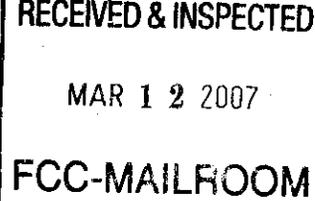




Educational Consortium for  
Telecommunications Savings

COPY ORIGINAL



November 30, 2006

## Appeal of FCDL dated October 3, 2006

### Sent to

Schools & Libraries Division - Correspondence Unit  
100 South Jefferson Road  
P.O. Box 902  
Whippany, NJ 07981

### Contact Information

Robert Beck  
Education Consortium  
790 Newtown-Yardley Road, Suite 410  
Newtown, PA 18940  
267-352-0137 (voice)  
215-504-5047 (fax)  
[robertbeck@e-rate-ects.org](mailto:robertbeck@e-rate-ects.org)

### Basis for Appeal

FCDL for Ascension Parish LA School District  
1100 Webster Street  
Donaldsonville, LA 70346  
BEN 139229

Funding Year 2006-2007  
471 Application Number 530997

### Appealing the funding denial for FRN 1465226

### Request

This is a timely appeal regarding an outstanding FRN for Novell Netware SLA services (Netware and GroupWise) for the pre-discount amount of \$43,598.16. We request that this decision be reversed and the funding be awarded as requested.

The basis for the funding denial is that "no contract or legally binding agreement was in place when the Form 471 certification was filed."

I am authorized by the school district to submit this appeal, and am the contact person on the original application.

## Explanation

Ascension Parish filed for funding for an eligible bundle of Netware SLA products as described in the Item 21 (attached). Note that, because the number of students decreased between the initial application and the actual service order, the amount requested is lower than on the Form 471.

We applied for funding on a MTM basis, not on a contractual basis, as noted below. I explained this at length to your PIA reviewer, but she chose to interpret it as a contractual situation, which became the basis for its denial.

The FCC Rules for Internal Connection funding applications listed in 47 C.F.R. 54.506, and for Ordering Services given in 54.511, state nothing about requiring a contract for Internal Connection type products. The USAC web site states the following:

Except for services to be delivered under non-contracted tariffed or month-to-month arrangements, FCC rules require that an applicant sign a contract with the service provider before signing and submitting a completed (certified) *Services Ordered and Certification Form* (Form 471).

When you compare the USAC statement cited above with the actual FCC Rules (see copies), this statement would seem to go beyond the explanation provided in the FCC Rule. In denying this funding, the SLD presumes that the service provider (Novell) should require a contract to order their products, which does not describe how this service provider actually conducts business. In my discussions with Novell sales personnel, they do not require a contract for their products, only an order form on the school's anniversary date. Their ordering process goes as follows:

- Novell does require a contract for the initial year of using their products. This was done by Ascension Parish a number of years ago. That original contract established an annual renewal date (which varies by school district).
- Within 90 days of the renewal date (e.g., in June for Ascension), Novell sends the school a service order, asking if they want to take their products for the next year, and if so, then asking them to select the specific product mix.
- If the District wants the Netware and GroupWise products for the following year, they fill out the order form and send it to the Novell sales rep.
- Novell provides the product and sends them an invoice

Point: Novell only requires an annual order form for these products, and the annual order date does not fit within the time frame that the Form 471 certification is filed. Since the USAC request categories are limited (Tariff, MTM and Contract), and do not offer a non-contractual, annual one-time payment option, we applied as a MTM service since it is the only reasonable category that seems to fit Novell's ordering procedure.

## Conclusions

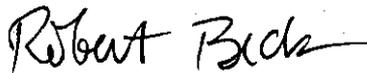
This FRN is for two eligible products, and it is within the spirit and intent of the E-rate program to fund such expenses. Accordingly:

- The school filed a Form 470 requesting these products.
- A contract is not required, but the school indicated their intent to use these eligible Novell products by submitting the Form 471 in a timely manner.
- When the annual renewal option was given in June, the school followed through and ordered these products as specified on the Form 471.

The school is being denied a significant amount of funding (\$39,238.34, after discount) where the products requested are eligible for funding and were requested properly on the Form 470. We maintain that the SLD erred in unilaterally changing the ordering process on the Form 471 from MTM by presuming that a contract should be required, and then denying funding on that basis. That requirement is neither stated in the FCC Rules cited, nor required by the service provider. Therefore, Ascension Parish is being unfairly penalized for following the service provider's normal ordering process.

We are requesting that this funding denial be reversed and approved for funding for this FRN.

Thank you for your consideration.



Robert Beck  
Education Consortium  
E-Rate Contact  
Certified Mail – Return Receipt # 7006 0100 0006 9329 9028

### Authorized person information

Marshal Carlin – Director of Information Technology - 225-473-7981 x 263

Attachments: Form 471 # 530997 cover page  
FRN # 1465226  
Item 21 Attachment for FRN 1465226  
FCDL pages 1,5  
Novell order form copy  
Correspondence with PIA reviewer  
FCC Orders 54.506 & 54.511

