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

In the Matter of the	)	File No. SLD -
	)	
Appeal of the Decision of the	)	
	)	
Universal Service Administrator by	)	
Liberty County School System	)	
	)	
	)	
	)	CC Docket No. 96 - 45
Federal-State Joint Board on	)	
Universal Service	)	
Changes to the Board of Directors of	)	
The National Exchange Carrier	)	
Association, Inc.	)	CC Docket No. 97 - 21

Appeal<sup>1</sup>  
and  
Request for Expedited Relief

May 6, 2008

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W. Suite TW-A325  
Washington, D.C. 20554

This is an appeal from an adverse decision by the USAC.

Enclosed, find the original and four copies of the Appeal. An extra copy is also enclosed.

Please time stamp the extra copy and return it to me in the enclosed self addressed-  
stamped envelope.

<sup>1</sup> Second Liberty Appeal

Funding Commitment Decision Letter Appealed

Form 471 Application Number: 573661  
Funding Year : 2007  
Billed Entity Number for System: 127458  
Date of Funding Denial Notice: March 10, 2008  
Date of Appeal: May 6, 2008

(2) Liberty County School System Contact Information

Dr Patti Crane, Executive Director  
of Technology/Media

Liberty County School System  
910 Long Frasier St., Rm 503  
Hinesville, GA 31313  
Phone: 912.369.3144  
Fax: 912.368.2607

(3) FRN Appealed  
1585441

(4) SLD's Reason for Funding Denial

“On the Original Form 471 the applicant was approved at 88 percent discount. FCC rules indicate that the level of poverty shall be measured by the percentage of the student enrollment or a federally approved alternative mechanism.\*\*\* applicant could not validate the requested discount level using the extrapolation method\*\*\*” **Exhibit A**

(5) The SLD incorrectly applied FCC Regulations to Liberty County School System

Liberty did exactly what FCC rules permit.

*The FCC, in DA 01-588, Rel March 6, 2001, defines extrapolation as the use of a “feeder pattern method,” which relies on extrapolation rather than actual counting. **Exhibit B***

The FCC Regulations Governing Discount Calculations provides in relevant part:



\*\*\* a school may use either an actual count<sup>1</sup> of students eligible for the national school lunch program or federally-approved alternative mechanisms to determine the level of poverty for purposes of the universal service discount program. Alternative mechanisms may prove useful for schools that do not participate in the national school lunch program or schools that participate in the lunch program but experience a problem with undercounting eligible students (e.g., high schools, rural schools, and urban schools with highly transient populations). Schools that choose not to use an actual count of students eligible for the national school lunch program may use only the federally-approved alternative mechanisms contained in Title I of the Improving America's Schools Act, which equate one measure of poverty with another. These alternative mechanisms permit schools to choose from among existing sources of poverty data a surrogate for determining the number of students who would be eligible for the national school lunch program.<sup>2</sup>

The *Federal-State Joint Board* stated in *Para 567* “ \*\*\* we seek to minimize the administrative burden on school districts.” The FCC stated “[a]lternative mechanisms may prove useful for schools that do not participate in the national school lunch program or schools that participate in the lunch program but experience a problem with undercounting eligible students (e.g., high schools, rural schools, and urban schools with highly transient populations).” FCC Report is *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Rel: May 8, 1997, Para 510* The objective appears to not

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<sup>1</sup> The actual count issue is not a simple concept as seen from a draft “SA 9-1, Policy 210.18-03”, issued by the USDA. It states, *in part*, “[t]he “Actual” column only differs from the “Estimate” column in that the “Actual” column takes into account the days in the review month when students were not yet enrolled in school or had withdrawn. To arrive at this number, the reviewer would have to add the calendar days each student was enrolled to arrive at the total maximum number of lunches reported in line 3. The “Estimate” column estimates this number by simply multiplying the number of students by the number of serving days, ignoring the fact that some students may not have been enrolled all month. The “Estimate” column was provided to lessen calculations done by the reviewer.” **Exhibit C**

<sup>2</sup> See 34 C.F.R. § 200.28(a)(2)(i)(B) . Under this regulation, enacted pursuant to Title I of the Improving America's Schools Act of 1994, private schools that do not have access to the same poverty data that public schools use to count children from low-income families may use comparable data “(1) [c]ollected through alternative means such as a survey” or “(2) [f]rom existing sources such as AFDC or tuition scholarship programs.” 34 C.F.R. § 200.28(a)(2)(i)(B)(1) and (2). \*\*\*

administratively burden schools and to promote E-rate, that is getting funds to needy schools, while having an actual count of eligible students.

