

**Appendix 3**  
**Extension Approval**  
**July, 2005**



Universal Service Administrative Company  
Schools & Libraries Division

YRB

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## Administrator's Decision on Implementation Extension Request

July 29, 2005

Tony Korwin  
Alamogordo Public School District  
1211 Hawaii Avenue  
Alamogordo, NM 88310

471 Application Number: 377841  
Funding Request Number(s): 1044434  
Your Correspondence Dated: June 22, 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 implementation extension request. This letter explains the basis of SLD's decision.

FRN: 1044434  
Decision on Appeal: **Approved**

Since you have established circumstances beyond your named service provider's control that prevent you from meeting the established deadline for the delivery and installation of non-recurring services, you are granted an extension in accordance with the FCC Report and Order (FCC 01-195) released on June 29, 2001. The last date to deliver and install the non-recurring service(s) is September 30, 2006. While invoices should be submitted as soon as possible, the last allowable date to postmark an invoice for this non-recurring service(s) is January 28, 2007. The invoice should be submitted in accordance with the instructions on the Schools and Libraries web site (<http://www.sl.universalservice.org>).

Please note that recurring services covered by this FRN must have been received during the course of regular program year, July 1, 2003 through June 30, 2004.

In order to process invoices, a valid Form 486 must be submitted by the Form 471 applicant.

In order to process eventual invoices on the non-recurring services, we will also require the applicant on the above-referenced Form 471 to file a Form 500 to amend the contract expiration date to September 30, 2006. Such extension of the contract expiration date must be in accordance with state and local procurement laws and the terms of the original contract.

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

Schools and Libraries Division  
Universal Service Administrative Company

cc: Charles P. Mosely, Desert Communication Inc.

**Appendix 4**  
**Funding Reversal**  
**October, 2005**



**Universal Service Administrative Company  
Schools & Libraries Division**

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**Notification of Commitment Adjustment Letter**

**Funding Year 2003: 7/01/2003 - 6/30/2004**

October 13, 2005

**TONY KORWIN  
ALAMOGORDO PUBLIC SCHOOL DIST  
1211 HAWAII AVE  
ALAMOGORDO, NM 88310**

**Re: Form 471 Application Number: 377841  
Funding Year: 2003  
Applicant's Form Identifier: APSVIDEO2  
Billed Entity Number: 143365  
FCC Registration Number: 11621257  
SPIN Name: Desert Communications, Inc.  
Service Provider Contact Person: Charles Mosely**

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, the Schools Libraries Division (SLD) of the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the adjustments to your funding commitment required by program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for SLD to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of the Demand Payment Letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at [www.universalservice.org/new/2004.asp#083104](http://www.universalservice.org/new/2004.asp#083104) for more information regarding the consequences of not paying the debt in a timely manner.

**TO APPEAL THIS DECISION:**

If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of 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 the date of the Notification of Commitment Adjustment Letter and the Funding Request Numbers you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, Billed Entity Number, and FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter specific and brief, 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 electronically, please send your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org) using your organization's e-mail. 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 Appeals Area of the SLD section of the USAC web site or by contacting the Client Service Bureau at 1-888-203-8100. We strongly recommend that you use the electronic appeals options.

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 or postmarked within 60 days of the date of 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 section of the USAC web site, or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

**FUNDING COMMITMENT ADJUSTMENT REPORT**

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. Immediately preceding the Report, you will find a guide that defines each line of the Report.



**Universal Service Administrative Company  
Schools & Libraries Division**

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**Notification of Commitment Adjustment Letter  
Funding Year 2003: 7/01/2003 - 6/30/2004**

October 13, 2005

**TONY KORWIN  
ALAMOGORDO PUBLIC SCHOOL DIST  
1211 HAWAII AVE  
ALAMOGORDO, NM 88310**

**Re: Form 471 Application Number: 377799  
Funding Year: 2003  
Applicant's Form Identifier: APSNETWORK2  
Billed Entity Number: 143365  
FCC Registration Number: 11621257  
SPIN Name: Desert Communications, Inc.  
Service Provider Contact Person: Charles Mosely**

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, the Schools Libraries Division (SLD) of the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the adjustments to your funding commitment required by program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for SLD to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of the Demand Payment Letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at [www.universalservice.org/new/2004.asp#083104](http://www.universalservice.org/new/2004.asp#083104) for more information regarding the consequences of not paying the debt in a timely manner.