FCC Form 471	Do not write in this area.	Approval by OMB 3060-0806
<p><b>Schools and Libraries Universal Service</b>  <b>Description of Services Ordered and Certification Form 471</b>                  Estimated Average Burden Hours per Response: 4 hours</p> <p>This form asks schools and libraries to list the eligible telecommunications-related services they have ordered and estimate the annual charges for them so that the Fund Administrator can set aside sufficient support to reimburse providers for services.                  Please read instructions before beginning this application. (You can also file online at <a href="http://www.sl.universalservice.org">www.sl.universalservice.org</a>.)                  The instructions include information on the deadlines for filling this application.</p>		
Applicant's Form Identifier (Create your own code to identify THIS form 471)	9ASCENSION RB#2	Form 471 Application# (To be assigned by administrator)
530997		
<b>Block 1: Billed Entity Information</b> (The "Billed Entity" is the entity paying the bills for the service listed on this form.)		
<b>1 a</b>	Name of Billed Entity: ASCENSION PARISH SCHOOL DIST	
<b>2 a</b>	Funding Year: July 1, 2006 Through June 30: 2007	Billed Entity Number: 139229
<b>4 a</b>	Street Address, P.O. Box, or Routing Number: 1100 WEBSTER ST	
	City: DONALDSONVILLE	
	State: LA	Zip Code 70346
<b>5 a</b>	Type of Application: <input type="checkbox"/> Individual School (individual public or non-public school) <input checked="" type="checkbox"/> School District (LEA; public or non-public [e.g. diocesan] local district representing multiple schools) <input type="checkbox"/> Library ( including library system, library outlet/branch or library consortium as defined under LSTA) <input type="checkbox"/> Consortium <input type="checkbox"/> Check here if any members of this consortium are ineligible or non-governmental entities)	
<b>6</b>	Contact Person's Name: ROBERT BECK	
First, if the Contact Person's Street Address is the same as in Item 4, check this box. <input checked="" type="checkbox"/> If not, please complete the entries for the Street Address below.		
<b>b</b>	Street Address, P.O. Box, or Routing Number: 133 N STATE STREET	
	City: NEWTOWN	
	State: PA	Zip Code 18940

FRN: 1465226      FCDL Date: 10/03/2006	
10. Original FRN:	
11. Category of Service: Internal Connections	12. 470 Application Number: 241360000565323
13. SPIN: 143004863	14. Service Provider Name: Novell, Inc.
15a. Non-Contracted tariffed/Month to Month Service: Y	15b. Contract Number: MTM
15c. Covered under State Master Contract:	15d. FRN from Previous Year:
16a. Billing Account Number: 200593746	16b. Multiple Billing Account Numbers?:
17. Allowable Contract Date: 01/13/2006	18. Contract Award Date:
19a. Service Start Date: 07/01/2006	19b. Service End Date: 06/30/2007
20. Contract Expiration Date:	
21. Attachment #: 1	22. Block 4 Worksheet No.: 804187
23a. Monthly Charges: \$0.00	23b. Ineligible monthly amt.: \$0.00
23c. Eligible monthly amt.: \$0.00	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges ( 23c x 23d): \$0.00	
23f. Annual non-recurring (one-time) charges: 47805	23g. Ineligible non-recurring amt.: 0
23h. Annual pre-discount amount for eligible non-recurring charges ( 23f - 23g): \$47,805.00	
23i. Total program year pre-discount amount ( 23e + 23h): \$47,805.00	
23j. % discount (from Block 4): 90	
23k. Funding Commitment Request ( 23i x 23j): \$43,024.50	



Educational Consortium for  
Telecommunications Savings

133 North State Street  
Newtown, PA 18940  
800-682-3284  
215-504-5047 (fax)

Multiple Account Number Listing

School District Ascension Parish, LA

Form 471 Item 21 Attachment 1  
471 # 530997  
Entity # 139229  
FRN # 1465226  
Service Provider Novell, Inc  
Narrative Description Network operating system software plus  
e-mail software

Quantity	Product Service Description	Unit Cost	Extended Pre-Discount Cost	
			Recurring	Non-Recurring
1	Annual charge for operating system software and e-mail software as part of a Netware SLA package		\$0.00	
	1. Netware OS software - 19122 students x \$1.78 / student			\$34,037.16
	2. GroupWise e-mail software add-on - 19122 students x \$0.50 / student			\$9,561.00
		Totals	\$0.00	\$43,598.16

FED ID#: 87-0393339 1-800-453-1267

REMIT TO: Novell Inc.  
PO BOX 31001-0024  
PASADENA, CA, 91110-0024

SHIP TO: ASCENSION PARISH SCHOOL BOARD  
APSB WAREHOUSE  
9690 AIRLINE HWY  
SORRENTO, LA, 70778

BILL TO: ASCENSION PARISH SCHOOL BOARD  
MARSHALL CARLIN  
PO BOX 189  
DONALDSONVILLE, LA, 70346

CONTRACT # 178159:82002X0706  
PROJECT ID  
PROJECT NAME  
PROJECT PHASE

<b>INVOICE</b>	
NUMBER	200593476
DATE	07-JUL-2005
PAGE	1 OF 1
TERMS	NET 30 1 of 1
DUE DATE	06-AUG-2005
PURCHASE ORDER NUMBER	41560-OL
OUR REFERENCE	
SALES ORDER NUMBER	1500083
SALES ORDER DATE	05-JUL-2005

CUSTOMER #	LOCATION	COLLECTOR	SALESPERSON	FOB CODE	SHIP VIA	SHIPPING REFERENCE
54614	ASCENSION PARIS-	US West -	US GEN	FOB NOVELL		

INV LINE	CO LINE	ITEM NUMBER / DESCRIPTION	ORDERED	SHIPPED	UNIT PRICE	EXTENDED AMOUNT
1	1	876-000107-001 EC SLA OES/ZENDT 6.5/EM BNDL EL Start Date: 01-AUG-2005 End Date: 31-JUL-2006	16033	16,033	2.00	32,066.00
2	3	STL-000124-001 SLA GW/NETMAIL BNDL FTE Start Date: 01-AUG-2005 End Date: 31-JUL-2006	16033	16,033	0.50	8,016.50
3	4	876-000078-001 EC SLA ZEN 6.5 SRVR MGMT FTE Start Date: 01-AUG-2005 End Date: 31-JUL-2006	16033	16,033	0.50	8,016.50

*Handwritten signature and date: 20050719*

INVOICES MAY BE SUBJECT TO INTEREST CHARGE IF PAYMENT IS NOT RECEIVED BY DUE DATE.

