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4 Email: tracy@warrenbanker.com

5 Attorneys for Petitioner

6 **Federal Communications Commission**

7  
8 *In re Request for Waiver of Appeal Deadline for USAC*  
9 *Decision regarding FRN# 1026344 for Funding Year*  
10 *2003:*

CC Docket Nos. 02-6 and 96-45

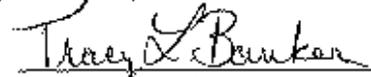
Notice of Appearance

10 Liberty Traditional Charter School  
4027 North 45<sup>th</sup> Avenue,  
11 Phoenix, Arizona 85031  
BEN# 208832,

12 Petitioner.

13 Comes now the firm of WARREN & BANKER, PLC, and files its Notice of Appearance as counsel for LIBERTY  
14 TRADITIONAL CHARTER SCHOOL in this matter.

15 Dated this 25<sup>th</sup> day of February, 2009

16 

17 Tracy L. Banker, Esq.  
Terry D. Warren, Esq.  
Warren & Banker, PLC  
18 4300 North Miller Road, Suite 141  
Scottsdale, Arizona 85251

19 Filed this 25<sup>th</sup> day of February, 2009,  
20 by Electronic Comment Filing System (ECFS), to

21 Marlene H. Dortch, Secretary  
Federal Communications Commission  
22 Office of the Secretary  
445 12<sup>th</sup> Street, SW  
23 Washington, D.C. 20554

24 Copy of the foregoing was sent, by  
Electronic Mail, this 25<sup>th</sup> day of February, to:

Schools and Libraries Division- Correspondence unit

100 S. Jefferson Road

P.O. Box 902

Whippany, NJ 07981

Email: [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org)

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8 Email: tracy@warrenbanker.com

9 Attorneys for Petitioner

10  
11 **Before the Federal Communications Commission**

12 *In re Request for Waiver of Appeal Deadline for USAC*  
13 *Decision regarding FRN# 1026344 for Funding Year*  
14 *2003:*

15 CC Docket Nos. 02-6 and 96-45

16 Request for Waiver of USAC Appeal Deadline

17 Liberty Traditional Charter School  
18 4027 North 45<sup>th</sup> Avenue,  
19 Phoenix, Arizona 85031  
20 BEN# 208832,

21 Petitioner.

22 Comes now the Petitioner, Liberty Traditional Charter School ("Liberty"), by counsel, and requests that the Federal  
23 Communications Commission ("FCC") waive the deadline set forth at 47 CFR §54.720 for appealing a Universal  
24 Service Administrative Company ("USAC") decision. Petitioner sets forth the following facts and conclusions of  
25 law in support of its Request for Waiver of the USAC appeal deadline.

26 MEMORANDUM OF FACTS AND CONCLUSIONS OF LAW

- 27
- 28 1. On November 25, 2008, USAC allegedly mailed to Liberty, by first-class mail, a letter titled, *Notification*  
29 *of Commitment Adjustment Letter Funding Year 2003: 7/1/2003 – 6/30/2004* (hereinafter, the "November  
30 2008 Letter"), a copy of which is attached hereto for reference as Exhibit A.
  - 31 2. Pursuant to FCC rules, the mailing of this letter began a 60-day appeal window for Liberty to appeal  
32 USAC's decision, which adjusted the funding commitment for Liberty's Form 471 Application Number

1 374715, Funding Request Number 1026344 for funding year 2003 from \$321,827.89 to \$0.00. See 47 CFR  
2 \$4,720.

- 3 3. Although the November 2008 letter was correctly addressed to Liberty, Liberty did not receive a copy of  
4 the letter during the 60-day appeal window.
- 5 4. On January 26, 2009, one day after the 60-day appeal window expired, USAC mailed a subsequent  
6 Demand for Payment letter demanding that Liberty repay \$321,827.89 of E-rate funding within 30 days.  
7 The January 26, 2009 letter was received by Liberty on January 30, 2009.
- 8 5. Liberty immediately contacted USAC to ascertain information regarding USAC's decision and, for the first  
9 time, learned of the November 2008 letter and the appeal window. Liberty requested a copy of the  
10 November 2008 letter from USAC on February 5, 2009, which was received on February 10, 2009.
- 11 6. Liberty is an Arizona nonprofit corporation operating an Arizona charter school with approximately 350  
12 students. Liberty's budget is limited and the Arizona State Legislature is currently cutting charter school  
13 budgets for the 2008-2009 school year as well as the 2009-2010 school year due to state budget deficits.  
14 Liberty is not in a financial position to pay USAC or the FCC \$321,827.89 by February 25, 2009 as  
15 demanded by USAC in it January 26, 2009 letter and does not believe that such repayment is warranted.  
16 Demanding such payment would create a significant hardship on Liberty, would likely bankrupt the  
17 corporation and close the charter school, thereby displacing 350 students from their school.
- 18 7. Although Liberty received a copy of the November 2008 letter on February 10, 2009 from the USAC legal  
19 department, Liberty is still researching the reason for USAC denial of funding request number 1026344,  
20 which occurred nearly five years after the original funding request was granted and paid by USAC.
- 21 8. Unlike schools that timely receive the Notification Letter, Liberty has been denied the benefit of a 60-day  
22 appeal window to review the USAC decision and formulate and submit its appeal. Instead, Liberty did not  
23 receive notice until after the appeal window closed and only had 14 days, after receiving a copy of the  
24 November 2008 letter to submit this request for waiver.

- 1 9. FCC rules permit the FCC to waive an appeal deadline for good cause so long as the circumstances  
2 surrounding the request for waiver could not be avoided even with careful planning and that the waiver of  
3 an FCC rule would serve the public interest. *See 47 CFR §1.3; Universal Service Administrative*  
4 *Company's Appeals Procedure*. Liberty's request for waiver clearly meets these requirements.
- 5 10. Liberty has a strict policy regarding the distribution of mail and all office staff members are familiar with  
6 the policy. Specifically, when mail is delivered by the United States Postal Service, the main office  
7 secretary, Rosie Boroquez, sorts and distributes mail into the proper addressee's internal mailbox. As in  
8 the case of the November 2008 letter, if the letter is addressed to the principal, Ms. Bonnie Knauel, who is  
9 also currently Liberty's E-rate grant contact, the mail is delivered to Ms. Knauel's internal mailbox and Ms.  
10 Knauel checks the mailbox daily.
- 11 11. Neither Ms. Boroquez nor Ms. Knauel received the November 2008 letter from USAC. *See Affidavits of*  
12 *Bonnie Knauel and Rosie Boroquez*.
- 13 12. Certainly, the delivery of this important notice could have been more accurately tracked if the notice had  
14 been sent by certified or registered mail, but USAC did not send the letter in such manner.
- 15 13. Therefore, even with strict mail delivery policies and procedures in place, Liberty did not receive the  
16 November 2008 letter and therefore, could not timely appeal the USAC decision to adjust Liberty's 2003  
17 E-rate funding commitment relating to FRN 1026344.
- 18 14. Liberty reasonably believes that there are grounds to support an appeal of the USAC decision and that the  
19 decision to adjust the 2003 funding commitment could be justifiably overturned upon appeal. Waiving the  
20 FCC appeal deadline and permitting Liberty to appeal the USAC decision would serve the public interest  
21 by allowing Liberty the opportunity to prove that Liberty properly bid for, contracted for and received cost-  
22 effective and reasonably tailored technology and related services to support its 350 Arizona students as  
23 permitted by the E-rate grant program.
- 24  
25

1 THEREFORE, for the foregoing reasons, Liberty respectfully requests that the Federal Communications  
2 Commission waive the USAC appeal deadline and permit Liberty to file its appeal of USAC's decision to adjust  
3 Liberty's 2003 E-rate funding commitment.

4 Dated this 25<sup>th</sup> day of February, 2009

5 

6 Tracy L. Banker, Esq.  
7 Terry D. Warren, Esq.  
8 Warren & Banker, PLC  
9 4300 North Miller Road, Suite 141  
10 Scottsdale, Arizona 85251

11 Filed this 25<sup>th</sup> day of February, 2009,  
12 by Electronic Comment Filing System (ECFS), to:

13 Marlene H. Dortch, Secretary  
14 Federal Communications Commission  
15 Office of the Secretary  
16 445 12<sup>th</sup> Street, SW  
17 Washington, D.C. 20554

18 Copy of the foregoing was sent, by  
19 Electronic Mail, this 25<sup>th</sup> day of February, to:

20 Schools and Libraries Division- Correspondence unit  
21 100 S. Jefferson Road  
22 P.O. Box 902  
23 Whippany, NJ 07981  
24 Email: [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org)