The SLD is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these Funding Request Numbers, a separate letter will be sent to the service provider detailing the necessary service provider action.

Please note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Please note the Funding Commitment Adjustment Explanation in the attached Report. It explains why the funding commitment is being reduced. Please ensure that any invoices that you or your service provider submit to USAC are consistent with program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any)-the applicant is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc: Charles Mosely  
Desert Communications, Inc.

**TO APPEAL THIS DECISION:**

If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of 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 the date of the Notification of Commitment Adjustment Letter and the Funding Request Numbers you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, Billed Entity Number, and FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter specific and brief, 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 electronically, please send your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org) using your organization's e-mail. 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 Appeals Area of the SLD section of the USAC web site or by contacting the Client Service Bureau at 1-888-203-8100. We strongly recommend that you use the electronic appeals options.

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 or postmarked within 60 days of the date of 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 section of the USAC web site, or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

**FUNDING COMMITMENT ADJUSTMENT REPORT**

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. Immediately preceding the Report, you will find a guide that defines each line of the Report.

The SLD is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these Funding Request Numbers, a separate letter will be sent to the service provider detailing the necessary service provider action.

Please note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Please note the Funding Commitment Adjustment Explanation in the attached Report. It explains why the funding commitment is being reduced. Please ensure that any invoices that you or your service provider submit to USAC are consistent with program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc: Charles Mosely  
Desert Communications, Inc.

## A GUIDE TO THE FUNDING COMMITMENT ADJUSTMENT REPORT

A report for each E-rate funding request from your application for which a commitment adjustment is required is attached to this letter. We are providing the following definitions for the items in that report.

**FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each individual request in 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.

**SERVICES ORDERED:** The type of service ordered from the service provider, as shown on 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 mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

**SERVICE PROVIDER NAME:** 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 your Form 471.

**BILLING ACCOUNT NUMBER:** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.

**SITE IDENTIFIER:** The Entity Number listed in Form 471, Block 5, Item 22a. This number will only be present for "site specific" FRNs.

**ORIGINAL FUNDING COMMITMENT:** This represents the original amount of funding that SLD had reserved to reimburse you for the approved discounts for this service for this funding year.

**COMMITMENT ADJUSTMENT AMOUNT:** This represents the amount of funding that SLD has rescinded because of program rule violations.

**ADJUSTED FUNDING COMMITMENT:** This represents the adjusted total amount of funding that SLD has reserved to reimburse for the approved discounts for this service for this funding year. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.

**FUNDS DISBURSED TO DATE:** This represents the total funds that have been paid to the identified service provider for this FRN as of the date of this letter.

**FUNDS TO BE RECOVERED FROM APPLICANT:** This represents the amount of improperly disbursed funds to date as a result of rule violation(s) for which the applicant has been determined to be responsible. These improperly disbursed funds will have to be recovered from the applicant.

**FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This entry provides an explanation of the reason the adjustment was made.

**Funding Commitment Adjustment Report for  
Form 471 Application Number: 377799**

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Funding Request Number: 1036354  
Services Ordered: INTERNAL CONNECTIONS  
SPIN: 143005691  
Service Provider Name: Desert Communications, Inc.  
Contract Number: na  
Billing Account Number: 143365  
Site Identifier: 143365  
Original Funding Commitment: \$628,641.00  
Commitment Adjustment Amount: \$628,641.00  
Adjusted Funding Commitment: \$0.00 ←  
Funds Disbursed to Date: \$0.00  
Funds to be Recovered from Applicant: \$0.00

**Funding Commitment Adjustment Explanation:**

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review it was determined that the price of eligible products and services was not the primary factor in the vendor selection process. This determination was based on the bid evaluation sheets provided by the applicant, which indicated that District Funds Consideration was 30% of the primary factor and price was 20%. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and SLD will seek recovery of any disbursed funds.

