

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of Decisions of the Universal Service Administrator	)	CC Docket No. 02-6
)	
Riverside County Office of Education Riverside County, California	)	File No. SLD148309 (FY1999)
)	
	)	FRN Nos. 299355, 299356, 299359, 299361, 299363, 299365, 299367, 299368, 299370, 299371, 299372, 299373, 299376, 299377, 299378, 299379, 299381, 299382

To: Chief, Wireline Competition Bureau

ADMINISTRATIVE RECORD

William Spires
Director, Systems Development and Support
Services
Riverside County Office of Education
3939 Thirteenth Street
Riverside, CA 92502

Paul C. Besozzi
Patton Boggs LLP
2550 M Street NW
Washington, DC 20037
(202) 457-6000

*Counsel to Riverside County Office of
Education*

August 27, 2009

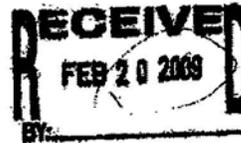


Schools and Libraries Division

Administrator's Decision on FCC Remand - Funding Year 1999-2000

February 17, 2009

Rina M. Gonzales
Best Best & Krieger LLP
3750 University Avenue
P.O. Box 1028
Riverside, CA 92502-1028



Re: Applicant Name: Billed Entity Number: Form 471 Application Number: Funding Request Number(s): FCC Order: FCC Order Release Date:	R O P - Riverside County 143743 148309 299355, 299356, 299359, 299361, 299363, 299365, 299367, 299368, 299370, 299371, 299372, 299373, 299376, 299377, 299378, 299379, 299381, 299382 DA 05-498 February 25, 2005
---	--

The Federal Communications Commission (FCC) has directed the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) to further review your application consistent with the FCC Order referenced above.

After thorough review and investigation of all the relevant facts, USAC has made its decision in regard to the FCC Remand of USAC's Funding Year 1999 Administrator's Decision on Appeal 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. If you included more than one Application Number in your appeal to the FCC, please note that you will receive a separate letter for each application.

Funding Request Number(s):	299355, 299356, 299359, 299361, 299363, 299365, 299367, 299368, 299370, 299371, 299372, 299373, 299376, 299377, 299378, 299379, 299381, 299382
-----------------------------------	--

Decision on FCC Remand:	Approved, Funding Denied
Explanation:	

- In accordance with the FCC decision in the released order (DA 05-498), your appeal to the FCC has brought forward persuasive information that additional reviews must be completed in order to determine compliance with the rules of the Schools and Libraries

Division Support Mechanism. However, after further review, funding will be recovered from the applicant for the reasons cited below.

- USAC had previously determined that the applicant did not pay the entire non-discounted portion. 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, funding will be recovered from the applicant for the amounts specified in the previously issued ~~Reasons for Denial of Disbursed Funds (RDF) Letter~~.

If the Administrator's Decision on FCC Remand Letter indicates that 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 20534. 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 FCC Remand review process.

Schools and Libraries Division
Universal Service Administrative Company

CC: Elliott Duchon
R O P - Riverside County
3939 Thirteenth Street
Riverside, CA 92502

CC: Pierre Pendergrass
Spectrum Communications Cable Services, Inc.
226 North Lincoln Avenue
Corona, CA 92882

DECLARATION

1. I, William Spires, am the Director, Systems Development and Support Services, Riverside County Office of Education ("RCOE") in Riverside, California. I have occupied that position since 1999. I am familiar with the Funding Year ("FY") 1999 application of RCOE, on behalf of a consortium of Riverside School Districts, for support under the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC"). I am also familiar with the history of the effort of USAC to recover certain approved E-Rate Program funds for FY 1999 as "erroneously distributed".

2. I have reviewed the foregoing Supplement To Request For Review ("Supplement"), which was prepared pursuant to my direction and oversight. I hereby declare, under penalty of perjury, on this 27th day of August 2009, that the facts and circumstances described in the Supplement relating to and surrounding RCOE's FY 1999 application for E-Rate Program support and the subsequent history relating to and surrounding that application and the E-Rate Program support, are true and correct to the best of my knowledge and belief.



William Spires

470

**Schools and Libraries Universal Service
Description of Services Requested
and Certification Form**

Estimated Average Burden Hours Per Response: 6.0 hours

This form is designed to help schools and libraries describe the eligible telecommunications-related services they seek so that this data can be posted on a website and interested service providers can identify the applicant as a potential customer and compete to serve it.

Please read instructions before completing.

(To be completed by entity that will negotiate with providers.)

Block 1: Applicant Address and Identifications
(School, library, or consortium desiring Universal Service funding.)

Posting Date: 03/05/1999
Allowable Contract Date: 04/02/1999
Certification Received Date: 03/12/1999

1. Name of Applicant: R O P - RIVERSIDE COUNTY	2. Funding Year: 07/01/1999 - 06/30/2000
---	---

3a. NCES School Code (if individual school) Or NCES Library Code (if individual library)
State: - District: - School/Library:

3b. Universal Service Control Number: 22010000227898	3c. Applicant ID Number: 143743
---	--

4a. Type Of Applicant
(Check only one box.)

school

school district

library or library consortium under the LSTA

consortium of multiple entities

4b. If Applicant is a consortium, check all other boxes that apply:

<input type="checkbox"/> includes non-governmental entities ineligible for support	<input type="checkbox"/> state educational agency
<input type="checkbox"/> entity desires separate bills for each member of consortium	<input checked="" type="checkbox"/> local educational agency
<input type="checkbox"/> entity desires separate bills for some members of consortium	<input type="checkbox"/> educational service agency
<input checked="" type="checkbox"/> region of a state <input type="checkbox"/> statewide <input type="checkbox"/> multi-state	

5. Applicant's Street Address, P.O.Box, or Route Number

Street:
3939 13TH ST

City: RIVERSIDE	State: CA	Zip Code 5Digit: 92501	Zip Code 4Digit:
Telephone number Ext: (909) 2224400	E-mail Address: educhon@rcoe.k12.ca.us		

6. Contact Person's Name: Elliott Duchon

Street Address, P.O.Box, or Route Number (if different from Item 5)

Street:
3939 13TH ST

City: RIVERSIDE	State: CA	Zip Code 5Digit: 92501	Zip Code 4Digit:
---------------------------	---------------------	----------------------------------	------------------

Fill in all of the following (if available), and check the preferred mode of contact:

<input type="radio"/> Telephone Number Ext: (909) 3696478	<input checked="" type="radio"/> Fax Number Ext: (909) 3696363	<input type="radio"/> E-mail address: educhon@rcoe.k12.ca.us	<input type="radio"/> Mail:
---	--	--	-----------------------------

Block 2: Other Characteristics Of Applicant

7a. Number of students: 277321	7b. Number of library patrons:
8. Number of buildings to be served: 3270	9. Number of rooms to be served: 26160

Block 3: Summary Description of Needs or Services Requested

10. Check if applicant seeks discounts only for eligible services based on one or more existing, binding contract(s) and proceed to Block 4.

Sequence #	Date Contract Signed	Contract Termination Date
------------	----------------------	---------------------------

11. Check here if you have a Request for Proposal(RFP) available.If RFP is posted on a website, provide the website address

(1)	(2)	(3)	(4)	(5)
	Existing Services	Additional Services Desired	Total Services Desired	Details(Optional)

12. Telecommunications Services

a. Number of phones that have or require service (See instructions concerning extension phones and fax machines.)

b. Number of computers that have or require service

c. Number of high bandwidth video conferencing links

d. Specify other (Optional)

13. Internal Connections	Existing	Additional	Total	Details
a. Number of buildings with at least some rooms connected	3270	0	3270	
b. Number of rooms connected	26160	0	26160	increase # drops per classroom
c. Highest Speed of connection	100Mbps	100Mbps		
d. Specify other (Optional)				

14. Internet Access	Existing	Additional	Total	Details
a. Number of dial up connections necessary				
b. Highest speed of dial up connections				
c. Number of direct connections necessary	14	0	14	Maintain discounts on existing T1 service
d. Highest speed of such direct connections	T1			
e. Specify other (Optional)				

15. You may provide additional summary information about the services you are requesting to help service providers identify your needs more precisely. You may provide technical requirements or give an informal description of your telecommunications-related goals.

This application advances the existing RiverLink Project, a county wide initiative to provide 95 drops to all High Schools, 48 drops for each Jr. High and 24 drops for each Elementary School in Riverside County. Hardware needed includes, but is not limited to Smart Switches, routers and CSU/DSUs. Additionally, we require installation and maintenance services for all equipment and infrastructure. Vendor must be able to provide all necessary aspects of the installation.

16. Check here if there are any restrictions imposed by state or local laws or regulations on how and when providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures. You may attach restrictions or give website where they are posted.

17. Purchases in future years: If you have current plans to purchase additional services in future years, describe them below (Providing this information is optional.)

FCCAR00005

Block 4: Technology Assessment

18. Although the following services and facilities are ineligible for support, they are usually necessary if schools and libraries are to make effective use of the eligible services requested in this application.

(If your application is only for basic voice telephone service, check this box

and go to Item 19. Otherwise, you must check at least one box in each of the other lines. You may provide details for purchases being sought.)

a. Desktop communications software: Software required <input checked="" type="checkbox"/> has been purchased; and/or <input type="checkbox"/> is being sought.
b. Electrical systems: <input checked="" type="checkbox"/> adequate electrical capacity is in place or has already been arranged; and/or <input checked="" type="checkbox"/> upgrading for additional electrical capacity is being sought.
c. Computers: a sufficient quantity of computers <input checked="" type="checkbox"/> has been purchased; and/or <input type="checkbox"/> is being sought.
d. Computer hardware maintenance: adequate arrangements <input checked="" type="checkbox"/> have been made; and/or <input type="checkbox"/> are being sought.
e. Staff development: <input checked="" type="checkbox"/> all staff have had an appropriate level of training or additional training has already been scheduled; and/or <input checked="" type="checkbox"/> training is being sought.
f. Additional details: Use this space to provide additional details to help providers to identify the services or facilities you desire.

Block 5: Listing Consortium Participants

19. **Eligible Entities:** (Billed Entities.) If applicant is an individual school or a library or a school district or a library system that will receive only one bill, it should only fill in the first row of this chart. If applicant is a consortium of multiple billed entities, then it should fill out a row for each billed entity. (Applicant may attach additional pages.)

Billed Entity	Billed Entity's Zip Code	Billed Entity Code <i>(Inserted by Administrator)</i>	Zip Code(s) of Recipients of Service
Riverside County Office of Education	92501	159304	92254
Riverside County Office of Education	92501	159304	92201
Riverside County Office of Education	92501	159304	92396
Riverside County Office of Education	92501	159304	92532
Riverside County Office of Education	92501	159304	92530
Riverside County Office of Education	92501	159304	92555
Riverside County Office of Education	92501	159304	92234
Riverside County Office of Education	92501	159304	92276
Riverside County Office of Education	92501	159304	91719
Riverside County Office of Education	92501	159304	92223
Riverside County Office of Education	92501	159304	92539

FCCAR00006

6/28/2009 8:21 PM

Riverside County Office of Education	92501	159304	91752
Riverside County Office of Education	92501	159304	92553
Riverside County Office of Education	92501	159304	92507
Riverside County Office of Education	92501	159304	92592
Riverside County Office of Education	92501	159304	92220
Riverside County Office of Education	92501	159304	92518
Riverside County Office of Education	92501	159304	92563
Riverside County Office of Education	92501	159304	92240
Riverside County Office of Education	92501	159304	92270
Riverside County Office of Education	92501	159304	92582
Riverside County Office of Education	92501	159304	91760
Riverside County Office of Education	92501	159304	92505
Riverside County Office of Education	92501	159304	92236
Riverside County Office of Education	92501	159304	92239
Riverside County Office of Education	92501	159304	92509
Riverside County Office of Education	92501	159304	92562
Riverside County Office of Education	92501	159304	92264
Riverside County Office of Education	92501	159304	92225
Riverside County Office of Education	92501	159304	92585
Riverside County Office of Education	92501	159304	92504
Riverside County Office of Education	92501	159304	92501
Riverside County Office of Education	92501	159304	92274
Riverside County Office of Education	92501	159304	92544
Riverside County Office of Education	92501	159304	92536
Riverside County Office of Education	92501	159304	92549

FCCAR00007

Riverside County Office of Education	92501	159304	92567
Riverside County Office of Education	92501	159304	92506
Riverside County Office of Education	92501	159304	92508
Riverside County Office of Education	92501	159304	91720
Riverside County Office of Education	92501	159304	92260
Riverside County Office of Education	92501	159304	92253
Riverside County Office of Education	92501	159304	92595
Riverside County Office of Education	92501	159304	92584
Riverside County Office of Education	92501	159304	92262
Riverside County Office of Education	92501	159304	92570
Riverside County Office of Education	92501	159304	92583
Riverside County Office of Education	92501	159304	92503
Riverside County Office of Education	92501	159304	92275
Riverside County Office of Education	92501	159304	92545
Riverside County Office of Education	92501	159304	92571
Riverside County Office of Education	92501	159304	92591
Riverside County Office of Education	92501	159304	92543
Riverside County Office of Education	92501	159304	92557

20. Entities Ineligible for Schools and Libraries Discount:

Name of Entity	Zip Code(s) of Recipients of Service	Contact Person	Phone Number, E-mail Address, or Alternative Preferred Contact Method
----------------	--------------------------------------	----------------	---

Block 6: Certifications and Signature

21. The applicant includes:(Check one or both)

FCCAR00008

a. <input checked="" type="checkbox"/> schools under the statutory definitions of elementary and secondary schools found in the Elementary and Secondary Education Act of 1965, 20 U.S.C. Secs. 8801(14) and (25), that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or
b. <input checked="" type="checkbox"/> libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school(including, but not limited to) elementary and secondary schools, colleges, and universities.
22. All of the individual schools, libraries, and library consortia listed above in item 19 are covered by:
a. <input type="checkbox"/> individual technology plans and/or
b. <input checked="" type="checkbox"/> higher-level technology plans for using the services requested in this application(if those services consist of other than voice services).
23. Status of technology plan(check one):
a. <input checked="" type="radio"/> Technology plan(s) has/have been approved; or
b. <input type="radio"/> Technology plan(s) will be approved by a state or other authorized body; or
c. <input type="radio"/> Technology plan(s) will be submitted to Schools and Libraries Corporation for approval.
24. <input checked="" type="checkbox"/> I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.
25. <input checked="" type="checkbox"/> I recognize that support under this program is conditional upon the school(s) or library(ies) I represent securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.
26. <input checked="" type="checkbox"/> I certify that I am authorized to submit this request on behalf of the above-named applicant, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.
29. Printed name of authorized person ELLIOTT DUCHON
30. Title or position of authorized person ASSISTANT SUPERINTENDENT OF SCHOOLS

[New Search](#)
[Return To Search Results](#)



Box 125 - Correspondence Unit
100 South Jefferson Road
Whippany, NJ 07981
Phone: 888-203-8100

R O P - RIVERSIDE COUNTY
MR. ELLIOTT DUCHON
3939 THIRTEENTH STREET
RIVERSIDE, CA 92502

April 18, 2000

Re: Form 471 Application Number: 148309
Funding Year: 07/01/1999 - 06/30/2000
Billed Entity Number: 143743

Thank you for your 1999-2000 E-rate application and for any assistance you provided throughout our review. We have completed processing of your Form 471. This letter is to advise you of our decisions.

FUNDING COMMITMENT REPORT

From your Form 471, we reviewed row-by-row discount requests in Items 15 and 16. We assigned each row a Funding Request Number (FRN). On the pages following this letter, we have provided a Funding Commitment Report for each FRN in your application.

Attached to this letter you will find a guide that defines each line of the Funding Commitment Report and a complete list of FRNs from your application. The SLD is also sending this information to your service provider(s) so arrangements can be made to begin implementing your E-rate discount(s). We would encourage you to contact your service providers to let them know your plans regarding these services.

FOR QUESTIONS

If you have questions regarding our decisions on your E-rate application, please notify us in writing. Your questions should be sent to: Questions, Schools and Libraries Division, Universal Service Administrative Company, Box 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981.

FOR APPEALS

If you wish to appeal to the SLD, your appeal must be made in writing and received by us within 30 days of issuance of this letter as indicated by its postmark. In your letter of appeal, please include: correct contact information for the appellant, information on the Funding Commitment Decision you are appealing and the specific Funding Request Number in question, and an original authorized signature. Appeals sent by fax, e-mail or phone call cannot be processed. Please mail your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981. You may also call our Client Service Bureau at 888-203-8100. 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): FCC, Office of the Secretary, 445 12th Street SW, Room TW-A 325, Washington, D.C. 20554.

NEXT STEPS

Once you have reviewed this letter and have determined that some or all of your requests have been funded, your next step is to complete and submit the enclosed FCC Form 486. This Form notifies the SLD that you are currently receiving or have begun receiving services approved for discounts and provides certified indication that your technology plan(s) has been approved. As you complete your Form 486,

RCOE
Exhibit C
Page 1 of 9

FCCAR00010

you should also contact your service provider to verify they have received notice from the SLD of your commitments. After the SLD processes your Form 486, we can begin processing invoices from your service provider(s) so they can be reimbursed for discounted services they have provided you. For further detailed information on next steps, please review all enclosures.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the universal service mechanisms for schools and libraries. FCC Form 471 Applicants who have received funding commitments continue to be subject to audits and other reviews that SLD or the Commission may undertake periodically to assure that funds have been committed and are being used in accordance with all such requirements. If the SLD subsequently determines that its commitment was erroneously issued due to action or inaction, including but not limited to that by SLD, the Applicant, or service provider, and that the action or inaction was not in accordance with such requirements, SLD may be required to cancel these funding commitments and seek repayment of any funds disbursed not in accordance with such requirements. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC) may pursue enforcement actions and other means of recourse to collect erroneously disbursed funds.

The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

We look forward to continuing our work with you on connecting our schools and libraries together through communications technology.

Sincerely,
Kate L. Moore
President, Schools and Libraries Division, USAC

Enclosures

EXPLANATION OF A FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each approved E-rate funding request from your application. We are providing the following definitions.

FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each line completed in Items 15 and 16 of your Form 471 once an application has been processed. This number is used to report to applicants and vendors the status of individual discount requests submitted on a Form 471. Applicants and vendors learned about FRNs when they received their Receipt Acknowledgement Letter and must use these numbers when completing the Form 486 and Invoices. An FRN will never be longer than 10 digits. If a FRN is shorter than 10 digits, applicants are advised to add zeroes to the front of the numbers to reach 10 digits when filing post-commitment forms.

FUNDING STATUS: Each FRN will have one of six definitions: "Funded", "Denied", "Partially Funded", "Funds Exhausted", "Unfunded", or "As Yet Unfunded". An FRN that is "Funded" will be approved at the level that SLD determined is appropriate for that item. That will generally be the level requested by you unless the SLD determines during the application review process that some adjustment is appropriate, for example, a different discount percentage for that FRN than the Form 471 featured. A "Denied" FRN is one for which no funds will be committed, and the reason for that decision will be briefly explained in the "Funding Commitment Decision", and amplification of that explanation may be offered in the section, "Funding Commitment Decision Explanation". In accordance with FCC program rules, FRNs are "Partially Funded" or "Unfunded", if the total amount of funds in the Universal Service Fund is insufficient to fully fund or fund all approved requests. If the Form 471 was received after all the funds in the Universal Service Fund were allocated and it was processed, the status will indicate "Unfunded - Funds Exhausted". "As Yet Unfunded" is a temporary status that would be assigned to an FRN when the SLD is uncertain at the time the letter is generated whether there will be sufficient funds to make commitments for a particular service type at a particular discount level. For example, if your application included both telecommunications services and internal connections, you might receive a letter with our funding commitment for your telecommunications requests and a message that your internal connections requests are "As Yet Unfunded". You would then receive a later letter regarding our funding decision on your internal connections requests.

SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to vendors seeking payment from the Universal Service Fund for participating in the universal service support programs. A SPIN contains 9 digits and should be included by applicants on their completed Form 471 applications. 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.

PROVIDER CONTRACT NUMBER: The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.

SERVICES ORDERED: The type of service ordered from the service provider, as shown on Form 471.

EARLIEST POSSIBLE EFFECTIVE DATE OF DISCOUNT: The first possible date of service for which the SLD will reimburse service providers for the discounts for the service. Note: If the actual service start date provided on a Form 486 is later than this date, the actual service start date set forth in the Form 486 will be the effective date of the discount.

RCOE
Exhibit C
Page 3 of 9

CONTRACT EXPIRATION DATE: The date the contract expires. This will be present only if a contract expiration date was provided on Form 471. This is not applicable for tariff services.

SITE IDENTIFIER: This will appear only for FRNs listed in Item 16 of your Form 471. For public schools, the 12-digit NCES code you listed in Item 14 for this school site will appear here. If there is no NCES Code for an FRN in Item 16, the SLD-assigned entity number will appear here.

PRE-DISCOUNT COST: Amount in Column 10 of Item 15/16, Form 471, as determined through the application review process. Please note that, during the Problem Resolution process at SLD, the amount in Col. 10 of Item 15/16 may have been corrected to conform to the information provided about Service Start Date and Monthly Costs.

