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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	File No. SLD-148309
Request for Review of Decision of the Universal Service Administrator	)	CC Docket No. 02-6
by	)	FRN Nos. 299376, 299377, 299378, 299379, 299381, 299382, 299355, 299356, 299359, 299361, 299363, 2999365, 399367, 299368, 299370, 299371, 299372 and 299373
Riverside County Office of Education Riverside, California	)	

APPLICATION FOR REVIEW

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John E. Brown, Bar No. 65322
Cathy S. Holmes, Bar No. 188702
Rina M. Gonzales, Bar No. 225103
BEST BEST & KRIEGER LLP
3750 University Avenue, Suite 400
P. O. Box 1028
Riverside, CA 92502
(951) 686-1450

Attorneys for
Riverside County Office of Education

April 26, 2004

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I. INTRODUCTION

The Riverside County Office of Education ("RCOE"), pursuant to Section 1.115 of the Rules of the Federal Communications Commission, ("Commission")[1] submits this Application for Review seeking a reversal of Order DA 05-498, issued on February 25, 2005 by the Telecommunications Access Policy Division.[2] DA 05-498 remanded RCOE File No. SLD-148309 and Spectrum Communications Cabling Systems, Inc. ("Spectrum"), File No. SLD-148309, to the Universal Service Administrative Company ("USAC") for further consideration. In its Order, the Telecommunications Access Policy Division found it "appropriate to remand certain 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*" which simply clarifies that recovery of schools and libraries funds disbursed in violation of an applicable statute or a rule should be directed to the entity that is responsible for the statutory or rule violation.

RCOE is unfamiliar with the other matters globally addressed by DA 05-498.[3] As applied to RCOE and Spectrum, however, the only question on remand would be which party was responsible for the alleged error in the valuation of trade-in equipment that was accepted by Spectrum, the service provider, for the non-discounted share of services provided.

The Universal Service Administrative Company, Schools and Libraries Division ("USAC/SLD" or "SLD") asserts the rule that the valuation of the trade-in equipment must be

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[1] 47 C.F.R. Section 1.115.

[2] *Requests for Review of the Decision of the Universal Service Administrator,* File No. SLD-148309, CC Docket 02-6, Order, DA 05-498 (rel. February 25, 2005).

[3] In addition to the RCOE and Spectrum Communications Cabling Services, Inc. Files, DA 05-498 also responds to Requests for Review of the Decision of the Universal Service Administrator filed by ATEK Construction, Inc. – Los Angeles Unified School District (File No. SLD 153005); 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 2002704); 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. 02-06.

based on the fair market value of the equipment and that the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year.[4] Under this rule, USAC/SLD asserts that the trade-in equipment at issue was over-valued because it was valued on a date prior to the beginning of the funding year which in this case is July, 1999.

Spectrum does not deny that it valued the equipment as of March, 1999, a date prior to the beginning of the funding year. Spectrum has argued that it is inherently unfair for USAC/SLD to seek recovery 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 and the SLD neither announced a rule nor sought guidance from the FCC on this issue until four years after the transaction. While there may be merit to Spectrum's argument that no recovery should be sought on fairness grounds, there is no dispute that Spectrum admitted being the party with first hand knowledge of the actual pieces of equipment in question, had superior knowledge as to appropriate fair market value for the equipment, and was the party that determined and assigned the value to the equipment as of March, 1999.

USAC has already confirmed as much. In its Administrator's Decision on Appeal dated July 1, 2004, USAC clarifies it considered Spectrum's arguments and denied them in full.[5] Consequently, a remand is unnecessary in this case both because Spectrum has admitted, and USAC has already determined, consistent with the direction set forth in the Fourth Report and Order, that Spectrum was the responsible party for determining the value of the property at the

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[4] Letter from Schools and Libraries Division, Universal Service Administrative Company to Elliott Duchon, ROP-Riverside, (October 3, 2003) (on file with Schools and Libraries Division, Universal Service Administrative Company). A true and correct copy of the USAC/SLD letter is attached and hereafter referred to as Exhibit "A."

