenue
Corona, CA 92882

RECEIVED

JUL 06 2004

Re: R O P Riverside County

BEST BEST & KRIEGER

Re: Billed Entity Number: 143743
471 Application Number: 148309
Funding Request Number(s): 299355, 299356, 299359, 299361, 299363,
299365, 299367, 299368, 299370, 299371,
299372, 299373, 299376, 299377, 299378,
299379, 299381, 299382

Your Correspondence Dated: December 2, 2003

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 concerning your appeal of SLD's Funding Year 1999 Recovery of Erroneously Disbursed Funds (REDF) Decision for the application number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day period 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 an appeal is submitted, a separate letter is sent.

Funding Request Number(s): 299355, 299356, 299359, 299361, 299363,
299365, 299367, 299368, 299370, 299371,
299372, 299373, 299376, 299377, 299378,
299379, 299381, 299382

Decision on Appeal: **Denied in Full**
Explanation:

- You have stated on appeal that the SLD determined that the appropriate valuation date for trade-in equipment is the date the service provider took possession of the equipment but no earlier than the beginning of the funding year, in this case July 1, 1999. You also state that the SLD has relied upon an independent appraisal that Spectrum provided in order to determine the value of the equipment on July 1, 1999. You feel that the SLD

determination in this matter is misguided and SLD should cease its attempt to recover funds disbursed. You close by stating that it is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule of FCC guidance on this issue existed at the time the transaction occurred. In fact, the SLD neither announced a rule nor sought guidance from the FCC on this issue until the first quarter of 2003, four years after the transaction. You add that although the independent appraisal Spectrum provided did value the equipment in the amounts indicated in the REDF Letter, this appraisal is not more authoritative than Spectrum's opinion because Spectrum had first hand knowledge of the actual pieces of equipment in question. Further, the appraisal is less reliable than Spectrum's opinion at the time it received the equipment because the appraisal is based upon information that is almost four years old.

- Upon thorough review of the appeal letter and relevant documentation, we find that the facts support SLD's decision. An Internal Audit found that Spectrum Communications accepted a trade-in amount for the above funding requests. This is permitted under program rules because the original equipment was not purchased with program funds. After the Audit findings, the applicant argued that the calculation of the Fair Market Value (FMV) of the equipment should not be based on a 3-year straight-line depreciation schedule, and SLD accepted this presumption. However, the trade-in amount was based on the value of the equipment at the time of the contract, which was before the start of the funding year and several months before Spectrum was set to take possession of the equipment. Spectrum provided an independent appraisal indicating the FMV of the equipment as of July 1, 1999. SLD has accepted this appraisal and determined that the recovery amounts should be based on the date that Spectrum took possession of the equipment, but no earlier than the first day of the funding year. Although the agreement was executed in March 1999, you have indicated that the equipment was not transferred until after the start of Funding Year 1999. Therefore, it is appropriate for SLD to value the equipment as of July 1, 1999. In its role as program Administrator, USAC must ensure that there is no waste, fraud and abuse. Consequently, the appeal is denied.
- The FCC has directed USAC "to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in violations of a federal statute" and to pursue collection of any disbursements that were made in violation of a federal statute. See *In re Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 97-21, 96-45, FCC 99-291 ¶ 7 (rel. October 8, 1999). The FCC stated that federal law requires the Commission to "seek repayment of erroneously disbursed funds" where the disbursements would violate a federal statute. *Id.* ¶¶ 7, 1. The FCC stated that repayment would be sought "from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds from the universal service support mechanism." *Id.* ¶ 9.