DISCOUNT PERCENTAGE APPROVED BY THE SLD: This is the discount rate that the SLD has approved for this service.

FUNDING COMMITMENT DECISION: This represents the total amount of funding that the SLD is now reserving to reimburse service providers for the discounts for this service through June 30, 2000. This figure may be different from the Estimated Total Annual Pre-Discount Cost (Col. 10 of Item 15/16) times the Percentage Discount (Col. 11 of Item 15/16) in the 471 application. It may be lower because of an adjustment determined appropriate by the SLD, such as of the discount percentage, or a denial of discounts and, if so, the accompanying comment will explain this difference. The difference may also reflect a reduction from the request level made necessary by overall funding limitations, in which case the "Funding Status" above will indicate "Partially Funded" or "Unfunded". Whatever amount is listed here, it is important that you and the service provider both recognize that the SLD should be invoiced and the SLD may direct disbursement of discounts on only eligible, approved services actually rendered.

FUNDING COMMITMENT DECISION EXPLANATION: This entry may appear to amplify the comment in the "Funding Commitment Decision", if the discount request for this service is denied for reasons other than "Unfunded" or if the SLD determined that some adjustment to the request level was appropriate.

FUNDING COMMITMENT REPORT FOR APPLICATION NUMBER: 0000148309

Funding Request Number: 0000299353 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: RUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 04/30/2001
Pre-discount Cost: \$357,807.88
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$246,431.28 - 471 approved as submitted

Funding Request Number: 0000299354 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: NVUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 04/30/2001
Pre-discount Cost: \$49,332.51
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$33,052.78 - 471 approved as submitted

Funding Request Number: 0000299355 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: PSUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 04/30/2001
Pre-discount Cost: \$258,943.51
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$173,492.15 - 471 approved as submitted

Funding Request Number: 0000299356 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: CNUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$501,442.85
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$335,966.71 - 471 approved as submitted

Funding Request Number: 0000299359 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: SJUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$113,027.59
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$75,728.49 - 471 approved as submitted

FUNDING COMMITMENT REPORT FOR APPLICATION NUMBER: 0000148309

Funding Request Number: 0000299361 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: VVSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$466,577.26
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$312,606.76 - 471 approved as submitted

Funding Request Number: 0000299363 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: PVUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$129,471.76
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$86,746.98 - 471 approved as submitted

Funding Request Number: 0000299365 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: HUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$316,498.11
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$212,053.73 - 471 approved as submitted

Funding Request Number: 0000299367 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: MUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$65,776.68
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$44,070.38 - 471 approved as submitted

Funding Request Number: 0000299368 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: RSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$57,554.60
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$38,561.58 - 471 approved as submitted

RCOE
Exhibit C
Page 6 of 9

FUNDING COMMITMENT REPORT FOR APPLICATION NUMBER: 0000148309

Funding Request Number: 0000299369 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: DCUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$24,566.26
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$16,526.39 - 471 approved as submitted

Funding Request Number: 0000299370 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: DSUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$468,554.51
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$313,931.52 - 471 approved as submitted

Funding Request Number: 0000299371 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: AUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$283,609.77
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$190,018.55 - 471 approved as submitted

Funding Request Number: 0000299372 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: JUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$324,720.19
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$217,562.53 - 471 approved as submitted

Funding Request Number: 0000299373 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: LEUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$275,387.68
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$184,509.75 - 471 approved as submitted

RCOE
Exhibit C
Page 7 of 9

FUNDING COMMITMENT REPORT FOR APPLICATION NUMBER: 0000148309

Funding Request Number: 0000299374 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: CUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$261,024.12
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$174,886.16 - 471 approved as submitted

Funding Request Number: 0000299375 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: BUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$137,693.84
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$92,254.87 - 471 approved as submitted

Funding Request Number: 0000299376 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: BANUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$154,138.01
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$103,272.47 - 471 approved as submitted

Funding Request Number: 0000299377 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: PJUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$129,471.76
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$86,746.08 - 471 approved as submitted

Funding Request Number: 0000299378 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: PELEM
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$65,776.68
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$44,070.38 - 471 approved as submitted

FUNDING COMMITMENT REPORT FOR APPLICATION NUMBER: 0000148309

Funding Request Number: 0000299379 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: TUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$267,165.60
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$179,000.95 - 471 approved as submitted

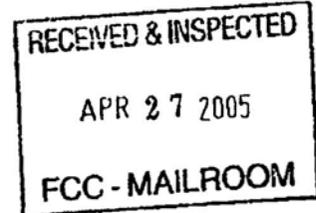
Funding Request Number: 0000299381 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: MUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$187,026.35
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$125,307.65 - 471 approved as submitted

Funding Request Number: 0000299382 Funding Status: Funded
SPIN: 143010165 Service Provider Name: Spectrum Communications
Provider Contract Number: JUSD
Services Ordered: Internal Connections (Shared)
Earliest Possible Effective Date of Discount: 07/01/1999
Contract Expiration Date: 06/30/2001
Pre-discount Cost: \$589,804.18
Discount Percentage Approved by the SLD: 67%
Funding Commitment Decision: \$395,168.80 - 471 approved as submitted



SPECTRUM COMMUNICATIONS
CABLING SERVICES, INC.

Date: March 15, 2003
To: Ed Falkowitz
Schools and Libraries Division
From: Robert Rivera



Subject: Riverside (Ben 143743) FY 1999- Equipment Trade-In

Attached is the Appraisal report for the equipment received as trade in for the balance due from customers within the Riverside consortium. We have had the equipment appraised as of March 1, 1999 which is the month the agreement between the Riverside consortium and Spectrum Communications was negotiated and the Form 471 submitted to the SLD. In addition, as you requested we had the equipment appraised as of July 1, 1999. Using these appraisals, below is a summary table of the results of the transaction:

	<u>March 1, 1999</u>	<u>July 1, 1999</u>
Equipment Appraised Value (per report)	\$1,859,821	\$1,316,159
Cash Received	<u>155,996</u>	<u>155,996</u>
Total	\$2,015,317	\$1,472,155
Customer Match	<u>1,813,506</u>	<u>1,813,506</u>
Difference	\$ 201,811	\$ (341,351)

As shown above, at the time Spectrum Communications entered into the transaction the value of the equipment was well above the customer match required for E-rate discounts. Given the program rules and guidelines available at the time the transaction was agreed upon, we believe using the contract date for valuation was a prudent and reasonable basis for establishing value when consummating this transaction.

If you have any questions, please call me.


Robert Rivera
Spectrum Communications
(909) 371-0549

Appraisal Report

For

Spectrum Communications

By

**DMC Consulting Group
Newport Beach, CA**

March 2003

March 2003

DMC Consulting Group

RCOE
Exhibit G
Page 56 of 76

1

FCCAR00020

Table of Contents

Appraisal Report 4
 Overview of Report 4
 Purpose and Use of the Appraisal 4
 Objective and Valuation Date of Appraisal 4
 Definition and Premise of Value 5
 Description of Subject Computer Assets 5
 Approaches to Value 5
 Income Approach 5
 Cost Approach 6
 Market Approach 6
 Appropriate Method - Methodology 7
 About Cisco Equipment 8
 DMC Fair Market Value Report Analysis 8
 Conclusions of Value - Summary 9
Assumptions and Limiting Conditions 10
Exhibit A. Curriculum Vita for Peter Daley 11
Exhibit B. Portfolio Analysis - Detail 17

List of Figures

Figure 1. Summary of Conclusions March 1999 and July 1999..... 9

Appraisal Report

DMC Consulting Group (DMC) presents the following summary desktop appraisal as an *opinion of value of high-tech Cisco network communications equipment sold to Riverside County in March 1999*. The following is a list of the documents submitted to DMC for review by Spectrum Communications.

- Summarized equipment spreadsheet for the Cisco Equipment

The portfolio was appraised for End-User Fair Market Value for March 1999 and July 1999. The listing of the equipment and the forecast appear as Exhibit B and the end of this appraisal report.

Overview of Report

This appraisal report identifies the assets in question and determines the various Fair Market Values for March 1999 and July 1999. Adherence to the code of ethics and the requirement and standards of Uniform Standards of Professional Appraisal Practices and the conduct of an appraiser as a member of the American Society of Appraisers is strictly followed for the creation of this report.

Purpose and Use of the Appraisal

The purpose of this appraisal is to provide an *independent valuation opinion* with regard to the Fair Market Values at the two dates mentioned. This was done through the use of researching the equipment, using reports available in the marketplace and applying my 17 years of valuing computer equipment to arrive at the *opinion of value* presented. This report should be used as an *opinion of value* as of the appraisal dates for the assets listed.

The End-User value is the price the user would pay to a vendor, computer broker or lessor for the equipment in an arms length contract subject to the definition of Fair Market Value (FMV) listed later in this report. Cisco does not charge the end-user for freight and installation of this type of equipment. The End-User valuation represents on average what the user can expect to pay for like equipment in the specific timeframe requested.

Objective and Valuation Date of Appraisal

The objective is to give an opinion of Fair Market Value as of March 1999 and July 1999 for the equipment in the detail listing in Exhibit B.

Definition and Premise of Value

"Fair Market Value - Installed" (FMV) is defined as the price that the equipment should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars or financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

For purposes of this valuation freight and installation are not included in the value of the equipment.

Description of Subject Computer Assets

The subject computer assets are listed in Exhibit B. *Portfolio Analysis - Detail*.

There was no inspection of the assets listed. It is assumed that:

- *The equipment was under a normal maintenance agreement from the manufacturer since it was first installed.*
- *The equipment was up to its current engineering level.*
- *The equipment was in a proper room environment and subject only to the normal wear and tear of such use.*
- *The equipment was used for normal business applications.*

Approaches to Value

The generally accepted approaches to tangible personal property valuation include the income approach, cost approach and the market approach. The following outlines these various approaches to value.

Income Approach

The income approach considers value in relation to the present worth of anticipated future benefits derived from ownership and is usually measured through the capitalization of a specific

level or income, (i.e. net income or net cash flow). The net income or net cash flow is projected over an appropriate period and is then capitalized at an appropriate capitalization or discount rate.

While the cost approach and the market approach are readily applicable in many situations of computer equipment valuations, the income approach is less frequently applied since it is usually difficult to isolate a unique income stream.

Cost Approach

The cost approach is that approach which measures value by determining the current cost of an asset and deducting for the various elements of depreciation, physical deterioration and functional and economic obsolescence. This approach is based on the proposition that the informed purchaser would pay no more for computer equipment than the cost of producing substitute equipment with the same utility as the subject asset from the same manufacturer.

The main definitions of cost are reproduction cost and replacement cost. Reproduction cost considers the construction of an exact replica of the asset. Replacement cost considers the cost to recreate the functionality or utility of the subject asset.

The cost approach commonly measures value by estimating the current cost of a new asset, and then deducts value for various elements of depreciation, including physical deterioration and functional and external obsolescence to arrive at "depreciated cost new". This "cost" may be either reproduction or replacement cost. The logic behind this method is that an indication of value of the asset is its cost (reproduction or replacement) less a charge against various forms of obsolescence such as functional, technological and economic as well as physical deterioration if any.

Thus:	Current Cost of Replacement or Reproduction New
Less:	Physical Deterioration
Less:	Functional Obsolescence
Less:	External Obsolescence
Results in:	Fair Market Value

The availability and cost of the substitute asset is directly affected by shifts in the supply and demand of the utility. Utility may be measured in many ways including functionality, desirability, etc. Costs typically include the cost of all material, labor, overhead, and entrepreneurial profit (or return on the investment in the subject tangible personal property).

Market Approach

The logic behind the market approach for computer equipment is that a prudent investor can go to the marketplace and purchase an exact copy of the asset with the same features and/or

functionality built by the same manufacturer. Analysis of recent sales and/or asking prices of comparative computer assets are the basis used to establish market values for current fair market value of used equipment.

In the market approach or sometimes also called the "sales comparison" approach, recent sales and offering prices of exact copies and/or similar assets are gathered to arrive at an indication of the most probable selling price of the asset being appraised. The basic procedure is to gather data, determine the features to be compared, and apply the results to the subject. Along with this data and historical data about the same product, a depreciation curve can be established to predict a residual value for this and similar products.

The market approach is considered to be the best method to estimate the current and future value of computer assets, especially when an actual secondary market exists and there is data available to provide a good indicator of value for the asset. There is enough data available from marketplace to provide a good basis for defining value for the assets under question.

Appropriate Method - Methodology

Of the various "Approaches to Value" available, the *Market Approach is the appropriate method* of valuing this portfolio of equipment.

The Income Approach considers value in relation to the present worth of future benefits of ownership. It is not usually applied to individual items of equipment since it is difficult, if not impossible, to identify individual income streams. If you assemble a group of individual machines to produce a product, in aggregate, they generate income for the business. So by using an income approach, we could value the aggregation of assets that generate this income. However, it is very difficult to gather and isolate the appropriate information needed for this type of appraisal.

The Cost Approach is based on the proposition that the informed purchaser would pay no more for a property than the cost of reproducing a substitute property from the same manufacturer with the same utility as the subject property. It considers that the maximum value of a property to a knowledgeable buyer would be the amount currently required to construct purchase a new asset of equal utility. This approach should not be used because the cost to Reproduce and/or to develop and re-engineer an exact Replacement would be more than a unit purchased in the secondary marketplace, plus the identification of the specific percentages to apply for physical, functional and economic depreciation.

About Cisco Equipment

Cisco is the dominant player in the network communications arena with equipment servicing a broad spectrum of companies from the small business LAN networks to the backbone of the Internet and the Internet Service Providers. From their web site: "Cisco service provider products and solutions enable service providers to increase revenue by offering compelling data and managed services to enterprises, small/medium business, and residential customers. In its aim to be the preferred partner for profitable services, Cisco offers three advantages to its service provider customers: industry-leading technology and solutions, expertise in creating products that support new services, and the ability to identify and influence business demand for service provider offerings."

I was president of Daley Marketing Corporation from 1980 to 2001 and I have been publishing the DMC Network Communications Report since 1996. I used the DMC Network End-User reports from March 1999 and July 1999 to determine the opinion of value. I obtained the values for my report from the publications below plus information from brokers/dealers and lessors around the country. Information is available from:

- The Processor
- Compu-Mart
- Telecom Manager
- Computer Manager
- Various web sites

DMC Fair Market Value Report Analysis

The data used by Daley Marketing for the reporting of current market values for the computer industry has come from various brokers and lessors within the industry. The Daley Marketing reports have been an integral part of the computer marketplace since 1985 with the first publication of the IBM Market Value Report. Daley Marketing Corporation was a computer lessor from 1980 to 1985 prior to entering into the publishing business. The DMC Fair Market Value reports are published monthly to the end-user and brokerage community.

The use of the computer broker information as opposed to end-user information is used to avoid reporting on hidden costs that could be included in a quote from an end-user and distort the real fair market value. Sales reports from different end-users may include different soft costs that can distort the end-user fair market value. Because the marketplace allows one broker to sell a machine to another broker without soft costs such as free rent, systems help and/or software, this has become the basis for the Daley Marketing reports.

Daley Marketing Corporation utilizes the broker information as the basis for its reports and then adds a gross margin to arrive at an End-User FMV. The gross margin is derived from conversations with computer brokers, dealers, lessors and past experience with Daley Marketing Corporation. The gross margin can vary depending on the equipment and the cost of the equipment but represents what can be expected by the sale of equipment from a broker, dealer or lessor to an end-user.

Conclusions of Value - Summary

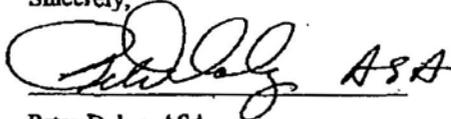
The portfolio consisted of Cisco Catalyst 5000, 2820 and 1900 Switches and Router equipment. I used the information presented in the DMC Market Value Reports to arrive at my *opinion of value*. The following represents a summary of conclusions from Exhibit B.

	Riverside County Invoice Price	End-User Fair Market Value March 1999	End-User Fair Market Value July 1999
Cisco Portfolio	\$2,643,383	\$1,859,321	\$1,316,159

Figure 1. Summary of Conclusions March 1999 and July 1999.

The information contained in this desktop letter appraisal is to be used as a guide in formulating Fair Market Values for the Cisco equipment listed. All estimates of value presented in this report are the appraisers considered opinion. Should you need additional information, please call.

Sincerely,



Peter Daley, ASA
 Accredited Senior Appraiser
 DMC Consulting Group
 61 Wentworth
 Newport Beach, CA 92660
 949-737-7780

Assumptions and Limiting Conditions

I certify that, in the preparation of this report and to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal and unbiased professional analyses, opinions, and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

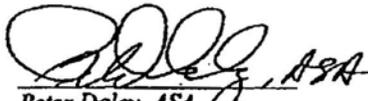
My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Practice.

No one else has provided significant professional assistance in the preparation of this report.

This valuation report is prepared solely for the purpose stated herein and is accurate to best of my knowledge and belief. No other purpose is intended or should be inferred.

DMC renders no opinion as to the legal owner of the equipment and is not aware of any tax liens or encumbrances of the property

I understand that I may be called upon to offer expert testimony regarding this independent valuation opinion.


Peter Daley, ASA
Accredited Senior Appraiser
DMC Consulting Group

Date March 17, 2003

Exhibit A Curriculum Vita for Peter Daley

Peter Daley
61 Wentworth
Newport Beach, CA 92660

EDUCATION:

Bachelor of Science, Business Administration
Cal State Northridge - 1965
Masters of Business Administration
Pepperdine University -1991
Accredited Senior Appraiser
American Society of Appraisers -1999

BUSINESS:

IBM Corporation, Marketing Representative. Marketed mid-range computer systems and peripherals in the Southern California area. Received Regional Managers Award and two District Managers Awards for competitive wins. Qualified for three hundred percent clubs.

Intel Corporation, Marketing Representative. Re-marketed the IBM System/360 portfolio to customers in Southern California, Hawaii, Colorado and Arizona. Qualified for three hundred percent clubs.

Saddleback Marketing Corporation, President. Brokered and leased used IBM equipment to customers in the western United States. Sales volume varied between \$3 and \$5 million per year.

1980-2001 - Daley Marketing Corporation. President. From 1980 to summer of 1985, brokered and leased IBM equipment in the Western United States. In 1981 began to market an IBM Computer Price List and in June of 1985 sold existing leasing business and created the market value and residual value publications that are sold worldwide today.

1994-Present - DMC Consulting Group. President. From 1994 to present Mr. Daley has been writing computer appraisals and reports for Fortune 500 customers. He received his Accredited Senior Appraisal certificate in April 1999 from the American Society of Appraisers.

2001-Present - Computer Economics. President. Mr. Daley acquired CEI on January 1, 2001. CEI is an IT Consulting company that deals with economics of running and managing an Information Technology department. It publishes FMV and Residual Values for the computer equipment as well as salary and demographic information.

Appraiser Qualifications

PETER DALEY, Accredited Senior Appraiser

Professional Overview

Mr. Daley is an ASA (Accredited Senior Appraiser) for the discipline of Machinery and Equipment with a specialty in High-Tech for the valuation of computer equipment.

Mr. Daley has been in the computer business since 1965, first with IBM as a computer broker/lessor and then with Daley Marketing Corporation (DMC), a firm he founded in July 1980 to publish reports about computer equipment, including "Market Value Reports" and "Residual Value Reports." In January 2001 Mr. Daley acquired Computer Economics, (CEI), and recently merged DMC into CEI. CEI is an independent research organization founded in 1979 devoted to helping IT executives control and manage IT costs. CEI has an on-line subscription based IT consulting web site and advisory service as well as a number of monthly and quarterly print newsletters. Today, the combination of CEI and DMCs published and online reports and services cover all segments of the secondary computer markets. These reports are used extensively by Fortune 500 companies in the preparation of IT budgets. Mr. Daley directs the company's research and the publication of its reports. Additionally, Mr. Daley remains president of DMC Consulting Group, a separate company that specializes in writing Appraisals, Portfolio Analysis and Property Tax Valuation from Fair Market Value (FMV) to Residual Value (RV) valuations.

Mr. Daley has developed a database of "Fair Market Value" equipment values from 1989 to the present, utilizing a variety of reports and publications along with the DMC Market Value Reports. This database has been successfully used in the valuation of computer equipment in the settlement of a number of Virginia tax cases. He has also previously testified in California, Minnesota, Michigan, New York and the Virginia Courts as an expert in the field of valuation of computer equipment.

Lectures/Seminars/Presentations

Equipment Leasing Associations Management Conference - Residual Value Forecasting, Tuscon, AZ, February 1997.

American Society of Appraisers Machinery Conference - Determining Fair Market Values and Residual Value Forecasting, Chicago, IL, October 2001.

Panelist at the fall Comdex - Orderly Disposition of Computer Assets, Las Vegas, November 2001.

American Society of Appraiser's International Conference - Residual Value Forecasting for the Computer Industry, San Diego, CA, August 2002.

