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Technology Department

Caldwell ISD 203 North Gray Caldwell, TX 77836

Fax: 979-567-9023 Phone: 979-567-9017

Doug Beavers

Pam Evans

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Lynn Stutts

JAN 30 2006

FAX

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TO: FCC FROM: Pam Evans

FAX NUMBER: 202-418-0187 PAGES: 9 DATE: 1-30-06

COMMENTS: Request for Review & Waiver

BEN 141406

471 App# 484485

FRW 1342759

cc Docket # 02-6

CALDWELL INDEPENDENT SCHOOL DISTRICT

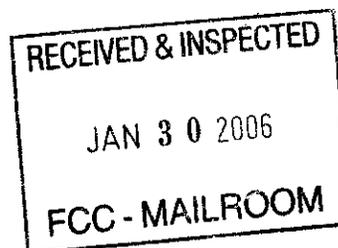
January 30, 2006

CC Docket No. 96-45 and CC Docket No. 02-6

Request for Review and Waiver Request

USAC Funding Commitment Decision Letter dated October 19, 2005 Appeal

Re: Form 471 Application Number 484485
 Funding Year 20-05: 07/01/2005 – 06/30/2006
 Billed Entity Number: 141406
 Applicant's Form Identifier: 47120051A



- Person most readily able to discuss this appeal
 Pam Evans
 Caldwell Indep School District
 203 North Gray
 Caldwell, Texas 77836
 979-567-9018 office
 979-567-9023 fax
pevans@caldwell.k12.tx.us
- Appeal of a decision of the above described Funding Commitment Decision Letter.
From: Universal Service Administrative Company, Schools & Libraries Division.
Applicant: Originally applied for by Marilyn Egger, Caldwell ISD then turned over upon retirement to Pam Evans, Caldwell Indep School District
Service provider: Texas A & M University – Trans-Texas Videoconference.
Applicant BEN: 141406 **Service Provider SPIN:** 143007865
Form 471 Application Number: 484485
Funding Commitment Decision Letter: \$0.00 – Contract Violation
Funding Commitment Decision Explanation: No contract was in place when the Form 471 certification was filed. The amount, \$5,184 is "Denied."

I, Pam Evans, am appealing the above decision to deny funding because of a contract violation. I took over the Erate filing position in July, 2005 after the previous person retired. In the original appeal to USAC, I inadvertently sent the wrong contract since being new to the position, I didn't know there was a contract already in place. The previous appeals letter included the new contract that will take us through another 5 years and was dated after the 471 was filed. I am asking that further consideration be taken on this issue. I am attaching the agreement that was in placed as of 2/28/03. This agreement has a terms statement that states that the agreement will commence on September 1, 2002 and will continue through August 31, 2003 at which time the agreement may be automatically renewed for subsequent one year terms, not to exceed five years. This should have taken us through August 31, 2007. Please review the appeal again to see if this is enough documentation to get this reversed. I am unsure if the time period allowed concerning review has lapse, but I just found out today about the other contract. Thank you for your consideration concerning this matter. If you need further information, please contact me at the above information.

Respectfully,

Pam Evans
 IT Coordinator

203 NORTH GRAY ST. • CALDWELL, TEXAS 77836 • (409) 567-9559

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KAMU

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P.1

. Educational Broadcast Services
 . 4244 TAMU
 . Texas A&M University
 . 979-845-5611, Fax 979-845-1643
 .



To: Pam Evans Fax: 979 567 9023
 From: Cathy Ruedinger Date: 1/30/06
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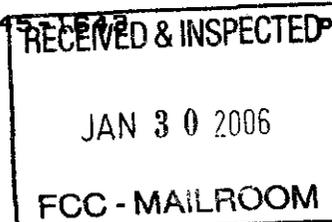
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Texas A&M University
Trans-Texas Videoconference Network

Internet Data Affiliation Agreement

Texas A&M University on behalf of its Educational Broadcast Service (hereinafter EBS) agrees to provide a computer network connection to:

Caldwell ISD

(Hereinafter known as Affiliate) from the Texas A&M University System Trans-Texas Videoconference Network (TTVN) subject to these conditions:

- 1) Term of this agreement will commence on **September 1, 2002** and will continue through **August 31, 2003** at which time the agreement may be automatically renewed for subsequent one year terms, not to exceed five years. After the renewal period, the agreement may be renewed by an agreement executed by both parties.
- 2) The function of TTVN is to serve the members of the Texas A&M University System. Connections to other organizations are provided within existing capacities after TAMUS requirements are satisfied. Should the requirements of either party change, the connection agreement may be withdrawn after giving a sixty-day written notice.
- 3) TTVN will provide a single network connection on a System router at an appropriate access point on the TTVN Network.
- 4) Affiliate must provide the telecommunications data circuit to connect to TTVN, the CSU/DSU(s), associated cabling and a data router that meet the minimum requirements as set forth by the TTVN staff. EBS makes no warranties for purchased equipment.
- 5) Affiliate will be assessed a one time installation fee to defray the actual cost of providing the connection. This fee is **\$1,800** and shall be invoiced by EBS to Affiliate, which agrees to pay according to the terms of the invoice.
- 6) Affiliate will be assessed an annual service access fee of **\$7,200** prorated to August 31, 2003. The amount of this fee will be evaluated annually. Payments, to be invoiced by EBS to Affiliate, may be paid in twelve (12) equal monthly payments due by the tenth day of each month. An account which is unpaid for more than 60 days may result in termination of this agreement.
- 7) If a Frame Relay circuit is used, the Affiliate will pay a prorated portion of the cost, which shall be invoiced by EBS to Affiliate, of the TAMUS Frame Relay Access Line from the cloud to TTVN. For example if the line costs \$4,000 per year and 8 entities share the line, the cost would

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be \$500 per year each. If TAMUS costs increase, Affiliate will be notified of corresponding increase.