If you believe there is a basis for further examination of your application, you may file an appeal 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 or 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 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: Mr. Elliott Duchon
R O P Riverside County
3939 Thirteenth Street
Riverside, CA 92502

cc: Rina M. Gonzales
Best Best & Krieger LLP
3750 University Avenue
Post Office Box 1028
Riverside, CA 92502-1028

BEST BEST & KRIEGER LLP

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SAN DIEGO
(619) 525-1300
ORANGE COUNTY
(949) 260-0962
SACRAMENTO
(916) 325-4000

December 2, 2003

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

Re: Billed Entity Name: Riverside County Office of Education
Billed Entity Number: 143743
E-Rate Funding Year 1999-2000; FCC Form 471 Application Number: 148309
Schools and Libraries Division letter dated: October 3, 2003

Dear School and Libraries Division:

The law firm of Best, Best & Krieger LLP represents the Riverside County Office of Education ("RCOE") in this matter and is filing this letter of appeal on its behalf. This appeal concerns the letter sent to RCOE on October 3, 2003, from the Universal Service Administrative Company ("USAC"), Schools and Libraries Division ("SLD").¹ The SLD letter states that SLD determined that funds were disbursed in error. The letter asserts that RCOE did not pay a portion of the discounted charges for which it was responsible, and demands reimbursement of a portion of the moneys paid to Spectrum Communications Cabling Services, Inc. ("Spectrum"), the service provider for the contracts in question. SLD's decision is based on its position that trade-in equipment was over-valued, in part because SLD utilizes a later trade-in date than that used by Spectrum when it valued the equipment. The SLD decision demands the repayment of \$707,521.34 which was allegedly erroneously disbursed for the benefit of 16 individual school districts. A true and correct copy of the letter decision from which RCOE appeals is attached hereto as Exhibit "A." RCOE appeals on the ground that any moneys found due and owing to USAC, SLD should be recovered from Spectrum, not RCOE.

RCOE is filing this appeal because SLD sent a copy of its decision letter to RCOE, and that letter did not identify the party from which SLD was proposing to recover the allegedly wrongfully disbursed funds. The letter does not demand reimbursement from RCOE or offer any authority

¹ RCOE is informed and believes that this same letter and request from the SLD was also sent to Spectrum Communications Cabling Services, Inc. because Spectrum was the Service Provider for RCOE and received direct payment from the USAC, SLD for the funding year at issue.

Letter of Appeal

Schools and Libraries Division

December 2, 2003

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supporting an attempt to recover any portion of the allegedly erroneously disbursed funds from RCOE. RCOE requests that the SLD confirm that it is not seeking any reimbursement from RCOE.

The person who can most readily discuss this appeal with the SLD is:

John E. Brown
Attorney for Riverside County Office of Education
Best Best & Krieger LLP
3750 University Avenue, Suite 400
Riverside, CA 92507
Phone: (909) 686-1450
Facsimile: (909) 686-3083
E-mail: JEBrown@bbklaw.com

Factual Background

RCOE is a service agency which provides support for 23 school districts within Riverside County. As such, RCOE may serve as an agent for the school districts in acquiring federal and state funding.

In late 1999, RCOE filed a Federal Communications Commission ("FCC") Form 470 application with USAC as a consortium, on behalf of its school districts, for E-rate Year 2 funding. The fiscal year for which RCOE sought funding by that application was 1999-2000. After RCOE's FCC Form 470 application was approved, it was posted on the Internet as required by 47 C.F.R. section 54.504.

RCOE selected Spectrum from the interested vendors to be the service provider for the county school districts. The decision to select Spectrum was based, in part, on the fact that Spectrum had worked with many of the school districts as part of the county's "Riverlink Project."² Based on its work in 1998 on the Riverlink Project, in which Spectrum supplied equipment to school districts, Spectrum knew of the existing equipment and technology needs of many of the school districts. The decision to select Spectrum also was based, in part, on the fact that Spectrum had experience as an E-rate service provider. Based on that experience, Spectrum counseled RCOE and the school districts that the districts could trade-in, and Spectrum would accept, existing equipment³ for the new equipment.

² The RCOE Superintendent's goal of the Riverlink Project was to get a majority of Riverside County school classrooms connected to the Internet.

³ Any equipment traded-in was not purchased with Universal Service Funds (i.e., non-E-rate funded equipment.).