Again, *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Rel, May 8, 1997*, does not state that NSLP can not be used as a survey.

In *DA 01-588, Rel March 6, 2001*, “\*\*\* the Commission held that schools that do not use a count of students eligible for the national school lunch program could use only the federally-approved alternative mechanisms contained in Title I of the Improving America’s Schools Act, and that all of these mechanisms, while looking to other indices of poverty such as participation in tuition scholarship programs, still rely on ‘actual counts of low-income children.’” **Exhibit B**

The method used by Liberty produces an “actual count” of low-income children. This is demonstrated by Liberty’s SNP, or survey, sent to all household’s within its school district.

The survey must be sent to all families whose children attend the school. The survey must, at a minimum, contain the following information:

- Name of the family and students
- Size of the family
- Income level of the family

This is the actual Form sent by Liberty to all families in the district whose children attend the school.

Liberty Elementary

**LIBERTY COUNTY SNP 2006-07 Family Application for Free & Reduced Meal Benefits**  
USE EITHER OR ONLY. PRINT HEAVILY. COMPLETE ONE APPLICATION PER HOUSEHOLD AND ONE FOR EACH FOSTER CHILD

App # 25 Status 1 FOR Income \$33,000.00 Size 6 08/03/2006  
 Application Type Income

**PART 1 - STUDENT SECTION** LET ALL STUDENTS ATTENDING LIBERTY COUNTY SCHOOLS

Student's ID# (Optional)	Student's Legal Name (Print Full)	School Name	Food Stamp/FANPS	Grade	STUDENT'S MONTHLY INCOME
	Jalen	LES		2	\$ 100.00
	Jasmine	LES		1st	\$ 100.00
	Jarvis	LES		Pre-K	\$ 100.00
					\$ 100.00
					\$ 100.00
					\$ 100.00

**PART 2** - If the child you are applying for is homeless, migrant, or a runaway check the appropriate box and call 912.876.4876 or 912.876.4877  
 Homeless  Migrant  Runaway

**PART 3 - FOSTER CHILD SECTION** HOUSEHOLDS WITH A FOSTER CHILD  
 If a child living with your household is the legal responsibility of a welfare agency or court check here and use the child's monthly personal net income \$ \_\_\_\_\_

**PART 4 - ADULTS SECTION** LIST ALL ADULTS & CHILDREN **NOT** ATTENDING LIBERTY COUNTY SCHOOLS

Other household members:	Check Box if NO Income	MONTHLY Gross Earnings Before Deductions include all jobs	MONTHLY Visa/Imm Payments Child Support Agency	MONTHLY Pay from Pensions Retirement/Goodwill Security	Any OTHER MONTHLY Income
Elvis	<input type="checkbox"/>	\$ 2200.00	\$ 100.00	\$ 100.00	\$ 100.00
Deidre	<input checked="" type="checkbox"/>	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00
Jayla	<input checked="" type="checkbox"/>	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00
	<input checked="" type="checkbox"/>	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00

PUT TOTAL NUMBER OF HOUSEHOLD MEMBERS HERE  Liberty County of the information on all applications in case of that all income is reported. If you are not reporting all income, the school will get all the information from the 1099s and other documents and may require benefits, and they will be processed. Family take information to a child support order. Social Security Number

**PART 5 SIGN HERE** I hereby certify that all the information on this application is true and that all income is reported. I understand that the school will get all the information from the 1099s and other documents and may require benefits, and they will be processed. Family take information to a child support order. Social Security Number

PRINT NAME: [Redacted] DATE: 8-3-06  
 ADDRESS: [Redacted] DAY PHONE NUMBER: 834-7287 HOME PHONE NUMBER: 834-7307

**PART 6** Children's race and ethnic identities (optional)  
 Mark one or more boxes that apply:  
 Black or African American  American Indian or Alaska Native  Hispanic or Latino  White  Native Hawaiian or Other Pacific Islander  Other

Work on ethnic identity:  
 Hispanic or Latino  Not Hispanic or Latino

RECEIVED  
 AUG 03 2006  
 YES/NO/OTHER

This Liberty Form generates an "actual count." **Please note that income data is demanded.**

Liberty's Form is no different than the NSLP Form which is used for an actual count.