CURRENT AMOUNT DUE	TAX	TOTAL AMOUNT DUE
48,099.00	1,923.96	50,022.96

IF YOU ARE TAX EXEMPT AND HAVE BEEN CHARGED TAXES, PLEASE FAX A COPY OF YOUR TAX EXEMPTION CERTIFICATE TO 801-861-2654.

[***100% of Invoice Due in this installment***]		
SUBTOTAL	USD	48,099.00
TAX	4 % USD	<del>1,923.96</del>
TOTAL DUE	USD	50,022.96

This invoice must be paid in USD  
Refer to invoice number when remitting payment.



Universal Service Administrative Company  
Schools & Libraries Division

**FUNDING COMMITMENT DECISION LETTER**  
(Funding Year 2006: 07/01/2006 - 06/30/2007)

October 3, 2006

ROBERT BECK  
ASCENSION PARISH SCHOOL DIST  
133 N STATE STREET  
NEWTOWN, PA 18940

Re: Form 471 Application Number: 530997  
Billed Entity Number (BEN): 139229  
Billed Entity FCC RN: 0011881067  
Applicant's Form Identifier: 9ASCENSION RB#2

Thank you for your Funding Year 2006 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, \$109,727.74 is "As Yet Unfunded."
- The amount, \$43,024.50 is "Denied."

Please refer to the Report on the page following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file Form 486 (Receipt of Service Confirmation Form). A guide that provides a definition for each line of the Report precedes the Report.

A list of Important Reminders and Deadlines is included with this letter to assist you throughout the application process.

**NEXT STEPS**

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full
- Review technology planning approval requirements
- Review CIPA requirements
- File Form 486
- Invoice USAC using the Form 474 (service provider) or Form 472 (Billed Entity) - as products and services are being delivered and billed

**TO APPEAL THIS DECISION:**

If you wish to appeal a decision in this letter, your appeal must be received by USAC 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 (if available) email address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
  - Appellant name,
  - Applicant name and service provider name, if different from appellant,
  - Applicant BEN and Service Provider Identification Number (SPIN),
  - Form 471 Application Number 530997 as assigned by USAC,
  - "Funding Commitment Decision Letter for Funding Year 2006," AND
  - The exact text or the decision that you are appealing.

FUNDING COMMITMENT REPORT  
Billed Entity Name: ASCENSION PARISH SCHOOL DIST  
BEN: 139229  
Funding Year: 2006

\* Form 471 Application Number: 530997  
Funding Request Number: 1465226  
Funding Status: Not Funded  
Category of Service: Internal Connections  
Form 470 Application Number: 241360000565323  
SPIN: 143004863  
Service Provider Name: Novell, Inc.  
Contract Number: MTM  
Billing Account Number: 200593746  
Service Start Date: 07/01/2006  
Contract Expiration Date: 06/30/2007  
Number of Months Recurring Service Provided in Funding Year: 12  
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00  
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$47,805.00  
Pre-discount Amount: \$47,805.00  
Discount Percentage Approved by the USAC: N/A  
Funding Commitment Decision: \$0.00 - Contract Violation  
Funding Commitment Decision Explanation: No contract or legally binding agreement was in place when the Form 471 certification was filed.

FCDL Date: 10/03/2006  
Wave Number: 024  
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2007

Funding Request Number: 1465342  
Funding Status: As Yet Unfunded  
Category of Service: Internal Connections  
Form 470 Application Number: 118260000568752  
SPIN: 143007389  
Service Provider Name: Global Data Systems, Inc  
Contract Number: N/A  
Billing Account Number: N/A  
Service Start Date: 07/01/2006  
Contract Expiration Date: 09/30/2007  
Number of Months Recurring Service Provided in Funding Year: 12  
Annual Pre-discount Amount for Eligible Recurring Charges:  
Annual Pre-discount Amount for Eligible Non-recurring Charges:  
Pre-discount Amount:  
Discount Percentage Approved by the USAC:  
Funding Commitment Decision:

FCDL Date: 10/03/2006  
Wave Number: 024  
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2007

TRANSMISSION VERIFICATION REPORT

TIME : 07/27/2006 10:03  
NAME : EDUCATION CONSORTIUM  
FAX : 2155045047  
TEL : 2155045380  
SER.# : BROJ5J344296

DATE, TIME	07/27 10:02
FAX NO./NAME	19735996522
DURATION	00:00:58
PAGE(S)	03
RESULT	OK
MODE	STANDARD ECM



Educational Consortium for  
Telecommunications Savings

To: Kate Song

From: Bob Beck

SD: SLD - PIA Review

Company: Education Consortium

Voice: 973-581-6743

Voice: 267-352-0137

Fax: 973-599-6522

Fax: 215-504-5047

Date: 7/27/06

Pages 2 Pages including this sheet

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ASCENSION PARISH SCHOOL DIST  
Application Number 530997  
FRN # 1465226 - Novell

I'm still waiting for clarification on the other Internal Connection FRN 1465342,  
but am sending this information along in the meanwhile.

