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

FCC Mail Room

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

Additional Authority for Liberty Appeals

September 5, 2008

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

Enclosed, find the original and four copies of Additional Authority. An extra copy is also enclosed. Please time stamp the extra copy and return it to me in the enclosed self addressed-stamped envelope.

On July 7, 2008, the USDA issued a "Letter" regarding student eligibility data for Federal education programs including E-Rate. This "Additional Authority" relates that Letter to the Appeals filed by the Liberty County School System (Liberty). Both Appeals are

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pending before this Commission and this Additional Authority is filed in support of both Appeals.

The First Liberty Appeal's identifying data consist of:

Form 471 Application Number:	574174
Funding Year :	07/01/2007-06/30/2008
Billed Entity Number for System:	127458
Date of Funding Denial Notice:	November 13, 2007
Date of Appeal:	January 4, 2008

FRN Appealed:	1598094
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The Second Liberty Appeal's identifying data consist of:

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

FRN Appealed	1585441
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In both appeals the USAC stated that Liberty used the "extrapolation method," and that "FCC rules indicate that the level of poverty shall be measured by the percentage of the student enrollment or a federally approved alternative mechanism."

The USAC has stated that schools may use the alternative mechanism to determine student enrollment, that is the number of students eligible for free and reduced lunches.

"[A] school may use either an actual count 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...

"[S]chools 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 School Act, which equate one measure of poverty with another."

- FCC 97-157 ¶ 510

But, the USAC states that "[a]pplicants cannot use National School Lunch Application forms as surveys. The USAC states that surveys must be based on the following guidelines:

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 family and students

Size of the family

Income level of the family"

<http://www.usac.org/sl/applicants/step05/alternative-discount-mechanisms.aspx>

In both Appeals, Liberty used the NSLA form as a survey and contended that such use was permissible under FCC Rules and Regulations.

On July 7, 2008 the USDA issued a "Letter" regarding the "appropriateness of providing information to contractors auditing school districts' receipt of funds under the FCC's E-Rate fund." **Exhibit A** While the USDA's Letter is directed toward privacy issues, it reinforces Liberty's position that the NSLA form may be used as a survey, USAC's guidelines notwithstanding.

The Letter deals directly with "student eligibility information to Federal education programs" including E-Rate. Exhibit A The Letter goes on to point out that the "applicable protocols are to:

Compare aggregate enrollment data with aggregate free and reduced price eligibility data;

For a small sample of eligible students, request their applications (which could include direct certification records);

Confirm that an application or other documentation exists for each selected student;****”

Since the USDA's Letter deals with "student eligibility information to Federal education programs" including E-Rate, it addresses BOTH the NSLA form and any survey that is used under the FCC's Alternative Mechanism. The USDA's Letter, which also is an agreement between the USDA and the USAC, recognizes that the NSLA and a survey used the same data. But more importantly, the "agreement" overrides the USAC's attempt to impose additional "survey" guidelines on E-Rate applicants, without an FCC Regulation. If the USAC wanted its survey method blessed by the USDA, it would have been addressed in the Letter. The USAC's attempt to add "guidelines" to the student eligibility information is without regulatory effect. The Letter factually and legally reinforces Liberty's position that the NSLA form may also be used as a survey. There is no need for a separate "survey" in light of the USDA's Letter and the USAC's agreement thereto.

Conclusion:

This Additional Authority is provided in support of Liberty's Appeals.

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



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: July 7, 2008

MEMO CODE: SP 29-2008

SUBJECT: Cooperation with Federal Communications Commission's (FCC)
E-Rate Audits

TO: Special Nutrition Programs
All Regions

State Agencies
Child Nutrition Programs
All States

We have been asked to address the appropriateness of providing information to contractors auditing school districts' receipt of funds under the FCC's E-Rate fund. The FCC, through the Universal Service Administrative Company (USAC), administers the E-Rate program. USAC provides discounts to schools to obtain affordable telecommunication and Internet access; the discount rates are based on the percentage of children who are approved for free and reduced price school meals. USAC has contracted with private firms to conduct audits of the discount rates given to schools. Specifically, auditors have asked for a list of students eligible for free or reduced price meals under the National School Lunch Program (NSLP) who enrolled in the selected schools along with the applications for those students.

Based on information shared with us by the FCC's Office of the Inspector General, we have now determined that release of information to their auditors is **permitted** under section 9(b)(6) of the Richard B. Russell National School Lunch Act (NSLA). That section allows release of certain student eligibility information to Federal education programs. We have worked with the FCC to ensure that their audit protocols comply with the requirements of the NSLA.

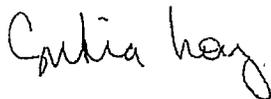
As long as the audit protocols below are followed, local educational agencies (LEAs) may share individual children's information with authorized FCC auditors. The applicable protocols are to:

- compare aggregate enrollment data with aggregate free and reduced price eligibility data;
- for a small sample of eligible students, request their applications (which could include direct certification records);
- confirm that an application or other documentation exists for each selected student; and
- prohibit auditors from retaining personal student information

Cooperation with Federal Communications Commission's (FCC) E-Rate Audits
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Auditors cannot verify the accuracy of the LEA's determinations and cannot contact the household. Further, because these auditors are bound by our disclosure requirements, they cannot share or otherwise release individual information. FCC has instructed their auditors that the LEA may redact all information from the application that does not directly show that a student has an approved application or other documentation on file. For example, if the student is identified by his/her student number, the LEA could redact the student's name, address, etc. as long as the student number and approved eligibility status were visible.

We ask that State agencies immediately convey this information to local agencies and ask them to contact your office if there are any questions or concerns.



CYNTHIA LONG
Director
Child Nutrition Division