Below is an NSLP Form. Liberty actually modified this NSLP Form to the Liberty Count SNP Form above.



Operated by Local Educational Agencies - under section 200.28 Allocation of funds to school attendance areas and schools.

This is the text that actually outlines alternative mechanisms [(1) ...**alternative means, such as a survey**; or (2) for existing sources such as AFDC or tuition scholarship programs...] emphasis added.

NSLP can be used as a survey! The NSLP is a survey<sup>3</sup>!

Liberty's NSLP "application" meets the "survey guidelines."

### **Survey Guidelines**

If a school chooses to do a survey, the following guidelines apply:

- a. The survey must be sent to all families whose children attend the school.
- b. The survey must attain a return rate of at least 50%.
- c. The survey must, at a minimum, contain the following Information: Address of family Grade level of each child Size of the family Income level of the parents
- d. The survey must assure confidentiality. (The names of the families are not required.) <http://www.sl.universalservice.or1/reference/alt.asp> 11/8/2005<sup>4</sup>

### **Exhibit E**

USAC guidelines permit "projections" based on Liberty County's survey "application".

The guidelines provide:

\*\*\*

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<sup>3</sup>Survey means a formal or official examination of the particulars of something, made in order to ascertain condition, character, etc.; a sampling, or partial collection, of facts, figures, or opinions taken and used to approximate or indicate what a complete collection and analysis might reveal\*\*\* *Dictionary.Com*

<sup>4</sup> The USAC Fact Sheet was subsequently modified on June 21, 2007 to state that NSLP could not be used as a survey. First, Liberty's FCC 471 application is governed by the USAC Fact Sheet 2005 posting, and second, adding the NSLP application prohibition to the June 21, 1997 Fact Sheet is meaningless since it is not an FCC regulation.

#### 7. Projections based on surveys

If a school has sent a questionnaire to all of its families, and if it receives a return rate of at least 50 percent of those questionnaires, it may use that data to project the percentage of eligibility for E-rate purposes for all students in the school. For example, a school with 100 students sent a questionnaire to the 100 homes of those students, and 75 of those families returned the questionnaire. The school finds that the incomes of 25 of those 75 families are at or below the IEG for NSLP. Consequently, 33 percent of the students from those families are eligible for E-rate purposes. The school may then project from that sample to conclude that 33 percent of the total enrollment, or 33 of the 100 students in the school, are eligible for E-rate purposes. *Alternative Discount Mechanisms Fact Sheet - Schools & Libraries (USAC)*, <http://www.sl.universalservice.or1/reference/alt.asp>, 11/8/2005 **Exhibit E**

Both the NSLP Application and survey methods are “projections,” *i.e.*, how many students are eligible for free and reduced meals, or who meet the Income Eligibility Guidelines of the National School Lunch Program, or “actual count.”

The USAC stated that Liberty “extrapolated” from the survey, rather than “project” from the survey as is permitted. (“Projection” means a prediction or an estimate of something in the future, based on present data or trends. *Dictionary.Com*) A look at Liberty’s data does not demonstrate that there was an “extrapolation.” “Extrapolation” is defined *statistically as an estimate (the value of a variable) outside the tabulated or observed range; mathematically, extrapolation is defined as an estimate (a function that is known over a range of values of its independent variable) to values outside the known range.* Or, generally speaking, extrapolation is to infer (an unknown) from something that is known; conjecture. *Dictionary.Com* The USAC concluded that since Liberty used “the NSLP application forms the discount calculation was by the extrapolation method.” **Exhibit A** However, *DA 01-588, Rel March 6, 2001*, defines extrapolation. **The FCC defined**

extrapolation as the use of a "feeder pattern method," which relies on extrapolation rather than actual counting. Here, "extrapolation" is a USAC conclusion based on no evidence in the record.