This FRN is for Novell services: Netware Operating System, GroupWise e-mail

Priority 2 Questions

Operations in the non-instructional facility essential for the



Educational Consortium for  
Telecommunications Savings

To: Kate Song

From: Bob Beck

SD: SLD - PIA Review

Company: Education Consortium

Voice: 973-581-6743

Voice: 267-352-0137

Fax: 973-599-6522

Fax: 215-504-5047

Date: 7/27/06

Pages 2 Pages including this sheet

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ASCENSION PARISH SCHOOL DIST  
Application Number **530997**  
FRN # **1465226 - Novell**

I'm still waiting for clarification on the other Internal Connection FRN 1465342, but am sending this information along in the meanwhile.

This FRN is for Novell services: Netware Operating System, GroupWise e-mail

Priority 2 Questions

Q. Are the Internal Connections in the non-instructional facility essential for the effective transport of data and information to an instructional building of a school?

A. YES

Configuration diagram: this is strictly software, so there is nothing to diagram.

X Pricing Question

This is not a contracted service. Per my discussions with the Novell reps, the service automatically renews each year on an anniversary date (August 1 with Ascension Parish), unless the school notifies Novell otherwise.

The only documentation is an annual reorder form for their services. Ascension Parish is keeping the same services as listed on the 7/7/2005 invoice - what varies

is the number of students, and that affects the cost (see Item 21). It was 16,033 students last year (see attachment), but that increased to 19,122 students due to Katrina-related students for this current funding year.

Handwritten signature of Robert Beck in black ink, with a horizontal line extending from the end of the signature.

[robertbeck@e-rate-ects.org](mailto:robertbeck@e-rate-ects.org)

TITLE 47--TELECOMMUNICATION

CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION (CONTINUED)

PART 54 \_UNIVERSAL SERVICE--Table of Contents

Subpart F \_Universal Service Support for Schools and Libraries

Sec. 54.506 Internal connections.

(a) A service is eligible for support as a component of an institution's internal connections if such service is necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch. Discounts are not available for internal connections in non-instructional buildings of a school or school district, or in administrative buildings of a library, to the extent that a library system has separate administrative buildings, unless those internal connections are essential for the effective transport of information to an instructional building of a school or to a non-administrative building of a library. Internal connections do not include connections that extend beyond a single school campus or single library branch. There is a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right-of-way.

(b) Basic maintenance services. Basic maintenance services shall be eligible as an internal connections service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services. Basic maintenance services do not include services that maintain equipment that is not supported or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information.

(c) Frequency of discounts for internal connections services. Each eligible school or library shall be eligible for support for internal connections services, except basic maintenance services, no more than twice every five funding years. For the purpose of determining eligibility, the five-year period begins in any funding year, starting with Funding Year 2005, in which the school or library receives discounted internal connections services other than basic maintenance services. If a school or library receives internal connections services other than basic maintenance services that are shared with other schools or libraries (for example, as part of a consortium), the shared services will be attributed the school or library in determining whether it is eligible for support.

[69 FR 6191, Feb. 10, 2004]

[http://a257.g.akamaitech.net/7/257/2422/09nov20051500/edocket.access.gpo.gov/cfr\\_2005/octqtr/47cfr54.506.htm](http://a257.g.akamaitech.net/7/257/2422/09nov20051500/edocket.access.gpo.gov/cfr_2005/octqtr/47cfr54.506.htm)

[Code of Federal Regulations]  
[Title 47, Volume 3]  
[Revised as of October 1, 2005]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 47CFR54.511]

[Page 146-147]

## TITLE 47--TELECOMMUNICATION

### CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION (CONTINUED)

#### PART 54\_ UNIVERSAL SERVICE--Table of Contents

##### Subpart F\_ Universal Service Support for Schools and Libraries

##### Sec. 54.511 Ordering services.

(a) Selecting a provider of eligible services. In selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers but price should be the primary factor considered.

(b) Lowest corresponding price. Providers of eligible services shall not charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory. Promotional rates offered by a service provider for a period of more than 90 days must be included among the comparable rates upon which the lowest corresponding price is determined.

(c) Existing contracts. (1) A signed contract for services eligible for discounts pursuant to this subpart between an eligible school or library as defined under Sec. 54.501 or consortium that includes an eligible school or library and a service provider shall be exempt from the requirements set forth in Sec. 54.504(a), (b)(3), and (b)(4) as follows:

(i) A contract signed on or before July 10, 1997 is exempt from the competitive bid requirements for the life of the contract; or

(ii) A contract signed after July 10, 1997, but before the date on which the

[[Page 147]]

universal service competitive bid system described in Sec. 54.504 is operational, is exempt from the competitive bid requirements only with respect to services that are provided under such contract between January 1, 1998 and December 31, 1998.

(2) For a school, library, or consortium that includes an eligible school or library that takes service under or pursuant to a master contract, the date of execution of that master contract represents the applicable date for purposes of determining whether and to what extent the school, library, or consortium is exempt from the competitive bid requirements.

(3) The competitive bid system will be deemed to be operational when the Administrator is ready to accept and post FCC Form 470 from schools and libraries on a website and that website is available for use by service providers.