[5] Letter from Universal Service Administrative Company, Schools and Libraries Division to Pierre Pendergrass, Spectrum Communications Cabling, Inc. (July 1, 2004) (on file with Schools and Libraries Division, Universal Service Administrative Company). A true and correct copy of the Administrator's Decision is attached and hereafter referred to as Exhibit "B."

time of trade-in.

Accordingly, RCOE seeks a reversal of DA 05-498 and a finding that as that Order applies to RCOE and Spectrum, there is no need for USAC to reconsider the party responsible for the applicable rule violation at issue.

II. STATEMENT OF FACTS

RCOE is a governmental agency which, among other duties, provides fiscal oversight for 23 school districts within Riverside County. (See Cal. Educ. Code § 1000 *et seq.*) As part of this fiscal oversight, RCOE assists constituent school districts in acquiring federal and state funding, including participation in the federal "E-Rate" Program which provides eligible schools and libraries funding and discounts on products and the costs of telecommunications services, internet access and internal connections.

A. RCOE's Solicitation for E-Rate Proposals

RCOE formed a consortium of its member school districts for the purpose of applying for E-Rate Program discounts in the 1999-2000 funding year. On or about March 9, 1999, RCOE filed a Form 470 Application with the SLD, which served to solicit proposals from prospective service providers for a range of eligible E-Rate products and services.

B. Spectrum's Determination of the Fair Market Value Rate

After examining existing equipment which RCOE consortium members intended to trade-in to Spectrum for the purpose of providing its E-Rate matching funds, Spectrum determined the fair market value of the equipment to be $1,813,505.83. (Letter from Pierre F. Pendergrass, General Counsel, Spectrum Communications Cabling Inc., to Schools and Libraries Division (December 2, 2003) (on file with Schools and Libraries Division, Universal Services Administrative Company) at 2.) Spectrum professes it calculated the fair market value of RCOE's equipment based upon its considerable expertise in the purchase and sale of new and used technology equipment in the Riverside market. (Letter from Pierre Pendergrass, General

Counsel, Spectrum Communications Cabling Inc., to Federal Communications Commission (August 30, 2004) (on file with Federal Communications Commission) at 4).

Specifically, Spectrum claims that it: (i) had previously sold and installed the specific pieces of equipment at issue; (ii) was knowledgeable about the manner in which the equipment had been used and maintained; (iii) was knowledgeable about the training and expertise of the staff who had been using the equipment; and (iv) most importantly, had detailed knowledge about the identity and needs of potential buyers of the specific pieces of equipment in question. (Letter from Pendergrass to Federal Communications Commission of 8/30/04 at 4).

C. RCOE's Selection of Spectrum as its Service Provider

After determining the fair market value of the equipment, Spectrum then submitted a bid proposal to the Form 470. (Letter from Pendergrass to Schools and Libraries Division of 12/02/03 at 2). Spectrum asserts that after carefully considering the type, amount and condition of the equipment held by the RCOE consortium, it developed a proposal that would enable the consortium members to meet their technology plan objectives while, at the same time, avoid a cash outlay. Spectrum also asserts that RCOE reviewed this proposal and found it to be the most cost-effective response to its Form 470. (Letter from Pendergrass to Schools and Libraries Division of 12/02/03 at 6).

RCOE concurs that its decision to select Spectrum was based on the fact that Spectrum had experience as an E-Rate service provider and had knowledge of the specific technological needs of the school districts in the consortium. More importantly, the decision was based on the fact that Spectrum counseled RCOE and the participating school districts that the districts could trade-in, and Spectrum would accept, existing equipment[6] for the new equipment.

Because Spectrum's bid proposal was the most advantageous to RCOE, RCOE filed a

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[6] Any equipment traded-in was not purchased with Universal Service Funds (i.e, non-E-Rate funded equipment.).

