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MICHAEL J. GARAVALLA*
BRIAN T. KREISLER
SEAN K. CRONIN*

SENT VIA: Certified U.S. Mail #7007 3020 0000 7061 8935

March 27, 2009

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

Re: CC Docket No. 02-6

**REQUEST FOR REVIEW OR, ALTERNATIVELY, REQUEST FOR WAIVER
Concerning February 26, 2009 Universal Service Administrative Company
Schools & Library Division (SLD) Administrator's Decision on Appeal denying
Appeal of January 19, 2005 Notification of Commitment Adjustment Letter
Funding Request Number: 440965
Billed Entity Name: East St. Louis School District No. 189
Billed Entity Number: 136412
Applicant's Form Identifier: ESTL-F471-YR3
FCC Registration Number: 0012736567
Form 471 Application Number: 200698
Funding Year: 2000 (7/1/2000 – 6/30/2001)
Service Provider Name: Ameritech Advanced Data Services, Inc.
Service Provider Identification Number (SPIN): 143005375
Services Ordered: Telecommunications Services
Contract Number: ESTL-ERATE-AADS-2
Site Identifier: 136412
Original Funding Commitment: \$109,895.72
Adjusted Funding Commitment Claimed: \$109,895.72
Funds Disbursed to Date: \$36,397.90
Funds Sought to be Recovered from Applicant: \$36,397.90**

Secretary Dortch:

Our law firm represents East St. Louis School District No. 189 (District). I write at the direction of the District Board of Education pursuant to its Resolution No. 031809D authorizing and instructing me to seek appeal in the above-referenced matter. (See Attachment 1). Accordingly, the District hereby appeals the February 26, 2009 Universal Service Administrative Company Schools & Library Division (SLD) Administrator's Decision on Appeal denying the

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District's appeal to SLD of Notification of Commitment Adjustment Letter from SLD for Funding Request Number 440965 (as more fully described above).

Specifically, through the Funding Commitment Adjustment Report attached to the January 19, 2005 Notification of Commitment Adjustment, the SLD originally concluded that "[s]ince the applicant was unable to demonstrate that they had a legally binding agreement or contract in place at the time of submission of the Form 471, the commitment has been rescinded in full and the SLD will seek recovery of any disbursed funds." (See Attachment 2, Exhibit A). On appeal, the SLD Administrator acknowledged that "a legally binding agreement or contract between the district and service providers was effective January 18, 2000", but nevertheless concluded that the "district did not follow the Program's competitive bidding rules" because the agreement or contract was effective "after the submission of the Form 471" that was "signed and postmarked on January 17, 2000." (See Attachment 1, Exhibit A). However, that conclusion remains erroneous and/or based upon an incorrect legal assumption by the SLD Internal Audit Division and the SLD Administrator in that it belies the documentation produced by the District as well as applicable law.

Initially, SLD's determination "that the Form 471 certification was signed and postmarked on January 17, 2000" is incorrect in that it is impossible. Indeed, January 17, 2000 was Martin Luther King, Jr. Day, a national holiday during which both the District administrative offices and the U.S. Post Offices were closed. Actually, District Director of Technology James Daniels sent the Form 471 to SLD via Federal Express on January 18, 2000 (after all necessary approvals) for delivery to and filing with SLD on the January 19, 2000 deadline. (See Attachment 2, Exhibit C).