(d)(1) The exemption from the competitive bid requirements set forth in paragraph (c) of this section shall not apply to voluntary extensions or renewals of existing contracts, with the exception that an eligible school or library as defined under Sec. 54.501 or consortium that includes an eligible school or library, that filed an application within the 75-day initial filing window for 1998 (January 30, 1998-April 15, 1998), may voluntarily extend or renew, to a date no later than June 30, 1999, an existing contract that otherwise would terminate between April 15, 1998 and June 30, 1999.

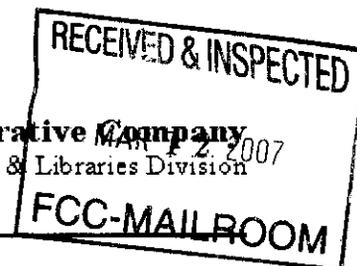
(2) For the 1998-1999 funding year, a contract exempt from the competitive bid requirement, as described in paragraph (c) of this section, may be voluntarily extended to September 30, 1999 only to the extent necessary to permit delivery of the nonrecurring services subject to that contract and for which discounts have been approved.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2130, Jan. 13, 1998; 63 FR 33586, June 19, 1998; 63 FR 43097, Aug. 12, 1998; 63 FR 70572, Dec. 21, 1998; 64 FR 22810, Apr. 28, 1999; 68 FR 36942, June 20, 2003]

[http://a257.g.akamaitech.net/7/257/2422/09nov20051500/edocket.access.gpo.gov/cfr\\_2005/octqtr/47cfr54.511.htm](http://a257.g.akamaitech.net/7/257/2422/09nov20051500/edocket.access.gpo.gov/cfr_2005/octqtr/47cfr54.511.htm)



Universal Service Administrative Company  
Schools & Libraries Division



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

January 08, 2007

Robert Beck  
Educational Consortium  
790 Newtown-Yardley Road  
Suite 410  
Newtown, PA 18940

Re: Applicant Name: ASCENSION PARISH SCHOOL DIST  
Billed Entity Number: 139229  
Form 471 Application Number: 530997  
Funding Request Number(s): 1465226  
Your Correspondence Dated: November 30, 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): 1465226  
Decision on Appeal: **Denied**  
Explanation:

- Upon thorough review of the appeal letter and relevant documents, the USAC has determined that, at the time you submitted your Form 471 application, you did not have a signed contract in place with your service provider. During the application review, you were asked to provide a copy of the signed and dated contract. You were also asked to provide documentation if the FRN is for Month-To-Month or Tariffed services. In the response provided to the USAC on July 27, 2004, you stated that the service is not a contracted service. You further stated that the service renews automatically every year on August 1. 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. Per Program Rules, Internal Connections are presumed to be provided under

a contract (<http://www.usac.org/sl/providers/step04/>). You have failed to provide evidence that USAC erred in its initial decision. Consequently, your appeal is denied.

- USAC has determined that, at the time you submitted your Form 471 application, you did not have a signed and dated 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. sec. 54.504(c). The FCC Rules further require that both beneficiaries and service providers must retain executed contracts, signed and dated by both parties. See Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15824-26, FCC 04-190 para. 48 (rel. Aug. 13, 2004). The FCC has consistently upheld USAC's denial of funding when there is no contract in place for the funding request. See 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). 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. See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) at page 23.

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

corrective plan of action to address past errors. It may also include site visits or other investigatory activities. Such heightened scrutiny could continue as long as necessary. We envision, however, that in most instances, such heightened scrutiny would no longer be necessary in subsequent years, after USAC determines that a pending application is compliant with the statute and Commission requirements.

## B. Document Retention Requirements

### 1. Background

45. Currently, the Commission's rules require each entity to maintain "for their purchases of telecommunications and other supported services at discounted rates the kind of procurement records that they maintain for other purchases."<sup>80</sup> Service providers also are required to retain records of rates charged to and discounts allowed for entities receiving supported services.<sup>81</sup> The Commission's rules do not specify how long such records should be maintained nor do they require entities or service providers to maintain records to demonstrate compliance with all program rules.

46. In the *Schools and Libraries Second Further Notice*, we sought comment on whether to amend our rules governing the retention of records related to the receipt of universal service discounts.<sup>82</sup> Specifically, we invited comment on whether all records related to the receipt or delivery of discounted services should be maintained by the beneficiary and/or service provider for a period of five years after the last day of delivery of the discounted services.<sup>83</sup> We also sought comment on the types of documents that would be sufficient to demonstrate compliance with program rules.<sup>84</sup> In addition, we sought comment on whether service providers should be required to comply with periodic program audits or reviews to assure program compliance, including identifying the portions of bills that represent the costs of services provided to eligible entities.<sup>85</sup> Commenters were also asked to discuss ways to limit waste, fraud and abuse and improve the Commission's ability to enforce the rules governing the schools and libraries program.<sup>86</sup>

### 2. Discussion

47. Most commenters addressing this issue support the adoption of a five-year record retention rule, but suggest that the Commission should provide clear guidance on what information needs to be retained for possible audits and/or reviews.<sup>87</sup> We agree. Therefore, in this Order, we amend section 54.516 of our rules to require both applicants and service providers to retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular Funding Year.<sup>88</sup> This rule change shall go into effect when this order becomes effective and, as such, will apply to Funding Year 2004 and thereafter. We conclude that the adoption of a five-year record retention requirement will facilitate improved information collection during the auditing process and will enhance the ability of auditors to determine whether applicants and service

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<sup>80</sup> 47 C.F.R. § 54.516.

