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(3) **Funding Request Numbers Appealed**

FRN 1331087

(4) **USAC's Reason for Funding Denial**

"The record shows that Florence City School District did not have a contract in place at the time of submission of the Form 471. The Purchase Order: 06-000654 that was submitted by the District in lieu of a contract, in response to a USAC request for a copy of contract was awarded on January 17, 2006. On appeal you stated that the contract was awarded on February 3, 2005 and approved by the Florence Board of Education on March 8, 2005. The contract award date of February 3, 2005 is before the allowable contract date of February 14, 2005, which is a violation of program rules. Also, the contract approval date of March 8, 2005 is after the Form 471 certification postmark date of February 17, 2005. The rules of this support mechanism require that applicants must sign and date a valid contract prior to certifying the Form 471"

(5) The USAC unreasonably and unlawfully relied upon *DA 03-3526 (2003)* in reaching its decision to deny the Appeal

(6) **Facts, Law and Argument**

Facts:

- A. The effective rate Year in question for this FRN, 1331087, was Funding Year 8: 07/01/2005-06/30/2006;
- B. The Service request from the vendor was Web hosting service;
- C. The date on the contract was "02-03-2005"; Exhibit A (Pages 27-30)
- D. The Allowable contract date was "02-14-2005"; Exhibit B
- E. **The Florence Board of Education approved the contract and purchase price for Edline on "03-08-2005; Exhibit C**

Law:

- A. This issue raised by USAC herein was conclusively discussed in the FCC's Order in *Richmond County School District, CC Docket No. 02-6, DA 06-1265, Released: June 13, 2006.* [File Nos. SLD-451211, 452514, 464649]

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- B. In *DA 06-1265* the FCC stated in *Para 7* “Richmond County technically missed the program deadline for having a signed contract in place prior to submission of its FCC Form 471, Richmond County had a legally binding contract in place during Funding Year 2005 and before the vendor began providing services*** while the Commission’s competitive bidding rules are a central tenet of the E-rate program, and a tool for preventing waste, fraud, and abuse, the record contains no evidence at this time that Richmond County engaged in activity intended to defraud or abuse the E-rate program.
- C. The FCC went on to state “good cause exists to waive section 54.504(c) of the Commission’s rules, which states that an applicant for E-rate funding must have a legally binding contract in place upon submission of its FCC Form 471. *Para 8. DA 06-1265*
- D. The FCC also stated “in *Bishop Perry Middle School*¹ ***, under certain circumstances, rigid adherence to certain E-rate rules and requirements that are “procedural” in nature does not promote the goals of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.” *DA 06-1265*
- a. The USAC relies upon *Waldwick School District, DA 03-3526 (2003)* in denying the Appeal. Such reliance was unreasonable. *DA 03-3526, a 2003 Order*, is clearly distinguishable from the instant matter. **The FCC expressly stated that** “Waldwick did not have a signed, binding contract***”. *Id. para. 8* Here, Florence did have a binding contract in place had a legally binding contract in place during Funding Year and before the vendor began providing services
- b. While *DA 03-3526 (2003)* was not expressly overruled, in latter FCC Opinions/Orders it was implicitly and substantively overruled.
- c. In *DA 06-1265* the District had a legally binding contract in place during the relevant funding years. That is what the Commission relied upon, that is the distinguishing feature of the Order.

¹ 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)

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- d. *DA 06-1265* was decided on March 28, 2007. This was after *Waldwick*.

- e. *In 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)*, the Commission chose NOT to focus on “rigid adherence to certain E-rate rules and requirements that are “procedural” in nature because it does not promote the goals of section 254 of the Act***”

- f. **Both *Bishop Perry and Adams* modified if not expressly overruled *Waldwick, DA 03-3526, a 2003 Appeal.***

- h. *See also, Adams County School District 14, FCC 07-35, Released: March 28, 2007, which states “although the Petitioners missed the deadline for evidencing a signed contract, they had legally binding contracts in place during the relevant funding years.” And, “these mistakes do not warrant the complete rejection of these Petitioners’ applications for E-rate funding. Importantly, these appeals do not involve a misuse of funds.” Paras. 9-10*

Argument

- A. The date on the contract was “02-03-2005”; **Exhibit A [This is the date that Edline sent the Contract to Florence.]**

- B. The Allowable contract date was “02-14-2005”; **Exhibit B**

- C. **The Florence Board of Education approved the contract and purchase price for Edline on “03-08-2005; Exhibit C In other words the “contract became legally binding on Florence on “03-08-2005, when Edline’s offer was accepted by the Board; Exhibit C**

- D. The relevant Funding Year 8 was 07/01/2005-06/30/2006;

- E. **Florence had a legally binding contract in place during the relevant funding year.**

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- F. The Administrator's focus on the contract approval date of March 8, 2005 and that it is after the Form 471 certification postmark date of February 17, 2005, is unreasonable and not relevant.
- G. The Administrator's focus on the Form 471 certification postmark date of February 17, 2005, is not relevant because the FCC has stated that it only requires "some form of an agreement during the relevant Funding Year."
- H. The contract was 'in place' during the relevant funding year because the Florence Board of Education ratified² the contract ON MARCH 8, 2005, SENT TO THEM BY EDLINE on 02-03-2005. Exhibit A
- I. Edlines' "offer" was signed by Edline on February 03, 2005. The offer was not accepted by the School District until March 08, 2005, when it was approved by the Board of Education. **Exhibit C BUT, Florence had a legally binding contract in place during the relevant funding year.**
- J. See also the FCC's Letter of January 16, 2009, DA 09-86, to Scott Barash Acting Chief Executive Officer, Universal Service Administrative Company, stating:

"No Signed Contract (2004 and Beyond): No Legally Binding Agreement (2003 and Before): Starting in 2004, USAC denied the validity of contracts unless they were signed and dated by both parties. USAC also began to distinguish between contracts and legally binding agreements. USAC based its actions on language in the Schools and Libraries Fifth Report and Order, which states that, for recordkeeping purposes, applicants and service providers should keep "executed contracts signed and dated by both parties." Consistent with the Commission's direction, contract guidance in formation posted on USAC's website no longer requires a contract to be signed and dated by both parties.' Thus, USAC should not recover funding if there was a binding agreement that was a binding agreement under state law."

Exhibit D

Conclusion:

² Ratify means to confirm by expressing consent, approval, ***
[http://dictionary.reference.com/browse/ratified+](http://dictionary.reference.com/browse/ratified)

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Florence is Requesting the Following Action by the USAC:

- (a) Within 90 days or less Order funding for the telecommunications services requested in the 471 Application, specifically FRN:1331087
- (b) Set aside funds to totally fund Florence City School District 's request.

Respectfully submitted,


Nathaniel Hawthorne

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Attorney for
Florence City School District

Cc: Florence City School District

Administrator's Decision on Appeal



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

August 05, 2009

Nathaniel Hawthorne
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Cleveland, OH 44122

Re: Applicant Name: FLORENCE CITY SCHOOL DISTRICT
Billed Entity Number: 128014
Form 471 Application Number: 481239
Funding Request Number(s): 1331087
Your Correspondence Dated: July 23, 2009

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 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 period 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 Number(s): 1331087
Decision on Appeal: **Denied**
Explanation:

- The record shows that Florence City School District did not have a contract in place at the time of submission of the Form 471. The Purchase Order: 06-000654 that was submitted by the District in lieu of a contract, in response to a USAC request for a copy of contract was awarded on January 17, 2006. On appeal, you stated that the contract was awarded on February 3, 2005 and approved by the Florence Board of Education on March 8, 2005. The contract award date of February 3, 2005 is before the allowable contract date of February 14, 2005, which is a violation of program rules. Also, the contract approval date of March 8, 2005 is after the Form 471 certification postmark date of February 17, 2005. The rules of this support mechanism require that applicants must sign and date a valid contract prior to certifying the Form 471.

- SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). The FCC has consistently upheld SLD's denial of Funding Request Number(s) when there is no contract in place for the funding requested.¹ The FCC Form 471 instructions under Block 5 clearly state that you MUST sign a contract for all services that you order on your Form 471 except tariffed services and month-to-month services.² You did not provide evidence with your appeal that, at the time you signed your Form 471, you had signed a contract for eligible services. Consequently, SLD denies your appeal.

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 SLD section of the USAC website 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.

Schools and Libraries Division
Universal Service Administrative Company

cc: Brian Holley

¹ *Request for Review by Waldwick School District, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-256981, CC Docket Nos. 02-6, Order, 18 FCC Rcd. 22,994, DA 03-3526 (2003).

² *See Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (October 2004) at page 20.

Exhibit A

Florence City Schools
Request for Proposal - Web-based Communications System

EXHIBIT A

OFFEROR REPRESENTATIONS AND CERTIFICATION

The undersigned hereby affirms that:

- He/She is a duly authorized agent of the offeror (corporate or other authorization confirmation may be requested prior to final contract execution).
- He/She has read and agrees to the complete solicitation, including any and all amendments issued pursuant to Section 6.5.
- The offer is being offered independently of any other offerors and is in full compliance with the collusive prohibitions of the State of Alabama. The offeror certifies that no employee of its firm has discussed, or compared the proposal with any other offeror or District employee, and has not colluded with any other offeror or District employee.
- The offeror will accept any awards made to it as a result of this Solicitation if the acceptance is made within 120 calendar days after the proposal due date.

I hereby certify that I am submitting the following offers as my firm's proposal. I understand that by virtue of executing and returning with this proposal this required response form, I further certify full, complete, and unconditional acceptance of the contents of this solicitation (except as may be noted in the offer). I also agree to be bound by any and all specifications, terms, and conditions, contract document, accepted offer and other documents of this solicitation.

Submitted by: Marge Abrams Title: Vice President

Company Name: Edline

Address: P O Box 06290

City Chicago State: IL ZIP: 60606 Telephone No.: 800 491 0010

Fax: 312 236 7251 E-Mail Address: erate@edline.com

By: *Mary Edline* Date: 02-03-2005
Manual Signature of Agent(s)

NOTE: If a joint venture, each separate party must provide a completed certification form.

Marge Abrams Vice President

Florence City Schools
Request for Proposal – Web-based Communications System

**EXHIBIT B
PRICING SCHEDULE**

ALL potential costs shall be listed in this table for the proposal to be considered. Vendor is responsible for all other expenses including travel, per diem, etc. A not-to-exceed total cost for completion of all aspects of the project as specified in this RFP must also be provided. This table shall be used, with descriptions given on a separate sheet if necessary. In those descriptions, include the percentage of the listed costs that apply to e-mail as opposed to other services, if applicable.

Charges	Cost /Hour	Hours Expected	Total Cost Expected	Total Cost (not-to-exceed)	Percent E-Rate Eligible	One Time or Annual Charge
Set-up and Installation						
Other Support (describe)						
Annual Maintenance						
Training						
Software Costs (describe)						
Hardware Costs (list)						
Other System Costs (describe)				9,368.80	100%	
Other Service Costs (describe)						
Tax (One-time Costs)						One-time
Tax (Annual Costs)						Annual
Total One-time Cost (tax included)						One-time
Total Annual Cost (tax included)						Annual

Should the District apply for but not be approved for E-rate in the amount specified, will you provide discounts to match your estimates of E-rate above?	
---	--

Mary Illman

Authorized Signature

 02-03-2005

Date

 Vice President

Title

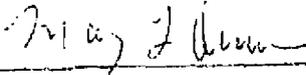
 Edline

Company Name

*Edline is a complete web hosting service. All costs associated with items mentioned on the pricing chart are included in the web hosting service.

EXHIBIT D

VENDOR LIST APPLICATION
(Subject to any state and local laws)

VENDOR NO.		ACCEPTANCE DATE:	
NAME OF COMPANY	DATE	Web site :	
Edline	02-03-2005	www.edline.com	
		E-Mail address:	
		erate@edline.com	
ADDRESS TO WHICH CORRESPONDENCE AND PURCHASE ORDER ARE TO BE MAILED:			
P O Box 06290 , Chicago IL 60606			
ADDRESS TO WHICH PAYMENT IS TO BE MAILED TO:		HOW LONG IN PRESENT BUSINESS	
Same		5 + years	
TYPE OF ORGANIZATION:		IF CORPORATION INDICATE WHICH STATE:	
INDIVIDUAL (CORPORATION) NON-PROFIT		Delaware	
NAME OF OFFICER'S, OWNER'S OR PARTNER'S AND CONTRACTS IN YOUR NAME:			
(A) PRESIDENT Jonathan Abrams	PRODUCTS ARE SOLD:		
(B) VICE PRESIDENT Marge Abrams	DELIVERED FOB / so FOB POINT		
(C) SECRETARY	INVOICE TERMS (min., not 30)		
(D) TREASURER			
(E) OWNER'S PARTNERS	NET WORTH:		
PERSON AUTHORIZED TO SIGN BIDS, OFFERS, AND CONTACTS IN YOUR NAME			
NAME	OFFICIAL CAPACITY	TEL. NO.	FAX NO.
Marge Abrams	Vice President	800 491 0010	312 236 2251
Jay Alter	Vice President	800 491 0010	312 236 2231
LIST TYPE OF EQUIPMENT, SUPPLIES, MATERIAL, AND/OR SERVICES ON WHICH YOU DESIRE TO RECEIVE BID SOLICITATIONS:			
DESCRIPTION			
Web Hosting			
TYPE OF BUSINESS			
CATEGORY (CHECK ONE)		BUSINESS ENTERPRISE	
MANUFACTURER	REGULAR DEALER	SMALL BUSINESS	MINORITY
(SERVICE ESTABLISHMENT)	SURPLUS DEALER	WOMAN OWNED	
CONSTRUCTION CONCERN	OTHERS		
WHOLESALE	CERTIFIED: yes If yes attach form no		
OTHERS	SIZE OF BUSINESS: AVERAGE NUMBER OF EMPLOYEES:		
I certify that the information supplied herein is correct and neither the Applicant nor any person in any connection with the applicant as a principal or officer, so far as is known, is now debarred, suspended or otherwise declared ineligible by any agency of the Federal Government, agencies of the State of Alabama or by Florence City School District.		Name: Marge Abrams	
		Title: Vice President	
		FEIN or SSN 02-0593636	
		Business License Number:	
AUTHORIZED SIGNATURE:			
			

Your Net Cost (after E-Rate) is \$3,062.02

The price for Edline web hosting service for Florence City School District from July 1, 2005 through June 30, 2006 is \$9,568.80. Our research indicates that your previous discount rate was 68% (or \$6,506.78). Assuming that this is the correct Year 8 (2005-2006) discount, your net cost would be \$3,062.02.

Applicant's Name	Florence City School District
Year 8 Form 470#	155990000533920
Requested Service	Internet Access — Web Hosting
Service to be provided	Edline Web Hosting Service
Initial Term of Service	July 1, 2005 to June 30, 2006
Years of Service	Up to 3 years at this price
Number of Schools	7 -
Student Enrollment	Up to 4,300 students
Cost of Service	\$9,568.80
Ineligible Services	None (0.00%)
Anticipated Year 8 Discount	68%

Net Cost after E-Rate \$3,062.02

To select Edline as your web hosting provider, please fax a signed contract to 312-236-7251.



www.edline.com

T.800.491.0010

F.312.236.7251

SPIN 143027282

FCCRN 0011861283

Please Note: Edline is a web hosting service and does not create or provide content for school websites. All content must be published or provided by the customer.



SPIN 143027282 — Phone 800.491.0010 — Fax 312.236.7251 — FCCRN 0011861283

Page 4 of 7

Exhibit B

3. Rural/Urban: Urban
 4. Student Count: 425
 7. Discount: 80%
 9. Pre-K/Adult Ed/Juv:

5. NSLP Students: 313
 8. Weighted Product: 340
 10. Alt Disc Mech:

6. NSLP Students/Students: 73.647%

1. School Name: HIBBETT SCHOOL
 2. Entity Number: 39588 NCES: 10 15300 1664
 3. Rural/Urban: Urban
 4. Student Count: 600
 7. Discount: 80%
 9. Pre-K/Adult Ed/Juv:

5. NSLP Students: 432
 8. Weighted Product: 480
 10. Alt Disc Mech:

6. NSLP Students/Students: 72.000%

1. School Name: RICHARDS CENTER
 2. Entity Number: 16030273 NCES:
 3. Rural/Urban: Urban
 4. Student Count: 0
 7. Discount: 73%
 9. Pre-K/Adult Ed/Juv:

5. NSLP Students: 0
 8. Weighted Product: 0
 10. Alt Disc Mech:

6. NSLP Students/Students:

1. School Name: WEEDEN ELEMENTARY SCHOOL
 2. Entity Number: 39589 NCES: 10 15300 0535
 3. Rural/Urban: Urban
 4. Student Count: 451
 7. Discount: 90%
 9. Pre-K/Adult Ed/Juv:

5. NSLP Students: 417
 8. Weighted Product: 405.9
 10. Alt Disc Mech:

6. NSLP Students/Students: 92.461%

Block 5: Discount Funding Request(s)

FRN: 1331087 FCDL Date:	
10. Original FRN:	
11. Category of Service: Internet Access	12. 470 Application Number: 155990000533920
13. SPIN: 143027282	14. Service Provider Name: Edline LLC
15a. Non-Contracted tariffed/Month to Month Service:	15b. Contract Number: N/A
15c. Covered under State Master Contract:	15d. FRN from Previous Year:
16a. Billing Account Number: 256-768-3000	16b. Multiple Billing Account Numbers?:
17. Allowable Contract Date: 02/14/2005	18. Contract Award Date: 02/16/2005
19a. Service Start Date: 07/01/2005	19b. Service End Date:
20. Contract Expiration Date: 06/30/2006	
21. Attachment #: 471-11-Yr8-Alt1	22. Block 4 Worksheet No.: 700831
23a. Monthly Charges: \$0.00	23b. Ineligible monthly amt.: \$0.00
23c. Eligible monthly amt.: \$0.00	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$0.00	
23f. Annual non-recurring (one-time) charges: 9568.8	23g. Ineligible non-recurring amt.: 0
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$9,568.80	
23i. Total program year pre-discount amount (23e + 23h): \$9,568.80	
23j. % discount (from Block 4): 73	
23k. Funding Commitment Request (23i x 23j): \$6,985.22	

Block 6: Certifications and Signature

Exhibit C



Florence City Schools
 541 Riverview Drive
 Florence, AL 35630

Kendy Behrends, Ed.D
 Superintendent

Telephone (256) 768-3000
 Facsimile (256) 768-3006

www.fcs.k12.al.us

To: Dr. Kendy Behrends
 From: Charlotte Carr / Brian Holley
 Re: Technology Purchases
 Date: March 1, 2005

Technology Bids

(1) An RFP was sent out for an email and web development hosting service. The results were as follows:

RFP 2005-1-TD Bid #650

Vendor	Package	Price
Gaggle.Net	Student email	\$10,800.00
Edline	Web hosting service	\$9,568.80
ITS	Student email/web hosting	\$55,100.00
SchoolCenter	Student email/web hosting	\$18,100.00
SchoolSites	Student email/web hosting	\$23,950.00

While price was the primary concern, other factors were considered. Gaggle.Net has the only CIPA-compliant student email package on the market. Edline has the most comprehensive and easy to use web hosting service the committee reviewed. Also, both services are fully E-rate discountable. If approved, we will receive a 73% discount on the above costs. The committee recommends the purchase of Gaggle.Net and Edline to jointly satisfy the requirements of RFP 2005-1-TD.

We are requesting approval of Gaggle.Net and Edline for Bid #650, in the amount of \$20,368.80.



Total Technology Requests

\$ 20,368.80

CONCUR *Ken Davis*
Ken Davis

CONCUR *Kendy Behrends*
Dr. Kendy Behrends

APPROVED BY BOARD OF EDUCATION
3-8-07
B. Williams

Exhibit D



Federal Communications Commission
Washington, D.C. 20554

January 16, 2009

DA 09-86

Mr. Scott Barash
Acting Chief Executive Officer
Universal Service Administrative Company
2000 L Street, N.W.
Suite 200
Washington, DC 20036

Re: Schools and Libraries Program, WC Docket No. 02-6
"Table C" recovery issues

Dear Mr. Barash:

This letter responds to the outstanding policy issues regarding recovery of funds in the schools and libraries universal service program, also known as the E-rate program, on which USAC has sought formal guidance. On March 8, 2006, USAC submitted a memorandum proposing action regarding schools and libraries commitment adjustments and funds recoveries. In that memorandum, USAC submitted lists of recovery situations in a table format: Tables A, B, and C.¹ Table C contained scenarios that were not specifically addressed in the *Schools and Libraries Fifth Report and Order*, and USAC had proposed to seek recovery for the violations listed in Table C.