Form 471 documenting RCOE's acceptance of Spectrum's proposal and its selection of Spectrum as its service provider, which was approved as submitted. Sixteen school districts took advantage of Spectrum's offer to credit trade-in equipment value to meet some or all of their identified 33% match obligation.[7]

D. USAC Determination of Erroneous Fair Market Value Rate

In October 2001, USAC engaged Arthur Andersen LLP to conduct an audit which was undertaken with the assistance of RCOE, the school districts and Spectrum. As a result of the audit, Arthur Andersen LLP 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 LLP audit and using July 1, 1999 appraisal values from the appraisal report, on or about October 3, 2003, RCOE and Spectrum received a letter from USAC/SLD seeking recovery of $707,521.34 which represents the difference between the equipment trade-in value as determined by Spectrum, and the trade-in value determined to apply under the SLD rule that such value must be based on the fair market value of the equipment on the date the service

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[7] 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. RCOE was also 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. The USAC Funding Commitment Decision Letter stated that each district would be responsible for paying 33% of the technology installation, while the other 67% would be paid directly to the service provider. A true and correct copy of the USAC Funding Commitment Decision Letter is attached and hereafter referred to as Exhibit "C".

[9] Letter of Rina M. Gonzales, Attorney, Riverside County Office of Education, to Schools and Libraries Division (December 2, 2003) (on file with Schools and Libraries Division, Universal Service Administrative Company) and Letter of Pierre Pendergrass, General Counsel, Spectrum Communications Cabling Inc., to Schools and Libraries Division (December 2, 2003) (on file with Schools and Libraries Division, Universal Service Administrative Company). A true and correct copy of the RCOE appeal letter is attached and hereafter referred to as Exhibit "D". A true and correct copy of the Spectrum appeal letter is attached and hereafter referred to as Exhibit "E".

provider took possession of the equipment, but not earlier than the beginning of the funding year. (See Exhibit "A").

In this letter, USAC/SLD asserted that the Universal Service Funding provided to the 16 districts listed above was "erroneously disbursed" and provided 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. (Exhibit "A", at pp. 5-22.)

E. Appeals of USAC Determination that Fair Market Value in this Instance Should be Calculated as of July 1, 1999, as opposed to March, 1999 the date used by Spectrum

In December, 2003, RCOE and Spectrum filed separate appeals to USAC/SLD, as described *infra*.[9] Spectrum appealed the SLD's decision on the grounds that it was misguided for USAC/SLD to determine 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, or in this case, July 1, 1999. Spectrum argued that all trade-in equipment should be valued on or around March 1, 1999, the date by which they calculated the fair market value of the trade-in property at issue in this matter. (Exhibit "E").

USAC issued an Administrator's Decision on Appeal – Funding Year 1999-2000 ("Administrator's Decision") on July 1, 2004. (Letter from Universal Service Administrative Company to Pierre F. Pendergrass, Spectrum Communications Cabling Services, Inc., (July 1, 2004) (on file with Universal Services Administrative Company, Schools and Libraries Division.) (Exhibit "B"). The Administrator's Decision explained that Spectrum's appeal was denied in full, finding that the factual background supported the SLD's decision and SLD appropriately valued the trade-in equipment using the July 1, 1999 valuation date. (Exhibit "B").

After receiving a courtesy copy of the Administrator's Decision, counsel for RCOE contacted counsel for USAC to verify its understanding of the outcome announced in the Decision.[10] Counsel for USAC confirmed that USAC would only be seeking recovery from Spectrum. (Exhibit "F"). On August 30, 2004, Spectrum filed a Request for Review to the FCC ("Spectrum Appeal #2").[11] After reviewing Spectrum's Request, RCOE sent a letter to the FCC Office of the Secretary on October 1, 2004, requesting that RCOE be allowed to participate in the appeal process if USAC was considering changing its previous position.[12]

As described above, on February 28, 2005, the FCC issued a memorandum accompanied by FCC Order No. DA 05-498 to multiple parties, including RCOE and Spectrum.[13] The FCC instructed that RCOE's October 1, 2004 letter, which it apparently was considered as a "Request for Review," and Spectrum's appeal be remanded to USAC for further review consistent with the Fourth Report and Order which serves to clarify that recovery of schools and libraries funds

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[10] See Declaration of Rina M. Gonzales attached and hereafter referred to as Exhibit "F."