<sup>81</sup> 47 C.F.R. § 54.501(d)(3).

<sup>82</sup> *Schools and Libraries Second Further Notice*, 18 FCC Rcd at 26948 para. 88.

<sup>83</sup> *Id.* at 26948-49 paras. 88-89.

<sup>84</sup> *Id.* at 26948 para. 88.

<sup>85</sup> *Id.* at 26948-49 para. 89.

<sup>86</sup> *Id.* at 26949 para. 90.

<sup>87</sup> *See, e.g.*, BellSouth Comments at 9-10; California Reply Comments at 9; CoSN Comments at 6.

<sup>88</sup> *See infra* Appendix B.

providers have complied with program rules.<sup>89</sup> Further, we believe that specific recordkeeping requirements not only prevent waste, fraud and abuse, but also protect applicants and/or service providers in the event of vendor disputes.

48. Although we agree with commenters that an explicit list of documents that must be retained in the recordkeeping requirement would be most useful for service providers and program beneficiaries,<sup>90</sup> we do not believe that an exhaustive list of such documents is possible. We base this conclusion on our knowledge that due to the diversity that exists among service providers and program beneficiaries, the descriptive titles or names of relevant documents will vary from entity to entity. To address commenters' concerns, however, we provide for illustrative purposes the following description of documents that service providers and program beneficiaries must retain pursuant to this recordkeeping requirement, as applicable:

- Pre-bidding Process. Beneficiaries must retain the technology plan and technology plan approval letter. If consultants are involved, beneficiaries must retain signed copies of all written agreements with E-rate consultants.
- Bidding Process. All documents used during the competitive bidding process must be retained. Beneficiaries must retain documents such as: Request(s) for Proposal (RFP(s)) including evidence of the publication date; documents describing the bid evaluation criteria and weighting, as well as the bid evaluation worksheets; all written correspondence between the beneficiary and prospective bidders regarding the products and service sought; all bids submitted, winning and losing; and documents related to the selection of service provider(s). Service providers must retain any of the relevant documents described above; in particular, a copy of the winning bid submitted to the applicant and any correspondence with the applicant. Service providers participating in the bidding process that do not win the bid need not retain any documents.
- Contracts. Both beneficiaries and service providers must retain executed contracts, signed and dated by both parties. All amendments and addendums to the contracts must be retained, as well as other agreements relating to E-rate between the beneficiary and service provider, such as up-front payment arrangements.
- Application Process. The beneficiary must retain all documents relied upon to submit the Form 471, including National School Lunch Program eligibility documentation supporting the discount percentage sought; documents to support the necessary resources certification pursuant to section 54.505 of the Commission's rules, including budgets;<sup>91</sup> and documents used to prepare the Item 21 description of services attachment.
- Purchase and Delivery of Services. Beneficiaries and service providers should retain all documents related to the purchase and delivery of E-rate eligible services and equipment. Beneficiaries must retain purchase requisitions, purchase orders, packing slips, delivery and installation records showing where equipment was delivered and installed or where services were provided. Service

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<sup>89</sup> See Council of the Great City Schools Comments at 7.

<sup>90</sup> See, e.g., Council of the Great City Schools Comments at 7.

<sup>91</sup> See 47 C.F.R. § 54.505.

providers must retain all applicable documents listed above.

- ***Invoicing.*** Both service providers and beneficiaries must retain all invoices. Beneficiaries must retain records proving payment of the invoice, such as accounts payable records, service provider statement, beneficiary check, bank statement or ACH transaction record. Beneficiaries must also be able to show proof of service provider payment to the beneficiary of the BEAR, if applicable. Service providers must retain similar records showing invoice payment by beneficiary to the service provider, USAC payment to the service provider, payment of the BEAR to the beneficiary, through receipt or deposit records, bank statements, beneficiary check or automated clearing house (ACH) transaction record, as applicable.
- ***Inventory.*** Beneficiaries must retain asset and inventory records of equipment purchased and components of supported internal connections services sufficient to verify the location of such equipment. Beneficiaries must also retain detailed records documenting any transfer of equipment within three years after purchase and the reasons for such a transfer.
- ***Forms and Rule Compliance.*** All program forms, attachments and documents submitted to USAC must be retained. Beneficiaries and service providers must retain all official notification letters from USAC, as applicable. Beneficiaries must retain FCC Form 470 certification pages (if not certified electronically), FCC Form 471 and certification pages (if not certified electronically), FCC Form 471 Item 21 attachments, FCC Form 479, FCC Form 486, FCC Form 500, FCC Form 472. Beneficiaries must also retain any documents submitted to USAC during program integrity assurance (PIA) review, Selective Review and Invoicing Review, or for SPIN change or other requests. Service providers must retain FCC Form 473, FCC Form 474 and FCC Form 498, as well as service check documents. In addition, beneficiaries must retain documents to provide compliance with other program rules, such as records relevant to show compliance with CIPA.<sup>92</sup>

49. We emphasize that the rule we adopt here requires that program participants retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt, and delivery of services receiving schools and libraries discounts. Thus, the descriptive list above is provided as a guideline but cannot be considered exhaustive. For example, service providers must provide beneficiaries' billing records, if requested, and will be held accountable for properly billing those applicants for discounted services and for complying with other rules specifically applicable to service providers. Service providers are responsible for maintaining records only with respect to the services they actually provide, not records for applicants on whose contracts they may have bid, but not won.<sup>93</sup>

50. We make additional clarifications to our rules providing for audits of program beneficiaries and service providers participating in the program. In particular, we clarify that schools, libraries, and service providers remain subject to both random audits and to other audits (or investigations) to examine an entity's compliance with the statute and the Commission's rules initiated at the discretion of the Commission, USAC, or another authorized governmental oversight body. We also

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<sup>92</sup> See 47 C.F.R. § 54.520.