Mr. Daley has testified in Federal and Tax Courts in the following cases:

United States v. Knutson and Harper
United States District Court for the Eastern District of New York
97-CR-957 (ILG)
May 1998
Brooklyn, NY

EDS v. Flint Township
Local Property Tax Court
March 2003

DMC Consulting Group

RCOE
Exhibit G 12
Page 67 of 76

Income Michigan
October 1998

Andantech, LLC v. Commissioner of IRS
No. 15532-98, 4277-00, 6348-00
U.S. Tax Court
October 2000
St. Paul, MN

Nicole Rose v. Commissioner of IRS
No. 1967-00
U.S. Tax Court
December 2000
New York, NY

Central Funding Inc v. CompuServe Interactive Services, Inc.
Case No. 01CVH05-4019
May 10, 2002
Columbus, Ohio

CMA Consolidated, Inc and Subsidiaries, Inc. v. Commissioner of IRS
No. 12746-01
U.S. Tax Court
October 2002
San Francisco, CA

Mr. Daley has been deposed in the following cases:

Fogler v. Motorola; Adv 94-939
ComNet Technologies, Inc. 93-113243-PHX-GBN
U.S. Bankruptcy Court, District of Arizona
Phoenix, AZ.
February 3, 1998

Central Funding Inc v. CompuServe Interactive Services, Inc.
Case No. 01VH05-4019
Santa Ana, CA
April 23, 2002

Magnetek v. United States
Case No. 3-00-0925
Los Angeles, CA
July 16, 2002

Long Term Capital Holdings v United States
Case No. 8176
Santa Ana, CA
February 19, 2003

Background

The mission statement of Computer Economics is: to be the recognized leader in capturing today's information and to disseminate that information in a quality and timely service to companies around the world; to provide pertinent and timely information that benefits companies to make business decisions that allow them to obtain the greatest amount of profit from each transaction; and to use the latest technology to publish and transmit information to our customers in a timely manner.

Market values are obtained from brokerage and leasing companies across the United States. The information is compiled and these values then become an integral part of the Market Value Reports published monthly.

Computer Economics publishes four different Residual Value reports that cover everything from Hubs, Routers, PC's, to midrange and mainframe products. These reports cover the future value of over 1,000 pieces of equipment. Besides the normal reports, Computer Economics does independent residual forecasting for a number of clients.

The Computer Economics Computer Price List reports on the description, feature code, and purchase and maintenance prices of current machines marketed by IBM. This report supplements the market value reports and keeps the broker/dealer up to date with IBM list prices.

The Computer Economics reports are distributed in hard copy and over the Internet. Computer Economics subscription list consists of some of the largest end-users, broker/dealers and lessors in the world. Computer Economics also markets its' products in 15 countries around the world.

Peter Daley is a member of the ASA (American Society of Appraisers).

Computer Economics, Inc.

Partial Customer List

Accenture
BankAmerica Leasing & Capital
Boeing Computer Services
Charles Schwab & Company
Commonwealth Capital Corp
Compaq Capital Corp
Copelco Capital Corp
Dreamworks Interactive
E-Systems
EMC Corporation
FLC Partnership
Fleet Credit Corporation
Forsythe Solutions Group
G.E. Capital Corporation
Gartner Group
GTE Service Corporation
Hewitt & Associates
Hewlett Packard
Hitachi Data Corporation
IBM Corporation
Information Leasing Corp.
Internal Revenue Service
KPMG Peat Marwick
Leasing Technologies Int'l
Meridian Leasing Corporation
Price Waterhouse
Pacific Gas & Electric
Ratheon - E Systems
Sanwa Business Credit Corporation
StorageTek Corporation
Sun Data Inc.
United Computer Capital
Wisconsin Gas

DMC Publications History

The following is a breakdown of reports conceived and marketed by Daley Marketing Corporation and now part of Computer Economics:

PRODUCT	STARTED	DESCRIPTION
Manufacturer's Price Lists		
IBM Computer Price Lists	1981	Mfr's List Price, Maintenance Prices
Market Value Reports - Broker and End-User Reports		
IBM/PCM Market Value Report	1985	Market Values for Amdahl, IBM, EMC, HDS, Memorex, STK. From Mainframes to Midrange to I/O Equipment
DEC Market Value Report	1991	Market Values for DEC I/O Equipment, VAX, MicroVAX
Workstation/PC Market Value	1992	Market Values for DEC, HP, IBM, SGI, SUN, Compaq etc.
Network Communications	1995	Market Values for over 25 mfrs. Bridges, Hubs, Routers, Switches
Residual Value Reports		
Mainframe/Midrange Report	1987	Mainframe Residuals for Amdahl, HDS, HP, IBM and Stratus
Disk/Tape/Miscellaneous I/O Report	1987	Residual Values on DASD, printers, controllers and tape Subsystems for Amdahl, EMC, HDS, IBM, HP & StorageTek.
Workstation & PC Report	1994	Residual Values for DEC, HP, IBM, SGI, SUN, Compaq etc.
Network Communications Report	1995	Residual Values on Bridges, Hubs, Routers, Switches, etc.

The above subscriber products are available either hard copy, on-line or email.

Exhibit B. Portfolio Analysis - Detail

Spectrum Communications

Cisco Portfolio

					United States	July 1, 1999
Model Number	Description	Total Units	Original Unit Price	Original Extended Price	End-User Fair Market Value/Extended	End-User Fair Market Value/Extended
WS-C5000	Cisco 5 Slot Core Switch Management Module w/2 FX SC	36	2,097	75,474		57,360
WS-X5006	Ports	33	6,297	207,785		157,916
WS-X5009	Management Module w/2 TX Ports	5	4,897	24,483		18,807
WS-X5213A	C5000 Fast Ethernet Switching (10/100BaseTX,12port)	35	6,997	244,878		186,107
WS-X5010	Amphenol Module	26	3,497	90,909		69,091
WS-X5011	C5000 Fast Ethernet Switching (10BaseFX,12port)	4	6,997	27,988		21,289
WS-C5008B	Catalyst 5000/5505AC Power Supply	72	1,397	100,548		76,418
WS-X5111	12 port 100baseFX Switching Module	8	13,997	111,972		85,099
WS-C2822-A	Switch 2820 24 port 10base-T	239	2,797	668,364		227,244
WS-X2824	4 port 100 FX Module for 2822	269	2,097	563,959		191,748
WS-X2821	1 port 100 FX Module for 2822	1	837	837		284
WS-C1912A	12 port 10base-T Switch w/2 100base TX ports Ent Ed Upgradable	54	1,747	94,311		56,587
WS-C1900C	24 port 10base T Switch with 1 100base TX port and 1 100 base FX port	183	2,360	431,880		168,433
Total				\$2,843,383		\$1,316,159

↳ \$1,359,321

ROOE
 Exhibit G
 Page 73 of 76

FCCAR00037

March 2003

DMC Consulting Group



Universal Service Administrative Company
Schools & Libraries Divisio

RECOVERY OF ERRONEOUSLY DISBURSED FUNDS

October 3, 2003

MR. ELLIOTT DUCHON
R O P - RIVERSIDE COUNTY
3939 THIRTEENTH STREET,
RIVERSIDE, CA 92502

Re:

Funding Year 1999 -2000
Form 471 Application Number: 148309

Dear Applicant:

Reviews of Schools and Libraries Program disbursements occasionally reveal that funds were disbursed in error. Such discoveries may arise out of our periodic audits, attempts by applicants to reduce a funding commitment below the amount already disbursed, or other investigations resulting from our program compliance procedures. For example, funds may be disbursed in error when:

- Services were billed but were not delivered
- Services were billed in excess of the services delivered
- Services were returned but an appropriate refund to SLD was not made

The SLD has determined that the funds detailed on the attached FUNDING DISBURSEMENT SYNOPSIS were disbursed in error. This synopsis includes the specific funding requests, amounts, and reasons for recovery by Funding Request Number (FRN). The SLD must now recover the amount that was disbursed in error.

FUNDING DISBURSEMENT SYNOPSIS

On the pages following this letter, we have provided a Funding Disbursement Synopsis for the Form 471 application cited above. The enclosed report includes a list of the FRNs from this application for which recovery of erroneously disbursed funds is necessary.

Immediately preceding the Funding Disbursement Report, you will find a guide that defines each line of the Report. The SLD is also sending this information to the applicant named above.

TO APPEAL THIS DECISION

If you wish to appeal the decision indicated in this letter, your appeal must be RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE ABOVE DATE ON 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 which Recovery Of Erroneously Disbursed Funds you are appealing. Indicate the funding request number and date of the Disbursed Funds Recovery letter. Your letter of appeal must also include the applicant name, the Form 471 Application Number, and the Billed Entity Number from the top of your letter.
3. When explaining your appeal, include the precise language or text that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, the SLD will be able to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, 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 on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the Client Service Bureau. We encourage the use of either the e-mail or fax filing options to expedite filing your appeal.

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 BY THE FCC WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER. Failure to meet this requirement will result in automatic dismissal of your appeal. 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 web site or by calling the

RCOE
Exhibit A
Page 2 of 22

Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options because of substantial delays in mail delivery to the FCC. 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.

Schools and Libraries Division
Universal Service Administrative Company

RCE
Exhibit A
Page 3 of 22

A GUIDE TO THE FUNDING DISBURSEMENT SYNOPSIS

Attached to this letter will be a report for each funding request from the application cited at the top of this letter for which a Recovery of Erroneously Disbursed Funds is required. We are providing the following definitions.

- **FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each request in Block 5 of 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.
- **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 programs.
- **SERVICE PROVIDER:** 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 the Form 471.
- **SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER:** The Entity Number listed on Form 471 for "site specific" FRNs.
- **BILLING ACCOUNT NUMBER:** The account number that was established for billing purposes. This will be present only if a Billing Account Number was provided on the Form 471.
- **FUNDING COMMITMENT:** This represents the total amount of requested funding that the SLD committed to this FRN.
- **FUNDS DISBURSED TO DATE:** This represents the total funds that have been paid to you for this FRN.
- **FUNDS TO BE RECOVERED:** This represents the amount of Erroneously Funds Disbursed to Date. These erroneously disbursed funds will have to be recovered.
- **DISBURSED FUNDS RECOVERY EXPLANATION:** This entry provides a description of the reason SLD is seeking the recovery.

Funding Disbursement Synopsis for Application Number: 148309

Funding Request Number 299376 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: BANUSD
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:
Billing Account Number:
Funding Commitment: \$79,113.39
Funds Disbursed to Date: \$103,272.47
Funds to be Recovered: \$24,159.08

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$24,159.08 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$38,966.30, which is \$11,899.24 less than the non-discounted share of \$50,865.54 that the applicant was obligated to pay. Since the applicant did not cover \$11,899.24 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$24,159.08. As a result this amount of \$24,159.08 determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299377 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: PJUSD
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:
Billing Account Number:
Funding Commitment: \$70,868.99
Funds Disbursed to Date: \$86,746.08
Funds to be Recovered: \$15,877.09

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$15,877.09 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only 34,905.62, which is \$7,820.06 less than the non-discounted share of \$42,725.68 that the applicant was obligated to pay. Since the applicant did not cover \$7,820.06 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$15,877.09. As a result this amount of \$15,877.09 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299378 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: PELEM
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:
Billing Account Number:
Funding Commitment: \$21,985.08
Funds Disbursed to Date: \$44,070.38
Funds to be Recovered: \$22,085.30

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$22,085.30 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$10,828.47, which is \$10,877.84 less than the non-discounted share of \$21,706.31 that the applicant was obligated to pay. Since the applicant did not cover \$10,877.84 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$22,085.30. As a result this amount of \$22,085.30 was determined to have been erroneously disbursed and must now be recovered.

RCOE
Exhibit A
Page 7 of 22

Funding Request Number 299379 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: TUSD
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:

Billing Account Number:
Funding Commitment: \$144,486.12
Funds Disbursed to Date: \$179,000.95
Funds to be Recovered: \$34,514.83

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$34,514.83 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$71,164.80, which is \$16,999.85 less than the non-discounted share of \$88,164.65 that the applicant was obligated to pay. Since the applicant did not cover \$16,999.85 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$34,514.83. As a result this amount of \$34,514.83 was determined to have been erroneously disbursed and must now be recovered.

RCOE
Exhibit A
Page 8 of 22

Funding Request Number 299381 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: MUSD
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:
Billing Account Number:
Funding Commitment: \$90,105.93
Funds Disbursed to Date: \$125,307.65
Funds to be Recovered: \$35,201.72

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$35,201.72 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$44,380.53, which is \$17,338.16 less than the non-discounted share of \$61,718.69 that the applicant was obligated to pay. Since the applicant did not cover \$17,338.16 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$35,201.72. As a result, this amount of \$35,201.72 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299382 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: JUSD
Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment: \$335,108.01

Funds Disbursed to Date: \$395,168.80

Funds to be Recovered: \$60,060.79

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$60,060.79 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$165,053.20, which is \$29,582.18 less than the non-discounted share of \$194,635.38 that the applicant was obligated to pay. Since the applicant did not cover \$29,582.18 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$60,060.79. As a result, this amount of \$60,060.79 was determined to have been erroneously disbursed and must now be recovered.

RCOE
Exhibit A
Page 10 of 22

Funding Request Number 299355 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: PSUSD
Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment: \$141,737.98

Funds Disbursed to Date: \$173,492.15

Funds to be Recovered: \$31,754.17

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$31,754.17 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$69,811.25, which is \$15,640.11 less than the non-discounted share of \$85,451.36 that the applicant was obligated to pay. Since the applicant did not cover \$15,640.11 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$31,754.17. As a result, this amount of \$31,754.17 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299356 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: CNUSD
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:

Billing Account Number:
Funding Commitment: \$277,979.70
Funds Disbursed to Date: \$335,966.71
Funds to be Recovered: \$57,987.01

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$57,987.01 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$136,915.37, which is \$28,560.77 less than the non-discounted share of \$165,476.14 that the applicant was obligated to pay. Since the applicant did not cover \$28,560.77 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$57,987.01. As a result, this amount of \$57,987.01 was determined to have been erroneously disbursed and must now be recovered.

RCOE
Exhibit A
Page 12 of 22

Funding Request Number 299359 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: SJUSD
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:
Billing Account Number:
Funding Commitment: \$65,372.72
Funds Disbursed to Date: \$75,728.49
Funds to be Recovered: \$10,355.77

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$10,355.77 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$32,198.50, which is \$5,100.61 less than the non-discounted share of \$18,993.02 that the applicant was obligated to pay. Since the applicant did not cover \$5,100.61 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$10,355.77. As a result this amount of \$10,355.77 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299361 SPIN: 443010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: VVSD
Services Ordered: INTERNAL CONNECTINS_S
Site Identifier:
Billing Account Number:
Funding Commitment: \$183,542.51
Funds Disbursed to Date: \$312,606.76
Funds to be Recovered: \$129,064.25

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$129,064.25 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$90,401.53, which is \$63,568.96 less than the non-discounted share of \$153,970.49 that the applicant was obligated to pay. Since the applicant did not cover \$63,568.96 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$129,064.25. As a result this amount of \$129,064.25 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299363 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: PVUSD
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:
Billing Account Number:
Funding Commitment: \$70,868.99
Funds Disbursed to Date: \$86,746.08
Funds to be Recovered: \$15,877.09

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$15,877.09 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$34,905.62, which is \$7,820.06 less than the non-discounted share of \$42,725.68 that the applicant was obligated to pay. Since the applicant did not cover \$7,820.06 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$15,877.09. As a result, this amount of \$15,877.09 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299365 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: HUSD
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:
Billing Account Number:
Funding Commitment: \$160,974.92
Funds Disbursed to Date: \$212,053.73
Funds to be Recovered: \$51,078.81
Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$51,078.81 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$79,286.16, which is \$25,158.21 less than the non-discounted share of \$104,444.37 that the applicant was obligated to pay. Since the applicant did not cover \$25,158.21 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$51,078.81. As a result, this amount of \$51,078.81 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299367 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: MUSD
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:
Billing Account Number:
Funding Commitment: \$21,985.08
Funds Disbursed to Date: \$44,070.38
Funds to be Recovered: \$22,085.30

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$22,085.30 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$10,828.47, which is \$10,877.84 less than the non-discounted share of \$21,706.31 that the applicant was obligated to pay. Since the applicant did not cover \$10,877.84 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$22,085.30. As a result, this amount of \$22,085.30 was determined to have been erroneously disbursed and must now be recovered.

RCOE
Exhibit A
Page 17 of 22

Funding Request Number 299368 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: RSD
Services Ordered: INTERNAL CONNECTNS S
Site Identifier:
Billing Account Number:
Funding Commitment: \$19,236.94
Funds Disbursed to Date: \$38,561.58
Funds to be Recovered: \$19,324.64

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$19,324.64 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$9,474.91, which is \$9,518.11 less than the non-discounted share of \$18,993.02 that the applicant was obligated to pay. Since the applicant did not cover \$9,518.11 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$19,324.64. As a result, this amount of \$19,324.64 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299370 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: DSUSD
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:
Billing Account Number:
Funding Commitment: \$266,987.16
Funds Disbursed to Date: \$313,931.52
Funds to be Recovered: \$46,944.36

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$46,944.36 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$131,501.14, which is \$23,121.85 less than the non-discounted share of \$154,622.99 that the applicant was obligated to pay. Since the applicant did not cover \$23,121.85 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$46,944.36. As a result this amount of \$46,944.36 was determined to have been erroneously disbursed and must now be recovered.

RCOE
Exhibit A
Page 19 of 22

Funding Request Number 299371 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: AUSD
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:
Billing Account Number:
Funding Commitment: \$149,982.39
Funds Disbursed to Date: \$190,018.55
Funds to be Recovered: \$40,036.16

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$40,036.16 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$73,871.92, which is \$19,719.31 less than the non-discounted share of \$93,591.23 that the applicant was obligated to pay. Since the applicant did not cover \$19,719.31 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$40,036.16. As a result, this amount of \$40,036.16 was determined to have been erroneously disbursed and must now be recovered.

Funding Request Number 299372 SPIN: 143010165
Service Provider: Spectrum Communications Cabling Services, Inc.
Contract Number: JUSD
Services Ordered: INTERNAL CONNECTNS_S
Site Identifier:
Billing Account Number:
Funding Commitment: \$163,723.06
Funds Disbursed to Date: \$217,562.53
Funds to be Recovered: \$53,839.47

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$53,839.47 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$80,639.72, which is \$26,517.94 less than the non-discounted share of \$107,157.66 that the applicant was obligated to pay. Since the applicant did not cover \$26,517.94 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$53,839.47. As a result, this amount of \$53,839.47 was determined to have been erroneously disbursed and must now be recovered.

RCOE
Exhibit A
Page 21 of 22

Funding Request Number 299373

SPIN: 143010165

Service Provider: Spectrum Communications Cabling Services, Inc.

Contract Number: LEUSD

Services Ordered: INTERNAL CONNECTNS_S

Site Identifier:

Billing Account Number:

Funding Commitment: \$147,234.25

Funds Disbursed to Date: \$184,509.75

Funds to be Recovered: \$37,275.50

Disbursed Funds Recovery Explanation:

After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of \$37,275.50 is required. A beneficiary audit discovered that the service provider accepted a trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only \$72,518.36, which is \$18,359.58 less than the non-discounted share of \$90,877.94 that the applicant was obligated to pay. Since the applicant did not cover \$18,359.58 of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to \$37,275.50. As a result, this amount of \$37,275.50 was determined to have been erroneously disbursed and must now be recovered.

RCOE
Exhibit A
Page 22 of 22



SPECTRUM COMMUNICATIONS
CABLING SERVICES, INC.

December 2, 2003

LETTER OF APPEAL

(Sent via email, facsimile and Federal Express)

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

Re: Recovery of Erroneously Disbursed Funds
Funding Year 1999-2000
Form 471 Application Number: 148309
Applicant Name R O P - Riverside County

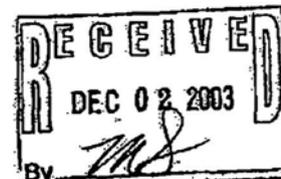
Dear Schools and Libraries Division:

Spectrum Communications ("Spectrum") submits this letter to appeal the SLD's Recovery Of Erroneously Disbursed Funds for the following Funding Request Numbers (the "FRNs" or, individually, "FRN"): 299376, 299377, 299378, 299379, 299381, 299382, 299355, 299356, 299359, 299361, 299363, 299365, 299367, 2993368, 299370, 299371, 299372 and 299373.

The Disbursed Funds Recovery Letter is dated October 3, 2003. The named applicant is R O P Riverside County. The Form 471 Application Number is 148309. The Billed Entity Number is 143743.

Provided below is the contact information for the person authorized to discuss this appeal on behalf of Spectrum:

Pierre F. Pendergrass
General Counsel
Spectrum Communications
226 N. Lincoln Avenue
Corona, CA 92882
Tel.: 909-371-0549
Fax: 909-273-3114
Email: Pierre@Spectrumccsi.com



226 NORTH LINCOLN AVENUE • CORONA, CA 92882
(909) 371-0549 • (800) 319-8711 • FAX (909) 273-3114
ST. LC. 713796

RCOE
Exhibit E
Page 1 of 20

FCCAR00060

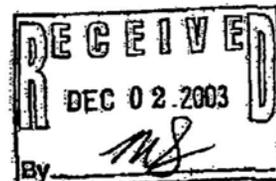
1 1 1 1 1 1

I. PRELIMINARY STATEMENT

Spectrum, a privately held corporation founded in 1985, is a provider of information technology products and services. The company's customer base is primarily the education market, public sector agencies and large healthcare facilities. The company has participated in the E-Rate program since 1998. Since then, Spectrum has acted as a service provider for approximately 38 different school districts.