In its April 30, 2004 *Executive Summary – Schools and Libraries Beneficiary Audit Report – East St. Louis School District (Audit No. SL2003BE098)* directed to SLD Vice-President George McDonald, the SLD Internal Audit Division contends that "[t]he results of the audit disclosed apparent non-compliance with Schools and Libraries Support Mechanism regulations and/or procedures in" that "[t]he applicant did not have a signed contract in place prior to the submission of the FCC Form 471" for Funding Year 2000. (See Attachment 2, Exhibit B). However, as noted in the Funding Commitment Adjustment Report attached to the January 19, 2005 Notification of Commitment Adjustment, "[p]rior to Funding Year 2004, the Commission interpreted this rule to require a legally binding agreement at the time the Form 471 was submitted, but not necessarily a signed contract." (See Attachment 2, Exhibit A). In this instance, the District had such a legally binding agreement or contract prior to the January 19, 2000 filing of the Form 471 for Funding Year 2000. Indeed, in response to the District's Convergence Network Request for Proposal (see Attachment 2, Exhibit D), the aforementioned service provider submitted a fully executed bid to the District on or about December 27, 1999 (see Attachment 2, Exhibit E), which was approved by the District Board of Education Finance Committee on January 13, 2000 (see Attachment 2, Exhibit F), pre-approved by the District Financial Oversight Panel contingent on District Board of Education approval on January 14, 2000 (see Attachment 2, Exhibit G), and approved by the full District Board of Education on January 18, 2000 (see Attachment 2, Exhibit H). Under Illinois law, such acceptance by public authorities of a bid submitted pursuant to a proposal or advertisement for bids for a contract for public work created a legally binding and enforceable contract or agreement, specifically a legally binding agreement or contract between the District and the above-referenced service provider effective January 18, 2000. *Universal Printing Company v. State of Illinois*, 43 Ill.Ct.Cl.

165 (1990), citing *Harvey v. United States*, 105 U.S. 671 (1882); see also *Joseph J. Duffy Co. v. State of Illinois*, 34 Ill.Ct.Cl. 69 (1981), *People ex rel. Department of Public Works and Buildings v. South East National Bank of Chicago*, 131 Ill. App. 2d, 278, 266 N.E.2d 778 (1st Dist. 1971), *Mandel Brothers, Inc. v. State of Illinois*, 10 Ill.Ct.Cl. 448 (1939), *West Chicago Park Commissioners v. Carmody*, 139 Ill. App. 635 (1908). Because the January 18, 2000 acceptance of that bid preceded the January 19, 2000 filing of Form 471 for Funding Year 2000, the District clearly had a legally binding agreement or contract in place at the time of submission of the Form 471. Accordingly, the SLD should not rescind the commitment and should not seek recovery of any disbursed funds.

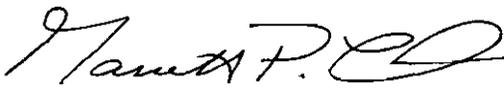
Alternatively, even if such a violation of program rules was committed for argument's sake, the Notification of Commitment Adjustment Letter erroneously seeks recovery of funds disbursed from the District rather than the aforementioned service provider. Indeed, SLD Commitment Adjustment rules provide that "if funds need to be recovered, the SLD will seek recovery from the service provider." The fact remains that the District's Form 471 filed on January 19, 2000 identifies the aforementioned service provider and its properly-filed invoices were paid directly to the aforementioned service provider by SLD. (See Attachment 2, Exhibit I). Accordingly, SLD should seek recovery of any disbursed funds from the aforementioned service provider, not the District.

Further alternatively, even if such a violation of program rules was committed for argument's sake, the District hereby requests that the FCC waive the applicable rule because SLD's conclusion, albeit erroneous, only involves a one-day discrepancy and there is no allegation of misappropriation of funds/equipment. Indeed, all of the funds expended and equipment purchased are accounted for by the District.

For one or more of the foregoing reasons, East St. Louis School District No. 189 respectfully requests that the FCC grant its appeal, reverse the SLD Administrator's Decision on Appeal denying the District's appeal to SLD of Notification of Commitment Adjustment Letter from SLD for Funding Request Number 440965 (as more fully described above), and order such other relief as FCC deems just and proper.

If you have any questions or comments, please contact me at your convenience at the contact information below.

BECKER, PAULSON, HOERNER & THOMPSON, P.C.