<sup>93</sup> See BellSouth Comments at 9-10; California Reply Comments at 9.

conclude that failing to comply with an authorized audit or other investigation conducted pursuant to section 54.516 of the Commission's rules (e.g., failing to retain records or failing to make available *required documentation*) is a rule violation that may warrant recovery of universal service support monies that were previously disbursed for the time period for which such information is being sought.<sup>94</sup>

## C. Technology Plans

### 1. Background

51. To ensure that applicants make appropriate decisions regarding the services for which they seek discount, the Commission requires applicants to base their request for services on an approved technology plan.<sup>95</sup> The Commission specifically required that technology plans be independently approved, to ensure the plans are based on the "reasonable needs . . . of the applicants and are consistent with the goals of the program."<sup>96</sup>

52. In the *Schools and Libraries Further Notice* and *Schools and Libraries Second Further Notice*, we sought comment on whether the Commission should revise its rules regarding two aspects of technology plans, the timing of their approval and their content.<sup>97</sup> With regard to the timing of plan approval, section 54.504(b)(2)(vii) of the Commission's rules states that the applicant must certify in its FCC Form 470 that it has a technology plan that has been certified by its state, the Administrator, or an independent entity approved by the Commission.<sup>98</sup> We also noted that the instructions for FCC Form 470 permit applicants to certify that their technology plan will be approved by the relevant body no later than when service commences.<sup>99</sup>

53. With regard to plan content, we note that the Commission adopted specific requirements for information that must be included in the technology assessment in the FCC Form 470,<sup>100</sup> but did not adopt specific rules addressing the required content of the technology plan. In the *Universal Service Order*, however, the Commission indicated that applicants should provide certain information prior to placing an order for supported services.<sup>101</sup> We sought comment on whether we should codify USAC's current guidelines regarding technology plans.<sup>102</sup>

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<sup>94</sup> See also *Universal Service Order*, 12 FCC Rcd at 9081, para. 581 (eligibility for support is conditioned on schools' and libraries' consent to cooperate in future random compliance audits to ensure that services are being used appropriately).

<sup>95</sup> See 47 U.S.C. § 254(h)(1)(B); *Universal Service Order*, 12 FCC Rcd at 9078 para. 574. The Commission does not require applicants to develop technology plans, however, for local and long distance service and cellular service. See *Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 18812 (2001).

<sup>96</sup> *Universal Service Order*, 12 FCC Rcd at 9078 para. 574.

<sup>97</sup> See *Further Notice*, 18 FCC Rcd at 9235 paras. 99-100; *Schools and Libraries Second Further Notice*, 18 FCC Rcd at 26950-51 para 94.

<sup>98</sup> 47 C.F.R. § 54.505(b)(2)(vii); see also *Universal Service Order*, 12 FCC Rcd at 9078 para. 574.

<sup>99</sup> FCC Form 470 Instructions.

<sup>100</sup> 47 C.F.R. § 54.504(b).

<sup>101</sup> *Universal Service Order*, 12 FCC Rcd at 9077 para. 572.

<sup>102</sup> See *Schools and Libraries Second Further Notice* at para 94 ; see also <http://www.sl.universalservice.org/apply/step2.asp>. Under USAC's guidelines, a technology plan should address the following areas. The plan must establish clear goals and a realistic strategy for using telecommunications and

(continued....)

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Request for Review by	)	
	)	
Waldwick School District	)	File No. SLD-256981
Waldwick, New Jersey	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support mechanism	)	

**ORDER**

**Adopted: November 4, 2003**

**Released: November 5, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a request filed by Bergen County Technical Schools on behalf of Waldwick School District (Waldwick), Waldwick, New Jersey (Appellant).<sup>1</sup> Appellant seeks review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to reject an application from Waldwick in Funding Year 2002.<sup>2</sup> The application was rejected because there was no binding contract in place for the funding requested. For the reasons set forth below, we deny the Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> The Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library or consortium must seek competitive bids for all services eligible for support.<sup>4</sup> In accordance with the Commission's rules, the applicant must file with SLD, for posting on its website, an FCC Form 470 requesting services.<sup>5</sup> The applicant must wait 28 days

<sup>1</sup> Letter from, John A. Serapiglia, Jr., Bergen County Technical Schools, on behalf of Waldwick School District, to Federal Communications Commission, filed January 28, 2002 (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>2</sup> See Request for Review.

<sup>3</sup> 47 C.F.R. §§ 54.502-54.503.

<sup>4</sup> 47 C.F.R. §§ 54.504, 54.511(c).