R O P - Riverside County, also known as the Riverside County Office of Education ("RCOE"), is a service agency supporting Riverside County's 23 school districts and linking them with the California Department of Education. RCOE provides, among other services, assistance to its member districts in the deployment and maintenance of network and telecommunications services. There are approximately 6.1 million students enrolled throughout Riverside County for the 2002-03 school year.

For E-Rate Funding Year 1999-2000, RCOE formed a consortium of its member school districts for the purpose of applying for E-Rate discounts. On March 5, 1999, RCOE filed a Form 470 (Number 220100000227898) soliciting proposals from prospective service providers for a range of E-Rate eligible products and services. After examining existing equipment which RCOE consortium members intended to trade-in to Spectrum for the purpose of providing its E-Rate matching funds, Spectrum determined the fair market value of the equipment to be \$1,813,505.83. Spectrum then submitted a bid proposal in response to the Form 470 and RCOE subsequently selected Spectrum as the service provider for the consortium. On April 5, 1999, RCOE filed a Form 471 (number 148309) evincing its acceptance of Spectrum's proposal and its selection of Spectrum as its service provider for Funding Year 1999-2000.



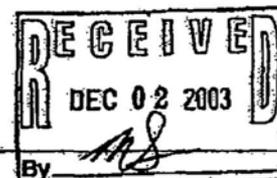
The total pre-discount value of the agreement between RCOE and Spectrum was \$5,495,472.20. RCOE was eligible for an E-Rate discount of sixty-seven percent (67%). Consequently, RCOE and/or its consortium members were required to provide matching funds at a rate of 33% or \$1,813,505.83 total. In or around March, 1999, when RCOE and Spectrum entered into the agreement for E-Rate services, the parties agreed that Spectrum would accept, in lieu of cash, the consortium equipment Spectrum had valued at \$1,813,505.83 as RCOE's payment for the non-discounted portion of the contract price.

The SLD now contests the value of the trade-in equipment RCOE provided as its matching component. More precisely, the SLD contends that the appropriate trade-in value of the equipment was its fair market value at the beginning of the funding year (July 1, 1999) and not its fair market value on the date RCOE and Spectrum entered into the agreement for services (March 1999). The SLD contends that the total fair market value of the consortium's equipment on July 1, 1999 was \$1,316,159. Consequently, the SLD seeks recovery in the amount of \$707,521.34.

II. THE DISBURSED FUNDS RECOVERY LETTER

The Disbursed Funds Recovery Letter, dated October 3, 2003, is a total of 22 pages. Pages 1 through 4 describe the process for filing an appeal and also provide a guide to the funding disbursement synopsis. Pages 5 through 22 each seek recovery for a specific FRN. For each of the 18 FRNs in question, the basis of recovery is the contention that on July 1, 1999, the fair market value of the trade-in equipment was less than the non-discounted share that the applicant was required to pay. Specifically, for each of the FRNs, the Disbursed Funds Recovery Letter states the following:

"The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date



the service provider took possession of the equipment, but not earlier than the beginning of the funding year."

Spectrum appeals the determination by the SLD that the valuation date should be the date the service provider took possession of the equipment, but no earlier than the beginning of the funding year.

Pages 5 through 22 of the Disbursed Funds Recovery Letter reach a determination of the value of the trade-in equipment on July 1, 1999 for each of the FRNs. Specifically, for each of the FRNs, pages 5 through 22 state the following:

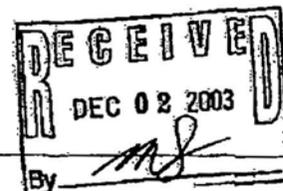
"The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only (amount varies by FRN), which is (amount varies by FRN) less than the non-discounted share of (amount varies by FRN) that the applicant was obligated to pay."

Spectrum appeals the determination by the SLD that the actual fair market value of the equipment on July 1, 1999 was the value indicated in the independent appraisal.

III. ARGUMENT

The SLD has determined that the appropriate valuation date for trade-in equipment is the date the service provider took possession of the equipment but no earlier than the beginning of the funding year or, in this case, July 1, 1999. Further, the SLD has relied upon an independent appraisal Spectrum provided in order to determine the value of the equipment on July 1, 1999. These determinations are misguided and the SLD should cease its attempt to recover funds disbursed pursuant to the FRNs.

Firstly, any agreement that contemplates an equipment trade-in in lieu of cash must assign a value to the equipment at the time of contract formation - not at a later date. Otherwise, the applicant will not know its payment obligations under the agreement. Furthermore, for

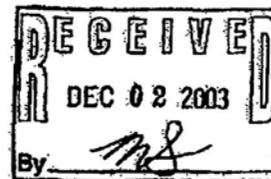


Funding Year 1999-2000, the SLD required an applicant to enter an agreement and file a Form 471 by April 6, 1999. As a result, it was impossible for RCOE and Spectrum to value the equipment at the start of the funding year (July 1, 1999) and still comply with the SLD's requirement that the agreement be formed and the Form 471 be filed by April 6, 1999.

Secondly, it is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule or FCC guidance on this issue existed at the time the transaction occurred. In fact, the SLD neither announced a rule nor sought guidance from the FCC on this issue until the first quarter of 2003 - four years after the transaction.

Thirdly, although the independent appraisal Spectrum provided did value the equipment in the amounts indicated in the Disbursed Funds Recovery Letter, this appraisal is not more authoritative than Spectrum's opinion because Spectrum had first-hand knowledge of the actual pieces of equipment in question. Further, the appraisal is less reliable than Spectrum's opinion at the time it received the equipment because the appraisal is based upon information that is almost four years old.

Lastly, if funds were, in fact, erroneously disbursed as a result of the use of an incorrect valuation date, the appropriate remedy is to require RCOE to pay Spectrum the corresponding non-discounted portion because this is what would have been required at the time of transaction had the parties known the correct valuation date. Alternatively, the SLD should seek full recovery from the applicant alone because recovery from Spectrum will result in RCOE having paid less than its required matching portion - a clear rule violation and an abuse of the E-Rate Discount Mechanism.

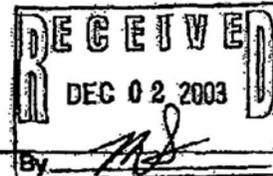


A. THE APPROPRIATE VALUATION DATE IS THE DATE THE PARTIES ENTERED INTO AN AGREEMENT FOR SERVICES - NOT THE DATE THE SERVICE PROVIDER TOOK POSSESSION OF THE EQUIPMENT OR, IN THIS CASE, JULY 1, 1999.

The E-Rate program rules require the service provider and the applicant to enter into an agreement before the Form 471 is filed. This agreement necessarily establishes the type and amount of consideration to be paid for the goods and services purchased. Consequently, any agreement that contemplates the trade-in of equipment in lieu of a cash payment must assign a value to the equipment at the time of contract formation - not at a later date. Otherwise, the parties will have no way of determining the actual price in the contract and the validity of the contract would be in doubt. For this reason alone, the appropriate valuation date could not be July 1, 1999 or, alternatively, the date Spectrum took possession of the equipment.

Furthermore, the SLD's Funding Year 1999-2000 requirement that the applicant enter an agreement with the service provider and file Form 471 by April 6, 1999 made it impossible for RCOE and Spectrum to value the equipment at the start of the funding year (July 1, 1999) and still comply with the requirement that the agreement be formed and the Form 471 be filed by April 6, 1999. The agreement between RCOE and Spectrum necessarily defined the type and amount of consideration RCOE was required to pay and, therefore, had to assign a value to the trade-in equipment. If the parties had waited until the start of the funding year (July 1) to value the equipment, RCOE would have missed the deadline for filing its Form 471.

After carefully considering the type, amount and condition of the equipment held by the RCOE consortium, Spectrum developed a proposal that would enable the consortium members to meet their technology plan objectives while, at the same time, avoid a cash outlay. RCOE reviewed this proposal and found it to be the most cost-effective response to its Form 470. However, before agreeing to hire Spectrum, RCOE and/or its consortium members were required

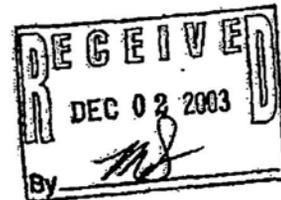


to obtain board approval of the proposed contract with Spectrum. It would have been impossible for RCOE and its member districts to have obtained board approval without first describing in detail the purchase price and the terms (including the amount of cash required) of the agreement. Consequently, the parties had to value the equipment at the time they reached an agreement.

B. IT IS UNFAIR TO SEEK RECOVERY FOR THIS MATTER BECAUSE NO RULE OR GUIDANCE REGARDING TRADE-IN VALUATIONS EXISTED EITHER AT THE TIME THE PARTIES ENTERED INTO THE AGREEMENT OR ON JULY 1, 1999.

It is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule or FCC guidance on this issue existed at the time the transaction occurred. As evidenced by a March 3, 2003 email from Ed Falkowitz of the SLD to John Price, CFO of Spectrum, neither Spectrum nor the SLD learned of any guidance on this issue until *four* years after RCOE and Spectrum reached their agreement. At the time RCOE and Spectrum reached their agreement most of the rules or guidance surrounding trade-in equipment addressed the issues of the original source of funds for the equipment and its fair market value in general. Specifically, the rules required equipment to be traded in at its fair market value and prohibited a trade-in of equipment that was purchased with E-Rate funds. The rules were silent, however, on which date the fair market value should be assessed.

The guidance provided in the March 3, 2003 email from Ed Falkowitz announces a new policy of which neither RCOE, Spectrum, nor the SLD were aware. If the entity charged with administering the program and preventing waste, fraud and abuse did not anticipate the need for guidance on this issue when it contemplated allowing trade-ins, it is certainly unfair to expect the applicant and the service provider to have done so. Between the SLD, RCOE and Spectrum, the SLD should bear the risk of the consequences of a new policy since it has the exclusive responsibility of administering the program.

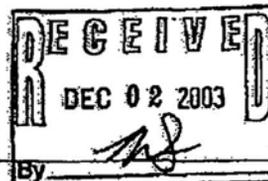


Moreover, it is unfair for a program participant, exercising good faith and complying with all applicable rules, to be penalized for acting reasonably under the circumstances. However, Spectrum will be penalized for acting reasonably if this appeal is not granted. For the reasons discussed above, it would have been entirely unreasonable to assume the valuation date to be any date other than the date the parties reached an agreement. This is particularly true in the absence, as here, of an SLD rule or FCC guidance on which date is the appropriate for equipment valuations. Consequently, RCOB and Spectrum had no other recourse but to reasonably assume the equipment should be valued at the time the agreement is formed.

Lastly, USAC's role of preventing waste, fraud and abuse in the program is severely undermined if program participants are penalized for acting reasonably in the absence of a clear rule or guidance on an issue. USAC should encourage participants to act reasonably and in good faith whenever the rules are silent on a particular issue. To do otherwise is to encourage waste, fraud and abuse.

C. THE ACTUAL FAIR MARKET VALUE OF THE TRADE-IN EQUIPMENT ON JULY 1, 1999, WAS NOT THE AMOUNT INDICATED IN THE APPRAISAL, BUT RATHER THE AMOUNT SPECTRUM ACTUALLY DETERMINED IT TO BE.

The appraisal which values the equipment at \$1,316,159 as of July 1, 1999, is not more authoritative than Spectrum's opinion of the value. Unlike the appraiser who compiled the report, Spectrum (i) had actually sold and installed the specific pieces of equipment at issue, (ii) was knowledgeable about the manner in which the equipment had been used and maintained, (iii) was knowledgeable about the training and expertise of the staff who had been using the equipment, and (iv) most importantly, knowledgeable about the identity and needs of potential buyers of the specific pieces of equipment in question. As a result of this additional knowledge which the appraiser lacked, Spectrum's opinion on the value of the equipment at issue is



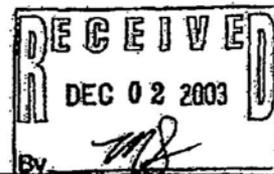
inherently more reliable than an appraiser's opinion formed four years after Spectrum's opinion. Each of the aforementioned facts within Spectrum's knowledge caused Spectrum to value the equipment more highly than a party without these facts might. For these reasons, USAC should defer to Spectrum's assessment of the equipment's value.

D. IF FUNDS WERE ERRONEOUSLY DISBURSED, THE APPROPRIATE REMEDY IS AN INCREASE IN THE NON-DISCOUNTED PORTION THE APPLICANT IS REQUIRED TO PAY OR, ALTERNATIVELY, FULL RECOVERY FROM THE APPLICANT OF THE ERRONEOUSLY DISBURSED AMOUNT.

If funds were, in fact, erroneously disbursed as a result of the use of an incorrect valuation date, the appropriate remedy is to require the applicant to pay Spectrum the corresponding non-discounted portion because this is what would have been required at the time of the transaction had the parties known the appropriate valuation date. Given the absence of bad faith by both RCOE and Spectrum, no purpose is served by imposing the harsh penalty of a full recovery against Spectrum. Instead, the SLD should seek to obtain the result that would have occurred had a clear rule defining the appropriate valuation date been in place at the time the parties reached their agreement. Therefore, the SLD should require RCOE to pay Spectrum matching funds that are appropriate for the amount of E-Rate funds actually disbursed.

Furthermore, Spectrum did not receive USAC's final determination of the amount that RCOE failed to pay for the non-discounted services until Spectrum received the Disbursed Funds Recovery Letter dated October 3, 2003. Spectrum has sent RCOE the attached invoice for the remaining matching funds. In the event USAC determines funds were erroneously disbursed, RCOE should immediately be given an opportunity to pay the invoice from Spectrum.

Alternatively, if USAC denies RCOE the opportunity to pay for the remaining non-discounted services, USAC should seek the entire recovery from RCOE because recovery from



Spectrum will result in RCOE having paid less than its required matching portion - a clear rule violation and an abuse of the E-Rate program. RCOE received all of the services for which it contracted. Consequently, it should pay the full contract price, less any E-Rate discounts to which it is actually entitled. If the SLD recovers disbursed funds from Spectrum, Spectrum will have provided all of the services it was obligated to provide, but Spectrum will receive only a portion of the price it legally and reasonably charged for those services. This unreasonable and unfair result will undermine the integrity of the program.

IV. CONCLUSION

Based on the foregoing, USAC should immediately reverse its determination that E-Rate funds were erroneously disbursed to RCOE for funding year 1999-2000.

Respectfully submitted,

**SPECTRUM COMMUNICATIONS
CABLING SERVICES, INC. D/B/A/
SPECTRUM COMMUNICATIONS**

By: 
Pierre F. Pendergrass

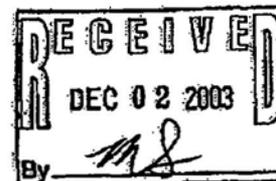
Its: General Counsel

Date: December 2, 2003

Attachments (3)

SLD website announcement regarding deadline for Form 471 for funding year 1999-2000
Email from Ed Falkowitz dated March 17, 2003
Invoice from Spectrum to RCOE dated December 2, 2003

10



RCOE
Exhibit E
Page 10 of 20

FCCAR00069

BEST BEST & KRIEGER LLP

A CALIFORNIA LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION

INDIAN WELLS
(760) 568-2611
ONTARIO
(909) 980-8584

LAWYERS
3750 UNIVERSITY AVENUE
POST OFFICE BOX 1028
RIVERSIDE, CALIFORNIA 92502-1028
(909) 886-1450
(909) 886-3083 FAX
BBKLAW.COM

SAN DIEGO
(619) 525-1300
ORANGE COUNTY
(714) 260-0962
SACRAMENTO
(916) 325-4000

December 2, 2003

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

Re: Billed Entity Name: Riverside County Office of Education
Billed Entity Number: 143743
E-Rate Funding Year 1999-2000; FCC Form 471 Application Number: 148309
Schools and Libraries Division letter dated: October 3, 2003

Dear School and Libraries Division:

The law firm of Best, Best & Krieger LLP represents the Riverside County Office of Education ("RCOE") in this matter and is filing this letter of appeal on its behalf. This appeal concerns the letter sent to RCOE on October 3, 2003, from the Universal Service Administrative Company ("USAC"), Schools and Libraries Division ("SLD").¹ The SLD letter states that SLD determined that funds were disbursed in error. The letter asserts that RCOE did not pay a portion of the discounted charges for which it was responsible, and demands reimbursement of a portion of the moneys paid to Spectrum Communications Cabling Services, Inc. ("Spectrum"), the service provider for the contracts in question. SLD's decision is based on its position that trade-in equipment was over-valued, in part because SLD utilizes a later trade-in date than that used by Spectrum when it valued the equipment. The SLD decision demands the repayment of \$707,521.34 which was allegedly erroneously disbursed for the benefit of 16 individual school districts. A true and correct copy of the letter decision from which RCOE appeals is attached hereto as Exhibit "A." RCOE appeals on the ground that any moneys found due and owing to USAC, SLD should be recovered from Spectrum, not RCOE.

RCOE is filing this appeal because SLD sent a copy of its decision letter to RCOE, and that letter did not identify the party from which SLD was proposing to recover the allegedly wrongfully disbursed funds. The letter does not demand reimbursement from RCOE or offer any authority

¹ RCOE is informed and believes that this same letter and request from the SLD was also sent to Spectrum Communications Cabling Services, Inc. because Spectrum was the Service Provider for RCOE and received direct payment from the USAC, SLD for the funding year at issue.

Letter of Appeal
Schools and Libraries Division
December 2, 2003
Page 2

supporting an attempt to recover any portion of the allegedly erroneously disbursed funds from RCOE. RCOE requests that the SLD confirm that it is not seeking any reimbursement from RCOE.

The person who can most readily discuss this appeal with the SLD is:

John E. Brown
Attorney for Riverside County Office of Education
Best Best & Krieger LLP
3750 University Avenue, Suite 400
Riverside, CA 92507
Phone: (909) 686-1450
Facsimile: (909) 686-3083
E-mail: JBrown@bbklaw.com

Factual Background

RCOE is a service agency which provides support for 23 school districts within Riverside County. As such, RCOE may serve as an agent for the school districts in acquiring federal and state funding.

In late 1999, RCOE filed a Federal Communications Commission ("FCC") Form 470 application with USAC as a consortium, on behalf of its school districts, for E-rate Year 2 funding. The fiscal year for which RCOE sought funding by that application was 1999-2000. After RCOE's FCC Form 470 application was approved, it was posted on the Internet as required by 47 C.F.R. section 54.504.

RCOE selected Spectrum from the interested vendors to be the service provider for the county school districts. The decision to select Spectrum was based, in part, on the fact that Spectrum had worked with many of the school districts as part of the county's "Riverlink Project."² Based on its work in 1998 on the Riverlink Project, in which Spectrum supplied equipment to school districts, Spectrum knew of the existing equipment and technology needs of many of the school districts. The decision to select Spectrum also was based, in part, on the fact that Spectrum had experience as an E-rate service provider. Based on that experience, Spectrum counseled RCOE and the school districts that the districts could trade-in, and Spectrum would accept, existing equipment³ for the new equipment.

² The RCOE Superintendent's goal of the Riverlink Project was to get a majority of Riverside County school classrooms connected to the Internet.

³ Any equipment traded-in was not purchased with Universal Service Funds (i.e., non-E-rate funded equipment.).

Letter of Appeal
Schools and Libraries Division
December 2, 2003
Page 3

In or around January 2000, RCOE took the next step toward securing E-rate Year 2 funding and submitted a consortium application – FCC Form 471 – for fiscal year 1999-2000 to the USAC, SLD on behalf of 23 school districts. This application included the estimated costs for each district's technology installation. The estimated costs in the FCC Form 471 were derived from meetings between RCOE, Spectrum and the school district Technology Directors or district employee(s) with responsibility for technology. At the meetings, each district explained its present technology status to Spectrum so that Spectrum could estimate the district's equipment needs.

On or about April 18, 2000, RCOE received a Funding Commitment Decision Letter from USAC which indicated that RCOE's FCC Form 471 application was approved as submitted. The Funding Commitment Decision Letter indicated that each district would be responsible for paying 33% of the technology installation, while the other 67% would be paid directly to the identified service provider – Spectrum – by USAC.

Sixteen of RCOE's school districts took advantage of Spectrum's offer to credit trade-in equipment value to meet some or all of their 33% match obligation. Those 16 school districts are now the subject of SLD's request for recovery of allegedly erroneously disbursed funds. The 16 school districts are as follows: (1) Alvard Unified School District; (2) Banning Unified School District; (3) Corona/Norco Unified School District; (4) Desert Sands Unified School District; (5) Hemet Unified School District; (6) Jurupa Unified School District; (7) Lake Elsinore Unified School District; (8) Menifee Unified School District; (9) Moreno Valley Unified School District; (10) Murrieta Valley Unified School District; (11) Palm Springs Unified School District; (12) Palo Verde Unified School District; (13) Perris School District; (14) Romoland School District; (15) Temecula Valley Unified School District; and (16) Val Verde Unified School District.⁴ All other districts that participated in Year 2 did not trade-in equipment, but instead made a cash payment for their 33% match amount to Spectrum.