25 



**Notification of Commitment Adjustment Letter**  
**Funding Year 2003: 7/01/2003 - 6/30/2004**

November 25, 2008

**FLORA WEBSTER**  
**LIBERTY TRADITIONAL CHARTER**  
4027 N. 45th Ave.  
Phoenix, AZ 85031

**Re: Form 471 Application Number: 374715**  
**Funding Year: 2003**  
**Applicant's Form Identifier: 2ND6YRFORM**  
**Billed Entity Number: 208832**  
**FCC Registration Number: 0013519152**  
**SPIN Name: REMOVABLE MEDIA SOLUTIONS, INC.**  
**Service Provider Contact Person: PATRICIA SULLIVAN**

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.

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Exhibit A

## 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: PATRICIA SULLIVAN  
REMOVABLE MEDIA SOLUTIONS, 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: 374715**

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Funding Request Number:	1026344
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143017430
Service Provider Name:	REMOVABLE MEDIA SOLUTIONS, INC.
Contract Number:	Year6 E-Rate
Billing Account Number:	
Site Identifier:	208832
Original Funding Commitment:	\$321,827.89
Commitment Adjustment Amount:	\$321,827.89
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$321,735.39
Funds to be Recovered from Applicant:	\$321,735.39

**Funding Commitment Adjustment Explanation:**

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review, it was determined that the funds were erroneously committed for the funding request 1026344, which was not justified as cost effective. The FCC rules require that, in selecting the service provider, the applicant must select the most cost effective service or equipment offering, with price being the primary factor, which will result in it being the most effective means of meeting educational needs and technology plan goals. Additionally, the applicants' technology plans for requested services should be based on an assessment of their reasonable needs. Applicants that request services that are beyond their reasonable needs and thus not cost effective have violated the above rules. Since FRN 1026344 exceeded the applicant's reasonable needs, this funding commitment is rescinded in full and SLD will seek recovery of any disbursed funds from the applicant.

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

**AFFIDAVIT OF BONNIE KAY KNAUEL**

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa     )

I, BONNIE KAY KNAUEL, being first duly sworn, upon my oath, depose and say:

1. I am over the age of 18 and competent to testify to the matter set forth herein.
2. The facts contained herein are based on my personal knowledge.
3. I have been employed by Liberty Traditional Charter School ("Liberty") as its Principal since 2002 and am familiar with the school's policies and procedures.
4. As part of my responsibilities at Liberty, I oversee the E-Rate Grant compliance and policies and regularly receive and review mail and correspondence for the E-Rate Grant Program.
5. Liberty's policy regarding school mail distribution is that all mail is sorted and distributed to internal mailboxes where it is retrieved by that individual. I have a routine of retrieving mail from my internal mailbox on a daily basis.
6. I am familiar with the November 25, 2008 letter from the Universal Service Administrative Company regarding Liberty's 2003 E-rate grant funding commitment and hereby assert that I never received or saw such letter prior to USAC providing a copy to our school attorney in February 2009.

Further I sayeth not.

Dated this 25<sup>th</sup> day of February, 2009

Bonnie Kay Knauel  
Bonnie Kay Knauel

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 25<sup>th</sup> day of February, 2009.

Lauren L. Page  
Notary Public

My Commission Expires: Sept. 15, 2011



Exhibit B

**AFFIDAVIT OF ROSA BOJORQUEZ**

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

I, ROSA BOJORQUEZ, being first duly sworn, upon my oath, depose and say:

- 1. I am over the age of 18 and competent to testify to the matter set forth herein.
- 2. The facts contained herein are based on my personal knowledge.

3. I have been employed by Liberty Traditional Charter School ("Liberty") since August 2004 and my current title is Dean of Students/Administrative Assistant.

4. As part of my responsibilities at Liberty, I regularly receive mail for the corporation and the school and distribute such mail according to school policies.

5. Liberty's policy regarding school mail distribution is that all mail is sorted and distributed to internal mailboxes where it is retrieved by that individual.

6. I am familiar with the November 25, 2008 letter from the Universal Service Administrative Company regarding Liberty's 2003 E-rate grant funding commitment and hereby assert that I never received or saw such letter prior to USAC providing a copy to our school attorney in February 2009.

Further I sayeth not.

Dated this 25 day of FEBRUARY, 2009

Rosa Bojorquez  
Rosa Bojorquez

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 25 day of February, 2009.

Terry Warren  
Notary Public

My Commission Expires: 3-2-2009