**Income Eligibility Guidelines of the National School Lunch Program (NSLP) Application (Actual Count) versus Survey Issues**

*The Federal-State Joint Board Universal Service on CC Docket No. 96-45,*

*Recommended Decision, Adopted: Nov 7, 1996 Rel: Nov 8, 1996,* stated, in relevant part that:

564. To minimize any additional recordkeeping or data gathering obligations, we seek the least burdensome manner to determine the degree to which a school or library is economically disadvantaged. \*\*\*\*We recognize that poverty data is also an\*\*\*accurate gauge of economic disadvantage, and that EDLINC's proposal for calculating the level of discount for schools and libraries takes affordability into consideration. \*\*\*we remain open to the approaches that may also prove to be both minimally burdensome for schools \*\*\* and accurate measures of economic disadvantage. \*\*\*

\*\*\*

\*\*\*

\*\*\*

567. \*\*\* we seek to minimize the administrative burden on school districts. That is, we do not seek to impose unduly burden some reporting and accounting requirements on school districts, but we also seek to ensure that the individual schools with the highest percentages of economically disadvantaged students may receive the steepest discounts. \*\*\* Therefore, we recommend that the district office certify to the administrator and to the service provider the number of students in each of its schools who are eligible for the national school lunch program. We recommend that the district office may decide to compute the discounts on an individual school basis or it may decide to compute an average discount. We further recommend that the school district assure that each school receive the full benefit of the discount to which it is entitled.

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\*\*\*

*See also , CC Docket 96-45, Rel, May 8, 1997, Para 510, adopting the Federal-State Joint*

*Board Recommendation regarding number of students eligible for NSLP discounts.*

The USAC seeks to increase the administrative burden on Liberty by its arbitrary, impulsive, and unreasonable imposition of an additional requirement. That is, the USAC's method does not allow Liberty to use the NSLP as a survey when in fact it is a survey. If a comparison is made between NSLP Application and Liberty methodology, the requested data arrives at the same destination that is actual count.

Assuming, *arguendo*, the USAC is correct in stating that NSLP Applications cannot be used as a survey, this is unreasonable since the FCC is the only administrative body that can issue such a regulation. The policy behind USF for schools is to "assure that each school receive(s) the full benefit of the discount to which it is entitled." *Federal-State Joint Board Universal Service on CC Docket No. 96-45, Recommended Decision, Adopted: Nov 7, 1996 Rel: Nov 8, 1996, Para 567* The USAC, by its unilateral policy which has evolved into a rule, seeks not only minimize that entitlement, but to create an additional administrative burden.

If the issue is E-rate waste, fraud and abuse, there is no evidence that it exist at Liberty. If the issue is, as the FCC has stated, to calculate the greater discounts on telecommunications and other covered services for economically disadvantaged schools, then Liberty's funding should be approved at the higher discount rate. If the issue is extrapolation, Liberty has demonstrated that its methodology resulted in an "actual count." After determining the actual count, Liberty then, in accordance with the Guidelines, made projections which were then entered on FCC Form 471. *Alternative*

*Discount Mechanisms Fact Sheet - Schools & Libraries (USAC),*

*<http://www.sl.universalservice.or1/reference/alt.asp>, 11/8/2005*

**Conclusion:**

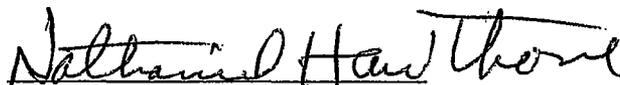
**The USAC should not make Liberty jump through more regulatory hoops than required to obtain USF, and absent waste, fraud and abuse, the USAC should get funds to Liberty at the discount level requested.**

Liberty is requesting the Following Action by the FCC:

(a) Within 90 days or less Order funding for the telecommunications services requested in the 471 Application, specifically: FRN: 1585441

(b) Set aside funds to totally fund FRN: 1585441

Respectfully submitted,



Nathaniel Hawthorne, Attorney/Consultant, Ltd  
By: Nathaniel Hawthorne

District of Columbia Bar No. : 237693  
27600 Chagrin Blvd., Ste. 265  
Cleveland, OH 44122  
tel.:216/514.4798  
e-mail:nhawthorne@earthlink.net

Attorney for  
Liberty County School System  
910 Long Frasier St., Rm 503  
Hinesville, GA 31313