- 8) Affiliate will not sell or otherwise provide Internet services to any other organization or person as a part of the TTVN connection without the express written consent of Texas A&M University System.
- 9) Operational support of the organization's router to allow Internet access will be performed by the TTVN support staff. Full access will be granted to TTVN support staff at all times. Affiliate shall retain the right to full access and may make modifications as required to support the needs of the Affiliate. However, should modifications by the organization cause problems to the TTVN network, TAMUS support staff shall have the right to remove the router from operation to the data network until the incorrect configurations has been corrected. Repeated instances causing disturbances to the data network may be cause for termination of this affiliation agreement.
- 10) Responsibility for LAN installations, operations and support shall rest solely with Affiliate.
- 11) Affiliate will provide primary Domain Name Service. TTVN will provide secondary Domain Name Service if requested. Requests for exceptions to this must be provided in writing.
- 12) Affiliate shall be responsible for maintenance cost for the data router and DSU. Affiliate may elect maintenance contract or time-and-materials support from the vendor.
- 13) Affiliate shall provide assistance to TTVN Support Staff in isolating connectivity problems within the ability of the organization.
- 14) If this connection is not completed within ninety days from notification of approval, this agreement shall be null and void. Affiliate may request extensions of ninety days. EBS reserves the right to modify or not extend the agreement at the time of each extension request.
- 15) EBS reserves the right to terminate this Agreement in the event adequate funds are not appropriated by the Texas Legislature.
- 16) The parties shall comply with all federal, state and local laws and regulations applicable to their performance as described in this Agreement.
- 17) It is understood that Affiliate shall not be liable for any claims against EBS, its employees, or third persons other than Affiliate's employees for damage resulting from or arising out of the activities of EBS personnel under this Agreement, and EBS agrees, to the extent allowed by the laws of the State of Texas, to hold Affiliate harmless from any and all such claims. It is also understood that EBS shall not be held liable for any claims against Affiliate and its employees for damage resulting from or arising out of activities of Affiliate, its employees, or third persons other than EBS employees, and Affiliate agrees to hold EBS harmless from any and all such claims.

- 18) The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by Texas A&M University, and Affiliate to attempt to resolve any claim for breach of contract made by Affiliate:
- (A) Affiliate's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Texas Government Code. To initiate the process, Affiliate shall submit written notice, as required by subchapter, to Dr. Richard L. Floyd, Associate Vice President for Finance. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Texas A&M University and Affiliate otherwise entitled to notice under the parties' contract. Compliance by Affiliate with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Texas Government Code.
 - (B) The contested case process in Chapter 2260, subchapter C, of the Texas Government Code is Affiliate's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by Texas A&M University if parties are unable to resolve their disputes under subparagraph (A) of this paragraph.
 - (C) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Ch. 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by Texas A&M University nor any conduct of any representative of Texas A&M University thereafter shall be considered a waiver of sovereign immunity to suit.
1. The submission, processing, and resolution of Affiliate's claim is governed by the published rules as adopted by the Office of the Attorney General of the State of Texas pursuant to Chapter 2260 as currently effective, hereafter enacted or subsequently amended.
 2. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Affiliate, in whole or in part.
 3. The designated individual responsible on behalf of Texas A&M University for examining any claim or counterclaim and conducting any negotiations related thereto, as required under Chap. 2260.052 of the Texas Government Code shall be Dr. Richard L. Floyd, Associate Vice President for Finance.

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In witness whereof, the parties hereto have executed this agreement:

Affiliate

Texas A&M University

The person signing below certifies that he/she has the authority to bind Affiliate.

RANDY BERRYHILL

Name

SUPERINTENDENT

Title

Randy Berryhill 2/28/03

Signature

Date

Rodney L. Zent 2/28/03

Rodney L. Zent, Ph.D.

Date

Director

Educational Broadcast Services

Michael B. Huddleston 2/5/03

Signature

Date

Michael B. Huddleston, Director

Department of Contract Administration



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

November 17, 2005

Pam Evans
Caldwell Independent School District
203 North Gray Street
Caldwell, TX 77836-1549

Re: Applicant Name: CALDWELL INDEP SCHOOL DISTRICT
Billed Entity Number: 141406
Form 471 Application Number: 484485
Funding Request Number(s): 1342759
Your Correspondence Dated: October 26, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time 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 you will receive a separate letter for each application.

Funding Request Number(s): 1342759

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

<http://www.sl.universalservice.org/form/default.asp#applicants>. Consequently, SLD supports the initial PIA decision.

- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested.¹ The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services.² You did not provide evidence with your appeal that, at the time you signed your Form 471, you had signed a contract for eligible services. Consequently, SLD denies your appeal.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

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

Schools and Libraries Division
Universal Service Administrative Company

¹ Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism. File No. SLD-256981, CC Docket Nos. 02-6, Order, 18 FCC Rcd. 22,994, DA 03-3526 (2003).

² See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2004) at page 20.

Pam Evans
Caldwell Independent School District
203 North Gray Street
Caldwell, TX 77836-1549

Billed Entity Number: 141406
Form 471 Application Number: 484485
Form 486 Application Number: