

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20554

In the Matter of)	
)	
Consolidated Request for Review of Decisions of the Universal Service Administrator)	CC Docket No. 02-6
)	
The School for Integrated Academics and Technologies, Inc. (“SIATech”))	File No. SLD-536126 (FY2006)
)	
New Education for the Workplace, Inc. (“NEWCorp”))	File No. SLD-536824, SLD-537090, SLD-537176, SLD-537265 (FY2006)
)	

To: The Commission

SUPPLEMENT TO CONSOLIDATED REQUEST FOR REVIEW

Trillion Partners, Inc. (“Trillion”), acting through counsel and pursuant to Section 54.719(c) of the Federal Communication Commission’s (“Commission”) rules,¹ hereby supplements its Consolidated Request for Review (“Consolidated Review”) previously timely filed on March 29, 2007.² The Consolidated Review is fully incorporated herein by reference.

This Supplement is required because in its recent *Aberdeen* decision³ the Commission, based on principles equally applicable to the Consolidated Review, granted certain appeals seeking the reversal of funding denials made by the Schools and Libraries Division of the

¹ 47 C.F.R. § 54.719(c).

² *The School for Integrated Academics and Technologies, Inc. and New Education for the Workplace, Inc.*, Consolidated Request for Review, Dkt. No. 02-6 (filed Mar. 29, 2007).

³ *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, et al.*, Order, File Nos. SLD-297249, et al., FCC 07-63, ¶1 (rel. May 8, 2007) (“*Aberdeen*”).

Universal Service Administrative Company (“USAC” or “Administrator”). Specifically, the Commission held that in certain circumstances USAC may not summarily deny applications because of inadvertent ministerial or clerical errors, even where those errors were not correctible (e.g., a contract was entered into before the end of the required 28-day posting period in Section 54.504(b) of the Commission’s rules). Rather under such circumstances a waiver of the applicable rules was justified to permit, in certain cases, a correction of such errors and, in others, the continued processing of the applications even without a correction.

In the Consolidated Review, to the extent that Trillion seeks a waiver, it does not even seek a waiver of a Commission rule based on a ministerial or clerical error, but, rather of an USAC Appeal Guideline. Therefore, the justifications outlined in *Aberdeen* relating to the waiver of Commission rules are arguably even more persuasive.

I. IN ABERDEEN THE COMMISSION GRANTED SIMILAR APPEALS WHERE THE SCHOOLS MADE CLERICAL ERRORS AND COMPLIED WITH THE 28-DAY POSTING PERIOD AND COMPETITIVE BIDDING REQUIREMENTS

In *Aberdeen*, the Commission granted 34 appeals where USAC had denied funding either because “applicants made ministerial or clerical errors on forms that were timely submitted” or the Commission found that “good cause exists to waive section 54.504(c) of the Commission’s rules, which requires applicants to submit a completed FCC Form 471 to USAC.” The Commission found that some of the *Aberdeen* petitioners (“Petitioners”) actually timely filed their FCC Form 471, but “needed a waiver to make a correction after the [FCC Form 471] deadline.”⁴ Explaining further, the Commission stated that the Petitioners’ appeals “involved clerical errors on the part of the Petitioners; they inserted the wrong contract date, the wrong

⁴ *Id.*, ¶6.

classification of service, or the wrong FCC Form 470 application number on the FCC Form 471, thus making it appear that the applicants violated the 28-day rule.”⁵ Taking into consideration the facts and circumstances of these specific cases, the Commission concluded “good cause exists to waive section 54.504(c)” because the Petitioners had “committed minor errors in filling out their application forms [and the Commission does] . . . not believe that such minor mistakes warrant the complete rejection of each of these applicants’ E-rate applications.”⁶ As it had previously concluded in *Bishop Perry*,⁷ the Commission determined in *Aberdeen* that “applicants’ errors [] could not have resulted in an advantage for them in the processing of their application . . . [and] if not caught by USAC, could not have resulted in the applicants receiving more funding than they were entitled to.”⁸ In further reliance on *Bishop Perry*, the Commission concluded in *Aberdeen* that the facts of the appeals did not support a “rigid adherence to certain E-rate rules and requirements that are ‘procedural’ in nature” because to do so “does not promote the goals of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.”⁹ Accordingly, the Commission granted waivers of section 54.504(c) to the Petitioners and remanded their applications back to USAC for further processing.¹⁰

⁵ *Id.*

⁶ *Id.*, ¶7.

⁷ *Request for review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism*, 21 FCC Rcd 5316 (2006) (“*Bishop Perry*”).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Albany Public Library - One appeal based on a clerical error granted and remanded by the Commission in *Aberdeen* is the Petition for Reconsideration filed by the Albany Public Library (“Albany Library”) on February 2, 2003 (“Albany Petition”).¹¹ In the Albany Petition, the Albany Library explained that it “mistakenly inserted 1/16/01” as the contract date rather than “1/17/01, the correct and actual date” on its FCC Form 471.¹² In support of its appeal, the Library included the statement and calendar of Jeffrey Cannell, Director of the Albany Library and its Authorized Representative, and the Express Mail receipt for its FCC Form 471 as evidence that the Albany Library’s E-rate Coordinator met with Mr. Cannell on January 17th, rather than January 16th, to sign the Albany Library’s FCC Form 471.¹³ The Commission granted and remanded the Albany Petition to USAC based on the facts and evidence submitted by the Albany Library in the Albany Petition showing a clerical error.

Rapides Parish Library - On January 19, 2006, the Rapides Parish Library (“Rapides Parish”) filed a Request for Review (“Rapides Parish Request”) with the Commission due to a clerical error.¹⁴ After it submitted its appeal to USAC, Rapides Parish noticed that it had “inadvertently showed 2/14/05 as the date that the [FCC Form 471] was signed” rather than “2/17/05, the same date it was mailed.”¹⁵ Rapides Parish’s appeal filed with USAC was denied and in the Rapides Parish Request the Parish’s Business Manager stated that the incorrect date was merely the result of a “clerical mistake on my part” without the submission of any additional

¹¹ *Id.*, ¶6 n.25.

¹² Albany Petition, p. 1.

¹³ *Id.*

¹⁴ *Aberdeen*, ¶6 n.25.

¹⁵ Rapides Parish Request, p. 2.

evidence.¹⁶ Based on these facts and no contemporaneous evidence, the Commission granted the Rapides Parish Request even though its appeal submitted to USAC included the incorrect contract date on its FCC Form 471.¹⁷

Twenty-eight (28) other Petitioners in *Aberdeen* “mistakenly signed their contracts or certified their FCC Forms 471 before the allowable contract date” or “mistakenly believed they did not have to wait 28 days before submitting an FCC Form 471.”¹⁸ After reviewing the facts of these individual appeals, the Commission concluded that “a waiver [of Section 54.504(b)(4) of the Commission’s rules] is warranted based on the circumstances presented and based on the facts that there is no evidence of waste, fraud or abuse.”¹⁹ The Commission further stated that “[w]e find no indication in the record that, as a result of these errors, applicants benefited from their mistakes or that any service provider was harmed” and finding good cause, the Commission granted the appeals and remanded the applications back to USAC for further processing.²⁰

Miles Unified School District - An example of one such appeal is the Request for Review (“Miles Review”) filed by the Miles Unified School District (“Miles District”) on June 20, 2005.²¹ In the Miles Review, the Miles District explained that only one bid for services was

¹⁶ *Id.*

¹⁷ *Aberdeen*, ¶7. The Commission also granted and remanded the Request for Review of the Bath County School District (“Bath County”) that was filed on July 26, 2006. Bath County inadvertently included the wrong signature page with its FCC Form 471 because it was filing multiple forms on the same day and the only way to differentiate the signature pages was the application file number, all other information was the same. USAC originally agreed to accept a replacement signature page, but upon submission, required Bath County to submit an appeal instead of such signature page.

¹⁸ *Id.*, ¶8.

¹⁹ *Id.*, ¶9.

²⁰ *Id.*

²¹ *Aberdeen*, ¶8 n.32.

received and its Authorized Representative would be at an out of town school conference when its FCC Form 471 needed to be completed and submitted to USAC.²² The Miles District's Authorized Representative signed a completed FCC Form 471 signature page only and mistakenly dated it the allowable contract date prior to traveling.²³ The mistaken date was not corrected by the Miles District before completing the remainder of the FCC Form 471 and submitting it to USAC after the allowable contract date.²⁴ An Express Mail receipt was filed with the Miles Review as evidence that the FCC Form 471 was timely submitted to USAC.²⁵ Based on these facts and the contemporaneous evidence submitted, the Commission granted the Miles Review in *Aberdeen*.²⁶

II. BASED ON THE PRINCIPLES OUTLINED IN *ABERDEEN* THE COMMISSION SHOULD GRANT THE CONSOLIDATED REVIEW

The facts of this case are similar to the types of mistakes and clerical errors that the Commission found warranted rule waivers in *Aberdeen* and, for that matter, earlier Commission decisions cited therein. First, the IT Director in this case has admitted to an inadvertent, clerical error in this consolidated appeal by acknowledging that he submitted the wrong contract to USAC in response to the PIA review request. The contemporaneous evidence that Trillion provided on appeal demonstrates that the Schools and Trillion had a legally binding contract executed on the allowable contract date that also adhered to Texas State contract law. In *Aberdeen*, the Commission granted individual appeals where contemporaneous evidence was

²² Miles Review, p. 2.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Aberdeen*, ¶9.

provided to demonstrate that it was clerical or ministerial error. Finally, as in *Aberdeen*, because there is no evidence that the Schools or Trillion engaged in any activity that involved a misuse of funds or abuse of E-rate program rules, the Commission should apply the reasoning and principles set forth therein with equal weight and force to the facts outlined in this Supplement and Consolidated Review.

Thus, in the spirit of the *Bishop Perry* and *Aberdeen*, the Commission should grant this consolidated appeal. If those decisions warrant in certain circumstances the waiver of *FCC rules* to avoid denial of funding based on correctible errors, they are certainly applicable to *internal Appeal Guidelines adopted by USAC*. Trillion has demonstrated good cause for a limited waiver of those Appeal Guidelines to permit the correction of a ministerial or clerical error in providing incorrect documents to the PIA reviewer. Specifically, the unexpected departure of the Schools' E-rate employee contributed to an inadvertent clerical mistake made with respect to the incorrect signature pages; there is no evidence of waste, fraud, or abuse, and the Schools complied with core program requirements. Moreover, there has been no harm to fair and open competition; and the public interest would best be served by providing much-needed E-rate funding to these public charter high schools. Based on the above, Trillion respectfully reiterates its request that, if necessary to this appeal, the Commission waive USAC's Appeal Guidelines and permit the introduction and consideration of dispositive evidence that there was no early execution of the relevant contract. The Schools complied with all rules and should be granted a waiver based on the same principles that applied in *Aberdeen*. The only clerical error here was in submitting an incorrect copy of the contract to USAC instead of the correctly executed copy.

III. CONCLUSION AND REQUEST FOR RELIEF

Trillion respectfully requests the Commission to grant this consolidated appeal for SIATech's and NEWCorp's FY2006 Applications. For the reasons set forth in this Supplement and the previously filed Consolidated Review, Trillion requests the Commission to make a finding that the principles adopted in *Aberdeen* and the cases before it cited therein relating to ministerial and clerical errors warrant a waiver of USAC's Appeal Guidelines as requested in the Consolidated Review, to the extent necessary, in order for the Schools to qualify for FY 2006 funding for Internet access. Further, Trillion respectfully requests that the Commission remand the applications to USAC with instructions to issue a decision based upon a complete review of the applications no later than 60 days from the release date of the Commission's order granting this appeal.

Respectfully submitted,

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July 16, 2007

CERTIFICATE OF SERVICE

I, Carly T. Didden, certify on this 16th day of July, 2007, a copy of the foregoing Supplement to Consolidated Request for Review has been served via electronic mail or first class mail, postage pre-paid, to the following:

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