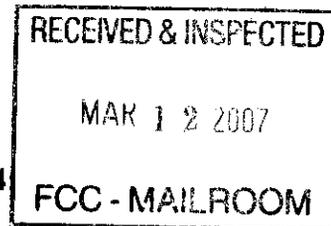


March 9, 2007

Denton Clark  
PO Box 105  
Spencerport, NY 14559-0105  
Tele: 585-594-5888  
Fax: 585-594-5806  
Email: dclark@netacc.net

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

**Re: CC Docket No. 96-45 and CC Docket No. 02-6  
Request for Review  
Letter of Appeal for: "Baker Hall School", BEN 15424  
Appellant Name: "Denton Clark"  
Application #: 492990;  
FRN 1443076  
SPIN: 143019354 "Fiber Technologies Networks, L.L.C.";  
Funding Commitment Decision Funding Year 2006**



**For FRN 1443076, we are appealing the decision: "The FRN was denied because 30% or more of this FRN includes a request for the purchase and installation of a WAN. Based on program rules, a Wide Area Network constitutes the connection that runs from a demarcation point at the school property to a point outside of the school property (i.e. across a public right of way) and is not funded as Internal Connections"**

**Application #: 492990;  
FRN 1443081  
SPIN: 143019354 "Fiber Technologies Networks, L.L.C.";  
Funding Commitment Decision Letter for Funding Year 2006**

**For the above FRN, we are appealing the decision: "Ineligible Services/Products. 30% or more of this FRN includes a request for Basic Maintenance of Internal Connections for WAN which is ineligible based on program rules"**

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The purpose of this FCC Appeal is to request reconsideration of the above two FRNs for 471 application 492990 which were denied based on alleged requests that contained 30% or more ineligible products/services.

**For FRN 1443076:**

When **FRN 1443076** was applied for we categorized the requested service as “Telecommunications Services.” We have a hardcopy of the 471 display (471 # 492990) that confirms this. Furthermore, the original view of 471 # 492990 that is currently displayed on the SLD Website clearly shows that the service categorization is “Telecommunications Services.” The appeal denial, and indeed the current view of **FRN 1443076** on the SLD Website shows that the service category has been changed to “Internal Connections”. This category change was made by the SLD and the reason for the change of category was not, nor has not been shared with us. We are at a loss to understand who changed the service category or most importantly, why the service category was changed. We certainly did not request a change from “Telecommunications Services” to “Internal Connections” during any of subsequent PIA reviews.

It appears the SLD reviewer, during the review process, considered the wording “a 1 Gigabit fiber based network” as a request to purchase a private fiber connection. If so, this is a mistake. **FRN 1443076** is a contracted service provided by a common carrier thus, the categorization of “Telecommunications Services.” The requested service crosses several public rights of way, the Baker Hall School cannot, and will not own anything. Thus, there are no ineligible services requested in **FRN 1443076**. Simply stated, there is no reason to reclassify this FRN as Internal Connections. **FRN 1443076** stands alone as “Telecommunications Services;” it was filed as such and should remain as such.

This is in contrast to **FRN 1443081** also included in **471 #492990** which is indeed “Basic Maintenance of Internal Connections” that serves one small cluster of classrooms, out of many classrooms total, that are all on one school owned campus. A short explanation about the Baker Hall School may be in order.

The Baker Hall School is a school for disadvantaged kids that have special needs. Unlike a traditional school that has many classrooms or a school district where each entity is in fact a school (i.e: elementary school, middle school, high school, etc.), Baker Hall is an entity unto itself. Instead of being structured like a traditional school with many classrooms under one roof, Baker Hall has many classrooms distributed in a small geographical footprint. Each classroom attends to the special needs of the students it serves. Thus, kids with similar needs (mentally challenged, emotionally disturbed, etc.) are kept in small groups where they get special attention. These classrooms are not located on one contiguous campus, but as stated, are distributed locally. The service between these classrooms is not included in **FRN 1443076**, but is the subject of the appeal for **FRN 1443081** below.

In our PIA response (May 12, 2006) the original RFP and contract were supplied for review. Each of these documents clearly stated that the service requested for **FRN 1443076** was for “a 1 Gigabit fiber based network”. This was stated many times throughout the RFP as well as the winning vendor’s response. It is irrelevant that the service was delivered via fiber, copper, or any other medium, just as long as the service meets the criteria of E-Rate category “Telecommunications Services,” which it does. The service requested meets the eligibility conditions of “Digital Transmission Service” as well as “Wide Area Network”. At no time during the review were we asked, or did we suggest that we change the category of service from “Telecommunications Services” to “Internal Connections”.

The telecommunications service requested in **FRN 1443076** is in order and all the service requested within **FRN 1443076** is eligible for Telecommunications Services funding (per the "Eligible Services List" dated November 18, 2005 on the SLD USAC Website) since the service is simply Gigabit circuits, provided across public right-of-ways by an E-Rate eligible common carrier.

The definition, per the "Eligible Service List" states, "*The Wide Area Network constitutes the connection that runs from a demarcation point at the school or library property to a point outside of the school or library property (i.e. across a public right of way) and is not funded as Internal Connections.*" The wide area network in question exactly fits this definition.

In summary, **FRN 1443076** was correctly applied for under the "Telecommunications Services" category. Somehow the SLD changed the category of service, erroneously, to "Internal Connections." The SLD then denied the funding of the telecommunications service because they had changed the category to "Internal Connections" – which the service is not. Therefore, we respectfully request that the FCC rectify the SLD's error and fund **FRN 1443076** since it is indeed an eligible telecommunications service that was correctly applied for under the "Telecommunications Services" category.

**For FRN 1443081:**

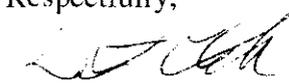
The service requested in **FRN 1443081** is for maintenance of an E-Rate eligible Local Area Network (per the "Eligible Services List" dated November 18, 2005 on the SLD USAC Website) serving a small cluster of classrooms that are all on one school owned campus contained exclusively on school property (it does not cross a public right-of-way). The definition, per the "Eligible Service List" states, "*FCC rules establish a rebuttable presumption that a connection does not constitute an Internal Connection if it crosses a public right of way. That is, the Local Area Network is considered to be the part of the network on school or library property, and hence is considered under the eligibility requirements for Internal Connections.*" The local area network in question exactly fits this definition. The network is exclusively contained within school property and services a small cluster of classrooms. It does not cross a public right of way.

This maintenance does indeed fall under the category of Basic Maintenance of Internal Connections and indeed is for maintenance on an Internal (all on school property) Connections network. There are no ineligible services requested within the FRN. The requested services are eligible per the above referenced "Eligible Services List" and correctly categorized as "Basic Maintenance of Internal Connections"

Therefore, we respectfully request that the FCC reconsider the SLD's denial of funding and fund **FRN 1443081** since it is indeed for eligible maintenance and was correctly applied for under the "Basic Maintenance of Internal Connections" category.

Should you wish to obtain any clarifying information or documentation for either of the two FRNs referenced above, please do not hesitate to contact me.

Respectfully,



Denton Clark



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

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**Administrator's Decision on Appeal – Funding Year 2006-2007**

January 17, 2007

Denton Clark  
Baker Hall School  
PO Box 105  
Spencerport, NY 14559-0105

Re: Applicant Name: BAKER HALL SCHOOL  
Billed Entity Number: 15424  
Form 471 Application Number: 492990  
Funding Request Number(s): 1443076, 1443081  
Your Correspondence Dated: November 17, 2006

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 USAC's Funding Year 2006 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC'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): 1443076, 1443081  
Decision on Appeal: **Denied**  
Explanation:

- Upon thorough review of the appeal letter and the relevant documentation, USAC has reviewed and assessed your appeal. USAC determined that this funding request was properly evaluated. The FRN was denied because 30% or more of this FRN includes a request for the purchase and installation of a WAN. Based on program rules, a Wide Area Network constitutes the connection that runs from a demarcation point at the school property to a point outside of the school property (i.e. across a public right of way) and is not funded as Internal Connections. The Item 21 Attachment and supporting documentation identified the installation and maintenance of fiber (which must be classified in the Internal Connections bucket), which is 100% of the total funding request. FCC rules require that, if 30% or more of an applicant's funding request includes ineligible products or services, the funding request must be denied. Consequently, the appeal is denied.

- Your Form 471 application included costs for the following ineligible products and/or services: purchase and installation of a WAN. FCC Rules provide that funding may be approved only for eligible products and services. 47 C.F.R. secs. 54.502, 54.503. The USAC website contains a list of eligible products and services. See the website, [www.usac.org/sl](http://www.usac.org/sl), Eligible Services List. FCC Rules further require that if 30% or more of the applicant's funding request includes ineligible products and/or services, then the funding request must be denied, otherwise the funding request will be reduced accordingly. 47 C.F.R. sec. 54.504(d).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC 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 section of the USAC website 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

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 20743 -MD -US  
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**FedEx Express** US Airbill  
 Date 3-7-2007 Sender's FedEx Account Number 8560 5051 12

Sender's Name DEVON CLARK Phone 585 514-58

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 Address 1 MOUNDAL CIRCLE  
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2 Your Internal Billing Reference \_\_\_\_\_  
 3 To Recipient's Name MARLENE H. DORTCH Phone \_\_\_\_\_

Company FEDERAL COMMUNICATIONS REGION  
 Recipient's Address 9300 EAST HAMPTON DRIVE

Address \_\_\_\_\_  
 City CAPITOL HEIGHTS State MD ZIP 20743



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