Those Table C scenarios are outlined in the attached chart. The chart provides our guidance as to when recovery should occur. Generally, we agree with USAC's recommendations to process recoveries for the scenarios listed. However, in certain instances we believe that recovery might not be appropriate for particular factual situations, as explained in detail below and as noted on the chart.

Children's Internet Protection Act (CIPA) Violations: USAC recommended complete recovery in every instance in which the applicant did not comply with all CIPA requirements, which require a school or library to certify that it is enforcing a policy of Internet safety that includes measures to block or filter Internet access for minors and adults to certain visual depictions.² We note, however, that, in certain instances, although the applicant may not have been in technical compliance, there was substantial compliance with the spirit of the CIPA requirements. For example, an audit found that Little Rock School District (Little Rock) was not in compliance with the CIPA requirement to have in place an

¹ Table A contained scenarios that were specifically addressed in the *Schools and Libraries Fifth Report and Order* and in which there was a specific reference in the *Schools and Libraries Fourth Report and Order* as to the party from whom recovery should be directed. Table B contained scenarios that were specifically addressed in the *Schools and Libraries Fifth Report and Order*, but did not have a specific reference in the *Schools and Libraries Fourth Report and Order* as to the party from whom recovery should be directed. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, (2004) (*Schools and Libraries Fifth Report and Order*); *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 97-21, 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004) (*Schools and Libraries Fourth Report and Order*).

² See 47 C.F.R. §54.520.

Internet safety policy that addressed measures designed to restrict minors' access to harmful materials. Although Little Rock's Internet safety policy did not address this point, Little Rock did have in place an Internet filter that restricted minors' access to harmful materials. In this case, recovery is not warranted.

Services Delivered to an Entity Not Listed on the FCC Form 471: USAC recommended complete recovery in every instance in which services were delivered to an entity that was not listed in the applicant's FCC Form 471. Pursuant to the Commission's direction in its *Bishop Perry Order*, however, USAC has allowed applicants to modify their FCC Forms 471 for clerical and ministerial errors.³ Accordingly, an applicant first must be given an opportunity to show that the omission of such entity from the FCC Form 471 was a ministerial or clerical error. If such entity would otherwise be eligible, then recovery is not warranted.

No Signed Contract (2004 and Beyond); No Legally Binding Agreement (2003 and Before): Starting in 2004, USAC denied the validity of contracts unless they were signed and dated by both parties. USAC also began to distinguish between contracts and legally binding agreements. USAC based its actions on language in the *Schools and Libraries Fifth Report and Order*, which states that, for recordkeeping purposes, applicants and service providers should keep "executed contracts, signed and dated by both parties."⁴ Consistent with the Commission's direction, contract guidance information posted on USAC's website no longer requires a contract to be signed and dated by both parties.⁵ Thus, USAC should not recover funding if there was a binding agreement that was legal under state law.

Equipment Not Utilized: USAC recommended recovery in every instance in which equipment was not utilized: for example, the equipment was installed but not connected to any computers, or some equipment was still in its original packaging and had not been installed. There could be situations that would justify a decision to not recover funds. For example, in one of the audits, Brownsville Independent School District delayed installation of all equipment due to human resource limitations, but anticipated that very shortly all of the equipment would be installed. In this instance, if the equipment was subsequently installed, recovery would not be warranted.

³ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Red 5316 (2006) (*Bishop Perry Order*).

⁴ *Schools and Libraries Fifth Report and Order*, 19 FCC Red at 15824, para. 48.

