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August 15, 2008

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket Nos. 96-45 and 02-6: Request for Review of the Aldine Independent School District

Billed Entity Number:	141224
Form 471 Application Number:	421086
Funding Request Number:	1160625

Dear Ms. Dortch:

Pursuant to 47 C.F.R. §§ 54.719(c) and 54.722, the Aldine Independent School District (the "District") hereby submits this request for review of the Decision of the Universal Service Administrator on the above-referenced Application. This request for review by the Federal Communications Commission (the "Commission") arises from the District's E-rate application for Funding Year 2004. The District appeals the Administrator's Decision on Appeal issued by the Universal Service Administrative Company ("USAC") on July 17, 2008. The District will amend and/or supplement this appeal with additional facts, argument, and supporting documentation on or before September 15, 2008, as is consistent with the sixty-day appeal window prescribed by the Commission's rules. The District hereby respectfully requests that the Commission direct USAC to suspend all collection actions on the alleged debt,[1] and further, order that no interest, late payment charges, administrative costs or other penalties accrue on the alleged debt until such time as the Commission issues its final decision on the merits of the District's appeal.[2]

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1 *See* 31 C.F.R. § 903.2, as made applicable to this proceeding by 47 C.F.R. § 1.1904.
2 *See* 31 C.F.R. §§ 901.9 (g)-(h).

Factual Background

USAC's Schools and Libraries Division ("SLD") maintains and periodically updates an Eligible Services List ("ESL"), which contains descriptions of the various services eligible for E-rate funding. Included among the eligible services are maintenance and technical support for eligible internal connections components. The ESL in effect for Funding Year 2004 was released on October 10, 2003. Prior to that time, the ESLs had highlighted new clarifications and modifications from previous versions of the document by highlighting such text in bold. The October 10, 2003 ESL discontinued this practice and instead stated that a notation regarding information that had been changed from previous years would be provided in the descriptive information for relevant entries.

For several years prior to the October 10, 2003 update, the ESL had stated that maintenance and technical support services were eligible if they were part of a maintenance contract for an eligible service or product and if the contract identified the eligible products or service covered. The October 10, 2003 update changed the language discussing maintenance and technical support services in the ESL and added a requirement that the maintenance contract should include product name, model number, and location of the eligible products covered. However, unlike other entries containing revised language, the October 10, 2003 ESL entry for maintenance and technical support services did not contain the notation showing that it contained new information for Funding Year 2004.

The District applied for E-rate funding of maintenance services for eligible internal connections equipment within District facilities for Funding Year 2004. The District's application was assigned Form 471 Application No. 421086 and Funding Request No. ("FRN") 1160625. This application was based on a maintenance contract the District entered into with vendor Solid IT Networks ("Solid IT" or "Vendor"). The contract listed the quantity, product name and model number of the eligible internal connections products that were covered, but it did not list the locations of the equipment. After review of the District's application by the SLD Program Integrity Assurance ("PIA") Team, SLD approved the District's application for $2,299,352.94 in funding and issued a Funding Commitment Decision Letter dated January 11, 2005. The approved funding was disbursed in the normal course of events.

Between the months of September and November of 2006, the District was audited by USAC's Internal Audit Division in regard to its Form 471 Application No. 421086. On September 19, 2007, SLD issued a Notification of Commitment Adjustment Letter concerning the funds disbursed under that funding application; the attached Funding Commitment Adjustment Report indicated that SLD had adjusted the District's funding to $0.

The stated basis of this decision was that the maintenance contract did not specify the locations of the eligible products or services for which the maintenance was to be provided.

The District filed an appeal with SLD on October 30, 2007 and subsequently provided documentation to SLD, including inventory lists showing that the District actually possessed the eligible equipment covered by the maintenance contract and documentation showing that technical support work was actually being performed on eligible equipment owned by the District. On July 17, 2008, the District received the USAC Administrator's Decision on Appeal, which denied the District's appeal. The Administrator's decision indicated that, even though the District had provided documentation showing the specific locations of equipment, the District was unable to provide support verifying the actual maintenance that was performed. The Administrator thus denied the appeal "since the issue of the contract not listing the location of the contracted equipment or the document retention required by the program rules has not been satisfied."

On July 18, 2008, SLD sent to the District a Demand Payment Letter, which stated that repayment of the balance of the debt (i.e., the funds that were the subject of the appeal) was due within 30 days of that letter. It further declared that failure to pay the debt within 30 days could result in interest, late payment fees, administrative charges, and implementation of the red light rule.[3]

Discussion

In *Bishop Perry*, the Commission acknowledged that many E-rate program beneficiaries, in particular, small entities, find the application process for public funds to be complicated, thereby resulting in significant numbers of applications for E-rate support being denied for ministerial, clerical or procedural errors.[4] Therefore, the Commission sought to provide relief from those types of errors in the application process, and to promote the statutory requirements and purposes of section 254(h) of the Communications Act of 1934, as amended, by helping to ensure that eligible schools and libraries actually obtain access to

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[3] *See* 47 C.F.R. §§ 1.1910-1.1911.

[4] *See Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry*) (directing USAC to identify and allow applicants to cure errors related to FCC Form 470 and FCC Form 471 filings and to enhance outreach to applicants in order to avoid clerical, ministerial, and procedural errors).

discounted telecommunications and information services. To that end, the Commission may waive any provision of its rules on its own motion and for good cause shown.[5]

A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.[6] The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[7] In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.[8]

The District's failure to include location information in the maintenance contract and to retain inventory documentation showing the locations of the eligible equipment during Funding Year 2004 was a mistake made in good faith. This mistake was nothing more than an oversight of new content requirements that were not specifically noted in the ESL Funding Year 2004. The District now is aware of the requirement at issue here, and its maintenance contracts have included the requisite information going forward. Moreover, the District has maintained the documentation specified by the E-rate program requirements.

The Administrator's statement that the District could not verify the actual maintenance performed is plainly incorrect. The District intends to provide the Commission documentation showing the actual maintenance and technical support services performed during Funding Year 2004 under that year's maintenance contract. The District also intends to provide to the Commission inventories for the relevant time period demonstrating that it possessed the eligible equipment covered under the contract, and listing the location of such equipment. Because the District can verify the existence and location of the eligible equipment covered by the Funding Year 2004 maintenance contract, USAC's decision to completely wipe out its entire funding commitment is inequitable and inconsistent with the public interest. The District's failure to list the locations of the equipment in the contract or to retain a full inventory for that year amounts to nothing more than an inadvertent oversight, and therefore, the Commission has good cause to waive these ministerial requirements.

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5 47 C.F.R. §1.3.

6 *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

7 *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

8 *Northeast Cellular*, 897 F.2d at 1166.

Relief Requested

For the above reasons, the Aldine Independent School District respectfully requests that the Commission grant this Request, reverse the USAC Administrator's Decision, and find that the District is entitled to the full original funding commitment of $2,299,352.94. The District also requests that the Commission direct USAC to suspend all collection actions on the alleged debt, and further, order that no interest, late payment charges, administrative costs or other penalties accrue on the alleged debt until such time as the Commission issues its final decision on the merits of the District's appeal.

Very truly yours,

George M. Foote
Brett Heather Freedson

Attorneys for Aldine Independent School District

cc: Universal Service Administrator
Universal Service Ombudsman
Gina Spade, Telecommunications Access Policy Division