



Buckingham County Public Schools

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December 20, 2005

Before the
Federal Communications Commission
Washington, D.C.

In the Matter of:

Application for Review of decisions)
of the Schools and Libraries Division)
of the Universal Service Administrative)
Company for Buckingham County) Funding Request Numbers
Schools, Buckingham, Virginia) 1160380, 1158533, and 1159491
) 1159340, 1160697
Joint Board on Universal Service) CC Docket No. 02-6

Buckingham County Public Schools, E-Rate Entity Number 236564, respectfully requests Federal Communications Commission review of a Schools and Libraries Division (Administrator) denial of an appeal submitted by Buckingham. We believe the Administrator improperly adjusted the service start date for Funding Request Numbers 1160380, 1158533, 1159340, 1160697, and 1159491. With this appeal we also ask the Commission to overturn the Administrator's policy of adjusting funding commitments through the Form 486 Notification Letter. Applicants should be notified of a Service Start Date adjustment through the Commitment Adjustment process rather than a Form 486 Notification Letter. Alternatively, and in the public interest, we ask for waiver of the 60 day appeal deadline.

This appeal comes before the Commission because of a chain of events that should never have occurred had the Administrator put in place internal safeguards in response to clear, unambiguous Commission Orders. A timely appeal would have been filed had the Form 486 Notification Letter clearly indicated a service start date adjustment had been made. More properly, a service start date adjustment should be conferred to applicants in the form of a Commitment Adjustment Letter rather than a footnote on a standard Form 486 Notification Letter.

Because this appeal began with a systemic error on the Administrator's part, an appeal

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should not have been necessary at all and the Administrator should have corrected the error through an internal process. Further, because the service start date adjustment resulted from a systemic Administrator error, there should be no appeal deadline, as the Administrator may correct systemic errors at any time.

Background

Buckingham County filed for E-Rate discounts for Fund Year 2004. After thorough review and delays due to the E-Rate program suspension of 2004, we received a Funding Commitment Letter dated December 3, 2004. In accordance with program rules, Buckingham submitted a proper Form 486 in an envelope postmarked on April 4, 2005, the first business day following the April 2, 120 day deadline for filing a Form 486.

In correspondence dated April 27, 2005, the Administrator issued a Form 486 Notification Letter. The first page of the letter indicated that the Administrator had "...received and accepted an FCC Form 486, Receipt of Service Confirmation Form..." The entire letter is identical to every Form 486 Notification Letter we have received in the past. Because of the language on the first page and our confidence that the Form 486 was submitted in a timely manner, clerical staff processing the letter did not recognize that on page four of the letter the SLD had adjusted the start date of our service and had adjusted the funding commitment for the FRN here under appeal.

At the conclusion of the funding year and after all invoices had been received and paid, we submitted several Form 472 (BEAR) forms to the Administrator in late October to claim E-Rate reimbursement. In correspondence dated November 1, 2005, the Administrator sent to us a Form 472 Notification Letter. On page one, above the first paragraph of the letter, the Administrator indicated that \$0.00 dollars had been approved for reimbursement. The reason for the zero funding was listed as "Customer Billed Date before Service Start Dat;" (as stated). Upon careful review of the Administrator's Data Retrieval Tool and the previously received Form 486 Notification Letter, we realized that indeed the Administrator had mistakenly adjusted our service start date from July 1, 2004 to December 5, 2004, exactly 120 days prior to the April 4, 2005 postmark of our Form 486 Form. Thus the Administrator acknowledges the postmark was indeed Monday April 4, 2005. The resulting new service start date had the effect of adjusted our funding commitment downward by almost half.

We immediately filed an appeal to the Administrator, which was denied because it was outside the 60 day appeal window that the Administrator started on April 27, 2005, the date of the Form 486 Notification Letter.

The change in the start date for these services will reduce E-Rate discount funding to Buckingham by almost \$25,000. Because the Forms 472 were funded at zero and the deadline for submitting invoices has passed, it is possible we will lose the entire E-Rate discount for 2004 of \$39,200.

Discussion

Program rules require that following receipt of a Funding Commitment Decision Letter (FCDL) the applicant must submit to the Administrator a Form 486 within 120 days of the start of service or the date of the FCDL, whichever is later. In accordance with program rules, a true and proper postmark associated with the required form shall constitute the filing date. In this case, the FCDL was the trigger to start the 120 day clock as the Commitment Letter was issued almost six months after the start of the fund year.

According to the calendar for 2005, 120 days after the date of the FCDL of December 3, 2004 was April 2, 2005, a Saturday. Buckingham submitted a proper Form 486 in an envelope postmarked on April 4, 2005, the first business day following the 120 day deadline. As such, the Form 486 was timely and properly filed. Unfortunately, the calculation program used by the Administrator did not account for the 120th day falling on a weekend and deemed the form outside the filing window.

The Commission has found on numerous occasions that the Administrator had improperly calculated filing deadlines when the last date of the deadline fell on a weekend or holiday. In such cases, appeals were granted and the Administrator instructed to recognize the first business day after the deadline as an eligible date for filing within the deadline. It is clear that the Administrator has again failed to implement safeguards against improper denial of funding in this case.

Because the Administrator has repeatedly been put on notice that when a filing deadline falls on a weekend or holiday, the first business day following the weekend or holiday will be the filing deadline, we feel that such improper denials should be treated as "systemic" errors at the Administrator, rather than decisions requiring appeal.

The Administrator has a policy of internally correcting improper funding decisions when caused by system problems at the Administrator. Clearly, this situation would fall under the category of an Administrator system failure and should be corrected internally without need for appeal.

Alternatively, because of the dire financial consequences caused by a service start date adjustment, notification of service start date adjustment should not be communicated through the Form 486 Notification Letter. Properly, such notification should be issued through a Commitment Adjustment Letter (COMAD). Unlike an innocuous standard Form 486 Notification Letter, a COMAD literally screams to applicants in bold headlines that funding that had previously been granted has been adjusted downward. If the applicant feels such adjustment had been done in error, the applicant must appeal within 60 days.

With this appeal we ask the Commission to require the Administrator to cease adjusting funding commitments (funding start date) solely through the Form 486 Notification Letter and require the Administrator to also issue a COMAD letter to adequately notify applicants that funding had been reduced.

Alternatively, we ask the Commission to waive the 60 day appeal deadline in this instance and review this appeal on its merits. The funding we sought through the E-Rate program is vital for continued operation of our telecommunications network. E-Rate funding allows us to provide high-quality instructional resources to our teachers and educational material to our students. The loss of E-Rate funds will jeopardize our ability to provide online assessments and remediation to our students. In the public interest to the citizens of Buckingham County, we make this request.

Respectfully Submitted,


James P. Owen, Jr.
Director of Technology
Buckingham County Public Schools

CC: The Honorable Rick Boucher, United States House of Representatives
Greg Weisiger, Virginia Department of Education
Lisa Zaina, Schools and Libraries Division