



March 1, 2007

City of Chicago  
Richard M. Daley, Mayor

Department of Law

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**Via Federal Express**

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

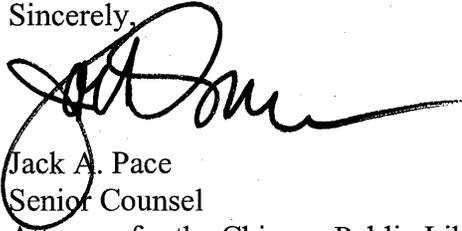
Re: Appeal of USAC Denial of the CPL Appeal (dated January 3, 2007)  
Funding Year 2006: 07/01/2006 - 06/30/2007  
Billed Entity: Chicago Public Library  
Billed Entity Number: 135748  
SPIN 143001912  
Funding Request Number 1468966  
Form 471 Application Number: 527145

Dear Sir/Madam:

I have enclosed for filing an original and four (4) copies of the Chicago Public Library's Verified Request for Review of a Decision of the Universal Service Administrator and a Request for Waiver of section 54.504© of the Federal Communications Commission's Rules (with attached exhibits). I have also filed an electronic copy of the above, but without the attached exhibits.

If you have any questions or require additional information, please contact the undersigned by e-mail at [jpace@cityofchicago.org](mailto:jpace@cityofchicago.org), or by phone at 312-744-6997.

Sincerely,



Jack A. Pace  
Senior Counsel  
Attorney for the Chicago Public Library

cc: Mr. Karim Adib, Chicago Public Library  
USAC

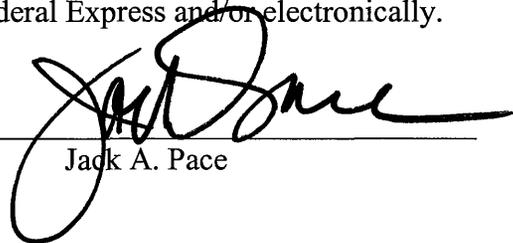


BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
)  
Request for Review of a Decision of the )  
Universal Service Administrator by )  
the Chicago Public Library )  
)  
Schools and Libraries Universal Service ) CC Docket No. 02-6  
Support Mechanism ) CC Docket No. 96-45  
)  
and )  
)  
Request for Waiver of Section 54.504 (c) )  
of the Federal Communication Commission's )  
Rules by the Chicago Public Library )

**PROOF OF SERVICE**

I, Jack A. Pace, Senior Counsel, the City of Chicago Law Department, certify that on the 1st day of March, 2007, on or before 5:00 p.m., I served a copy of THE CHICAGO PUBLIC LIBRARY'S VERIFIED REQUEST FOR REVIEW OF A DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR AND A REQUEST FOR WAIVER OF SECTION 54.504(c) OF THE FEDERAL COMMUNICATION COMMISSION'S RULE on the parties listed on the attached service list by U.S. mail, postage prepaid, Federal Express and/or electronically.



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## SERVICE LIST

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445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, D.C. 20554

USAC  
Schools and Libraries Division  
100 S. Jefferson Rd.  
P.O. Box 902  
Whippany, New Jersey 007981

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**  
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In the Matter of	)	
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Request for Review of a Decision of the	)	
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	)	
Request for Waiver of Section 54.504 (c)	)	
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Rules by the Chicago Public Library	)	

**THE CHICAGO PUBLIC LIBRARY'S VERIFIED  
REQUEST FOR REVIEW OF A DECISION OF THE UNIVERSAL  
SERVICE ADMINISTRATOR AND A REQUEST FOR WAIVER OF SECTION  
54.504(c) OF THE FEDERAL COMMUNICATION COMMISSION'S RULES**

The Chicago Public Library ("CPL"), through its attorney, Mara S. Georges, Corporation Counsel, City of Chicago, pursuant to the Federal Communications Commission's ("FCC") Rules of Practice, hereby requests a review of a decision of the Universal Service Administrator ("USAC") and hereby requests a waiver of section 54.504(c) of the FCC's Rules. In support thereof, the Chicago Public Library states the following.

## Statement of Facts

On September 26, 2006, USAC denied funding for telecommunications services received by CPL pursuant to the master contract with SBC in the amount of \$378,000.00. USAC's explanation for the denial of this funding was limited to the following: "No contract was in place when the Form 471 certification was filed." On November 20, 2006, the CPL filed an appeal to USAC. See, Group Exhibit 1.<sup>1</sup> On January 3, 2007, USAC denied the CPL's appeal.<sup>2</sup> See, Exhibit 2.