**PLEASE SEND A COPY OF THIS PAGE WITH YOUR  
CHECK TO ENSURE TIMELY PROCESSING**

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Funding Request Number: 1036383  
 Services Ordered: INTERNAL CONNECTIONS  
 SPIN: 143005691  
 Service Provider Name: Desert Communications, Inc.  
 Contract Number: na  
 Billing Account Number: 143365  
 Site Identifier: 143365  
 Original Funding Commitment: \$409,506.24  
 Commitment Adjustment Amount: \$409,506.24  
 Adjusted Funding Commitment: \$0.00   
 Funds Disbursed to Date: \$0.00  
 Funds to be Recovered from Applicant: \$0.00

**Funding Commitment Adjustment Explanation:**

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review it was determined that the price of eligible products and services was not the primary factor in the vendor selection process. This determination was based on the bid evaluation sheets provided by the applicant, which indicated that District Funds Consideration was 30% of the primary factor and price was 20%. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and SLD will seek recovery of any disbursed funds.

**PLEASE SEND A COPY OF THIS PAGE WITH YOUR CHECK TO ENSURE TIMELY PROCESSING**

## **Appendix 5**

### **Letters to officials and replies**



# Alamogordo Public Schools

1111 North Avenue

PO Box 850

Alamogordo, NM 88311-0650

Phone: (505) 439-3211 \* Fax: (505) 439-3211

**"Bridging the gap between education, technology and information."**

## Technology Support Services

November 10, 2005

The Honorable Pete Domenici  
United States Senate

Dear Senator Domenici:

I am writing to inform you of several concerns I have regarding the Federal Erate program. As you know, the Erate program was designed as an extension of the Universal Service Act of 1933 to provide telecommunications services to rural and other typically unprofitable areas. Erate was to add Internet access and network infrastructure to this program for school districts and libraries. During its eight years of operation, the success stories have been many, but unfortunately the fraud and abuse stories have garnered the headlines. To address the relatively few instances of fraud and abuse, the FCC has added a myriad of paperwork to attempt to ferret out the fraud. Instead, it has forced legitimate schools, districts and libraries to give up on attempts to apply for funding as the burden of the paperwork, justifications and rules of the program have become overwhelming.

In June of 2004, the Alamogordo Public Schools was awarded approximately \$1.4 million in Internal connections monies to provide network wiring and electronics to several of our 16 schools. The funding, for Year 6 came after the Year 6 officially concluded fiscally. This in and of itself, created a local funding issue that was not covered or justified in the original application. But the district rose to the occasion and found matching monies to pursue the project. Because of its late funding, we applied for and was granted a one year extension to September 2006 to complete the project and request reimbursement. As of September 30, 2005, we were 2/5ths complete with the project. Then in October, we received notification that the Schools and Libraries Division (SLD) re-reviewed the application and found it to be in violation of program rules. Subsequently, they rescinded the entire \$1.4 million dollar award. The Alamogordo Public Schools has already expended almost \$200,000 towards this project, but more importantly, Desert Communications, of El Paso, TX, has completed 2/5ths of the work and is now out these funds. This puts a law abiding, tax paying business on the verge of collapse.

In addition to helping get this ruling overturned, I am seeking your assistance to move forward and systematically remodel the entire Erate system. The funding commitments and rulings have become mired in subjective opinions over whether a district has met or not the intent of the program. Paperwork designed to eliminate fraud, has in fact begotten more potential for fraud and abuse and also has become more of a burden than most districts can afford to handle. I personally have knowledge of several districts in New Mexico, that no longer apply for some parts of the program because the overall work is too intensive.

With regards to this particular award retraction, there are also several concerns that I have about having this funding rescinded at this late date.