Although the application was filed by RCOE, each school district was individually responsible for management of the funding and program implementation with the district schools. Each school district dealt directly with Spectrum to identify its technology needs and to identify equipment to be traded in. Each school district separately negotiated the trade-in value, based in large part on Spectrum's expertise and knowledge in the technology industry and proposed trade-in valuations. Each school district separately issued purchase orders to Spectrum, using California's Multiple Award Schedule ("CMAS") contracting procedure, to obtain the services and equipment ultimately ordered. Given the very short time frame available to proceed with the project for the school districts, RCOE and the school districts had to rely on Spectrum's experience implementing the district's technology goals, awareness of the districts' existing technology, knowledge of the fair market value of that

⁴ RCOE was informed that Corona/Norco Unified School District and Jurupa Unified School District would both trade in old equipment and make a cash payment to meet their 33% match amounts.

Letter of Appeal
Schools and Libraries Division
December 2, 2003
Page 4

technology, and evaluation of district needs regarding upgrades. RCOE relied on the values that were provided by Spectrum and agreed to by the school districts with respect to both the trade-in value and the scope and cost of each district's technology installation.

In or around October 2001, USAC engaged Arthur Andersen to conduct an audit of the RCOE application. The audit was undertaken with the assistance of RCOE, the school districts and Spectrum. As a result of the audit, Arthur Andersen questioned the trade-in value placed on the used equipment. Spectrum then commissioned an independent appraisal of the trade-in equipment. Based on the Arthur Andersen audit and using July 1, 1999 appraisal values from the Spectrum appraisal report, on or about October 3, 2003 USAC sent both RCOE and Spectrum a letter requesting "Recovery of Erroneously Disbursed Funds" to both parties for the amount of \$707,521.34.

The October 3, 2003 letter from the SLD alleges that the Universal Service Funding provided to the 16 districts listed above was "erroneously disbursed" and provides the following explanation to each district:

"Disbursed Funds Recovery Explanation: After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of [dollar amount differs for each district] is required. A beneficiary audit discovered that the service provider accepted trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date that service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only [dollar amount differs for each district], which is [dollar amount differs for each district] less than the non-discounted share of [dollar amount differs for each district] that the applicant was obligated to pay. Since the applicant did not cover [dollar amount differs for each district] of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to [dollar amount differs for each district]. As a result this amount of [dollar amount differs for each district] determined to have been erroneously disbursed and must now be recovered."

Letter of Appeal
Schools and Libraries Division
December 2, 2003
Page 5

RCOE is informed and believes that Spectrum intends to appeal the SLD's decision on the ground that all trade-in equipment should be valued on or around March 1, 1999. As discussed below, RCOE has no obligation to refund any of the funds received by Spectrum in connection with the E-rate Year 2 funding at issue. However, to the extent that USAC seeks to recover any moneys from RCOE, any amount sought should be adjusted based on the extent that Spectrum is successful in establishing a higher trade-in value than that reflected in the SLD decision.

Grounds for Appeal

1. Spectrum Is Responsible for the Repayment of Any Funds Found to Be Erroneously Disbursed

In FCC Order No. 99-291,⁵ the FCC directed USAC to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in violations of a federal statute. The FCC stated that it would seek payment from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds from the universal service support mechanism. (FCC Order No. 99-291, ¶ 8.)

In the instant action, although the SLD has not claimed that the allegedly erroneous disbursement of funds is a violation of a federal statute, the principles articulated in FCC Order No. 99-291 should apply. As an experienced technology service provider, Spectrum assisted the districts in determining what technology was required, provided pricing for that technology as a CMAS vendor, and provided what it represented to be the fair market value of all trade-in equipment.⁶ The districts relied on Spectrum's superior knowledge and representations as to the value of the trade-in equipment when they made their ultimate decisions as to what new equipment to purchase and when they determined the additional funding, if any, that was necessary to secure that equipment. Similarly, RCOE relied on the information provided by Spectrum in preparing the application on behalf of the school districts and representing that the school districts had secured access to all resources necessary to pay the discounted charges for eligible services.

To the extent that SLD establishes that the trade-in values were overstated, Spectrum was the party with superior knowledge as to the appropriate fair market value for the equipment. Further, based on Spectrum's assertion of experience and expertise as an E-rate funding service provider, RCOE and the districts relied on Spectrum to have knowledge of the appropriate trade-in valuation

⁵ A true and correct copy of FCC Order No. 99-291 is attached hereto as Exhibit "B."

⁶ As between Spectrum and the school districts, RCOE asserts that Spectrum is contractually bound by the trade in value the parties agreed upon and may not recover additional funds from the districts.

Letter of Appeal
Schools and Libraries Division
December 2, 2003
Page 6

date for purposes of E-rate exchanges. Finally, Spectrum was the party that received the allegedly excess amounts. It is necessary and appropriate that, if funds are to be recovered by USAC, SLD, the party making the overstatement of trade-in value and receiving the allegedly excess funds should be obligated to repay those funds. Thus, the rationale stated in FCC Order No. 99-291 should apply and USAC should recover any funds found due and owing from Spectrum.

2. Perris Unified School District and San Jacinto Unified School District Did Not Participate in E-rate Year 2

Perris Union High School District ("Perris Union HSD") and San Jacinto Unified School District ("San Jacinto USD") were both included in the RCOE FCC Form 471 consortium application⁷, however these two districts chose not to participate after the RCOE application had been filed and approved.⁸ RCOE is informed that Perris Union HSD and San Jacinto USD did not receive any new equipment, and did not trade-in any equipment to Spectrum. However, it appears that Spectrum submitted invoices to SLD on behalf of these districts because both districts are included in the SLD request for recovery of erroneously disbursed funds. To the extent that Spectrum cannot document that it actually provided the equipment to Perris Union HSD or San Jacinto USD, SLD should direct any request for recovery concerning these two districts to Spectrum.

3. Palm Springs Unified School District Did Not Utilize All of the Funding it Requested

Palm Springs Unified School District ("Palm Springs USD") also was included in the RCOE FCC Form 471 consortium application⁹, but it did not utilize all of the funding it requested in the application. RCOE is informed that Spectrum submitted invoices to SLD on behalf of Palm Spring USD for the full amount requested. To the extent that Spectrum cannot document that it actually provided the full amount of equipment to Palm Springs USD, RCOE concurs that SLD should direct any request for recovery of the excess claimed concerning that district to Spectrum.

///
///

⁷ For identification purposes, Perris Union HSD's Funding Request Number is 299377 (approved and funded for \$86,746) and San Jacinto USD's Funding Request Number is 299359 (approved and funded for \$75,728).

⁸ RCOE provided this information to Arthur Anderson when it audited the RCOE consortium application.

⁹ For identification purposes, Palm Spring USD's Funding Request Number is 299355 (approved and funded for \$173,492.15.)

LAW OFFICES OF
BEST BEST & KRIEG: LP

Letter of Appeal
Schools and Libraries Division
December 2, 2003
Page 7

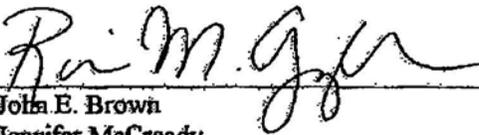
Conclusion

Based on the foregoing, RCOE respectfully requests that the SLD reconsider or clarify its decision and expressly confirm that it is not seeking recovery of some or all of the allegedly erroneously disbursed funds from RCOE or the school districts.

If your office has any questions regarding this matter, please do not hesitate to contact our office at (909) 686-1450 or via e-mail at <JEBrown@bbklaw.com>. Thank you for your consideration in this matter.

DATED: December 2, 2003

By:



Jolita E. Brown

Jennifer McCready

Rina M. Gonzales

Attorneys for Riverside County Office of Education



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 1999-2000

July 1, 2004

Pierre F. Pendergrass
Spectrum Communications Cabling Services, Inc.
226 North Lincoln Avenue
Corona, CA 92882

RECEIVED & INSPECTED
APR 27 2005
FCC - MAIL ROOM

Re: R O P Riverside County

Re: Billed Entity Number: 143743
471 Application Number: 148309
Funding Request Number(s): 299355, 299356, 299359, 299361, 299363,
299365, 299367, 299368, 299370, 299371,
299372, 299373, 299376, 299377, 299378,
299379, 299381, 299382

Your Correspondence Dated: December 2, 2003

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 concerning your appeal of SLD's Funding Year 1999 Recovery of Erroneously Disbursed Funds (REDF) Decision for the application number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day 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 for each application an appeal is submitted, a separate letter is sent.

Funding Request Number(s): 299355, 299356, 299359, 299361, 299363,
299365, 299367, 299368, 299370, 299371,
299372, 299373, 299376, 299377, 299378,
299379, 299381, 299382

Decision on Appeal: **Denied in Full**
Explanation:

- You have stated on appeal that the SLD determined that the appropriate valuation date for trade-in equipment is the date the service provider took possession of the equipment but no earlier than the beginning of the funding year, in this case July 1, 1999. You also state that the SLD has relied upon an independent appraisal that Spectrum provided in order to determine the value of the equipment on July 1, 1999. You feel that the SLD

determination in this matter is misguided and SLD should cease its attempt to recover funds disbursed. You close by stating that it is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule of FCC guidance on this issue existed at the time the transaction occurred. In fact, the SLD neither announced a rule nor sought guidance from the FCC on this issue until the first quarter of 2003, four years after the transaction. You add that although the independent appraisal Spectrum provided did value the equipment in the amounts indicated in the REDF Letter, this appraisal is not more authoritative than Spectrum's opinion because Spectrum had first hand knowledge of the actual pieces of equipment in question. Further, the appraisal is less reliable than Spectrum's opinion at the time it received the equipment because the appraisal is based upon information that is almost four years old.

- Upon thorough review of the appeal letter and relevant documentation, we find that the facts support SLD's decision. An Internal Audit found that Spectrum Communications accepted a trade-in amount for the above funding requests. This is permitted under program rules because the original equipment was not purchased with program funds. After the Audit findings, the applicant argued that the calculation of the Fair Market Value (FMV) of the equipment should not be based on a 3-year straight-line depreciation schedule, and SLD accepted this presumption. However, the trade-in amount was based on the value of the equipment at the time of the contract, which was before the start of the funding year and several months before Spectrum was set to take possession of the equipment. Spectrum provided an independent appraisal indicating the FMV of the equipment as of July 1, 1999. SLD has accepted this appraisal and determined that the recovery amounts should be based on the date that Spectrum took possession of the equipment, but no earlier than the first day of the funding year. Although the agreement was executed in March 1999, you have indicated that the equipment was not transferred until after the start of Funding Year 1999. Therefore, it is appropriate for SLD to value the equipment as of July 1, 1999. In its role as program Administrator, USAC must ensure that there is no waste, fraud and abuse. Consequently, the appeal is denied.
- The FCC has directed USAC "to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in violations of a federal statute" and to pursue collection of any disbursements that were made in violation of a federal statute. *See In re Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 97-21, 96-45, FCC 99-291 ¶ 7 (rel. October 8, 1999). The FCC stated that federal law requires the Commission to "seek repayment of erroneously disbursed funds" where the disbursements would violate a federal statute. *Id.* ¶ 7, 1. The FCC stated that repayment would be sought "from service providers rather than schools and libraries because, unlike schools and libraries that receive discounted services, service providers actually receive disbursements of funds from the universal service support mechanism." *Id.* ¶ 9.

If you believe there is a basis for further examination of your application, you may file an appeal 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 above 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 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.

Schools and Libraries Division
Universal Service Administrative Company

cc: Mr. Elliott Duchon
R O P Riverside County
3939 Thirteenth Street
Riverside, CA 92502

cc: Rina M. Gonzales
Best Best & Krieger LLP
3750 University Avenue
Post Office Box 1028
Riverside, CA 92502-1028

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____	)	File No. SLD-148309
In the Matter of)	
	)	CC Docket No. 02-6
Request for Review of Decision of the)	
Universal Service Administrator	)	FRN Nos. 299376, 299377, 299378,
	)	299379, 299381, 299382, 299355,
by	)	299356, 299359, 299361, 299363,
	)	299365, 299367, 299368, 299370,
Riverside County Office of Education	)	299371, 299372 and 299373
Riverside, California)	
_____)	

DECLARATION OF RINA M. GONZALES

John E. Brown, Bar No. 65322
Jack B. Clarke, Jr., Bar No. 120496
Cathy S. Holmes, Bar No. 188702
Rina M. Gonzales, Bar No. 225103
BEST BEST & KRIEGER LLP
3750 University Avenue, Suite 400
P. O. Box 1028
Riverside, CA 92502
(951) 686-1450

Attorneys for
Riverside County Office of Education

April 26, 2004

DECLARATION OF RINA M. GONZALES

I, Rina M. Gonzales, declare as follows:

1. I am a member of the California Bar, and am an associate at the law firm of Best Best & Krieger LLP, attorneys of record for Riverside County Office of Education ("RCOE"). The matters set forth in this declaration are within my first hand knowledge and, if called as a witness, I would be competent to so testify.

2. On or about August 3, 2004, I received a voicemail message from Kristy Carroll ((202) 263-1603), Associate General Counsel for the Universal Service Administrative Company ("USAC") responding to my previous inquiry regarding whether USAC would be issuing an Administrator's Decision specifically addressing RCOE. I contacted Ms. Carroll after reviewing the Administrator's Decision on Appeal dated July 1, 2004. Ms. Carroll stated that USAC would be seeking recovery solely from Spectrum Communication. She also informed me that RCOE's letter dated December 2, 2003 was considered a request for confirmation that recovery for the alleged erroneously disbursed funds would be sought from Spectrum, the service provider, and not RCOE. As such, RCOE's letter was not considered as a separate appeal and USAC/SLD would not provide a decision letter to RCOE.

3. Based on Ms. Carroll's clarification, I then notified RCOE that its involvement in the appeal process was concluded.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Riverside, California, on April 26, 2005.


Rina M. Gonzales

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

SEP 08 2004

BEST BEST & KRIEGER

In the Matter of)

Request for Review of Decision of the)
Universal Service Administrator)

by)

Spectrum Communications Cabling)
Systems, Inc.)

CC Docket No. 02-6

FRN Nos. 299376, 299377, 299378,
299379, 299381, 299382, 299355,
299356, 299359, 299361, 299363,
299365, 299367, 2993368, 299370,
299371, 299372 and 299373

REQUEST FOR REVIEW

Pierre Pendergrass
General Counsel
Spectrum Communications Cable
Services, Inc.
226 North Lincoln Avenue
Corona, CA 92882
(909) 273-3114

August 30, 2004

RECEIVED & INSPECTED
APR 27 2005
FCC - MAILROOM

RCOE
Exhibit G
Page 1 of 76

TABLE OF CONTENTS

	Page
SUMMARY	i
I. SPECTRUM'S INTEREST IN THE MATTER PRESENTED FOR REVIEW	3
II. STATEMENT OF FACTS	3
A. Riverside's Request for Funding and Resulting Agreement with Spectrum	3
B. USAC Upheld the SLD's Determination that the Trade-In Equipment was not Valued Appropriately	5
C. Commission and SLD Guidance in 1999	7
III. QUESTIONS PRESENTED FOR REVIEW	10
A. What Was the Required Valuation Date for Equipment that Was Traded-In Through the E-Rate Program in 1999?	10
B. Did the Administrator Exceed its Authority by Creating New Policy and then Applying that Policy Retroactively to Spectrum?	12
1. The Administrator Exceeded its Authority in Adopting a New Policy Without FCC Guidance	12
2. The Administrator Exceeded its Authority in Retroactively Applying a Later-Adopted SLD Policy to Previously Granted Funding Requests	14
C. If the FCC Concludes that E-Rate Funds Were Erroneously Disbursed, Should the SLD Seek Reimbursement from Riverside or Spectrum?	20
D. If the FCC Concludes that E-Rate Funds Were Erroneously Disbursed, Do the Facts in this Case Warrant a Waiver of the SLD's New Policy?	21
IV. RELIEF SOUGHT AND CONCLUSION	24

SUMMARY

In March 1999, R O P - Riverside County/ Riverside County Office of Education ("Riverside") contracted with Spectrum Communications Cabling Systems, Inc. ("Spectrum") for a variety of services offered through the universal service support mechanism for the schools and libraries ("E-rate Program"). Consistent with FCC and Program rules, Riverside traded in certain equipment and applied the fair market value of that equipment to the non-discounted portion of the services Riverside purchased from Spectrum. Spectrum, based upon its considerable expertise in the purchase and sale of new and used technology equipment, calculated the fair market value of Riverside's trade-in equipment as of March 1999, which served as consideration in the parties' contract. Spectrum's valuation of the equipment was later substantiated through an independent appraisal.

Four years after valuable E-rate services were funded by USAC and provided by Spectrum, the SLD and USAC now contest the E-rate funding granted to Riverside based upon the date of the fair market valuation for the traded-in equipment. Specifically, the SLD and USAC claim, based upon a new Program rule that was adopted years after E-rate services were rendered to Riverside, that the trade-in equipment should have been valued at the time the equipment changed hands or on the first date of the applicable E-rate funding year (July 1, 1999), not when the parties entered into their contract (March 1999).

Riverside and Spectrum complied with all applicable FCC and Program rules that were effective in 1999. At that time, there was little guidance available to E-rate participants regarding the timing of fair market valuations, or valuation methodologies, for trade-in equipment under the E-rate Program. The only policies then in effect required equipment to be

traded in at its fair market value and prohibited the trade-in of equipment that had been previously purchased using Program funds. Riverside and Spectrum complied with both of these requirements, which the SLD and USAC do not dispute.

The SLD and USAC exceeded their authority when they concluded that Riverside and Spectrum were precluded from establishing the fair market value of Riverside's equipment as of the date of contract formation. In 1999, when Spectrum and Riverside entered into their agreement, there was no FCC or Program guidance that addressed *when* the fair market value of traded-in equipment should be determined, and such formal guidance still does not exist today (except in the case of equipment that is valued using a 3-year depreciation analysis). Spectrum only became aware of a potentially new SLD Program rule in March 2003 when Mr. Falkowitz of the SLD contacted Spectrum about the trade-in value of Riverside's equipment. Falkowitz asserted that the FCC had provided the SLD with informal guidance regarding trade-in values which indicated that the fair market value of traded-in equipment could be calculated using the rebuttable presumption that equipment has a useful life of three years. This informal guidance did not direct the SLD to create a new Program rule regarding the timing of fair market valuations for traded-in equipment. It appears USAC has made a policy and created the equivalent of new guidelines regarding the timing of valuations for traded-in equipment in violation of its charter.

The SLD and USAC further exceeded their authority when they applied a new, later-adopted Program rule regarding the timing of fair market valuations for trade-in equipment to E-rate services that were provided years earlier, in 1999-2000. It is a basic tenet of American jurisprudence that new precedent is only applied prospectively. The Commission has long acknowledged this, concluding specifically in the context of the E-rate Program that new policies

and rules apply to applicants on a going-forward basis. It is unreasonable for Riverside and Spectrum, exercising good faith and complying with Program rules and general principles of contract law, to be penalized for acting reasonably under the circumstances in 1999, especially when there was no contrary FCC or Program guidance regarding the date upon which the fair market value of equipment should be established.

If the FCC concludes that E-rate funds in this case were erroneously disbursed, such monies should be recovered from Riverside because it would not have paid for the entire non-discounted portion of the E-rate services it obtained. The Commission has instructed USAC that beneficiaries of any FCC or Program violation should be liable for any reimbursement. The harm from rescinding the monies allocated to Riverside in this case, however, far outweigh any benefit. Accordingly, Spectrum, on behalf of Riverside, requests that the FCC waive any rule violation so that Riverside is not irreparably harmed in this case.

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)

Request for Review of Decision of the)
 Universal Service Administrator)

by)

Spectrum Communications Cabling)
 Systems, Inc.)

CC Docket No. 02-6

FRN Nos. 299376, 299377, 299378,
 299379, 299381, 299382, 299355,
 299356, 299359, 299361, 299363,
 299365, 299367, 2993368, 299370,
 299371, 299372 and 299373

REQUEST FOR REVIEW

Spectrum Communications Cabling Systems, Inc. ("Spectrum"), pursuant to Section 54.719(c) of the Commission's rules,¹ submits this Request for Review seeking reversal of a decision of the Administrator of the Universal Service Administrative Company ("Administrator" or "USAC" respectively), issued on July 1, 2004,² denying Spectrum's December 2, 2003 Letter of Appeal ("Appeal").³ Spectrum's Appeal sought reversal of a "Recovery of Erroneously Disbursed Funds" letter ("Recovery Letter") issued by USAC's Schools and Libraries Division ("SLD") on October 3, 2003, seeking to rescind more than \$700,000 in federal funding that was awarded to R O P - Riverside County/ Riverside County

¹ 47 C.F.R. § 54.719(c).

² Letter from the Universal Service Administrative Company to Pierre F. Pendergrass, General Counsel, Spectrum Communications Cabling Services, Inc. (July 1, 2004) ("*Administrator's Decision on Appeal*"), attached hereto as Exhibit 1.

³ Letter from Pierre F. Pendergrass, General Counsel, Spectrum Communications Cabling Services, Inc., to the Universal Service Administrative Company, Schools and Libraries Division (Dec. 2, 2003), attached hereto as Exhibit 2.

Office of Education ("Riverside") for products and services through the universal service support mechanism for schools and libraries ("E-rate Program").