Exhibit A



**Notification of Commitment Adjustment Letter**

**Funding Year 2007: 7/01/2007 - 6/30/2008**

March 10, 2008

**Dr. Patti Crane  
LIBERTY COUNTY SCHOOL DISTRICT  
910 Long Frasier St.  
Hinesville, GA 31313 3100**

**Re: Form 471 Application Number: 573661  
Funding Year: 2007  
Applicant's Form Identifier: LCSSFiber08  
Billed Entity Number: 127458  
FCC Registration Number: 0011792314  
SPIN Name: Coastal Utilities, Inc.  
Service Provider Contact Person: Cecil Lipscomb**

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

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

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

## TO APPEAL THIS DECISION:

*If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:*

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Numbers you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, Billed Entity Number, and FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter specific and brief, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.

4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal electronically, please send your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org) using your organization's e-mail. If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Dept. 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Appeals Area of the SLD section of the USAC web site or by contacting the Client Service Bureau at 1-888-203-8100. We strongly recommend that you use the electronic appeals options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC web site, or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

## FUNDING COMMITMENT ADJUSTMENT REPORT

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

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

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

Schools and Libraries Division  
Universal Services Administrative Company

cc: Cecil Lipscomb  
Coastal Utilities, Inc.

## A GUIDE TO THE FUNDING COMMITMENT ADJUSTMENT REPORT

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

**FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each individual request in your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.

**SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.

**SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

**SERVICE PROVIDER NAME:** The legal name of the service provider.

**CONTRACT NUMBER:** The number of the contract between the applicant and the service provider. This will be present only if a contract number was provided on your Form 471.

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

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

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

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

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

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

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

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

**Funding Commitment Adjustment Report for  
Form 471 Application Number: 573661**

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Funding Request Number:	1585441
Services Ordered:	TELCOMM SERVICES
SPIN:	143001455
Service Provider Name:	Coastal Utilities, Inc.
Contract Number:	100-82ADM
Billing Account Number:	542-0151-0
Site Identifier:	127458
Original Funding Commitment:	\$102,263.04
Commitment Adjustment Amount:	\$6,972.48
Adjusted Funding Commitment:	\$95,290.56
Funds Disbursed to Date:	\$0.00
Funds to be Recovered from Applicant:	\$0.00

**Funding Commitment Adjustment Explanation:**

After a thorough review, it was determined that the funding commitment for this request must be reduced by \$6,972.48. On the original Form 471 the applicant was approved at an 88 percent discount. FCC rules indicate that the level of poverty shall be measured by the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. During the course of review it was determined that the applicant is only eligible to receive an 82 percent discount. It was determined that the applicant could not validate the requested discount level using extrapolation method. Information obtained from applicant and NSLP data on file was used to verify discount level. Accordingly, the commitment has been reduced by \$6,972.48. (pre-discount commitment amount\*(discount percentage approved on the Form 471 less the discount rate the applicant is actually eligible to receive) and if recovery is required, USAC will seek recovery from the applicant..

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

Exhibit B

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Western Heights School District	)	File No. SLD-150495
Oklahoma City, Oklahoma	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

**ORDER**

**Adopted: March 5, 2001**

**Released: March 6, 2001**

By the Common Carrier Bureau:

1. The Common Carrier Bureau (Bureau) has under consideration a Request for Review filed by Western Heights School District (Western Heights), Oklahoma City, Oklahoma, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).<sup>1</sup> Western Heights appeals SLD's refusal to use the "feeder pattern method" to determine Western Height's discount percentage under the schools and libraries universal service support mechanism.<sup>2</sup> Western Heights further asserts that because this issue raises a novel question of policy, it should be considered by the full Commission.<sup>3</sup> For the reasons discussed below, we deny the Request for Review and affirm SLD's denial of Western Heights' application.

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

<sup>1</sup> Request For Review by John D. Harrington, Funds for Learning, on behalf of Western Heights School District, to Federal Communications Commission, filed July 31, 2000 (Request for Review).