⁵ See USAC website, Contract Guidance, <http://www.usac.org/sl/applicants/step04/contract-guidance.aspx> (retrieved Jan. 16, 2009); *Requests for Waiver of the Decision of the Universal Service Administrator by Adams County School District 14, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Red 6019 (2007) (the Commission granted waivers of rule section 54.504(c) where the petitioners had legally binding agreements in place for the relevant funding years, but missed the deadline for providing evidence of a signed contract).

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Electronically Filed APPEAL and REQUEST FOR WAIVER

August 12, 2009

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)	
Florence City Board of Education)	
)	
)	
)	
)	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

This is an appeal from a decision by the USAC issued on August 5, 2009.

(1) **Administrator's Decision on Appeal** [Attached hereto]

Form 471 Application Number:	481239
Funding Year 8:	07/01/2005-06/30/2006
Billed Entity Number for district:	128014
Date of Funding Denial Notice:	August 5, 2009
Date of Appeal:	August 12, 2009

(2) **SLD Contact Information**

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Florence City Board of Education

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(3) **Funding Request Numbers Appealed**

FRN 1331087

(4) **USAC's Reason for Funding Denial**

"The record shows that Florence City School District did not have a contract in place at the time of submission of the Form 471. The Purchase Order: 06-000654 that was submitted by the District in lieu of a contract, in response to a USAC request for a copy of contract was awarded on January 17, 2006. On appeal you stated that the contract was awarded on February 3, 2005 and approved by the Florence Board of Education on March 8, 2005. The contract award date of February 3, 2005 is before the allowable contract date of February 14, 2005, which is a violation of program rules. Also, the contract approval date of March 8, 2005 is after the Form 471 certification postmark date of February 17, 2005. The rules of this support mechanism require that applicants must sign and date a valid contract prior to certifying the Form 471"

(5) The USAC unreasonably and unlawfully relied upon *DA 03-3526 (2003)* in reaching its decision to deny the Appeal

(6) **Facts, Law and Argument**

Facts:

- A. The e-rate Year in question for this FRN, 1331087, was Funding Year 8: 07/01/2005-06/30/2006;
- B. The Service request from the vendor was Web hosting service;
- C. The date on the contract was "02-03-2005"; Exhibit A (Pages 27-30)
- D. The Allowable contract date was "02-14-2005"; Exhibit B
- E. **The Florence Board of Education approved the contract and purchase price for Edline on "03-08-2005; Exhibit C**

Law:

- A. This issue raised by USAC herein was conclusively discussed in the FCC's Order in *Richmond County School District, CC Docket No. 02-6, DA 06-1265, Released: June 13, 2006.* [File Nos. SLD-451211, 452514, 464649]

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- B. In *DA 06-1265* the FCC stated in *Para 7* “Richmond County `technically missed the program deadline for having a signed contract in place prior to submission of its FCC Form 471, Richmond County had a legally binding contract in place during Funding Year 2005 and before the vendor began providing services*** while the Commission’s competitive bidding rules are a central tenet of the E-rate program, and a tool for preventing waste, fraud, and abuse, the record contains no evidence at this time that Richmond County engaged in activity intended to defraud or abuse the E-rate program.
- C. The FCC went on to state “ good cause exists to waive section 54.504(c) of the Commission’s rules, which states that an applicant for E-rate funding must have a legally binding contract in place upon submission of its FCC Form 471. *Para 8. DA 06-1265*
- D. The FCC also stated “in *Bishop Perry Middle School*¹ ***, under certain circumstances, rigid adherence to certain E-rate rules and requirements that are “procedural” in nature does not promote the goals of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.” *DA 06-1265*
- a. The USAC relies upon *Waldwick School District, DA 03-3526 (2003)* in denying the Appeal. Such reliance was unreasonable. *DA 03-3526, a 2003 Order*, is clearly distinguishable from the instant matter. **The FCC expressly stated that** “Waldwick did not have a signed, binding contract***”. *Id. para.8* Here, Florence did have a binding contract in place had a legally binding contract in place during Funding Year and before the vendor began providing services
- b. While *DA 03-3526 (2003)* was not expressly overruled, in latter FCC Opinions/Orders it was implicitly and substantively overruled.
- c. In *DA 06-1265* the District had a legally binding contract in place during the relevant funding years. That is what the Commission relied upon, that is the distinguishing feature of the Order.

¹ 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)