- 1) This application had already been through several PIA reviews/reviewers and had systematically been escalated through the system to a funding status, meeting previous expectations of the intent of the program. To have another reviewer enter at this late date and make a subjective opinion of the RFP and its intent is ludicrous.
- 2) The original funding commitment was granted an extension in June of 2005, due to the lateness of the original commitment and the problems that ensued getting on the vendors schedule. Year 6 was a 2003-2004 award year.
- 3) The project began last spring and is about half way through, though the vendor has not yet applied for reimbursement, the district has expended its matching and the vendor is currently expecting payment for a substantial amount of money which is beyond the scope of the district's monetary plans and expectations and threatens to put a viable vendor out-of-business. This was a \$1.4 million dollar original award.
- 4) An effort was made to abide by the rulings and regulations of the FCC, which primary purpose is to ensure fair bidding and award appropriate vendors and to avoid a single awardee. We had three viable vendors and awarded parts of the RFP to all three. If that is not what fair bidding and procurement is all about, I don't know what is.
- 5) In all the talk about fraud and abuse of the erate program, it has never been addressed where the FCC and it's individual partners are potentially guilty of fraud and abuse in the application of the program itself. Individual judgments and opinions are often the argument for funding or not, not objective components that are completely understandable and equally administered. This late retraction is an example of that.
- 6) This program, while it's base mission is wonderful and admirable, has become a paperwork behemoth. The intent of the program is to fund telcom, internet and infrastructure in rural America, but many smaller districts are finding that the paperwork jungle is too hard to overcome with limited personnel. Effort to stem fraud and abuse has resulted in more bureaucracy and less objectiveness.
- 7) The program, which shares the original Universal Service idea of connecting rural America, has been based on economic factors, and not rurality. One can not get much more rural than south central New Mexico.
- 8) This program needs to be rebuilt from the ground up to eliminate needless paperwork, return to the original intent of the program, and to eliminate abuse on both sides of the application process.

I would very much, like to schedule some time to discuss this topic with you in further detail.

Sincerely,

Tony Korwin, Director  
Technology Support Services



Federal Communications Commission  
Washington, D.C. 20554

December 20, 2005

The Honorable Pete V. Domenici  
United States Senator  
Loretto Town Center  
505 South Main  
Suite 118  
Las Cruces, NM 88001  
ATTN: Leticia Garcia

Dear Senator Domenici:

Thank you for your November 17, 2005, letter forwarding the correspondence of your constituent Tony Korwin of Alamogordo Public Schools (Alamogordo). Specifically, you inquired about Alamogordo's appeal of a decision issued by the Schools and Libraries Division of the Universal Service Administrative Company (Administrator).

As noted in Mr. Korwin's correspondence, Alamogordo filed an appeal with the Administrator in November. The appeal is currently pending review by the Administrator. Although I am unable to comment on the merits of the appeal while it is pending and before the Administrator, the Administrator informs us that it is making every effort to conclude its review as quickly as possible. Once issued, a copy of the decision will be sent directly to Alamogordo.

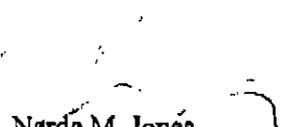
Mr. Korwin also noted in his letter his general concerns with the procedures for obtaining discounts from the schools and libraries program, commonly know as the E-rate program. In June, the Commission launched a broad inquiry into the management, administration and oversight of Universal Service Fund programs, including the E-rate program, through the Commission's *Comprehensive Universal Services Program Management NPRM*.<sup>1</sup> The cycle of comments for that proceeding closes December 19, 2005.

<sup>1</sup> See *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60 and 03-109, and CC Docket Nos. 96-45, 02-6 and 97-21; Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC-05-124, para. 40 (rel. June 14, 2005) (*Comprehensive Universal Services Program Management NPRM*) (available at <[www.fcc.gov/wcb/tapd/pendproceed.html](http://www.fcc.gov/wcb/tapd/pendproceed.html)>).

Page 2—The Honorable Pete V. Domenici—December 22, 2005

We appreciate your interest in the schools and libraries program. If you require additional information, please do not hesitate to contact me at (202) 418-7400.

Sincerely,

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

Tuesday, November 01, 2005

F.J. O'Leary  
President, Desert Communications, Inc.  
7355 Remcon Circle #101  
El Paso, Texas 79912

The Honorable Silvestre Reyes  
310 North Mesa #400  
El Paso, Texas 79901

Dear Congressman Reyes,

I am writing to appeal for your help in a matter concerning Desert Communications, Inc.'s (DCI) involvement with the FCC's School and Library Division (SLD), E-Rate program. As I'm sure you are aware, the E-Rate program has seen both tremendous success as well as tremendous abuse in the eight year history of the program. DCI has been a participant in the program since its inception and while the program can be very difficult to navigate through, we have been a successful participant in it throughout its history. However, we find ourselves faced with a dilemma that left unresolved will adversely effect the future of our company.

In Year 6 of the E-Rate program, DCI won a bid for the Alamogordo Public Schools (APS), in Alamogordo, New Mexico. DCI was awarded this bid in February of 2003, the Federal Government (SLD) approved the funding for this bid to APS on March 03 of 2004, DCI started work in April of 2005 and finally, the SLD approved an extension request for this award on July 15 of 2005.