The SLD specifically seeks to recover from Spectrum \$700,000 in E-rate funding that the SLD contends is related to the difference between the fair market value of Riverside's trade-in equipment as of March 1999, when Riverside and Spectrum formed their agreement for E-rate services, and the fair market value of Riverside's trade-in equipment as of July 1, 1999, the beginning of the 1999-2000 funding year. The SLD contends that Spectrum should have assessed the fair market value for the trade-in equipment as of July 1, 1999 based upon a Program rule that was adopted by the SLD roughly 3-4 years after the funding year in question. Spectrum and Riverside followed all FCC and Program Rules related to trade-in equipment that were applicable in 1999 (i.e., the equipment was traded for E-rate services at its fair market value, and the equipment was not previously purchased using E-rate funds). The fair market value assessed for Riverside's trade-in equipment in 1999 was confirmed by an independent appraisal performed in 2003. In the absence of specific FCC or USAC guidance in 1999 regarding the timing of determining the fair market value of trade-in equipment, the parties followed well established principles of contract law and valued the trade-in equipment, which was essential consideration for the E-rate services, at the time of contract formation.

The Commission should overturn USAC's decision and direct the SLD to withdraw the Recovery Letter because: (1) Spectrum and Riverside complied with all FCC and Program rules regarding trade-in equipment that were in effect in 1999; (2) the SLD and USAC exceeded their authority when they adopted a new policy that precludes calculating the fair market value of traded-in equipment at the time Program participants enter into a contract for services; and (3)

the SLD and USAC exceeded their authority by applying this new policy retroactively to Spectrum and Riverside.

I. SPECTRUM'S INTEREST IN THE MATTER PRESENTED FOR REVIEW.

Pursuant to Section 54.719 of the FCC's rules,⁴ any party aggrieved by an action taken by the SLD or the Administrator may appeal that decision, including service providers and applicants. Spectrum is an interested party in this case because it is the service provider to whom the SLD issued the Recovery Letter seeking to recoup more than \$700,000 in E-rate funding.

II. STATEMENT OF FACTS.

A. Riverside's Request for Funding and Resulting Agreement with Spectrum.

Spectrum, a privately held corporation founded in 1985, is a provider of information technology products and services. The company's customer base consists primarily of the education market, public sector agencies and large healthcare facilities. The company has participated in the E-rate Program since 1998, during which time Spectrum has acted as a service provider for approximately 38 different school districts.

Riverside is a service agency supporting Riverside County's 23 school districts and linking them with the California Department of Education. Riverside provides, among other services, assistance to its member districts in the deployment and maintenance of network and telecommunications services. Approximately 6.1 million students were enrolled in Riverside County in the 2002-2003 school year.

Riverside formed a consortium of its member school districts for the purpose of applying for E-rate Program discounts in the 1999-2000 funding year. On March 5, 1999, Riverside filed a Form 470 soliciting proposals from prospective service providers for a range of eligible E-rate

⁴ 47 C.F.R. § 54.719.

products and services. Consistent with Program rules, the Riverside consortium members intended to "trade-in" certain equipment owned by Riverside as consideration for Riverside's non-discounted portion of the E-rate services it was seeking through the Program.

Spectrum submitted a bid proposal in response to Riverside's Form 470 and Riverside subsequently selected Spectrum as the service provider for the consortium. In the absence of specific FCC or USAC guidance on the timing for determining the fair market value of the trade-in, Spectrum assessed the fair market value of the equipment as part of the initial "bid and ask" process at the time of contract formation.

Spectrum calculated the fair market value of Riverside's equipment, based upon its considerable expertise in the purchase and sale of new and used technology equipment in the Riverside market. Specifically, Spectrum: (i) had previously sold and installed the specific pieces of equipment at issue; (ii) was knowledgeable about the manner in which the equipment had been used and maintained; (iii) was knowledgeable about the training and expertise of the staff who had been using the equipment; and (iv) most importantly, had detailed knowledge about the identity and needs of potential buyers of the specific pieces of equipment in question. As discussed in further detail below, Spectrum's valuation of the equipment at the time the parties entered into their agreement in March of 1999 was subsequently substantiated by an independent third-party appraiser.⁵

On April 5, 1999, Riverside filed a Form 471 evincing its acceptance of Spectrum's proposal and its selection of Spectrum as its service provider for the 1999-2000 funding year.

⁵ See Appraisal Report for Spectrum Communications, DMC Consulting Group (Mar. 2003), attached to Memorandum from Robert Rivera, Spectrum, to Ed Falkowitz, Schools and Libraries Division (Mar. 15, 2003) ("Appraisal Report"), attached hereto as Exhibit 3. The appraiser, in fact, concluded that Spectrum's valuation in March 1999 was slightly *less* than the fair market value of the equipment at that time.

The eighteen funding request numbers ("FRNs") identified in the case caption above are associated with Riverside's and Spectrum's agreement. The total pre-discount value of the agreement for all E-rate services between Riverside and Spectrum was \$5,495,471.70. As calculated on the Form 471, Riverside was eligible for a Program discount of 67 percent. Consequently, pursuant to Commission and Program rules, Riverside and/or its consortium members were required to pay 33 percent, or \$1,813,505.66, of the total contract price. Some consortium members later decided to retain their equipment and, instead, pay their portion of the contract price in cash. The total amount of cash paid to Spectrum was \$155,996.21. The remaining portion of the purchase price owed by Riverside was paid by traded-in equipment.

B. USAC Upheld the SLD's Determination that the Trade-In Equipment was not Valued Appropriately.

The SLD contended that the fair market value of Riverside's traded-in equipment was less than Riverside's non-discounted share for services purchased through the E-rate Program, based upon the date the equipment was valued. USAC, upholding the SLD's determination, stated that:

[T]he trade-in amount was based on the value of the equipment at the time of the contract, which was before the start of the funding year and several months before Spectrum was set to take possession of the equipment. Spectrum provided an independent appraisal indicating the FMV [fair market value] of the equipment as of July 1, 1999. SLD has accepted this appraisal and determined that the recovery amounts should be based on the date that Spectrum took possession of the equipment, but no earlier than the first day of the funding year.

The FCC has directed USAC "to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in violations of a federal statute" and to pursue collection of any disbursements that were made in violation of a federal statute.⁶

⁶ *Administrator's Decision on Appeal* at 2.

USAC agreed with the SLD that the appropriate date for valuing Riverside's trade-in equipment was the beginning of the 1999-2000 funding year (July 1, 1999) and not at the time Riverside and Spectrum entered into an agreement for E-rate services (March 1999). Using a valuation date of July 1, 1999, USAC contends that the total fair market value of the consortium's equipment was \$1,316,159.⁷ This value was based upon a third-party appraisal, which was requested by the SLD as part of an audit in 2003. USAC neglects to mention that it also has an independent appraisal of the fair market value of the trade-in equipment as of contract formation, March 1999, and that this valuation shows that Spectrum's appraisal of the value of the trade-in equipment in March 1999 was the fair market value as required by Program rules that were in effect in 1999. Also, contrary to the *Administrator's Decision on Appeal*, there was no violation of a federal statute in this case, and there certainly was no violation of any applicable FCC or USAC statute, rule or guidance with respect to trade-in equipment that was applicable to Spectrum and Riverside in 1999. The parties complied with all known rules, laws and statutes.

In March 2003, four years after approving Riverside's funding, after valuable E-rate services were provided by Spectrum and received by Riverside, and paid for, in part, through the fair market value of Riverside's trade-in equipment, Ed Falkowitz, an SLD account manager, contacted Spectrum stating that it was conducting an internal audit regarding the trade-in value of Riverside's equipment. To assist the SLD in its investigation, and at the SLD's request, an

⁷ Under USAC's calculations, the total amount of matching funds that should have been paid by Riverside was \$1,472,155.21 (\$1,316,159 in equipment, plus \$155,996.21 in cash). Based upon Riverside's 67 percent discount, the payment of matching funds in the amount of \$1,472,155.21 would entitle Riverside to an E-rate discount of \$2,988,921.18. USAC previously disbursed \$3,681,966.04, which is \$693,044.96 more than it believes it should have disbursed (\$2,988,921.18 in actual disbursements minus \$1,472,155.21 in alleged appropriate disbursements). Inexplicably, however, the total amount USAC seeks to recover is \$707,521.34 - not \$693,044.96.

independent appraisal regarding the value of the equipment was undertaken in 2003 using both the actual appraisal date, March 1999, and July 1, 1999, the date suggested by the SLD. The Appraisal Report valued Riverside's equipment at \$1,859,321 in March 1999 and \$1,316,159 as of July 1, 1999.⁸ The Appraisal Report, which USAC and the SLD accepted as dispositive of the July 1, 1999 valuation, concluded that Spectrum's valuation of the equipment as of March 1999, was entirely consistent with the then-current market.

In valuing the trade-in equipment in 1999, Riverside and Spectrum complied with all Program rules that were effective at that time (*i.e.*, they assessed the appropriate fair market value of the equipment, and they did not trade in equipment that was previously purchased with Program funds). In the absence of specific guidance on when the trade-in equipment should be valued, the parties observed the basic legal principle that essential contract terms, including the consideration for a contract (*i.e.*, the trade-in equipment) must be definite and certain at the time of contract formation. The SLD's and USAC's actions in imposing a new date of valuation, based upon retroactive application of new Program rules, rewrites the essential terms of the agreement (*i.e.*, offer, acceptance and consideration) without the assent of the parties.

C. Commission and SLD Guidance in 1999.

At the time Riverside filed its Form 470 and entered into a contract with Spectrum in 1999, very little guidance was available to participants in the E-rate Program regarding the FCC's and SLD's policy for trading in equipment. Even now, the guidance does not specifically address *when* the fair market value of traded-in equipment should be determined in all cases. Rather, it only addresses fair market value in the case of the SLD's 3-year depreciation value analysis discussed below.

⁸ See Appraisal Report.

Today, the SLD's website has a page devoted to trading in equipment. That page advises that a Program applicant can trade in equipment and apply the value of that equipment to the non-discounted portion of new products and services that are funded through the E-rate Program.⁹ The SLD places certain conditions, however, on trading in equipment: (1) equipment previously purchased with E-rate discounts cannot be used toward payment of an applicant's non-discount share; and (2) the amount credited toward the non-discounted share must be the fair market value or acquisition cost, which ever is lower.¹⁰ The foregoing Program rules were applicable in 1999 when Spectrum and Riverside entered into their agreement for E-rate services. However, with regard to determining fair market value, the Program rules now also state the following:

There is a rebuttable presumption that technology equipment has a three-year life and that the value declines on a straight-line basis. Therefore, the presumptive value of a component with an original cost of \$1000 would be \$666 after one year, \$333 after two years, and would have no value after three years. Time periods are calculated from the date that equipment was originally delivered to the applicant to the estimated delivery date to the service provider. The applicant or service provider may provide evidence of fair market value to rebut this presumption. Although the form of the evidence is flexible, the best evidence would be from an independent third party source indicating the secondary market prices for the specific make and model of equipment traded in.¹¹

As an initial matter, the Program rules regarding timing of valuations and depreciation methodology were not available in 1999. The SLD's guidance at that time was more general, stating only that equipment must be traded-in at its fair market value and that the equipment to be traded could not be equipment previously purchased with Program funds. As discussed

⁹ Universal Service Administrative Company, "Transfer or Trade-in of Components," available at <http://www.sl.universalservice.org/reference/epsfaq-f.asp> (last modified Feb. 13, 2004).

¹⁰ *See id.*

¹¹ *Id.*

above, Spectrum and Riverside fully complied with these requirements. Spectrum carefully evaluated Riverside's equipment, which had not been previously purchased with Program funds, at the time they formed their agreement and calculated the fair market value of the equipment based upon Spectrum's considerable expertise in the market. Although the Program rules now explain how and when to assess the fair market value of equipment under the SLD's presumptive 3-year depreciation value analysis, it is devoid of any explanation regarding how or when Program participants should assess the fair market value of equipment using any other analysis. It does not appear that the new Program rule requires, as USAC contends in the *Administrator's Decision on Appeal*, that all valuations for trade-in equipment must be based on the date the service provider takes possession of the equipment, or no earlier than the first day of the funding year. Rather, it appears the new Program rule prescribes the dates to be used for valuing equipment when parties use the 3-year depreciation analysis. Spectrum did not use a 3-year depreciation analysis in the case of Riverside, and thus the new rule is inapplicable. In addition, the new Program rule allows for independent third party appraisals to rebut the SLD's presumptive 3-year depreciation value analysis, which Spectrum provided in this case.

Most importantly in this case, with the exception of requirements for a fair market valuation and a prohibition against trading-in "Program" equipment which Spectrum and Riverside observed, none of the foregoing guidance about the date upon which trade-in equipment should be valued, or valuation methodologies, was available to Spectrum or Riverside in 1999 when Spectrum assessed the fair market value of Riverside's equipment, Spectrum bid for Riverside's E-rate services, Riverside accepted Spectrum's bid, the parties entered into an agreement for services and agreed upon the consideration, the SLD approved Riverside's funding requests, and valuable E-rate services were provided in reliance thereon. Spectrum was

notified of the SLD's new policy only after Mr. Falkowitz from the SLD contacted Spectrum in March 2003.¹² The email correspondence between Mr. Falkowitz and Spectrum, indicates that the only "guidance" the SLD received from the FCC on this issue was that the fair market value of traded-in equipment could be calculated using the rebuttable presumption that equipment has a useful life of three years.¹³ It does not appear the FCC addressed the date upon which the fair market value should be determined.

III. QUESTIONS PRESENTED FOR REVIEW.

A. What Was the Required Valuation Date for Equipment that Was Traded-In Through the E-Rate Program in 1999?

Today, the SLD and USAC claim that equipment that is traded in for the purpose of paying an applicant's non-discounted portion of services purchased through the E-rate Program must be valued either at the time the service provider takes possession of the equipment or the first day of the applicable Program funding year. This guidance was not available to Riverside and Spectrum in 1999 and should not be applied retroactively to either devalue services that were already provided in reliance on the former rules and SLD funding grants, or require additional cash consideration from Riverside which it did not agree to pay for E-rate services in 1999. In the absence of specific guidance from the FCC or the SLD, the parties followed basic, well-established principles of contract law when they entered into their agreement for E-rate services and assessed a fair market value for Riverside's traded-in equipment at the time of contract formation. This valuation was later substantiated by an independent third party appraisal. It is also important to note that Riverside and Spectrum were required to assess the fair market value

¹² See email from Ed Falkowitz, Accounting Manager, SLD, to John Price, then-present Chief Financial Officer of Spectrum (Mar. 3, 2003), attached as Exhibit 4 hereto.

¹³ See *id.*

of the trade-in equipment and agree upon the consideration at the time of contract formation in order to obtain necessary board approvals and meet applicable SLD filing deadlines.

"Under long-standing principles of contract law, three familiar elements are typically required for the formation of a contract: offer, acceptance, and consideration."¹⁴ Consideration is an essential element of a valid contract,¹⁵ and a contract is not enforceable unless its terms and conditions are definite and certain.¹⁶ In the absence of specific FCC or USAC guidance regarding the timing of valuations for trade-in equipment, Spectrum and Riverside used basic principles of contract law and, at the time of contract formation -- not an undefined later date -- assigned a fair market value to the trade-in equipment that would be used in lieu of cash. Without an upfront understanding by Riverside and Spectrum of the combination of consideration that would be paid for the E-rate services, and the corresponding payment obligations, the contract would have lacked definite and enforceable terms.

In response to Riverside's Form 470, Spectrum submitted a proposal that would meet the technology plan objectives of the consortium while, at the same time, avoid a significant cash outlay. Riverside reviewed the proposal and found it to be the most cost-effective response to its Form 470. Before agreeing to hire Spectrum, however, Riverside and/or its consortium members were required to obtain school board approval of the proposed contract. It would have been impossible for Riverside and its member districts to have obtained board approval without first

¹⁴ "Government Contract Cases in the United States Court of Appeals for the Federal Circuit: 1996 in Review," C. Stanley Dees and David A. Churchill, 46 Am. U.L. Rev. 1807, 1844 (Aug. 1997) (citing the Restatement (Second) of Contracts, §§ 17(1), 22(1)).

¹⁵ See, e.g., *Agosta v. Astor*, 120 Cal. App. 4th 596, 605 (2004); *Lopez v. Charles Schwab & Co., Inc.*, 118 Cal. App. 4th 1224, 1230 (2004).

¹⁶ See, e.g., *Suffield Development Associates Ltd. Partnership v. Society for Sav.*, 708 A.2d 1361 (1998).

describing in detail the purchase price and the terms (including the amount of cash required) of the agreement, and the E-rate services that would be received in exchange. Consequently, the parties had to value the equipment at the time they reached an agreement.

E-rate Program rules require applicants and service providers to enter into agreements for E-rate services before filing a Form 471.¹⁷ Applicants use the Form 471 to request discounts from the SLD for eligible services, and specific amounts for the cost of the purchased services must be recorded in the Form 471. The agreement necessarily establishes the type and amount of consideration an applicant must pay for the goods and services purchased from a service provider so the applicant can seek the appropriate amount of E-rate support. It would have been impossible in this case for Riverside and Spectrum to predict the value of the equipment at some future date and still comply with USAC's requirement that the agreement be executed and the Form 471 filed by April 6, 1999. If Riverside and Spectrum had waited until the start of the funding year (July 1, 1999) to value the equipment, Riverside would have had to wait to enter into a contract with Spectrum and would have missed the deadline for filing its Form 471.

B. Did the Administrator Exceed its Authority by Creating New Policy and then Applying that Policy Retroactively to Spectrum?

1. The Administrator Exceeded its Authority in Adopting a New Policy Without FCC Guidance.

The FCC appointed USAC to administer the E-rate Program in 1998. USAC's authority over the Program is limited to implementing and applying the FCC's Part 54 rules, and the FCC's interpretations of those rules as found in agency adjudications.¹⁸ USAC is not

¹⁷ Universal Service Administrative Company, Selecting Service Providers, available at: <http://www.sl.universalservice.org/reference/selectingsp.asp>.

¹⁸ 47 C.F.R. § 54.702(c).

empowered to make policy, interpret any unclear rule promulgated by the FCC¹⁹ or to create the equivalent of new guidelines.²⁰ The Administrator exceeded its authority in this case by creating a new policy not previously elucidated by the FCC — namely, that the fair market value of traded-in equipment cannot be calculated at the time that an E-rate applicant and service provider execute a contract for E-rate services and products, consistent with basic principles of contract law.

In 1999 when Spectrum and Riverside entered into their agreement, there was no FCC or Program guidance that addressed *when* the fair market value of traded-in equipment should be determined, and such formal guidance still does not exist today (except in the case of equipment that is valued using a 3-year depreciation analysis). Spectrum only became aware of the new SLD Program rule in March 2003 when Mr. Falkowitz contacted Spectrum about the trade-in value of Riverside's equipment.²¹ As noted above, however, it does not appear that the FCC gave the SLD specific guidance regarding the date upon which the fair market value should be determined. Rather, the email correspondence between Mr. Falkowitz and Spectrum, indicates that the only "guidance" the SLD received from the FCC on this issue was that the fair market value of traded-in equipment could be calculated using the rebuttable presumption that equipment has a useful life of three years.²² It appears USAC has made a policy and created the

¹⁹ *Id.*

²⁰ *Changes to the Board of Directors of the Nat'l Exchange Carrier Ass'n, Inc.*, Third Report and Order, 13 FCC Red 25058, 25066-67 (1998) ("*NECA Third Report and Order*").

²¹ See email from Ed Falkowitz, Accounting Manager, SLD, to John Price, then-present Chief Financial Officer of Spectrum (Mar. 3, 2003), attached as Exhibit 4 hereto.

²² See *id.*

equivalent of new guidelines regarding the timing of valuations for all traded-in equipment in violation of its charter.

2. The Administrator Exceeded its Authority in Retroactively Applying a Later-Adopted SLD Policy to Previously Granted Funding Requests.

Even assuming, *arguendo*, that the Administrator had authority to adopt the policy that the fair market value of traded-in equipment cannot be determined at the time a contract is executed, the Administrator still exceeded its authority by retroactively applying the policy in this case. In this case, the Administrator is attempting to apply a new Program rule regarding the timing for valuation of trade-in equipment to a contract for E-rate services that was entered into in 1999, and performed in 1999-2000, three years before adoption of the new Program rule.

It is a basic tenet of American jurisprudence that if a court overturns its prior precedent in a line of cases, the new precedent is applied prospectively. The court does not re-open every prior case, retroactively apply the new precedent and overturn all prior concluded decisions.²³ In *RKO General v. FCC*,²⁴ the U.S. Court of Appeals for the D.C. Circuit addressed retroactive application of new Commission precedent very clearly:

Although an administrative agency is not bound to rigid adherence to its precedents, it is equally essential that when it decides to reverse its course, it must give notice that the standard is being changed . . . and apply the changed standard only to those actions taken by parties after the new standard has been proclaimed as in effect.²⁵

²³ See generally 28 U.S.C. § 2106 ("The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review.")

²⁴ *RKO General, Inc. v. FCC*, 670 F.2d 215 (D.C. Cir. 1981).