By: 
Garrett P. Hoerner

Attorney for East St. Louis School District No. 189
5111 West Main Street
Belleville, Illinois 62226
phone: (618) 235-0020
fax: (618) 235-8558
e-mail: gph@bphlaw.com

enclosures: Attachment 1
Attachment 2, Exhibits A through I

cc: Dr. Theresa E. Saunders (w/o enclosures via U.S. Mail only)
Mr. Lee Triefenbach (w/ enclosures via U.S. Mail only)
Mr. Lonzo Greenwood (w/o enclosures via U.S. Mail only)
Mr. Pearson C.J. Bush (w/o enclosures via U.S. Mail only)

ATTACHMENT 1

**BOARD OF EDUCATION
EAST ST. LOUIS SCHOOL DISTRICT NO. 189**

RESOLUTION NO. 031809D

RESOLUTION AUTHORIZING AND DIRECTING FURTHER APPEAL
OF UNIVERSAL SERVICE ADMINISTRATIVE COMPANY SCHOOLS
& LIBRARIES DIVISION DENIAL OF APPEAL OF NOTIFICATION OF
COMMITMENT OF ADJUSTMENT LETTER FOR FUNDING REQUEST NO. 440965

WHEREAS, East St. Louis School District No. 189 (District) has participated in the E-Rate Grant Program administered by Universal Service Administrative Company (USAC) Schools & Libraries Division (SLD), pertinently receiving grants for Funding Request No. 440965 for Funding Year 2000;

WHEREAS, SLD has served on District a January 19, 2005 Notification of Commitment Adjustment Letter seeking repayment of disbursed funds related to Funding Request No. 440965 for an alleged violation of Program rules;

WHEREAS, pursuant to its Resolution No. 031005D, this Board of Education appealed that SLD decision on or about March 10, 2005, in accordance with applicable rules, regulations and laws;

WHEREAS, SLD has served on the District a February 26, 2009 Denial of Appeal, in which SLD finds that the District did, in fact, have a binding contract with the applicable service provider, but nevertheless denied such appeal based upon erroneous SLD records mistakenly indicating the wrong filing date for the requisite Form 471 (See Exhibit A);

WHEREAS, this Board of Education disputes the aforementioned SLD denial of appeal and the Notification of Commitment Adjustment Letter, including but not limited to its basis and conclusions, and desires to further appeal that SLD decision, to the FCC or otherwise, in accordance with applicable rules, regulations and laws, and further desires to authorize and direct its legal counsel, Attorney Garrett P. Hoerner and the law firm of Becker, Paulson, Hoerner & Thompson, P.C. to take any and all actions necessary to pursue and perfect such an appeal on behalf of the District;

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of East St. Louis School District No. 189, St. Clair County, Illinois, as follows:

Section 1. This Board of Education hereby authorizes and directs its legal counsel, Attorney Garrett P. Hoerner and the law firm of Becker, Paulson, Hoerner & Thompson, P.C. to take any and all actions necessary to pursue and perfect an appeal of the aforementioned SLD denial of appeal and the SLD Notification of Commitment Adjustment Letter, to the FCC or otherwise, on behalf of the District, including but not limited to drafting and executing a Letter of Appeal on behalf of the District substantially similar to the form attached hereto as Exhibit B, along with such exhibits as legal counsel deems necessary and appropriate;

Section 2. That this Resolution shall be in full force and effect upon its adoption.

ADOPTED this 18th day of March, 2009 by the following roll call vote:

AYES: Lonzo Greenwood, LaVondia Neely, Irma Golliday, Joseph Lewis, Kinnis Williams

NAYS: _____

ABSENT: George Mitchom, Will McGaughy



Board of Education President



Board of Education Secretary

EXHIBIT A



Administrator's Decision on Appeal - Funding Year 2000-2001

February 26, 2009

Garrett P. Hoerner
Becker, Paulson, Hoerner & Thompson, P.C.
5111 West Main Street
Belleville, IL 62226

Re: Applicant Name: East St Louis School District 189
Billed Entity Number: 136412
Form 471 Application Number: 200698
Funding Request Number(s): 440965, 440968, 440978, 440981
Your Correspondence Dated: March 10, 2005

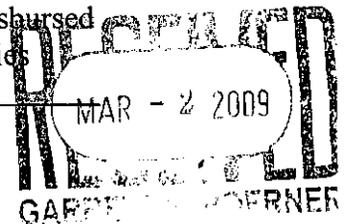
After thorough review and investigation of all relevant facts, the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2000 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60-day time for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Numbers: 440965, 440968, 440978, 440981

Decision on Appeal: **Denied**

Explanation:

- During an audit, it was determined that the Form 471 certification was signed and postmarked on January 17, 2000. Program rules required that a binding agreement with the service provider be in place at the time of the submission of the Form 471 Certification. The binding agreement needs to be legal under state law. During the audit, USAC gave you the opportunity to demonstrate that a legally binding agreement was in place before the submission of your Form 471 Certification. According to USAC records, there is no evidence that a binding agreement with the service providers for Funding Year 2000 was in effect before the signing and submission of the Form 471. On appeal, a legal opinion was provided. The legal opinion stated that a legally binding agreement or contract between the district and service providers was effective January 18, 2000. January 18, 2000 is after the submission of the Form 471. It is evident that your district did not follow the Program's competitive bidding rules as prescribed.
- Additionally, in accordance with the FCC's determination that "funds disbursed in violation of the statute or a rule should be directed to the party or parties



responsible for the statutory or rule violation," USAC has determined that the party responsible for this statutory or rule violation is the applicant. Consequently, the recovery was correctly directed toward the applicant. Therefore, the appeal is denied.

- USAC has determined that, at the time you submitted your FCC Form 471 application, you did not have a legally binding agreement with your service provider(s), which meets your state and local or the FCC's definition of a contract. Additionally, the services you requested are not tariffed or month-to-month services. Except for services to be delivered under non-contracted tariffed or month-to-month arrangements, FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." See 47 C.F.R. sec. 54.504(c). As USAC does not have authority to waive the FCC rules of the program, funding is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the 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 on 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 USAC web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Universal Service Administrative Company

Cc: James Daniels
East St Louis School District 189
1005 State Street
East St. Louis, IL 62201-1907

EXHIBIT B

BECKER, PAULSON, HOERNER & THOMPSON, P.C.

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SENT VIA: Certified U.S. Mail #

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By:

Garrett P. Hoerner

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ATTACHMENT 2

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* ILLINOIS AND MISSOURI

**SENT VIA: Fax Transmission to (973) 599-6542 (w/o enclosures)
Certified U.S. Mail #7003 3110 0001 3919 6851 (w/ enclosures)**

March 10, 2005

Letter of Appeal
Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

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¹ The District notes that SLD records incorrectly indicate a certified postmark date for its Form 471 as January 17, 2000, an impossibility in that that day was Martin Luther King, Jr. Day, a national holiday during which the District administrative offices were closed. Actually, District Director of Technology James Daniels sent the Form 471 to SLD via Federal Express on January 18, 2000 (after all necessary approvals) for delivery to and filing with SLD on the January 19, 2000 deadline. (See Exhibit C attached).

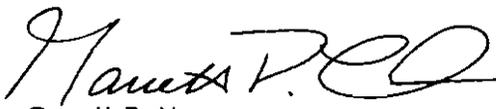
January 19, 2000 identifies the aforementioned service provider and its properly-filed invoices were paid directly to the aforementioned service provider by SLD. (See Exhibit I attached). Accordingly, SLD should seek recovery of any disbursed funds from the aforementioned service provider, not the District.

Further alternatively, even if such a violation of program rules was committed for argument's sake, the SLD should waive the applicable rule² because there is no allegation of misappropriation of funds/equipment. Indeed, all of the funds expended and equipment purchased are accounted for by the District.

For one or more of the foregoing reasons, East St. Louis School District No. 189 respectfully requests that the SLD grant its appeal, reconsider and reverse its position in its January 19, 2005 Notification of Commitment Adjustment Letter, not seek recovery of any disbursed funds from the District and honor Funding Request Number 440965 (as more fully described above).

If you have any questions or comments, please contact me at your convenience at the contact information below.

BECKER, PAULSON, HOERNER & THOMPSON, P.C.

By: 
Garrett P. Hoerner

Attorney for East St. Louis School District No. 189
5111 West Main Street
Belleville, Illinois 62226
phone: (618) 235-0020
fax: (618) 235-8558
e-mail: gph@bphlaw.com

enclosures

cc: Dr. Stan L. Mims (w/o enclosures via U.S. Mail only)
Mr. Lee Triefenbach (w/ enclosures via U.S. Mail only)
Mr. Lonzo Greenwood (w/o enclosures via U.S. Mail only)
Mr. Pearson C.J. Bush (w/o enclosures via U.S. Mail only)

²The District raises this argument to the extent permissible before the SLD and necessary to preserve the issue for FCC review, if necessary.