<sup>2</sup> *Id.*

<sup>3</sup> 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). The Commission's rules provide that requests for review of decisions shall be considered and acted upon by the Common Carrier Bureau, except that requests which raise novel questions of fact, law, or policy shall be considered by the full Commission. 47 C.F.R. § 54.722(a).

for eligible telecommunications services, Internet access, and internal connections.<sup>4</sup> In accordance with the Commission's rules, the discount available to a particular school or library is determined by indicators of poverty and high relative cost of service.<sup>5</sup> The level of poverty for schools and school districts is measured by the percentage of their student enrollment that is eligible for a free or reduced-price lunch under the National School Lunch Program (NSLP) or a federally-approved alternative mechanism.<sup>6</sup> A school's high-cost status is derived from rules that classify it as urban or rural.<sup>7</sup> The Commission's rules provide a matrix reflecting both the school's urban or rural status and the percentage of its students who are eligible for the school lunch program to establish its discount rate, ranging from 20 percent to 90 percent.<sup>8</sup> A school's discount rate is then applied to the cost of eligible services requested by the school.<sup>9</sup>

3. Western Heights is a school district which includes elementary schools as well as middle and high schools.<sup>10</sup> A school district calculates its discount by first calculating the discount applicable to each of its member schools and then calculating the weighted average of these discounts, based on the number of students in each school.<sup>11</sup>

4. In its application for year-two funding, Western Heights calculated the discount applicable to its elementary schools by an actual head-count of the number of students in those schools that reported that they were eligible for free or reduced price lunches under NSLP.<sup>12</sup> However, to determine the number of such students in its middle and high schools, Western Heights used the "feeder pattern method" rather than an actual head-count.<sup>13</sup> The "feeder pattern method" estimates the numbers of middle and high school students eligible for NSLP based on the assumption that these schools will have eligibility rates similar to the elementary schools that feed into them.<sup>14</sup> Thus, Western Heights based its reported middle and high school eligibility rates on a student-weighted average of the eligibility rates of its elementary schools.<sup>15</sup> Using this

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<sup>4</sup> 47 U.S.C. § 254(h)(1)(B); 47 C.F.R. §§ 54.502, 54.503.

<sup>5</sup> 47 C.F.R. § 54.505(b).

<sup>6</sup> 47 C.F.R. § 54.505(b)(1).

<sup>7</sup> 47 C.F.R. §§ 54.505(b)(3)(i), (ii).

<sup>8</sup> 47 C.F.R. § 54.505(c).

<sup>9</sup> *Id.*

<sup>10</sup> Request for Review at 1-2.

<sup>11</sup> 47 C.F.R. § 54.505(b)(4).

<sup>12</sup> Request for Review at 2.

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

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 2-3.

method, Western Heights calculated that its middle and high schools were entitled to the maximum 90% discount, and that the district overall was entitled to an 88% discount.<sup>16</sup>

5. On August 10, 1999, SLD issued a Funding Commitment Decision Letter, granting Western Heights' funding requests but assigning an 80% discount rate to the middle school, a 60% rate to the high school and a 78% shared discount to Western Heights as a whole.<sup>17</sup> On August 31, 1999, Western Heights appealed the discounts to the Administrator, submitting documentation that supported Western Heights' calculations and use of the "feeder pattern method."<sup>18</sup> On June 29, 2000, the Administrator denied the appeal, stating that "the shared discount percentage you requested was based on Feeder School method, which is an unacceptable method for E-rate discounts" and that "SLD modified your discount percentage to 78% in accordance with the actual count of students participating in the National School Program."<sup>19</sup> Western Heights then timely filed the instant Request for Review.

6. On review, we find that SLD properly denied Western Heights' request for higher discounts based on the "feeder pattern method." This method is not one of the acceptable methods set out in the Commissions' rules and orders for calculating the discount.<sup>20</sup> In the *Universal Service Order*, the Commission held that schools that do not use a count of students eligible for the national school lunch program could use only the federally-approved alternative mechanisms contained in Title I of the Improving America's Schools Act, and that all of these mechanisms, while looking to other indices of poverty such as participation in tuition scholarship programs, still rely on "actual counts of low-income children."<sup>21</sup> The permissible methods thus do not include the "feeder pattern method," which relies on extrapolation rather than actual counting.<sup>22</sup> Indeed, in the *Universal Service Order*, the Commission considered a comment

<sup>16</sup> FCC Form 471, Western Heights School District, filed April 2, 1999.