The CPL has been purchasing telecommunications services from SBC pursuant to a master contract since at least 1997. Significantly, except for the 2006 funding year which is at issue in this proceeding, USAC has repeatedly granted the CPL's annual requests for universal service support funding for these telecommunications services. At the time the 2006 FCC Form 471 application was filed, the CPL was receiving telecommunications services from SBC through this master contract, pending the outcome of a RFP process that placed the contract out for competitive bid. Because of the pending RFP, SBC had recently agreed to a series of short contract extension agreements, with the parties anticipating that the master contract would be replaced with a new contract in the near future. USAC was advised of these facts on the FCC Form 471, Item 21 attachment filed with USAC on March 13, 2006. See, Group Exhibit 1 (Exhibit B).

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<sup>1</sup> Group Exhibit 1 is the CPL's appeal to USAC. The appeal contains a cover letter and five exhibits, identified as Exhibits A-E. In the instant appeal, the CPL will cite the exhibits contained in the appeal to USAC using their original labels. For example, Exhibit A will be cited as follows: See, Group Exhibit 1 (Exhibit A).

<sup>2</sup> The CPL is the billed entity; the billed entity number is no. 135748, the funding request number is no. 1468966 and the Form 471 application number is no. 527145.

At the time of the 2006 FCC Form 471 filing, the particular contract extension then in effect was scheduled to expire on June 1, 2006, a date that by happenstance was a date prior to the commencement of the 2006 funding year period, which was July 1, 2006. While the CPL anticipated, of course, that the June 1, 2006 contract expiration date would be extended again (which it was) if the RFP process was not completed by that date,<sup>3</sup> the CPL believed it would be more prudent not to identify a service provider for the 2006 funding year until either the RFP process was completed or a further contract extension was executed with SBC.

Accordingly, the CPL identified what it believed to be the applicable instructions on USAC's website in completing the FCC Form 471. USAC's website states as follows:

Scenario A - State master contracts expiring before the funding year.

A state master contract may expire BEFORE the start of the funding year for an application. In this case, your state intends to select a service provider as part of a competitive bidding process to provide services under a new state master contract, but that process has not been completed and you are not sure who that service provider will be.

See, Exhibit 3.

The CPL in good faith believed that its circumstances fit within the definition of Scenario A above and completed the FCC Form 471 application according to its direction. Under these circumstances, instead of identifying the applicant's current service provider, USAC instructs applicants to, among other things, insert a generic spin number: 143999999 in item 13 of Block 5 of FCC Form 471 and to insert "state replacement contract" in item 14 of Block 5 of FCC Form 471 for the name of the service provider. See, Group Exhibit 1 (Exhibit C). The CPL also filed

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<sup>3</sup> A previous extension had been granted and certainly, the CPL (as well as other agencies) could not adequately perform its functions and fulfill its civic responsibilities without telecommunications services as of June 2, 2006.

with USAC FCC Form 471, Item 21 (attachment) that advised USAC about the existence of the master contract, the pending RFP process and the current contract extension agreement. See, Group Exhibit 1 (Exhibit B).

On July 28, 2006, after an additional extension had been executed (in April, 2006) that would be in effect for the entire 2006 funding year, the CPL advised USAC of this fact in writing and requested that it change the service provider information to reflect this fact. See, Group Exhibit 1 (Exhibit D). USAC complied with CPL's July 28, 2006 request.<sup>4</sup>

### Argument

#### A. Standard of Review

In denying the CPL's appeal, USAC stated that "the FCC has consistently upheld USAC's denial of funding when there is no contract in place for the funding request. In support, USAC relied on a single FCC order: Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism, File No. SLD-256981, CC Docket No. 02-6, Order, 18 FCC Rcd. 22994, DA 03-3526 (rel. Nov. 5, 2003) ("Waldwick")

While the CPL certainly agrees that as a general matter the FCC will enforce its rules in reviewing USAC funding decisions, the FCC has also shown a willingness to waive its rules when the particular facts make strict compliance inconsistent with the public interest. See, In the Matter of Request for Review of a Decision of the Universal Service Administrator by the Cincinnati City School District, File No. SLD-376499, CC Docket No. 02-6, Order, 21 FCC

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<sup>4</sup> USAC's funding denial letter of September 26, 2006 identified SBC as the service provider and contained the new SPIN requested by the CPL in the July 28, 2006 letter.

Rcd. 5994, DA 06-1107 (rel. May 26, 2006); see also, In the Matter of Request For Waiver of the West Virginia Department of Education, Charleston, West Virginia, CC Docket 06-6, Order, DA 05-2179 (rel. July 27, 2005) (“In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.”)