²⁵ *Id.* at 223-24, citing *Boston Edison Co. v. PFC*, 557 F.2d 845 (D.C. Cir. 1997) cert. denied sub nom. *Towns of Norwood, Concord and Wellesley, Mass. V. Boston Edison Co.*, 434 U.S. 956 (1988).

In addition, "an agency may be prevented from applying a new policy retroactively to parties who detrimentally relied on the previous policy."²⁶

The SLD's standard regarding when to evaluate the fair market value of traded-in equipment was expressed to Spectrum only in March 2003 through general correspondence. This standard has not, and even today is not, explicitly stated in any FCC decision or on the SLD's website as a Program rule (except in the case of equipment that is valued using a 3-year depreciation analysis). Even if the FCC finds such a rule is now applicable, consistent with the finding in *RKO*, new or changed standards can be applied prospectively only to pending or future applications, not retroactively to granted applications.

In addition, Spectrum and Riverside detrimentally relied on the FCC and SLD guidance that was available in 1999, and it detrimentally relied on the SLD's grant of Riverside's funding requests under the former rules pursuant to which valuable E-rate services were provided and accepted. It is unreasonable for a Program participant, exercising good faith and complying with all applicable Program rules and general principles of contract law, to be penalized for acting reasonably under the circumstances, especially when there was no contrary FCC or USAC guidance specifying the date on which the fair market value of traded-in equipment should be assessed. Riverside and Spectrum had no other recourse but to reasonably assume the equipment should be valued at the time the agreement was formed.

There is an extensive body of judicial case law regarding impermissible retroactivity in which the courts discuss basic notions of equity and fairness and detrimental reliance by citizens

²⁶ *New England Telephone and Telegraph Co. v. FCC*, 826 F. 2d 1101, 1110 (D.C. Cir. 1987) citing *RKO General*, 670 F.2d at 223.

on prior agency policies.²⁷ There is no need to present a full discussion of such retroactivity here, as the FCC's own decisions in prior SLD matters reflect its own concern about the retroactive application of new precedent.

In a November 5, 1999 FCC decision involving the E-rate Program, the Commission considered a case in which the Prairie City School District ("Prairie City") sought review of an

²⁷ See *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 224 (1988) (J. Scalia concurring) ("[W]here legal consequences hinge upon the interpretation of statutory requirements, and where no preexisting interpretive rule construing those requirements is in effect, nothing prevents the agency from acting retroactively through adjudication."). See *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 293-294 (1974); *SEC v. Chenery Corp.*, 332 U.S. at 194, 202-03 (1947). See also *Verizon Telephone Co. v. FCC*, 269 F.3d 1098 (2001) ("[T]he governing principle is that when there is a 'substitution of new law for old law that was reasonably clear,' the new rule may justifiably be given prospectively-only effect in order to 'protect the settled expectations of those who had relied on the preexisting rule.'"); *Id.* at 1109, citing *Williams Natural Gas Co. v. FERC*, 3 F.3d 1544, 1554 (D.C. Cir. 1993). Moreover, retroactivity will be denied "when to apply the new rule to past conduct or to prior events would work a manifest injustice." *Id.* citing *Clark-Cowlitz Joint operating Agency v. FERC*, 826 F.2d 1074, 1081 (D.C. Cir. 1987). To determine whether a manifest injustice will result from the retroactive application of a statute, a court must balance the disappointment of private expectations caused by retroactive application against the public interest in enforcement of the statute. *Demars v. First Serv. Bank for Sav.*, 907 F. 2d 1237, 1240 (1st Cir. 1990) (citing *New England Power v. United States*, 693 F. 2d 239, 245 (1st Cir. 1982)). The D.C. Circuit Court notes that it has not been entirely consistent in enunciating standards to determine when to deny retroactive effect in cases involving "new application of existing law, clarifications and additions" resulting from adjudicatory actions. In *Cassell v. FCC*, the court acknowledges that it has used the five-factor test set forth in *Clark-Cowlitz* as the "framework for evaluating retroactive application of rules announced in agency adjudications." *Cassell v. FCC*, 154 F.3d 478, 486 (D.C. Cir. 1998) citing *Clark-Cowlitz*, 826 F.2d at 1081. In a subsequent case, the court substituted a similar three-factor test. See *Dist. Lodge 64 v. NLRB*, 949 F.2d 441, 447 (D.C. Cir. 1991) (citing *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971)). Today, the court has moved from multi-pronged balancing tests for impermissible retroactivity in favor of applying basic notions of equity and fairness. See *Cassell*, 154 F.3d at 486 (declining to "plow laboriously" through the *Clark-Cowlitz* factors, which "boil down to a question of concerns grounded in notions of equity and fairness"); *PSCC v. FERC*, 91 F. 3d 1478, 1490 (concluding that "the apparent lack of detrimental reliance . . . is the crucial point [supporting retroactivity]"). In *Chadmoore Communications, Inc. v. FCC*, the court stated that the test it commonly uses to determine whether a rule has retroactive effect is if "it does not impair [] rights a party possessed when it acted, increase [] a party's liability for past conduct, or impose [] new duties with respect to transactions already completed." *Chadmoore*, 113 F.2d 235, 240 (D.C. Cir. 1997), citing *DIRECTV, Inc. v. FCC*, 110 F. 3d 816, 825-26 (D.C. Cir. 1997) (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994)).

SLD denial of its application for universal service support.²⁸ Prairie City argued that the SLD's denial should be overturned because Prairie City filed its application in reliance on filing guidelines provided by the SLD on its website. The FCC agreed with Prairie City and directed the SLD to issue a new funding commitment decision letter. Citing *Williamsburg-James City*, the FCC found that where an application was submitted before the establishment of a particular and applicable rule, the applicants could not have been aware of the application requirements.²⁹

The FCC also has recognized that clarifications of its universal service policies are to be applied prospectively only by the SLD. In *Ysleta*³⁰ and *Winston-Salem*³¹ the FCC clarified that a party submitting a bona fide service request under the E-rate Program must provide a Form 470 that lists the specific services for which the applicant anticipates seeking E-rate discounts, rather than a Form 470 that listed every service or product eligible for discounts.³² The FCC, however,

²⁸ *Request for Review of the Decision of the Universal Service Administrator by Prairie City School District*, 15 FCC Rcd 21826 (CCB 1999).

²⁹ *Id.* at 21827, citing *Request for Review of the Decision of the Universal Service Administrator by Williamsburg-James City Public Schools*, 14 FCC Rcd 20152, 20154-55 (1999) ("Williamsburg could not have been aware of the rules of priority at the time it filed its application." Williamsburg's application was also remanded for reprocessing and issuance of a new funding commitment decision letter. The applicant submitted its application in April of 1998 and new rules were adopted by the Commission in June of 1998.).

³⁰ *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas*, 18 FCC Rcd 26406 (2003) ("*Ysleta*"). In *Ysleta* the Commission addressed multiple requests to review the decisions of the SLD that were filed by E-rate applicants, but combined the requests as they had almost identical fact patterns.

³¹ *Request for Review of the Decision of the Universal Service Administrator by Winston-Salem/Forsyth County School District, Winston-Salem, North Carolina*, 18 FCC Rcd 26457 (2003) ("*Winston-Salem*").

³² *Ysleta*, 18 FCC Rcd at 26419-23; *Winston-Salem*, 18 FCC Rcd at 26462.

did not invalidate the applicants' applications based upon this error.³³ It acknowledged that the SLD had previously granted similar funding requests and that Program participants could have reasonably relied on those approvals.³⁴ The FCC determined that such all-inclusive Form 470s "should not be permitted on a going-forward basis."³⁵ The FCC therefore "clarified] prospectively that requests for service on the FCC Form 470 that list all services eligible for funding under the E-rate Program do not comply with the statutory mandate."³⁶ The FCC in *Ysleta* also provided additional guidance regarding other aspects of the E-rate Program rules "to provide greater clarity to those applicants re-bidding services and future applicants."³⁷

It is clear that the FCC intended for its precedent in *Ysleta* and *Winston-Salem* to apply to pending or future applications and not applications that have already been granted and funded. Similarly, the FCC should conclude that the SLD cannot retroactively apply the Administrator's new Program rule regarding the timing of valuing traded-in equipment to Spectrum's case. Riverside's funding requests were approved long before the SLD notified Spectrum of its new

³³ The Commission did conclude in *Ysleta* that the applicants violated the E-rate Program's rules, although not because of the broad list of services included in the applicants' Form 470s. *Ysleta*, 18 FCC Rcd at 26420-21.

³⁴ *Ysleta*, 18 FCC Rcd at 26422; see also *Winston-Salem*, 18 FCC Rcd at 26462.

³⁵ *Ysleta*, 18 FCC Rcd at 26422; see also *Winston-Salem*, 18 FCC Rcd at 26462.

³⁶ *Ysleta*, 18 FCC Rcd at 26422-23 (citation omitted); see also *Winston-Salem*, 18 FCC Rcd at 26462.

³⁷ *Ysleta*, 18 FCC Rcd at 26433-34 (emphasis added). The Commission also noted that the "SLD will carefully scrutinize applications" to ensure that they comply with the clarifications elucidated in this case. *Id.* at 26435 (emphasis added). If the Commission wanted the SLD to apply those clarifications retroactively to prior SLD decisions, it would have specifically directed the SLD to do so. The FCC also rejected the argument that it could not apply the E-rate Program rules to the applicants' pending funding requests in an adjudicatory context. According to the FCC, "[t]he fact that in prior years, [the SLD] did not disapprove applications that utilized the procurement processes at issue in no way limits our discretion to apply our existing rules." *Id.* at 26433 (emphasis added).

Program rule. Furthermore, the FCC has never determined that the fair market value of traded-in equipment cannot be established at the time a contract is formed. Spectrum and Riverside (and possibly other E-rate participants) relied on the FCC and SLD rules, and interpretations thereof, which were current in 1999, and reasonably interpreted them to support their valuation of the traded-in equipment at the time of contract formation. The rules in 1999 required a fair market valuation for Riverside's equipment and, as the independent third party appraisal confirms, Spectrum assessed a fair market value for the Riverside equipment.

The FCC also must consider the long term impact on the E-Rate Program if it does not reverse the Administrator's decision in this case. Specifically, it will raise serious questions for other participants in the E-rate Program about whether they can ever rely upon actions taken by the SLD. Allowing the Administrator's decision to stand would mean that the SLD and the Administrator can adopt new policies at will and retroactively deny previously granted applications based upon those new policies after the applications are approved. In the face of such regulatory uncertainty, service providers could certainly conclude that the risk of devoting resources to provide E-rate services is too great. Schools, libraries, students and faculty would be those that ultimately suffer.

3. The Administrator has Advocated Applying Only Program Rules Relevant to a Particular Funding Year to Its Own Audits.

The concept of the SLD applying E-rate Program rules that were in effect only for a particular funding year to judge compliance with its program is something USAC, itself, has advocated for its own audits of E-rate Program compliance. In USAC's November 26, 2003 report to the Commission entitled "*Task Force on the Prevention of Waste, Fraud and Abuse,*" the Task Force recommends that it develop audit policies that:

reflect compliance with the rules that existed during the funding year to which the funding was associated and to better communicate the degree of

program compliance . . . The Task Force believes that program audits, which are a necessary part of waste, fraud and abuse prevention, need to focus on the policies, procedures, eligible services, etc., that existed during the funding year that is being audited. Measuring program compliance against policies, procedures, eligible services, etc. which were not in place during a particular funding year is inherently unfair and invalid.³⁸

This approach should apply equally to participants in the E-rate Program like Riverside and Spectrum. The SLD's new policy regarding when traded-in equipment should be valued, should not be used as the filter through which Spectrum's and Riverside's 1999 agreement is judged. Spectrum and Riverside complied with all Program rules applicable to trade-in equipment that were effective in 1999.

C. If the FCC Concludes that E-Rate Funds Were Erroneously Disbursed, Should the SLD Seek Reimbursement from Riverside or Spectrum?

Assuming *arguendo* that the proper valuation date for Riverside's traded-in equipment was July 1, 1999, then Riverside would not have paid its entire non-discounted portion of the E-rate funded services it obtained from Spectrum. Accordingly, if the FCC should conclude that E-rate funds were, in fact, erroneously disbursed in this case as a result of the use of an incorrect

³⁸ *Recommendations of the Task Force on the Prevention of Waste, Fraud and Abuse*, CC Docket No. 02-6 at 10 (Nov. 26, 2003). The Task Force also makes a number of other recommendations to improve the schools and libraries program, concluding that "the program's competitive bidding process is not working as effectively as policy makers had intended." *Id.* at 5. "The Task Force believes there needs to be greater clarification of program rules, along with increased strong program support staff and educational outreach to further ensure optimal usage of program resources." *Id.* "Prior to the start of the annual training cycle, the SLD needs to provide clear policy, procedures, eligible services list, etc. for the upcoming program year and work to minimize the need for clarifications of the rules during the Program Integrity Assurance review process." *Id.* at 6. "The Task Force believes that if applicants have a better understanding of the rules and standards that will be applied, they will be better equipped to obey them. Providing clarity at the beginning of the cycle will also help avoid the waste associated with pursuing appeals that result from a misunderstanding of the rules." *Id.*

valuation date, the FCC should conclude that Riverside is responsible for any unpaid monies that are the result of it not paying the non-discounted portion of the E-rate services it purchased.³⁹

The *Administrator's Decision on Appeal* notes that the FCC requires all erroneous disbursements to be collected from service providers.⁴⁰ However, the Commission instructs USAC to recover such funds from "whichever party or parties has committed the statutory rule or violation."⁴¹ The duty to pay the undiscounted portion is solely Riverside's responsibility.⁴² In fact, USAC rules expressly prohibit the service provider from taking any action that would eliminate or lessen the applicant's obligation to pay the entire undiscounted portion. Consequently, any failure to pay the undiscounted portion would constitute a Program violation by Riverside, the beneficiary of the E-rate services.

D. If the FCC Concludes that E-Rate Funds Were Erroneously Disbursed, Do the Facts in this Case Warrant a Waiver of the SLD's New Policy?

Spectrum and Riverside complied with all applicable FCC and Program rules when they valued Riverside's trade-in equipment at the time they contracted for services through the E-rate Program (i.e., they did not trade-in equipment that was previously funded through the E-rate Program, and the equipment was traded-in at its fair market value). If, however, the Commission determines that the SLD and USAC correctly determined that the valuation timing utilized by

³⁹ Upon receiving the Recovery Letter, Spectrum promptly discussed it with Riverside and informed it that Spectrum would: (i) appeal it to USAC and, if necessary, the FCC; and (ii) invoice Riverside for the shortfall in matching funds in the event Spectrum's appeals are denied. In the event the Commission agrees with USAC's determination that funds were erroneously disbursed, RCOE should immediately be given an opportunity to pay the invoice from Spectrum.

⁴⁰ See *Administrator's Decision on Appeal* at 2 (citing *Changes to the Board of Directors of the National Exchange Carrier Association*, FCC 99-291 ¶ 9 (1999)).

⁴¹ *Federal-State Joint Board on Universal Service*, Order on Reconsideration and Fourth Report and Order, FCC 04-181, CC Docket Nos. 96-45, 97-21, 02-6 at ¶ 1 (rel. July 30, 2004).

⁴² *Id.* ¶¶ 13, 15.

Spectrum and Riverside was incorrect based upon a new Program rule and, as a result of this retroactive analysis, Riverside may not have paid the entire non-discounted portion of the services it purchased from Spectrum, then Spectrum requests that the Commission grant a waiver in this case on Riverside's behalf. Riverside should not be forced to pay additional cash consideration for 1999-2000 E-rate services at this time. Had Riverside known that additional cash consideration would be required, it likely would not have contracted for all of the E-rate services it received from Spectrum in the 1999-2000 Program year. As further discussed below, the harm resulting from rescinding the monies allocated to Riverside, or requiring additional cash consideration, far outweighs any purported benefit in denying the waiver, and grant of the waiver is in the public interest.

Pursuant to Section 1.3 of its rules, the FCC may waive one of its rules or procedures when good cause is shown.⁴³ The U.S. Court of Appeals for the District of Columbia has found that a waiver is appropriate "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."⁴⁴ Furthermore, there must be a rational policy supporting the grant a waiver.⁴⁵ In reviewing a waiver request, the Commission also can weigh "considerations of hardship, equity, or more effective implementation of overall policy."⁴⁶ Spectrum's waiver request meets this standard and should therefore be granted.

⁴³ 47 C.F.R. § 1.3.

⁴⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 n.3 (D.C. Cir. 1990) ("*Northeast Cellular*"); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 n.8 (D.C. Cir. 1969) ("*WAIT Radio*").

⁴⁵ *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1159.

⁴⁶ *WAIT Radio*, 418 F.2d at 1159 n.8.

Grant of a waiver in this case will serve the public interest. As previously discussed, there is no way Riverside or Spectrum could have known in 1999 that determining the fair market value for the trade-in equipment at the time of contract formation could be later considered unlawful. The critical public interest policies served by the FCC's and the SLD's rules are to ensure that schools and libraries seeking support through the E-rate Program obtain the most cost-effective services available, thereby lessening applicants' demands on universal service funds and increasing funds available to other applicants.⁴⁷ Through Riverside's competitive bidding process, there was fair and open competitive bidding for services, and at the end of the bidding process, Spectrum was found to be most cost-effective choice. As demonstrated above, Riverside did not receive any "free" services from Spectrum, and paid the non-discounted portion of such services with a combination of cash and by trading-in valuable equipment.

The failure to grant a waiver will result in irreparable harm to Riverside. The SLD's Recovery Letter was issued years after the SLD reviewed and approved Riverside's application and Riverside paid monies and traded-in equipment for E-rate services for the 1999-2000 funding year. Services were provided by Spectrum and paid for by Riverside years ago in accordance with all applicable Program rules. Accordingly, if a waiver is not granted, Riverside, who in all likelihood does not have funding in its budget to pay for services rendered years ago, will have to reimburse the monies to SLD. The students and faculty of Riverside will thus be irreparably harmed, which is in direct conflict with the purposes of the E-rate Program.⁴⁸

⁴⁷ *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8716, 9029 (1997).

⁴⁸ Although the Commission has considered and rejected waiver requests in prior appeals of SLD funding decisions, the facts of this case are clearly distinguishable from those prior decisions. For example, in *MasterMind*, the SLD denied requests for funding that it had yet to allocate to applicants. See, e.g., *Request for Review of Decisions of the Universal Service Administrator* by

The Commission has previously granted waiver requests "in light of the uncertain application of our rules to the novel situation presented."⁴⁹ For example, in *Ysleta* the Commission directed the SLD to allow certain applicants to reapply for E-rate discounts, even though the Commission concluded that the applicants violated the E-rate Program's competitive bidding process by using a certain template approach.⁵⁰ According to the Commission, a waiver was appropriate in *Ysleta* because the applicants were likely confused by the application of a new rule to the novel facts presented in that case.⁵¹ The Commission should similarly conclude that a waiver is appropriate here because the SLD is applying a new Program rule in this case to rewrite an agreement that was entered into in 1999 in compliance with all known FCC and USAC rules.

IV. RELIEF SOUGHT AND CONCLUSION.

Spectrum requests that the FCC reverse the Administrator's decision denying Spectrum's Appeal and direct the SLD to withdraw the Recovery Letter it issued to Spectrum. If, however, the FCC does not overturn the Administrator's decision, the SLD should seek to recover any funds owed from Riverside. Because the harm in rescinding Riverside's funding would

MasterMind Internet Services, Inc., 16 FCC Rcd 4028, 4035 (2000). The end result in that case was only that the applicant had to wait another year to apply for and receive funding for services supported by the E-rate Program. In contrast, in the case of Riverside and Spectrum, the SLD has already reviewed, granted and allocated funds pursuant to Riverside's Form 470 and Spectrum has already provided services under that grant. To now reverse the SLD's prior approvals and reclaim amounts already paid would be patently unfair and irreparably harm Spectrum and Riverside.

⁴⁹ *Ysleta*, 18 FCC Rcd at 26437.

⁵⁰ *Id.* at 26436.

⁵¹ *Id.* at 26437.

outweigh any benefits, Spectrum also requests a waiver of the E-rate Program's rules on Riverside's behalf.

Respectfully submitted,

/s/ Pierre Pendergrass

Pierre Pendergrass
General Counsel
Spectrum Communications Cable
Services, Inc.
226 North Lincoln Avenue
Corona, CA 92882
(909) 273-3114

August 30, 2004.