<sup>17</sup> Letter from Schools and Libraries Division, Universal Service Administrative Co., to Joe Kitchens, Western Heights School District 41, dated August 10, 1999 (Funding Commitment Decision Letter).

<sup>18</sup> Letter of Appeal, from John D. Harrington, Funds for Learning, on behalf of Western Heights School District, to Schools and Libraries Division, filed September 3, 1999.

<sup>19</sup> Letter from Schools and Libraries Division, Universal Service Administrative Co., to Joseph Kitchens, Western Heights School District, dated June 29, 2000, at 1 (Administrator's Decision on Appeal).

<sup>20</sup> *Request For Review by Merced Union High School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-8404, 9605, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 18803 (Common Carrier Bur. rel. 2000) (*Merced*); *Request for Review by Enterprise City School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-46073, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 6990 (Common Carrier Bur. rel. 1999) (*Enterprise*).

<sup>21</sup> *Federal-State Joint Board on Universal service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9044-46, 9524-25 (1997) (*Universal Service Order*), affirmed in part, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), cert. denied, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), cert. denied, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), cert. dismissed, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (Nov. 2, 2000).

<sup>22</sup> *Enterprise* at para. 6

The method used by Liberty Bell relies on an "actual count of low-income children." cell

This is demonstrated by Liberty County S.N.P. Liberty County sent its S.N.P. to every school household, amount pg. 6

specifically suggesting the use of the feeder method to calculate discounts and rejected it.<sup>23</sup> Thus, we find that Western Heights' Request for Review seeking to use this method must be denied. In addition, we reject Western Heights' assertion that this appeal raises a novel issue of policy which must be considered by the full Commission, because as noted above, the Commission has already addressed the issue.

7. 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 Western Heights School District, Oklahoma City, Oklahoma on July 31, 2000, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief, Common Carrier Bureau

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<sup>23</sup> *Universal Service Order* at 9525 (noting with approval a comment that expanding permissible proxies beyond those that have already been adopted could unnecessarily entangle the FCC in endless review and approval processes of many less appropriate schemes.); *see also Enterprise* at para. 6 (noting that "the Commission specifically rejected commenters' suggestions that would have permitted showings, such as the feeder method, that would merely approximate the percentage of low income children in a particular area.") (citing *Universal Service Order*). Western Heights cites to the "long standing practice" of the Department of Education as permitting the use of the feeder method to determine the number of low-income students in a school and urges us to defer to the Department of Education's expertise in this area. Request for Review at 2. However, as indicated, the Commission has already considered such proxy methodologies and rejected them.

Exhibit C



United States Department of Agriculture  
Food and Nutrition Service

Southeast Region

Reply to  
Attn. of: SA 9-1

Subject: Policy 210.18-03: Coordinated Review (CRE) Issues and Supplemental Guidance

To: All State NSLP Directors  
Southeast Region

This policy letter is to reissue Coordinated Review (CRE) policy issues previously distributed in policy letters NSLP 94-1 and NSLP 95-13. Any changes made to the original memorandum are in **bold**.

The purpose of this memo is to address operational issues that have been raised during CRE reviews, to highlight areas in which the reviews showed common or continuous problems with implementation of program requirements, and to address questions and issues related to the CRE review form and procedures.

S-1 COUNTING THE NUMBER OF STUDENTS ELIGIBLE FOR BENEFITS

The eligible count must be determined by the reviewer independent of the school or SFA total eligible counts. Because this data is used to test the meal count system, students are to be counted in the category that the determining official has assigned, not the correct category if there is a difference. (The purpose of this rule is to allow the reviewer to compare total meal counts by category to the number students the school, e.g. roster, indicated where eligible by category.)

The count at the beginning or end of a month, the monthly average, and the highest count in the month are all acceptable methods for the SFA to obtain their eligible count. The CRE count should be higher, as CRE counts all students who were eligible during the month, even for only one day. This higher count is beneficial to the SFA, not detrimental.

S-2 CERTIFICATION (APPLICATIONS)

SFA's in the Southeast Region do not appear to have major problems with application approval. However, several questions related to determining eligibility required clarification as follows:

All State NSLP Directors

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