[11] Letter from Pierre Pendergrass, General Counsel, Spectrum Communications Cabling, Inc., to Federal Communications Commission (August 30, 2004) (on file with Federal Communications Commission). A true and correct copy of the Spectrum Appeal #2 is attached and referred to hereafter as Exhibit "G".

[12] Letter from Rina M. Gonzales, Attorney, Riverside County Office of Education, to Federal Communications Commission (October 1, 2004) (on file with Federal Communications Commission). A true and correct copy is attached and hereafter referred to as Exhibit "H".

[13] A true and correct copy of the memo and FCC Decision No. DA 05-498 is attached and hereafter referred to as Exhibit "I."

disbursed in violation of an applicable statute or a rule should be directed to the entity that is responsible for the statutory or rule violation.

RCOE is filing this current Application for Review on the grounds that the Telecommunications Access Policy Division has committed an erroneous finding as to an important or material question of fact, and seeks a determination that there is no need to remand this matter to USAC/SLD on the issue of what party is responsible for the statutory or rule violation at issue, since Spectrum admits that it was responsible for calculating the fair market value of the trade-in equipment, and USAC has already heard, and denied Spectrum's appeal on the grounds that USAC exceeded its authority in adopting a new policy without FCC Guidance that would be applied retroactively to Spectrum.

III. QUESTIONS PRESENTED FOR REVIEW

A. Whether Spectrum Can Be Identified, Without Further Consideration by USAC, as the Party Responsible for the Rule Requiring that Fair Market Value Be Calculated on the Date a Service Provider Takes Possession of Trade-In Equipment, but not Earlier than the Beginning of the Fund Year.

The only basis upon which USAC seeks recovery of funds is on the grounds that trade-in equipment was assigned an improper fair market value which led to uncovered charges that the SLD now attempts to recover. While the Fourth Report and Order has clarified that the USAC/SLD seek recovery against schools *when the school is responsible for the statutory or rule violation*, it is unnecessary to remand the RCOE and Spectrum files for further consideration by USAC/SLD since it is already clear that Spectrum is the sole party responsible for the valuation.

1. Spectrum Admits They Were the Party Responsible for Calculating the Fair Market Value of Trade-In Equipment

There is no dispute that Spectrum calculated the fair market value of all trade-in equipment at issue and represented to RCOE how this would determine RCOE's obligations under the E-Rate Program. In fact, to support its argument that it was in the best position to

make such a determination, it has asserted before USAC that: "Spectrum, based upon its considerable expertise in the purchase and sale of new and used technology equipment, calculated the fair market value of Riverside's trade-in equipment as of March 1999." (Exhibit "G" at 1). Spectrum may have a fair argument that the SLD and USAC exceeded their authority when they established a SLD Program rule regarding the timing of fair market valuations for trade-in equipment to E-Rate services that were provided years earlier, however, this does not change the fact that Spectrum was the party responsible for calculating the value of the trade-in equipment, which is the only issue for remand.

Spectrum's own factual assertions, in both of its appeals, demonstrate that it is the responsible party in this matter. Spectrum admitted that it calculated the fair market value of RCOE's equipment based upon its previous experience and has also argued that Spectrum's valuation of the equipment at the time the parties entered into their agreement in March of 1999 was subsequently substantiated by an independent third-party appraisal. (See Exhibit "G" at i, 4, 6, 7, 9, 10, 19; see also Exhibit "E" at 2, 3, 5, 6, 8, 9). These direct admissions are significant as USAC's sole reason for seeking recovery of allegedly erroneous disbursed monies is due to the timing of the valuation.

Spectrum has also freely stated that its fair market valuation created the best proposal for RCOE. As an experienced technology service provider, Spectrum assisted the districts in determining what technology was required, provided pricing for that technology as a California's Multiple Award Schedule (CMAS) vendor, and provided what it represented to be the fair market value of all trade-in equipment.