This now brings me to my company's problem. On October 17, 2005, DCI received a letter from the SLD stating that APS had violated program rules in regards to the price of eligible products and services not being the primary factor in the vendor selection process and as a result the SLD has rescinded the entire award. Upon examination of the RFP, District Funding Considerations (Price) was the primary factor in the award of the bid (see following documentation).

As of today, DCI has completed \$415,727.65 worth of work that without the E-Rate funding now has no ability to be completely compensated for. As I know you are well aware, the E-Rate program was designed to help the poorest school districts receive funding to provide and improve technology in schools. APS certainly qualifies in this category and has no additional money to compensate DCI for the work already performed. While APS is filing an appeal with the SLD, the appeal process is a time consuming and tedious process and DCI cannot afford to go unpaid for the work or payment delayed by the time it takes an appeal to be decided.

I am appealing to you for help for three very specific reasons: One, there is a significant lack of consistency for the SLD to award funding for projects, then on a later date approve an extension for the projects and then 19 months after the initial award, rescind the funding. Two, the SLD rescinded the funding due to misunderstanding the Bid. Three, it is unjust to penalize a vendor such as DCI, which has no control over the process of awards, either from a school district perspective or the SLD perspective, but is the only entity incurring cost and risk by rescinding funding for projects we have been working on in good faith.

Congressman, DCI has been in existence since 1994, it has been a very successful company that is headquartered in El Paso, is 100% owned by El Pasoans and employs 30 El Pasoans full time, as well as 20 temporary workers. The SLD's decision to rescind this funding is now jeopardizing the existence of DCI as we cannot afford the loss of, or delayed payment of the money owed us. Enclosed in the following pages are details that will show the paper flow as well as wording from the bid that APS used at the time of the RFP. APS is filing an appeal, but my hope is that your involvement will expedite the appeal process as we cannot afford to wait month after month for the appeal to go through its normal channels. We would all be extremely grateful for any assistance you can lend to our company in this process.

Respectfully,

F.J. O'Leary

# United States Senate

WASHINGTON, DC 20510-4305

January 13, 2006

Mr. F.J. O'Leary  
Desert Communications, Inc.  
7355 Remcon Circle, #101  
El Paso, Texas 79912

Dear Mr. O'Leary:

Enclosed is the reply I received from the Federal Communications Commission in response to my earlier inquiry on your behalf. If you have any additional questions on this matter, please contact me again. I will be happy to investigate this matter further.

I appreciate the opportunity to represent you in the United States Senate and to be of service in this matter.

Sincerely,



JOHN CORNYN  
United States Senator

JC:das

Enclosure



Federal Communications Commission  
Washington, D.C. 20554

December 20, 2005

The Honorable John Cornyn  
United States Senator  
Occidental Tower  
5005 LBJ Freeway, Suite 1150  
Dallas, Texas 75244-6199  
ATTN: Elva Curl

Dear Senator Cornyn:

Thank you for your November 10, 2005, letter forwarding the correspondence of your constituent F.J. O'Leary of Desert Communications, Inc. (DCI). Specifically, you inquired about DCI's appeal of a decision issued by the Schools and Libraries Division of the Universal Service Administrative Company (Administrator).

As noted in Mr. O'Leary's correspondence, DCI filed an appeal with the Administrator in November. The appeal is currently pending review by the Administrator. Although I am unable to comment on the merits of the appeal while its pending and before the Administrator, the Administrator informs us that it is making every effort to conclude its review as quickly as possible. Once issued, a copy of the decision will be sent directly to DCI.

We appreciate your interest in the schools and libraries program. If you require additional information, please do not hesitate to contact me at (202) 418-7400.

Sincerely,

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

**Appendix 6**  
**Funds for Learning**  
**Year 6 funding synopsis**

This section shows all of your E-rate funding requests, whether or not they have been approved.