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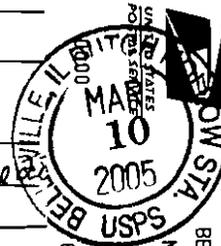
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<p>1. Article Addressed to:</p> <p>Letter of Appeals Schools and Libraries Division Box 125 Correspondence Unit 80 South Jefferson Rd Whippany NJ 07981</p>	<p>B. Received by (Printed Name) C. Date of Delivery</p> <p><i>[Signature]</i> <i>[Date]</i></p>
<p>2. Article Number <small>(Transfer from service label)</small></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>
<p>PS Form 3811, February 2004</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> <p>2003 3110 0001 3919 6851</p> <p>Domestic Return Receipt 102595-02-M-1544</p>

EXHIBIT A

**BOARD OF EDUCATION
EAST ST. LOUIS SCHOOL DISTRICT NO. 189**

RESOLUTION NO. 031005D

**RESOLUTION AUTHORIZING AND DIRECTING APPEAL OF UNIVERSAL SERVICE
ADMINISTRATIVE COMPANY SCHOOLS & LIBRARIES DIVISION NOTIFICATION OF
COMMITMENT OF ADJUSTMENT LETTER FOR FUNDING REQUEST NO. 440965**

WHEREAS, East St. Louis School District No. 189 (District) has participated in the E-Rate Grant Program administered by Universal Service Administrative Company (USAC) Schools & Libraries Division (SLD), pertinently receiving grants for Funding Request No. 440968 for Funding Year 2000;

WHEREAS, SLD has served on District a January 19, 2005 Notification of Commitment Adjustment Letter seeking repayment of disbursed funds related to Funding Request No. 440965 for an alleged violation of Program rules (see Exhibit A attached);

WHEREAS, this Board of Education disputes the Notification of Commitment Adjustment Letter, including but not limited to its basis and conclusions, and desires to appeal that SLD decision in accordance with applicable rules, regulations and laws, and further desires to authorize and direct its legal counsel, Attorney Garrett P. Hoerner and the law firm of Becker, Paulson, Hoerner & Thompson, P.C. to take any and all actions necessary to pursue and perfect such an appeal on behalf of the District;

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of East St. Louis School District No. 189, St. Clair County, Illinois, as follows:

Section 1. This Board of Education hereby authorizes and directs its legal counsel, Attorney Garrett P. Hoerner and the law firm of Becker, Paulson, Hoerner & Thompson, P.C. to take any and all actions necessary to pursue and perfect an appeal of such SLD Notification of Commitment Adjustment Letter on behalf of the District, including but not limited to drafting and executing a Letter of Appeal on behalf of the District substantially similar to the form attached hereto as Exhibit B, along with such exhibits as legal counsel deems necessary and appropriate;

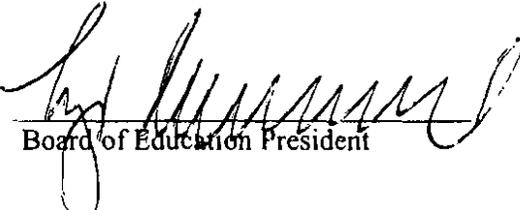
Section 2. That this Resolution shall be in full force and effect upon its adoption.

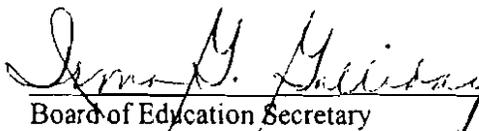
ADOPTED this 10th day of March, 2005 by the following roll call vote:

AYES: Greenwood, EL-Amin, Golliday, Lewis, Mitchom, Williams

NAYS: ---

ABSENT: Neely


Board of Education President


Board of Education Secretary

**JAMES DANIELS
EAST ST LOUIS SCHOOL DIST 189
1005 STATE ST.
EAST ST. LOUIS, IL 62201 1907**