Given the very short time frame available to proceed with the project for the school districts, RCOE and the school districts relied on Spectrum's experience implementing the district's technology goals, awareness of the district's existing technology, knowledge of the fair market value of that technology, and evaluation of district needs regarding upgrades. Spectrum

was selected by RCOE to be the service provider in part due to Spectrum's counsel that the school districts could trade-in, and Spectrum would accept existing equipment for the new equipment, and that based upon the fair market value they determined, such trade-ins would meet some or all of their required 33% match obligation.

RCOE also relied on Spectrum's 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. Finally, 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.

2. USAC Has Already Considered Spectrum's Arguments Supporting its Position as to Why Spectrum's Fair Market Value Calculation should be upheld

The request for remand, set forth in DA Order No. 05-498, is not necessary with respect to the present case because USAC has already been afforded an opportunity to pass on the issue of which party is responsible in this case. USAC's decision firmly rejects all of Spectrum's arguments and found that Spectrum was the responsible party. Specifically, USAC has already evaluated the merits of Spectrum's arguments and concluded that Spectrum violated the USAC Program rule that the valuation of trade-in equipment must be based on the fair market value of the equipment, and that the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the fund year. (Exhibit "A"). USAC concluded that Spectrum violated this rule because Spectrum valued the trade-in equipment prior to the commencement of the funding year <u>and</u> prior to the time Spectrum took possession of the equipment. (See Exhibit "B").

The Administrator's Decision carefully considered the arguments advanced by Spectrum, including the following: (1) Spectrum's assertion that "the SLD determination in this matter is

misguided and SLD should cease its attempt to recover funds disbursed"; (2) Spectrum's argument 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"; (3) Spectrum's assertion that "although the independent appraisal Spectrum provided did value equipment in the amounts indicated in the [Recovery of Erroneously Disbursed Funds] Letter, this appraisal is not more authoritative that Spectrum's opinion because Spectrum had first hand knowledge of the actual pieces of equipment in question"; and (4) Spectrum's further claim that "the [independent] 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." (See Exhibit "B"). The Administrator cited to all of these arguments, its review of the appeal letter and relevant documentation, and still found that the facts supported the SLD's decision to seek recovery for the subject funds. (Id.).

After considering these arguments, the Administrator still reasoned that Spectrum's valuation date violated the Program rule, as "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." (Exhibit "B"). Further, the decision also pointed out that "although the agreement was executed in March 1999, the equipment was not transferred until after the start of the Funding Year." (Id.) The Administrator concluded that "it [was] appropriate for SLD to value the equipment as of July 1, 1999." (Id.) The Administrator also emphasized that USAC must make an effort to ensure that there is "no waste, fraud and abuse." (Id.)

3. The only entity addressed by the USAC/SLD was Spectrum.

RCOE finds it significant that this decision, was the only response provided to the letters of appeal, filed by RCOE and Spectrum, separately, on December 2, 2003, (See Exhibits "D"

and "E"), and that the decision was only addressed to Spectrum's legal counsel, Pierre Pendergrass, with a courtesy copy was provided to both RCOE and RCOE's legal counsel. (Exhibit "B".)

RCOE, however, did not simply rely on the holding provided in the Administrator's Decision. Upon receipt of the Administrator's Decision, RCOE's legal counsel contacted a USAC attorney to confirm USAC's position that it would not seek recovery from RCOE because it had determined Spectrum to be the responsible party, and whether RCOE would be required to participate in any further appeals. (Gonzales Decl. ¶ 2.) RCOE was informed by a USAC attorney that RCOE's December 2, 2003 letter was not considered a true "appeal" as it had requested confirmation that recovery would be sought solely from Spectrum. (Id.; see also Exhibit "B" at pp. 2 and 7) Moreover, the USAC attorney stated that USAC would not provide a decision letter to RCOE. (Id.) Thus, while USAC had the opportunity to review a letter of appeal from Spectrum, as well as RCOE, it determined that its ruling would apply to Spectrum as the responsible party. This decision effectively dismissed RCOE from the dispute.

4. The Clarification Set forth in the Schools and Libraries Fourth Report and Order Does Not Alter USAC's Previous Conclusion that Spectrum is the Responsible Party in this Matter.

Through Order DA 05-498, the Telecommunications Access Policy Division remanded RCOE File No. SLD-148309 and Spectrum Communications Cabling Systems, Inc. ("Spectrum"), File No. SLD-148309, since USAC may now consider the fact that recovery of schools and libraries funds disbursed in violation of an applicable statute or rule can be sought from schools and libraries. However while the Fourth Report and Order clarifies this with more specificity, such a policy is essentially just an extension of USAC's practice already in existence of holding the party that has committed the statutory or rule violation be responsible. For example, when USAC has found that a school district has not followed the required competitive bidding processes, or has failed to make a bona fide request for services, or has failed in its

responsibility to ensure that the service provider it had contracted with was indeed a telecommunications provider whose status as a telecommunications provider would be appropriately reflected in its application materials, then in those situations, schools districts can be denied funding because specifically they have violated the rule requiring such a process to be followed.[14]

None of these potential rule violations for which school districts are responsible are currently before the USAC. Here again, the only rule at issue is SLD's Program rule that trade-in equipment must be valued at the time the equipment changed hands or on the first date of the applicable E-Rate funding year. RCOE had no involvement with the determination of the fair market value, as this was within the sole responsibility of Spectrum.

IV. CONCLUSION

For these reasons, RCOE respectfully requests that the FCC reverse DA 05-498 and find that, Spectrum's own contentions on appeal as well as the USAC Administrator's collectively have already determined that Spectrum was the party responsible for the rule violation at issue.

Dated: April 26, 2005

BEST BEST & KRIEGER LLP

By: _____

John E. Brown
Cathy S. Holmes
Rina M. Gonzales
Attorneys for Riverside County
Office of Education

[14]See Request for Review of the Decision of the Universal Service Administrator by Penn Hills School District Pittsburgh, Pennsylvania, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD 174801, CC Docket Nos. 96-45 and 97-21, Order, DA 02-85 (rel. January 14, 2002). See also Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service, SPIN-143006149, CC Docket No. 96-45, Order, FCC 00-167, (rel. May 23, 2000).

RCOE
EXHIBIT A

USAC

Universal Service Administrative Company
Schools & Libraries Divisio

RECOVERY OF ERRONEOUSLY DISBURSED FUNDS

October 3, 2003

MR. ELLIOTT DUCHON
R O P - RIVERSIDE COUNTY
3939 THIRTEENTH STREET,
RIVERSIDE, CA 92502

Re:
Funding Year 1999 -2000
Form 471 Application Number: 148309

Dear Applicant:

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.

Box 125, Correspondence Unit, 80 South Jefferson Road, Whippany, NJ, 07981
Visit us online at: www.sl.universalservice.org

FUNDING DISBURSEMENT SYNOPSIS

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

RCOE
Exhibit A
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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

A GUIDE TO THE FUNDING DISBURSEMENT SYNOPSIS

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 Disbursement Synopsis for Application Number: 148309

Funding Request Number 299376 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: BANUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$79,113.39
Funds Disbursed to Date:	$103,272.47
Funds to be Recovered:	$24,159.08

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 $24,159.08 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $38,966.30, which is $11,899.24 less than the non-discounted share of $50,865.54 that the applicant was obligated to pay. Since the applicant did not cover $11,899.24 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 $24,159.08. As a result this amount of $24,159.08 determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299377 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: PJUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$70,868.99
Funds Disbursed to Date:	$86,746.08
Funds to be Recovered:	$15,877.09

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 $15,877.09 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 34,905.62, which is $7,820.06 less than the non-discounted share of $42,725.68 that the applicant was obligated to pay. Since the applicant did not cover $7,820.06 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 $15,877.09. As a result this amount of $15,877.09 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299378 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: PELEM

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$21,985.08
Funds Disbursed to Date:	$44,070.38
Funds to be Recovered:	$22,085.30

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 $22,085.30 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $10,828.47, which is $10,877.84 less than the non-discounted share of $21,706.31that the applicant was obligated to pay. Since the applicant did not cover $10,877.84 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 $22,085.30. As a result this amount of $22,085.30 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299379 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: TUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$144,486.12
Funds Disbursed to Date:	$179,000.95
Funds to be Recovered:	$34,514.83

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 $34,514.83 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $71,164.80, which is $16,999.85 less than the non-discounted share of $88,164.65 that the applicant was obligated to pay. Since the applicant did not cover $16,999.85 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 $34,514.83. As a result this amount of $34,514.83 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299381 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: MUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$90,105.93
Funds Disbursed to Date:	$125,307.65
Funds to be Recovered:	$35,201.72

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 $35,201.72 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $44,380.53, which is $17,338.16 less than the non-discounted share of $61,718.69 that the applicant was obligated to pay. Since the applicant did not cover $17,338.16 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 $35,201.72. As a result, this amount of $35,201.72 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299382 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: JUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment: $335,108.01

Funds Disbursed to Date: $395,168.80

Funds to be Recovered: $60,060.79

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 $60,060.79 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $165,053.20, which is $29,582.18 less than the non-discounted share of $194,635.38 that the applicant was obligated to pay. Since the applicant did not cover $29,582.18 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 $60,060.79. As a result, this amount of $60,060.79 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299355 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: PSUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$141,737.98
Funds Disbursed to Date:	$173,492.15
Funds to be Recovered:	$31,754.17

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 $31,754.17 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $69,811.25, which is $15,640.11 less than the non-discounted share of $85,451.36 that the applicant was obligated to pay. Since the applicant did not cover $15,640.11 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 $31,754.17. As a result, this amount of $31,754.17 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299356 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: CNUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$277,979.70
Funds Disbursed to Date:	$335,966.71
Funds to be Recovered:	$57,987.01

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 $57,987.01is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $136,915.37, which is $28,560.77 less than the non-discounted share of $165,476.14 that the applicant was obligated to pay. Since the applicant did not cover $28,560.77 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 $57,987.01. As a result, this amount of $57,987.01 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299359 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: SJUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$65,372.72
Funds Disbursed to Date:	$75,728.49
Funds to be Recovered:	$10,355.77

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 $10,355.77 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $32,198.50, which is $5,100.61 less than the non-discounted share of $18,993.02 that the applicant was obligated to pay. Since the applicant did not cover $5,100.61 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 $10,355.77. As a result this amount of $10,355.77 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299361 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: VVSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$183,542.51
Funds Disbursed to Date:	$312,606.76
Funds to be Recovered:	$129,064.25

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 $129,064.25 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $90,401.53, which is $63,568.96 less than the non-discounted share of $153,970.49 that the applicant was obligated to pay. Since the applicant did not cover $63,568.96 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 $129,064.25. As a result this amount of $129,064.25 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299363 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: PVUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$70,868.99
Funds Disbursed to Date:	$86,746.08
Funds to be Recovered:	$15,877.09

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 $15,877.09 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $34,905.62, which is $7,820.06 less than the non-discounted share of $42,725.68 that the applicant was obligated to pay. Since the applicant did not cover $7,820.06 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 $15,877.09. As a result, this amount of $15,877.09 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299365 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: HUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$160,974.92
Funds Disbursed to Date:	$212,053.73
Funds to be Recovered:	$51,078.81

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 $51,078.81 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $79,286.16, which is $25,158.21 less than the non-discounted share of $104,444.37 that the applicant was obligated to pay. Since the applicant did not cover $25,158.21 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 $51,078.81. As a result, this amount of $51,078.81was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299367 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: MUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$21,985.08
Funds Disbursed to Date:	$44,070.38
Funds to be Recovered:	$22,085.30

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 $22,085.30 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $10,828.47, which is $10,877.84 less than the non-discounted share of $21,706.31 that the applicant was obligated to pay. Since the applicant did not cover $10,877.84 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 $22,085.30. As a result, this amount of $22,085.30 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299368 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: RSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$19,236.94
Funds Disbursed to Date:	$38,561.58
Funds to be Recovered:	$19,324.64