Indeed, the facts in Waldwick, the FCC decision cited by USAC, make that case clearly distinguishable from the instant case. In Waldwick, the FCC found that the applicant provided inaccurate information to USAC by declaring that Bergen County would be the service provider when in fact the applicant did not have a signed contract with that provider. See, Waldwick at para. 8. Here, the CPL at all times provided accurate information to USAC. In addition, the CPL in good faith followed the instructions on USAC’s website in submitting its FCC Form 471 for the 2006 funding year.

B. USAC’s Denial of Funding Is Without Merit

USAC stated the following in denying CPL’s appeal:

Upon thorough review of the appeal letter and relevant documents, USAC has determined that when you submitted your Form 471 application on February 16, 2006, you did not have a signed contract in place with your service provider for the 2006 funding year. During the application review, the response provided to the USAC on July 28, 2006 advised that no contract or contract extension was in place when the Form 471 certification was filed. FCC rules state that a contract must be signed and dated on or after the Allowable Contract Date as calculated by the Form 470 posting date, but prior to the submission of the Form 471. In this case, you have not demonstrated that you have complied with FCC Rules: therefore, the appeal is denied.

See, Exhibit 2.

1. For All Practical Purposes, The CPL Had A Binding Agreement With SBC For The 2006 Funding Year At The Time The 2006 FCC Form 471 Was Filed.

Based on all of the information provided to USAC by the CPL during the 2006 application process, USAC could have reasonably concluded that the CPL was subject to a binding agreement to receive telecommunications services from SBC for the 2006 funding year.

The information provided to USAC clearly indicated that the CPL had no choice but to continue to receive services from SBC for the 2006 funding year pursuant to the master contract, pending the outcome of the RFP process. The record shows that the master contract with SBC had been in place for several years and that the CPL had no authority to choose an alternative provider. The contract extension date then in effect was merely a device to continue the “status quo” of the master contract until the RFP process was concluded. Clearly, the June 1, 2006 date was just a placeholder and nothing more; it certainly should not have been interpreted as a final termination date. As a practical matter, it is simply inconceivable that SBC would have placed the CPL in the position of not having telecommunications services as of June 2, 2006.

Specifically, the record shows that the CPL provided the following information to USAC. At the time the FCC Form 471 certification was filed for funding year 2006 by the CPL, the master contract with SBC was in full force and effect and had been recently extended to June 1, 2006, pending the results of an RFP. USAC was advised of the existence of the master contract and the contract extension on the FCC Form 471, Item 21 attachment filed with USAC on March 13, 2006. See, Group Exhibit 1 (Exhibit B). As stated in the Item 21 attachment, FRN: 1468966:

Enclosed please find the “CONTINUATION OF CENTREX SERVICES’ SIGNED DECEMBER 19, 2003 and Letter of Agreement signed September 16, 2005, which further extends the contract to June, 2006 and provides automatic 90-day extensions until

the City of Chicago provides a 30-day notice of its intention not to renew. As indicated in the September, 2005 letter, the City [sic] seeking to replace the services through the request for proposal “RFP” process. The City currently does not have a projected award date and will most likely proceed with several 90-day extensions.

See, Group Exhibit 1 (Exhibit B).

The CPL was in fact receiving services from SBC pursuant to that contract at the time it filed the FCC Form 471. In this regard, the CPL sent USAC a printout of February, 2006 Centrex billing detail in response to a August 3, 2006 letter (e-mail) from USAC to CPL. This billing detail represents billing for the services provided to the CPL pursuant to the master contract in effect at the time the Form 471 certification was filed. See, Group Exhibit 1 (Exhibit E).

On April 25, 2006, because it was unlikely that the RFP process would be completed as soon as originally believed, an additional contract extension was executed extending the termination date of the master contract to June 1, 2007. See, Exhibit 4. The CPL notified USAC of this fact in a July 28, 2006 letter. See, Group Exhibit 1 (Exhibit D). In this letter, the CPL requested that its Form 471 be updated with a new SPIN 143001912 and with SBC Illinois as the service provider. Id. In response to the letter, USAC made these changes to the Form 471, as reflected in USAC’s Funding Commitment Decision Letter dated September 26, 2006. See, Exhibit 2.

At no time did the master contract with SBC expire. Indeed, at all times from February 16, 2006 to the end of the 2006 funding year, the CPL received telecommunications services from SBC pursuant to the master contract. Therefore, for all practical purposes, the CPL had a binding agreement with SBC at the time of the 2006 FCC Form 471 was filed for the entire 2006 funding year.