**Summary 2005 2004 2003 2002 2001 2000 1999**

[View Summary](#)

Service Provider	Description/Note	Form 471	FRN	Status	Svc Cat	Discount %	Requested	Committed	ERM Debits	ERM Balance	SLD Balance
Avaya Inc.		377343	<a href="#">1034782</a>	NOT FUNDED	IC	90%	\$303,369.30	\$0.00	\$0.00	\$0.00	\$0.00
Avaya Inc.		377343	<a href="#">1034841</a>	NOT FUNDED	IC	90%	\$278,415.00	\$0.00	\$0.00	\$0.00	\$0.00
Avaya Inc.		379192	<a href="#">1042757</a>	NOT FUNDED	IC	78%	\$436,384.00	\$0.00	\$0.00	\$0.00	\$0.00
Avaya Inc.		377842	<a href="#">1043508</a>	NOT FUNDED	IC	61%	\$152,734.40	\$0.00	\$0.00	\$0.00	\$0.00
Dell Marketing LP		377842	<a href="#">1046949</a>	NOT FUNDED	IC	61%	\$12,342.40	\$0.00	\$0.00	\$0.00	\$0.00
Desert Communications Inc.		377744	<a href="#">1036140</a>	NOT FUNDED	IC	90%	\$161,190.00	\$0.00	\$0.00	\$0.00	\$0.00
Desert Communications Inc.		377744	<a href="#">1036166</a>	NOT FUNDED	IC	90%	\$239,536.80	\$0.00	\$0.00	\$0.00	\$0.00
✓ Desert Communications Inc.		377799	<a href="#">1036354</a>	FUNDED	IC	78%	\$716,400.00	\$0.00	\$0.00	\$0.00	\$0.00
✓ Desert Communications Inc.		377799	<a href="#">1036383</a>	FUNDED	IC	78%	\$462,262.40	\$0.00	\$0.00	\$0.00	\$0.00
Desert Communications Inc.		377835	<a href="#">1044237</a>	NOT FUNDED	IC	90%	\$264,528.90	\$0.00	\$0.00	\$0.00	\$0.00
✓ Desert Communications Inc.		377841	<a href="#">1044434</a>	FUNDED	IC	78%	\$380,760.00	\$0.00	\$0.00	\$0.00	\$0.00
Desert Communications Inc.		377842	<a href="#">1044575</a>	NOT FUNDED	IC	61%	\$133,266.00	\$0.00	\$0.00	\$0.00	\$0.00
Desert Communications Inc.		377842	<a href="#">1045105</a>	NOT FUNDED	IC	61%	\$250,740.00	\$0.00	\$0.00	\$0.00	\$0.00
Desert Communications Inc.		377842	<a href="#">1045178</a>	NOT FUNDED	IC	61%	\$254,588.60	\$0.00	\$0.00	\$0.00	\$0.00
Desert Communications Inc.		380746	<a href="#">1047292</a>	NOT FUNDED	IC	77%	\$556,211.81	\$0.00	\$0.00	\$0.00	\$0.00
✓ GCI Communications Corp.		370608	<a href="#">1011157</a>	FUNDED	T	73%	\$96,810.56	\$91,781.44	\$0.00	\$91,781.44	\$42,659.89
Qwest Corporation fka US West Communications		370608	<a href="#">1011147</a>	NOT FUNDED	T	73%	\$12,754.77	\$0.00	\$0.00	\$0.00	\$0.00
✓ Qwest Corporation fka US West Communications, Inc.		370608	<a href="#">1011130</a>	FUNDED	T	73%	\$63,997.16	\$60,080.37	\$0.00	\$60,080.37	\$5,604.54
✓ Sprint PCS		370565	<a href="#">1011047</a>	FUNDED	T	73%	\$5,497.80	\$5,212.20	\$0.00	\$5,212.20	\$3,253.88
✓ Verizon Wireless fka Cellco Partnership		370565	<a href="#">1011000</a>	FUNDED	T	73%	\$8,024.94	\$7,608.06	\$0.00	\$7,608.06	\$7,608.06
Total							\$4,789,814.84	\$164,682.07	\$0.00	\$164,682.07	\$59,126.37

MEMS IN QUESTION

**Legend:**

✓ **Form 486 Submitted**--This signifies that the SLD has processed a Form 486 for this funding request.

! **Form 486 Warning**--Funding Request Numbers with this flag may be in jeopardy if the Form 486 deadline is not met. Review the FRN details for more information.

\* **Special Status**--These Funding Requests have been flagged because you have submitted them to an additional review by the SLD or FCC. Review the FRN details for more information.

**Appendix 7**

**Copy of USAC appeal denial**