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 $19,324.64 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $9,474..91, which is $9,518.11 less than the non-discounted share of $18,993.02 that the applicant was obligated to pay. Since the applicant did not cover $9,518.11 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 $19,324.64. As a result, this amount of $19,324.64 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299370 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: DSUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$266,987.16
Funds Disbursed to Date:	$313,931.52
Funds to be Recovered:	$46,944.36

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 $46,944.36 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $131,501.14, which is $23,121.85 less than the non-discounted share of $154,622.99 that the applicant was obligated to pay. Since the applicant did not cover $23,121.85 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 $46,944.36. As a result this amount of $46,944.36 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299371 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: AUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$149,982.39
Funds Disbursed to Date:	$190,018.55
Funds to be Recovered:	$40,036.16

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 $40,036.16 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $73,871.92, which is $19,719.31 less than the non-discounted share of $93,591.23 that the applicant was obligated to pay. Since the applicant did not cover $19,719.31 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 $40,036.16. As a result, this amount of $40,036.16 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299372 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: JUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$163,723.06
Funds Disbursed to Date:	$217,562.53
Funds to be Recovered:	$53,839.47

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 $53,839.47 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $80,639.72, which is $26,517.94 less than the non-discounted share of $107,157.66 that the applicant was obligated to pay. Since the applicant did not cover $26,517.94 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 $53,839.47. As a result, this amount of $53,839.47 was determined to have been erroneously disbursed and must now be recovered.

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Funding Request Number 299373 SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: LEUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment:	$147,234.25
Funds Disbursed to Date:	$184,509.75
Funds to be Recovered:	$37,275.50

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 $37,275.50 is required. A beneficiary audit discovered that the service provider accepted a 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 the 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 $72,518.36, which is $18,359.58 less than the non-discounted share of $90,877.94 that the applicant was obligated to pay. Since the applicant did not cover $18,359.58 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 $37,275.50. As a result, this amount of $37,275.50 was determined to have been erroneously disbursed and must now be recovered.

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Denise Berger

From: Rina M. Gonzales [Rina.Gonzales@bbklaw.com]
Sent: Wednesday, April 27, 2005 2:57 PM
To: CCBSecretary
Subject: Application for Review filing re File No. SLD-148309, CC Docket No. 02-6 (Email 4b of 4) (FINAL EMAIL)

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DOCKET FILE COPY ORIGINAL

To Whom It May Concern:

Please find attached Riverside County Office of Education's Application for Review regarding File No. SLD-148309, CC Docket No. 02-6 (Email 4b of 4).

This is the final email. You should have received 5 emails in total (Email 1, 2, 3, 4a, and 4b.) If any emails are missing, please call me and I will resend and emails you did not receive.

If you have any questions, please contact me directly at (951) 961-0335.

Rina M. Gonzales, Esq.
Best Best & Krieger LLP

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RCOE
EXHIBIT H

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BEST BEST & KRIEGER LLP

A CALIFORNIA LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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

INDIAN WELLS
(760) 568-2611

ONTARIO
(909) 989-8584

SAN DIEGO
(619) 525-1300

ORANGE COUNTY
(949) 263-2600

SACRAMENTO
(916) 325-4000

RINA M. GONZALES

October 1, 2004

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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

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.

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

RVPUB\RMG\681011.1

USAC

Universal Service Administrative Company
Schools & Libraries Division

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 0 6 2004
BEST BEST & KRIEGER

Re: R O P Riverside County

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 fist 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
A CALIFORNIA LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
LAWYERS
3750 UNIVERSITY AVENUE
POST OFFICE BOX 1028
RIVERSIDE, CALIFORNIA 92502-1028
(909) 686-1450
(909) 686-3083 FAX
BBKLAW.COM

INDIAN WELLS
(760) 568-2611

ONTARIO
(909) 989-8584

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.

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 equipment[3] for the new equipment.

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[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.).

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.