2. In The Alternative, The CPL Seeks A Waiver of Section 54.504 © Of The Commission's Rules.

If the FCC determines that a binding contract was not in place at the time of the FCC Form 471 filing, the CPL requests a waiver of section 54.504(c) of the Commission's rules for good cause to enable the CPL to receive funding support for the 2006 funding year.

As stated earlier, the CPL completed its FCC Form 471 filing for the 2006 funding year at a time when the contract extension negotiated by a third party for the provision of telecommunications services used by the CPL was set to expire prior to the commencement of the 2006 funding year. The CPL did not have the ability or authority to extend the contract to include the 2006 funding year, and was awaiting a decision on the RFP that was pending. Under these circumstances, the CPL chose to timely file the FCC Form 471 with the best information it had available rather than wait to file after the RFP process was concluded or an additional contract extension had been executed. Clearly, the CPL's application would have been denied as untimely if it had waited until the filing window had closed.

In nearly identical circumstances to the instant case, the FCC has determined that an applicant should be granted a waiver of section 54.504(c) for good cause. See, In the Matter of Request For Waiver of the West Virginia Department of Education, Charleston, West Virginia, CC Docket 06-6, Order, DA 05-2179 (rel. July 27, 2005) ("West Virginia Dept. of Education") In West Virginia Dept. of Education, the current master contract with the state department of education could not be extended for the next funding year until after the time for filing the FCC Form 471 had closed. Thus, a West Virginia school could either file its Form 471 application without a contract in place or wait until a contract extension was executed and file after the filing window had closed. Under either circumstance, the FCC reasoned, the school's application

would be denied. Accordingly, the FCC decided that it was appropriate to waive section 54.504© of the Commission's Rules to permit West Virginia schools to submit a FCC Form 471 without having a signed contract in place. The FCC should grant a waiver here as well for the same reason.

In addition, as the record shows, while it may be technically correct that the CPL missed the program deadline, an additional extension agreement for the 2006 funding year was executed on April 26, 2006 — before the funding year commenced and before SBC began providing services. See, Exhibit 4. Under these circumstances, where the policy behind the rule was satisfied, the FCC has waived section 54.504(c) of the Commission's Rules. See, In the Matter of Requests for Review by Richmond County School District, Hamlet, NC, File Nos. SLD-451211, 452514, 464649, 21 FCC Rcd. 6570, CC Docket 06-6, DA 06-1265 (rel. June 13, 2006).

The CPL's conduct throughout the 2006 application process was exemplary and it should not be penalized for circumstances beyond its control. The record shows that the CPL provided USAC with accurate and reliable information throughout the FCC Form 471 application process. Using what it thought was the proper procedures based on USAC's FCC Form 471 guidelines, the CPL provided accurate information to USAC as to the status of its service provider and the status of the contractual basis for the telecommunication services for which it was seeking funding. The CPL kept USAC updated on the status of the RFP process and provided billing information at the request of USAC demonstrating that it was in fact receiving telecommunications services from SBC. Finally, in furtherance of a critical policy objective supporting universal service, the CPL was taking advantage of the RFP process to obtain services at the lowest possible cost. See, West Virginia Dept. of Education, supra. For these

reasons, the CPL submits that good cause exists for the FCC to waive the requirements of section 54.504(c) in the instant case.

Conclusion

The CPL respectfully requests that the FCC reverse the decision by USAC to deny funding to the CPL by either (a) finding that a binding contract was in place at the time of the FCC Form 471 filing, or in the alternative, (b) waive the requirements of section 54.504(c) for good cause shown.

Respectfully submitted,

CHICAGO PUBLIC LIBRARY

Mara S. Georges  
Corporation Counsel  
City of Chicago



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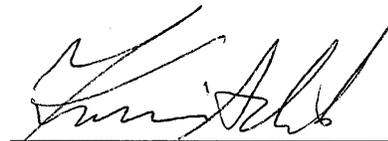
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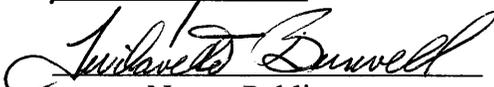
**VERIFICATION**

Karim Adib, under oath, states as follows:

1. I am Director of Library Automation for the Chicago Public Library. I have worked for the Chicago Public Library from about March 25, 2002 to the present. Based on, and as a result of, my experience working for the Chicago Public Library, I have personal knowledge of the facts stated in the Chicago Public Library's Request for Review of a Decision of the Universal Service Administrator and a Request for Waiver of Section 54.504(c) of the Federal Communications Commission's Rules and I believe them to be correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Karim Adib

Signed and sworn before  
me this 28<sup>th</sup> day of  
February, 2007.

  
\_\_\_\_\_  
Notary Public