Letter of Appeal

Schools and Libraries Division

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In or around January 2000, RCOE took the next step toward securing E-rate Year 2 funding and submitted a consortium application – FCC Form 471 – for fiscal year 1999-2000 to the USAC, SLD on behalf of 23 school districts. This application included the estimated costs for each district's technology installation. The estimated costs in the FCC Form 471 were derived from meetings between RCOE, Spectrum and the school district Technology Directors or district employee(s) with responsibility for technology. At the meetings, each district explained its present technology status to Spectrum so that Spectrum could estimate the district's equipment needs.

On or about April 18, 2000, RCOE received a Funding Commitment Decision Letter from USAC which indicated that RCOE's FCC Form 471 application was approved as submitted. The Funding Commitment Decision Letter indicated that each district would be responsible for paying 33% of the technology installation, while the other 67% would be paid directly to the identified service provider – Spectrum – by USAC.

Sixteen of RCOE's school districts took advantage of Spectrum's offer to credit trade-in equipment value to meet some or all of their 33% match obligation. Those 16 school districts are now the subject of SLD's request for recovery of allegedly erroneously disbursed funds. The 16 school districts are as follows: (1) Alvord Unified School District; (2) Banning Unified School District; (3) Corona/Norco Unified School District; (4) Desert Sands Unified School District; (5) Hemet Unified School District; (6) Jurupa Unified School District; (7) Lake Elsinore Unified School District; (8) Menifee Unified School District; (9) Moreno Valley Unified School District; (10) Murrieta Valley Unified School District; (11) Palm Springs Unified School District; (12) Palo Verde Unified School District; (13) Perris School District; (14) Romoland School District; (15) Temecula Valley Unified School District; and (16) Val Verde Unified School District.⁴ All other districts that participated in Year 2 did not trade-in equipment, but instead made a cash payment for their 33% match amount to Spectrum.

Although the application was filed by RCOE, each school district was individually responsible for management of the funding and program implementation with the district schools. Each school district dealt directly with Spectrum to identify its technology needs and to identify equipment to be traded in. Each school district separately negotiated the trade-in value, based in large part on Spectrum's expertise and knowledge in the technology industry and proposed trade-in valuations. Each school district separately issued purchase orders to Spectrum, using California's Multiple Award Schedule ("CMAS") contracting procedure, to obtain the services and equipment ultimately ordered. Given the very short time frame available to proceed with the project for the school districts, RCOE and the school districts had to rely on Spectrum's experience implementing the district's technology goals, awareness of the districts' existing technology, knowledge of the fair market value of that

⁴ RCOE was informed that Corona/Norco Unified School District and Jurupa Unified School District would both trade in old equipment and make a cash payment to meet their 33% match amounts.

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technology, and evaluation of district needs regarding upgrades. RCOE relied on the values that were provided by Spectrum and agreed to by the school districts with respect to both the trade-in value and the scope and cost of each district's technology installation.

In or around October 2001, USAC engaged Arthur Andersen to conduct an audit of the RCOE application. The audit was undertaken with the assistance of RCOE, the school districts and Spectrum. As a result of the audit, Arthur Andersen questioned the trade-in value placed on the used equipment. Spectrum then commissioned an independent appraisal of the trade-in equipment. Based on the Arthur Andersen audit and using July 1, 1999 appraisal values from the Spectrum appraisal report, on or about October 3, 2003 USAC sent both RCOE and Spectrum a letter requesting "Recovery of Erroneously Disbursed Funds" to both parties for the amount of \$707,521.34.

The October 3, 2003 letter from the SLD alleges that the Universal Service Funding provided to the 16 districts listed above was "erroneously disbursed" and provides the following explanation to each district:

"Disbursed Funds Recovery Explanation: After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of [dollar amount differs for each district] is required. A beneficiary audit discovered that the service provider accepted trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date that service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only [dollar amount differs for each district], which is [dollar amount differs for each district] less than the non-discounted share of [dollar amount differs for each district] that the applicant was obligated to pay. Since the applicant did not cover [dollar amount differs for each district] of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to [dollar amount differs for each district]. As a result this amount of [dollar amount differs for each district] determined to have been erroneously disbursed and must now be recovered."

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Schools and Libraries Division

December 2, 2003

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RCOE is informed and believes that Spectrum intends to appeal the SLD's decision on the ground that all trade-in equipment should be valued on or around March 1, 1999. As discussed below, RCOE has no obligation to refund any of the funds received by Spectrum in connection with the E-rate Year 2 funding at issue. However, to the extent that USAC seeks to recover any moneys from RCOE, any amount sought should be adjusted based on the extent that Spectrum is successful in establishing a higher trade-in value than that reflected in the SLD decision.

Grounds for Appeal

1. **Spectrum Is Responsible for the Repayment of Any Funds Found to Be Erroneously Disbursed**

In FCC Order No. 99-291,⁵ the FCC directed USAC to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in violations of a federal statute. The FCC stated that it would seek payment from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds from the universal service support mechanism. (FCC Order No. 99-291, ¶ 8.)

In the instant action, although the SLD has not claimed that the allegedly erroneous disbursement of funds is a violation of a federal statute, the principles articulated in FCC Order No. 99-291 should apply. As an experienced technology service provider, Spectrum assisted the districts in determining what technology was required, provided pricing for that technology as a CMAS vendor, and provided what it represented to be the fair market value of all trade-in equipment.⁶ The districts relied on Spectrum's superior knowledge and representations as to the value of the trade-in equipment when they made their ultimate decisions as to what new equipment to purchase and when they determined the additional funding, if any, that was necessary to secure that equipment. Similarly, RCOE relied on the information provided by Spectrum in preparing the application on behalf of the school districts and representing that the school districts had secured access to all resources necessary to pay the discounted charges for eligible services.

To the extent that SLD establishes that the trade-in values were overstated, Spectrum was the party with superior knowledge as to the appropriate fair market value for the equipment. Further, based on Spectrum's assertion of experience and expertise as an E-rate funding service provider, RCOE and the districts relied on Spectrum to have knowledge of the appropriate trade-in valuation

⁵ A true and correct copy of FCC Order No. 99-291 is attached hereto as Exhibit "B."

⁶ As between Spectrum and the school districts, RCOE asserts that Spectrum is contractually bound by the trade in value the parties agreed upon and may not recover additional funds from the districts.

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Schools and Libraries Division

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date for purposes of E-rate exchanges. Finally, Spectrum was the party that received the allegedly excess amounts. It is necessary and appropriate that, if funds are to be recovered by USAC, SLD, the party making the overstatement of trade-in value and receiving the allegedly excess funds should be obligated to repay those funds. Thus, the rationale stated in FCC Order No. 99-291 should apply and USAC should recover any funds found due and owing from Spectrum.

2. Perris Unified School District and San Jacinto Unified School District Did Not Participate in E-rate Year 2

Perris Union High School District ("Perris Union HSD") and San Jacinto Unified School District ("San Jacinto USD") were both included in the RCOE FCC Form 471 consortium application⁷, however these two districts chose not to participate after the RCOE application had been filed and approved.⁸ RCOE is informed that Perris Union HSD and San Jacinto USD did not receive any new equipment, and did not trade-in any equipment to Spectrum. However, it appears that Spectrum submitted invoices to SLD on behalf of these districts because both districts are included in the SLD request for recovery of erroneously disbursed funds. To the extent that Spectrum cannot document that it actually provided the equipment to Perris Union HSD or San Jacinto USD, SLD should direct any request for recovery concerning these two districts to Spectrum.

3. Palm Springs Unified School District Did Not Utilize All of the Funding it Requested

Palm Springs Unified School District ("Palm Springs USD") also was included in the RCOE FCC Form 471 consortium application⁹, but it did not utilize all of the funding it requested in the application. RCOE is informed that Spectrum submitted invoices to SLD on behalf of Palm Spring USD for the full amount requested. To the extent that Spectrum cannot document that it actually provided the full amount of equipment to Palm Springs USD, RCOE concurs that SLD should direct any request for recovery of the excess claimed concerning that district to Spectrum.

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⁷ For identification purposes, Perris Union HSD's Funding Request Number is 299377 (approved and funded for \$86,746) and San Jacinto USD's Funding Request Number is 299359 (approved and funded for \$75,728).