<sup>5</sup> 47 C.F.R. § 54.504(b).

before entering into an agreement with a service provider for the requested services and submitting an FCC Form 471 requesting support for the services ordered by the applicant.<sup>6</sup> The Commission's rules provide a limited exemption from the 28-day competitive bid requirement when applicants have "existing contracts," as defined by the Commission's rules.<sup>7</sup>

3. The Commission's rules specifically state that the FCC Form 471 shall be submitted "upon signing a contract for eligible services."<sup>8</sup> The FCC Form 471 instructions state that Block 5 of the form should include the name of the service provider that will be providing the service and information about each separate contract or service agreement.<sup>9</sup> Specifically, the instructions state that applicants must have a "signed contract" or a "legally binding agreement" with the service provider "for all services" ordered on the FCC Form 471.<sup>10</sup> There are two exceptions, however, for tariffed services and for certain month-to-month services.<sup>11</sup> If the services are month-to-month and a signed contract is unnecessary under program rules, applicants can instead submit copies of standard monthly bills as proof that they have binding, legal arrangements with service providers.<sup>12</sup> In addition, applicants are instructed to indicate that such situations exist by filling in the abbreviation "MTM" in Item 15 of the FCC Form 471.<sup>13</sup>

4. In prior funding years, Waldwick received Internet access from the service provider Intac Access Corporation.<sup>14</sup> At the time of filing its application for discounts from the schools and libraries universal support mechanism, the Waldwick school board was considering switching its Internet access service to a different service provider, Bergen County. Waldwick believed that Bergen County would become the Internet access service provider by the start of the funding year. However, the final agreement had not yet been approved by the school board and was, therefore, unsigned and not valid.

5. The record shows that Waldwick filed its FCC Form 471 on January 18, 2001.<sup>15</sup> On the form, Waldwick listed Bergen County as the Internet access service provider for Funding Year 2002.<sup>16</sup> Waldwick listed Bergen County as the provider and it provided a contract

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<sup>6</sup> 47 C.F.R. § 54.504(b)(4).

<sup>7</sup> 47 C.F.R. §§ 54.511(c).

<sup>8</sup> *Id.*

<sup>9</sup> Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2001) (FCC Form 471 Instructions) at 19.

<sup>10</sup> *Id.* ("Signed contracts: You MUST have a signed contract (or a legally binding agreement between you and your service provider preparatory to a formal signed contract) for all services you order on your Form 471...")

<sup>11</sup> *Id.* ("...for all services you order on your Form 471 except: *Tariffed services*: Telecommunications services that you purchase at prices regulated by your state regulatory commission and/or the FCC, which do not require a signed, written contract. *Month-to-Month Services*: Month-to-Month services which do not require a signed, written contract. Your billing arrangement signifies that you are receiving your services on a month-to-month basis.")

<sup>12</sup> *Id.* at 20.

<sup>13</sup> *Id.*

<sup>14</sup> Request for Review.

<sup>15</sup> See FCC Form 471, Waldwick School District, filed January 18, 2001 (Waldwick Form 471).

<sup>16</sup> Waldwick Form 471 (FRN 643475).

number.<sup>17</sup> Furthermore, Waldwick listed the start of the school year – which had not yet arrived – as the date of the new contract.<sup>18</sup> Waldwick then attached an unsigned contract form between Waldwick and Bergen County.

6. Subsequently, the school board did not finalize selection of the proposed new service provider, Bergen County.<sup>19</sup> As a result, Waldwick continued to receive service from the original service provider, Intac Access Corporation. Bergen County sent SLD a letter explaining the circumstances and requesting a change of the service provider on the application from Bergen County to Intac Access Corporation.<sup>20</sup>

7. Upon reviewing the application and finding the incomplete contract, SLD rejected the funding request as providing “insufficient documentation.”<sup>21</sup> Waldwick appealed the decision, which was denied by SLD.<sup>22</sup> SLD reasoned that there had been no binding agreement in existence at the time that the Form 471 was filed.<sup>23</sup> The instant appeal was then filed.<sup>24</sup>

8. The Appellant argues that SLD incorrectly denied the funding request because there was a binding agreement in effect at the time the application was filed.<sup>25</sup> The Appellant notes that Waldwick had a month-to-month contract with Intac Access Corporation at the time of the application, and was therefore not required to submit a contract for the services requested.<sup>26</sup> We note, however, that Intac Access Corporation was not listed as the service provider on the application, Waldwick did not indicate that a month-to-month contract was in effect in Item 15 of the FCC Form 471, and Waldwick did not include copies of standard monthly bills as proof of a binding, legal arrangement between Waldwick and Intac.<sup>27</sup> Instead, the record shows that Waldwick listed Bergen County as the service provider, and that Waldwick did not have a signed, binding contract with Bergen County.<sup>28</sup> Thus, SLD was correct to conclude that there was no binding agreement in existence between Waldwick and the service provider listed on the FCC Form 471 application. It was Waldwick’s responsibility to provide SLD with accurate information regarding its agreement with the relevant service provider on the FCC Form 471

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See Request for Review.

<sup>20</sup> Letter from John A. Serapiglia Jr., Bergen County Technical Schools, to Schools and Libraries Division, Universal Service Administrative Company, dated July 12, 2001.

<sup>21</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to John Serapiglia, Waldwick School District, issued August 7, 2001 (Funding Commitment Decision Letter).

<sup>22</sup> Letter from Robert J. Aloia, Waldwick Board of Education, to Schools and Libraries Division, Universal Service Administrative Company, filed August 16, 2001.

<sup>23</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Robert Aloia, Waldwick Board of Education, issued November 19, 2001 (Administrator’s Decision on Appeal).

<sup>24</sup> Request for Review.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Waldwick Form 471.

<sup>28</sup> Waldwick FCC Form 471.

application, and such information was not provided. Therefore, we deny the Request for Review.

9. **ACCORDINGLY, IT IS ORDERED**, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Bergen County Technical Schools on behalf of Waldwick School District, Waldwick, New Jersey, on January 28, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

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