⁸ RCOE provided this information to Arthur Anderson when it audited the RCOE consortium application.

⁹ For identification purposes, Palm Spring USD's Funding Request Number is 299355 (approved and funded for \$173,492.15.)

Letter of Appeal
Schools and Libraries Division
December 2, 2003
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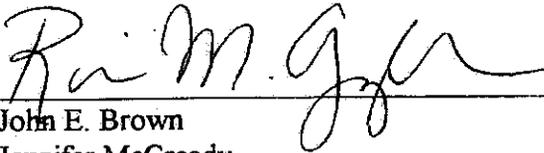
Conclusion

Based on the foregoing, RCOE respectfully requests that the SLD reconsider or clarify its decision and expressly confirm that it is not seeking recovery of some or all of the allegedly erroneously disbursed funds from RCOE or the school districts.

If your office has any questions regarding this matter, please do not hesitate to contact our office at (909) 686-1450 or via e-mail at <JEBrown@bbklaw.com>. Thank you for your consideration in this matter.

DATED: December 2, 2003

By:



John E. Brown
Jennifer McCready
Rina M. Gonzales
Attorneys for Riverside County Office of Education

RCOE
EXHIBIT I



Federal Communications Commission
Washington, D.C. 20554

ORIGINAL

Memo

To: Rina M. Gonzales, Attorney for
Riverside County Office of Education

From: Narda M. Jones, Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

Date: February 28, 2005

Re: DA 05-498, Released February 25, 2005

Please find accompanying this memo the Commission's decision on your Request for Review. The accompanying decision may be referenced in the future by its Proceeding Number and release date: DA 05-498, February 25, 2005.

If you are not satisfied with this decision, you may file a petition for reconsideration with the Commission within 30 days of the release date of the decision.¹ However, the petition will generally be granted only if it demonstrates an error in the decision based upon (1) facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (2) facts unknown to petitioner until after the Request for Review was filed and which could not, through the exercise of ordinary diligence, have been learned prior to that time.² Petitions for reconsideration are decided by the Wireline Competition Bureau of the Commission.

You may also file an application for review with the Commission if you are displeased with this decision. Your application for review must be filed within 60 days of the release date of the decision pursuant to section 1.115(c) of our rules. Please note that the application for review will not be granted if it relies on questions of fact or law upon which the designated

¹ See 47 C.F.R. § 1.106(f).

² See 47 C.F.R. § 1.106(b)(2).

authority has been afforded no opportunity to pass.³ Applications for review are decided by the full Commission.

Petitions for reconsideration and applications for review should be submitted to the Secretary, Federal Communications Commission, Washington, D.C., 20554, they should reference CC Docket No. 02-6 as well as the Proceeding Number of the decision from which relief is sought, and should otherwise conform to the requirements the Commission's rules.⁴

If you have any questions regarding the foregoing, feel free to contact the Telecommunications Access Policy Division at (202) 418-7400.

³ See *Implementation of Interim Filing Procedures for Filings of Requests for Review*, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, FCC-376, 17 FCC Rcd 339 (2002). See 47 U.S.C. § 1.115(c).

⁴ See 47 C.F.R. § 1.106, 1.115.

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

In the Matter of)	
)	
Requests for Review of the Decision of the Universal Service Administrator)	
)	
A TEK Construction, Inc. – Los Angeles Unified School District Los Angeles, California)	File No. SLD-153005
)	
Riverside County Office of Education Riverside, California)	File No. SLD-148309
)	
SBC-Illinois and Ameritech Advanced Data Services, Inc. – Harvey Public School District Harvey, Illinois)	File No. SLD-190697
)	
Southwestern Bell Telephone Company – Education Service Center-Region 1 Edinburg, Texas)	File No. SLD-202704
)	
Spectrum Communications Cabling Services, Inc. – Riverside County Office of Education Riverside, California)	File No. SLD-148309
)	
Verizon New Jersey, Inc. – Dar Al-Hikmah Elementary School Prospect Park, New Jersey)	File No. SLD-310459
)	
Schools and Libraries Universal Support Mechanism)	CC Docket No. 02-6
)	

ORDER

Adopted: February 23, 2005

Released: February 25, 2005

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration the above-captioned Requests for Review of commitment adjustment decisions issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC).¹ For the reasons set forth

¹Letter from Ali Taba, ATEK Construction, Inc., to Federal Communications Commission, filed July 12, 2004; Letter from Rina M. Gonzales, Riverside County of Education, to Federal Communications Commission, filed October 1, 2004; Letter from Christopher M. Heimann, SBC-Illinois and Ameritech Advanced Data Services, Inc. to Federal Communications Commission, filed on July 9, 2004; Letter from Christopher M. Heimann, Southwestern Bell Telephone Company – Education Service Center – Region 1, to Federal Communications Commission, filed on July 13, 2004; Letter from Pierre Pendergrass, Spectrum Communications Cabling Services, Inc., to Federal Communications Commission, filed on August 30, 2004; Letter from Ann H. Rakestraw, Verizon New Jersey, Inc., to Federal Communications Commission, filed May 14, 2004 (collectively, Requests for Review).

below, we grant the Requests for Review and remand them to USAC for further consideration.

2. Consistent with the requirements of the *Commitment Adjustment Order* and the *Commitment Adjustment Implementation Order*, USAC has generally pursued recovery for both statutory and rule violations from service providers.² In the *Schools and Libraries Fourth Report and Order*, however, the Commission determined that recovery of schools and libraries funds disbursed in violation of the statute or a rule should be directed to the party or parties responsible for the statutory or rule violation, including a school or library.³ The Commission directed USAC to implement this policy on a going forward basis to all matters for which USAC has not yet issued a demand letter as of the effective date of the order and to all recovery actions currently under appeal to either USAC or the Commission.⁴ Each Request for Review raises the argument that another party, particularly the school or library receiving discounted services or another service provider, committed the statutory or rule violation for which SLD is seeking recovery of funds.⁵ Because USAC did not consider which party was responsible for the statutory or rule violation at issue, we find it appropriate to remand the above-captioned Requests for Review of commitment adjustment decisions to USAC for further consideration consistent with the Commission's decision in the *Schools and Libraries Fourth Report and Order*.

3. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the requests for review filed by ATEK Construction, Inc. – Los Angeles Unified School District, Los Angeles, California, on July 12, 2004; Riverside County Office of Education, Riverside, California, on October 1, 2004; SBC-Illinois and Ameritech Advanced Data Services, Inc. – Harvey Public School District, Harvey, Illinois, on July 9, 2004; Southwestern Bell Telephone Company – Education Service Center-Region 1, Edinburg, Texas, on July 13, 2004; Spectrum Communications Cabling Services, Inc. – Riverside County Office of Education, Riverside, California on August 30, 2004; and Verizon New Jersey, Inc. – Dar Al-Hikmah Elementary School, Prospect Park, New Jersey, on May 5, 2004, ARE GRANTED, and these appeals ARE REMANDED to USAC for further action consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION



Vickie S. Robinson
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

² *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291 (rel. Oct. 8, 1999) (*Commitment Adjustment Order*); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, 15 FCC Rcd 22975 (2000) (*Commitment Adjustment Implementation Order*).

³ *Federal State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Support Mechanism, Order on Reconsideration and Fourth Report and Order*, 19 FCC Rcd 15252 (2004) (*Schools and Libraries Fourth Report and Order*).

⁴ *Id.* at 15256, para. 10.

⁵ *Id.*

CERTIFICATE OF SERVICE

I, Kay J. Bliss, certify that on this 26th day of April, 2005, a copy of the foregoing Application for Review has been served via first class mail, postage pre-paid, to the following:

Spectrum Communications Cabling Systems, Inc.
Attn: Pierre Pendergrass, Esq.
26 North Lincoln Ave
Corona, CA 92882

I further certify that the Application for Review was filed with the FCC by e-mail as follows:

Federal Communications Commission
Washington, D.C. 20554
Via E-Mail: CCBSecretary@fcc.gov



Kay J. Bliss