COPY

BEST BEST & KRIEGER LLP

A CALIFORNIA LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

INDIAN WELLS
(760) 566-2611

ONTARIO
(909) 989-6584

LAWYERS
3750 UNIVERSITY AVENUE
POST OFFICE BOX 1028
RIVERSIDE, CALIFORNIA 92502-1028
(909) 686-1450
(909) 686-3063 FAX
BBKLAW.COM

SAN DIEGO
(619) 525-1300

ORANGE COUNTY
(714) 263-2600

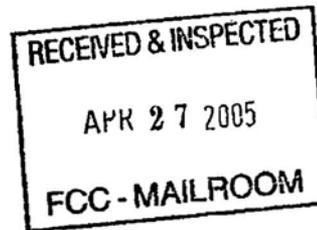
SACRAMENTO
(916) 326-4000

RINA M. GONZALES

October 1, 2004

BY UPS NEXT DAY AIRMAIL

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743



Re: In the Matter of Request for Review of Decision of the Universal Service Administrator by Spectrum Communications Cabling Systems, Inc.
CC Docket No. 02-6
Billed Entity Name: Riverside County Office of Education
Billed Entity Number: 143743
E-Rate Funding Year 1999-2000
FCC Form 471 Application Number: 148309
Schools and Libraries Division letter dated: October 3, 2003

To Whom It May Concern:

Best, Best & Krieger LLP represents the Riverside County Office of Education ("RCOE") in the above-referenced matter and is writing this letter on RCOE's behalf. This letter is related to the appeal filed on or about August 30, 2004 by Spectrum Communications, Inc. ("Spectrum") with your office. Spectrum's appeal concerns the letter sent to Spectrum and RCOE on October 3, 2003, from the Universal Service Administrative Company, Schools and Libraries Division ("USAC/SLD") which requested recovery of approximately \$700,000 in allegedly erroneously disbursed funds.

As background, in December 2003, both RCOE and Spectrum filed separate appeals with USAC/SLD regarding the issues raised in the October 3, 2003 letter. On about July 6, 2004, our office received a copy of the USAC Administrator's Decision on Appeal for Funding Year 1999-2000 ("Administrator's Decision"). A copy of the Administrator's Decision is attached hereto as Exhibit "A." The Administrator's Decision is addressed to Spectrum and states that the appeal was denied in full, specifically finding that the factual background of this matter supported the SLD's decision and SLD appropriately valued the equipment at issue using the July 1, 1999 valuation date. The Administrator's Decision explains that the Federal Communications Commission has provided that repayment of erroneously disbursed funds will be sought "from service providers rather than schools and libraries because [] service providers actually receive

RCOE
Exhibit H
Page 1 of 14

FCCAR00112

LAW OFFICES OF
BEST BEST & KRIEGER LLP

Federal Communications Commission
October 1, 2004
Page 2

disbursements of funds from the universal service support mechanism." (See Exhibit A at p. 2.) RCOE understands the Administrator's Decision to provide that USAC will seek reimbursement from Spectrum, not RCOE.

On behalf of RCOE, our office contacted a USAC attorney in Washington D.C., to verify our understanding of the Administrator's Decision. The USAC attorney confirmed that USAC will only be seeking recovery from Spectrum. She also indicated that she understood RCOE's letter to ask for confirmation that recovery of the allegedly erroneously disbursed funds would be sought from Spectrum, as the service provider, and not from RCOE. Because RCOE's letter was not considered a true "appeal," the USAC attorney stated that USAC/SLD would not provide a decision letter to RCOE. Because USAC confirmed our understanding, we did not pursue the matter further.

Recently, RCOE received a copy of Spectrum's appeal to the FCC. One argument in that appeal requests that liability be imposed on RCOE. Spectrum argues that, if the FCC concludes that funds were disbursed in error, then it should also conclude that RCOE "is responsible for any unpaid monies that are the result of its not paying the non-discounted portion of the E-rate services it purchased." (Spectrum Appeal at pp. 20-21.) A footnote to that statement requests that, if the FCC agrees with the USAC determination, RCOE should immediately be given an "opportunity" to pay an invoice from Spectrum for the alleged "shortfall in matching funds." (Spectrum Appeal at fn. 39.) That is, Spectrum is seeking to shift the USAC/SLD request for recovery onto RCOE, and to recover additional payment for itself at the same time.

This argument is the first assertion by Spectrum, of which RCOE received notice, that RCOE should be liable for the allegedly erroneously disbursed funding. RCOE denies that it is liable for any of the allegedly erroneously disbursed funding, as set forth in RCOE's letter dated December 2, 2003 to USAC/SLD. A copy of that letter is attached hereto as Exhibit "B." If the FCC is considering taking a position contrary to that previously represented by the USAC to RCOE and holding RCOE liable for a portion of the allegedly erroneously disbursed funding, RCOE requests that it be afforded the opportunity to brief the issues before any decision is reached. It would be prejudicially unfair and a denial of due process to consider Spectrum's argument without allowing RCOE to address this issue when RCOE relied on the Administrator's Decision that recovery would be sought directly from Spectrum.

We are aware that the appeals process regarding USAC/SLD issues is an extended process. Unfortunately, Spectrum's recent appeal to the FCC was the first time it advanced allegations that recovery should be sought from RCOE. If the FCC determines that additional briefing is necessary on the issue of who is responsible for repayment of allegedly erroneously disbursed funding, RCOE is prepared to brief the issue promptly to avoid any undue delay in finalizing this process.

RCOE
Exhibit H
Page 2 of 14

FCCAR00113

LAW OFFICES OF
BEST BEST & KRIEGER LLP

Federal Communications Commission
October 1, 2004
Page 3

If your office has any questions regarding this matter, please do not hesitate to contact our office at (951) 686-1450 or via e-mail at <Rina.Gonzales@bbklaw.com>. Thank you for your consideration in this matter.

Sincerely,



Rina M. Gonzales
for BEST BEST & KRIEGER LLP

Exhibit "A" – Administrator's Decision dated July 1, 2004
Exhibit "B" – RCOE December 2, 2003 letter to USAC/SLD

RVPU8RMG681011.1

RCOE
Exhibit H
Page 3 of 14

FCCAR00114

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	File No. SLD-148309
)	
Request for Review of Decision of the	)	CC Docket No. 02-6
Universal Service Administrator)	
	)	FRN Nos. 299376, 299377, 299378,
by	)	299379, 299381, 299382, 299355,
	)	299356, 299359, 299361, 299363,
Riverside County Office of Education	)	2999365, 399367, 299368, 299370,
Riverside, California	)	299371, 299372 and 299373
)	

APPLICATION FOR REVIEW

RECEIVED & INSPECTED
APR 27 2005
FCC - MAILROOM

John E. Brown, Bar No. 65322
Cathy S. Holmes, Bar No. 188702
Rina M. Gonzales, Bar No. 225103
BEST BEST & KRIEGER LLP
3750 University Avenue, Suite 400
P. O. Box 1028
Riverside, CA 92502
(951) 686-1450

Attorneys for
Riverside County Office of Education

April 26, 2004

No. of Copies rec'd 0
List ABCDE.

TABLE OF CONTENTS

	Page
I. INTRODUCTION	2
.....	4
II. STATEMENT OF FACTS	4
.....	4
A. RCOE's Solicitation for E-Rate Proposals	4
B. Spectrum's Determination of the Fair Market Value Rate	4
C. RCOE's Selection of Spectrum as its Service Provider	5
.....	6
D. USAC Determination of Erroneous Fair Market Value Rate	6
E. Appeals of USAC Determination that Fair Market Value in this Instance Should be Calculated as of July 1, 1999, as opposed to March, 1999 the date used by Spectrum	7
III. QUESTIONS PRESENTED FOR REVIEW	9
A. Whether Spectrum Can Be Identified, Without Further Consideration by USAC, as the Party Responsible for the Rule Requiring that Fair Market Value Be Calculated on the Date a Service Provider Takes Possession of Trade-In Equipment, but not Earlier than the Beginning of the Fund Year, which in this Case is July, 1, 1999	9
1. Spectrum Admits They Were the Party Responsible for Calculating the Fair Market Value of Trade-In Equipment	10
2. USAC Has Already Considered Spectrum's Arguments Supporting its Position as to Why Spectrum's Fair Market Value Calculation should be upheld	11
3. The only entity addressed by the USAC/SLD was Spectrum	13
4. The Clarification Set forth in the Schools and Libraries Fourth Report and Order Does Not Alter USAC's Previous Conclusion that Spectrum is the Responsible Party in this Matter	13
IV. CONCLUSION	14

I. INTRODUCTION

The Riverside County Office of Education ("RCOE"), pursuant to Section 1.115 of the Rules of the Federal Communications Commission, ("Commission")¹ submits this Application for Review seeking a reversal of Order DA 05-498, issued on February 25, 2005 by the Telecommunications Access Policy Division.² DA 05-498 remanded RCOE File No. SLD-148309 and Spectrum Communications Cabling Systems, Inc. ("Spectrum"), File No. SLD-148309, to the Universal Service Administrative Company ("USAC") for further consideration. In its Order, the Telecommunications Access Policy Division found it "appropriate to remand certain Requests for Review of commitment adjustment decisions to USAC for further consideration consistent with the Commission's decision in the *Schools and Libraries Fourth Report and Order*" which simply clarifies that recovery of schools and libraries funds disbursed in violation of an applicable statute or a rule should be directed to the entity that is responsible for the statutory or rule violation.

RCOE is unfamiliar with the other matters globally addressed by DA 05-498.³ As applied to RCOE and Spectrum, however, the only question on remand would be which party was responsible for the alleged error in the valuation of trade-in equipment that was accepted by Spectrum, the service provider, for the non-discounted share of services provided.

The Universal Service Administrative Company, Schools and Libraries Division ("USAC/SLD" or "SLD") asserts the rule that the valuation of the trade-in equipment must be

¹ 47 C.F.R. Section 1.115.

² *Requests for Review of the Decision of the Universal Service Administrator*, File No. SLD-148309, CC Docket 02-6, Order, DA 05-498 (rel. February 25, 2005).

³ In addition to the RCOE and Spectrum Communications Cabling Services, Inc. Files, DA 05-498 also responds to Requests for Review of the Decision of the Universal Service Administrator filed by ATEK Construction, Inc. - Los Angeles Unified School District (File No. SLD 153005); SBC-Illinois and Ameritech Advanced Data Services, Inc. - Harvey Public School District, Harvey, Illinois (File No. SLD 190697); Southwestern Bell Telephone Company - Education Service Center - Region 1, Edinburg, Texas (File No. SLD 2002704); Verizon New Jersey, Inc. - Dar Al-Hikmah Elementary School, Prospect Park, New Jersey (File No. SLD 310459); Schools and Libraries Universal Support Mechanism, CC Docket No. 02-06.

RVPLUB\RMG\6922841.5

based on the fair market value of the equipment and that the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the funding year.⁴ Under this rule, USAC/SLD asserts that the trade-in equipment at issue was over-valued because it was valued on a date prior to the beginning of the funding year which in this case is July, 1999.

Spectrum does not deny that it valued the equipment as of March, 1999, a date prior to the beginning of the funding year. Spectrum has argued that it is inherently unfair for USAC/SLD to seek recovery for an incorrect determination of the valuation date because no program rule of FCC guidance on this issue existed at the time the transaction occurred and the SLD neither announced a rule nor sought guidance from the FCC on this issue until four years after the transaction. While there may be merit to Spectrum's argument that no recovery should be sought on fairness grounds, there is no dispute that Spectrum admitted being the party with first hand knowledge of the actual pieces of equipment in question, had superior knowledge as to appropriate fair market value for the equipment, and was the party that determined and assigned the value to the equipment as of March, 1999.

USAC has already confirmed as much. In its Administrator's Decision on Appeal dated July 1, 2004, USAC clarifies it considered Spectrum's arguments and denied them in full.⁵ Consequently, a remand is unnecessary in this case both because Spectrum has admitted, and USAC has already determined, consistent with the direction set forth in the Fourth Report and Order, that Spectrum was the responsible party for determining the value of the property at the

⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company to Elliott Duchon, ROP-Riverside, (October 3, 2003) (on file with Schools and Libraries Division, Universal Service Administrative Company). A true and correct copy of the USAC/SLD letter is attached and hereafter referred to as Exhibit "A."

⁵ Letter from Universal Service Administrative Company, Schools and Libraries Division to Pierre Pendergrass, Spectrum Communications Cabling, Inc. (July 1, 2004) (on file with Schools and Libraries Division, Universal Service Administrative Company). A true and correct copy of the Administrator's Decision is attached and hereafter referred to as Exhibit "B."
RVPUBARMG692841.5

time of trade-in.

Accordingly, RCOE seeks a reversal of DA 05-498 and a finding that as that Order applies to RCOE and Spectrum, there is no need for USAC to reconsider the party responsible for the applicable rule violation at issue.

II. STATEMENT OF FACTS

RCOE is a governmental agency which, among other duties, provides fiscal oversight for 23 school districts within Riverside County. (See Cal. Educ. Code § 1000 *et seq.*) As part of this fiscal oversight, RCOE assists constituent school districts in acquiring federal and state funding, including participation in the federal "E-Rate" Program which provides eligible schools and libraries funding and discounts on products and the costs of telecommunications services, internet access and internal connections.

A. RCOE's Solicitation for E-Rate Proposals

RCOE formed a consortium of its member school districts for the purpose of applying for E-Rate Program discounts in the 1999-2000 funding year. On or about March 9, 1999, RCOE filed a Form 470 Application with the SLD, which served to solicit proposals from prospective service providers for a range of eligible E-Rate products and services.

B. Spectrum's Determination of the Fair Market Value Rate

After examining existing equipment which RCOE consortium members intended to trade-in to Spectrum for the purpose of providing its E-Rate matching funds, Spectrum determined the fair market value of the equipment to be \$1,813,505.83. (Letter from Pierre F. Pendergrass, General Counsel, Spectrum Communications Cabling Inc., to Schools and Libraries Division (December 2, 2003) (on file with Schools and Libraries Division, Universal Services Administrative Company) at 2.) Spectrum professes it calculated the fair market value of RCOE's equipment based upon its considerable expertise in the purchase and sale of new and used technology equipment in the Riverside market. (Letter from Pierre Pendergrass, General

Counsel, Spectrum Communications Cabling Inc., to Federal Communications Commission (August 30, 2004) (on file with Federal Communications Commission) at 4).

Specifically, Spectrum claims that it: (i) had previously sold and installed the specific pieces of equipment at issue; (ii) was knowledgeable about the manner in which the equipment had been used and maintained; (iii) was knowledgeable about the training and expertise of the staff who had been using the equipment; and (iv) most importantly, had detailed knowledge about the identity and needs of potential buyers of the specific pieces of equipment in question. (Letter from Pendergrass to Federal Communications Commission of 8/30/04 at 4).

C. RCOE's Selection of Spectrum as its Service Provider

After determining the fair market value of the equipment, Spectrum then submitted a bid proposal to the Form 470. (Letter from Pendergrass to Schools and Libraries Division of 12/02/03 at 2). Spectrum asserts that after carefully considering the type, amount and condition of the equipment held by the RCOE consortium, it developed a proposal that would enable the consortium members to meet their technology plan objectives while, at the same time, avoid a cash outlay. Spectrum also asserts that RCOE reviewed this proposal and found it to be the most cost-effective response to its Form 470. (Letter from Pendergrass to Schools and Libraries Division of 12/02/03 at 6).

RCOE concurs that its decision to select Spectrum was based on the fact that Spectrum had experience as an E-Rate service provider and had knowledge of the specific technological needs of the school districts in the consortium. More importantly, the decision was based on the fact that Spectrum counseled RCOE and the participating school districts that the districts could trade-in, and Spectrum would accept, existing equipment⁶ for the new equipment.

Because Spectrum's bid proposal was the most advantageous to RCOE, RCOE filed a

⁶ Any equipment traded-in was not purchased with Universal Service Funds (i.e., non-E-Rate funded equipment.).
RVPUURMG6928415

Form 471 documenting RCOE's acceptance of Spectrum's proposal and its selection of Spectrum as its service provider, which was approved as submitted. Sixteen school districts took advantage of Spectrum's offer to credit trade-in equipment value to meet some or all of their identified 33% match obligation.⁷

D. USAC Determination of Erroneous Fair Market Value Rate

In October 2001, USAC engaged Arthur Andersen LLP to conduct an audit which was undertaken with the assistance of RCOE, the school districts and Spectrum. As a result of the audit, Arthur Andersen LLP questioned the trade-in value placed on the used equipment. Spectrum then commissioned an independent appraisal of the trade-in equipment. Based on the Arthur Andersen LLP audit and using July 1, 1999 appraisal values from the appraisal report, on or about October 3, 2003, RCOE and Spectrum received a letter from USAC/SLD seeking recovery of \$707,521.34 which represents the difference between the equipment trade-in value as determined by Spectrum, and the trade-in value determined to apply under the SLD rule that such value must be based on the fair market value of the equipment on the date the service

⁷ The 16 school districts are as follows: (1) Alford Unified School District; (2) Banning Unified School District; (3) Corona/Norco Unified School District; (4) Desert Sands Unified School District; (5) Hemet Unified School District; (6) Jurupa Unified School District; (7) Lake Elsinore Unified School District; (8) Menifee Unified School District; (9) Moreno Valley Unified School District; (10) Murrieta Valley Unified School District; (11) Palm Springs Unified School District; (12) Palo Verde Unified School District; (13) Perris School District; (14) Romoland School District; (15) Temecula Valley Unified School District; and (16) Val Verde Unified School District. RCOE was also informed that Corona/Norco Unified School District and Jurupa Unified School District would both trade in old equipment and make a cash payment to meet their 33% match amounts. The USAC Funding Commitment Decision Letter stated that each district would be responsible for paying 33% of the technology installation, while the other 67% would be paid directly to the service provider. A true and correct copy of the USAC Funding Commitment Decision Letter is attached and hereafter referred to as Exhibit "C".

⁹ Letter of Rina M. Gonzales, Attorney, Riverside County Office of Education, to Schools and Libraries Division (December 2, 2003) (on file with Schools and Libraries Division, Universal Service Administrative Company) and Letter of Pierre Pendergrass, General Counsel, Spectrum Communications Cabling Inc., to Schools and Libraries Division (December 2, 2003) (on file with Schools and Libraries Division, Universal Service Administrative Company). A true and correct copy of the RCOE appeal letter is attached and hereafter referred to as Exhibit "D". A true and correct copy of the Spectrum appeal letter is attached and hereafter referred to as Exhibit "E".

provider took possession of the equipment, but not earlier than the beginning of the funding year.
(See Exhibit "A").

In this letter, USAC/SLD asserted that the Universal Service Funding provided to the 16 districts listed above was "erroneously disbursed" and provided the following explanation to each district:

Disbursed Funds Recovery Explanation: After a detailed review of documentation pertaining to this funding request the SLD has found that a recovery of erroneously disbursed funds in the amount of [dollar amount differs for each district] is required. A beneficiary audit discovered that the service provider accepted trade-in for the non-discounted share of services provided. This is permitted under the rules of the Schools and Libraries Division Support Mechanism, as the original equipment was not purchased with Universal Service Funds. The valuation of the trade-in equipment must be based on the fair market value of the equipment. Furthermore, the valuation date should be the date that service provider took possession of the equipment, but not earlier than the beginning of the funding year. The service provider has provided an independent appraisal of the trade-in equipment. Using the July 1, 1999 value indicated in that appraisal, it was determined that the trade-in value was only [dollar amount differs for each district], which is [dollar amount differs for each district] less than the non-discounted share of [dollar amount differs for each district] that the applicant was obligated to pay. Since the applicant did not cover [dollar amount differs for each district] of their portion of the charges, the corresponding portion of these charges paid by SLD must be recovered. At the 67 percent rate of this request, that translates to [dollar amount differs for each district]. As a result this amount of [dollar amount differs for each district] determined to have been erroneously disbursed and must now be recovered. (Exhibit "A", at pp. 5-22.)

E. Appeals of USAC Determination that Fair Market Value in this Instance Should be Calculated as of July 1, 1999, as opposed to March, 1999 the date used by Spectrum

In December, 2003, RCOE and Spectrum filed separate appeals to USAC/SLD, as described *infra*.⁹ Spectrum appealed the SLD's decision on the grounds that it was misguided for USAC/SLD to determine that the appropriate valuation date for trade-in equipment is the date the service provider took possession of the equipment but no earlier than the beginning of the funding year, or in this case, July 1, 1999. Spectrum argued that all trade-in equipment should be valued on or around March 1, 1999, the date by which they calculated the fair market value of the trade-in property at issue in this matter. (Exhibit "E").

USAC issued an Administrator's Decision on Appeal - Funding Year 1999-2000 ("Administrator's Decision") on July 1, 2004. (Letter from Universal Service Administrative Company to Pierre F. Pendergrass, Spectrum Communications Cabling Services, Inc., (July 1, 2004) (on file with Universal Services Administrative Company, Schools and Libraries Division.) (Exhibit "B"). The Administrator's Decision explained that Spectrum's appeal was denied in full, finding that the factual background supported the SLD's decision and SLD appropriately valued the trade-in equipment using the July 1, 1999 valuation date. (Exhibit "B").

After receiving a courtesy copy of the Administrator's Decision, counsel for RCOE contacted counsel for USAC to verify its understanding of the outcome announced in the Decision.¹⁰ Counsel for USAC confirmed that USAC would only be seeking recovery from Spectrum. (Exhibit "F"). On August 30, 2004, Spectrum filed a Request for Review to the FCC ("Spectrum Appeal #2").¹¹ After reviewing Spectrum's Request, RCOE sent a letter to the FCC Office of the Secretary on October 1, 2004, requesting that RCOE be allowed to participate in the appeal process if USAC was considering changing its previous position.¹²

As described above, on February 28, 2005, the FCC issued a memorandum accompanied by FCC Order No. DA 05-498 to multiple parties, including RCOE and Spectrum.¹³ The FCC instructed that RCOE's October 1, 2004 letter, which it apparently was considered as a "Request for Review," and Spectrum's appeal be remanded to USAC for further review consistent with the Fourth Report and Order which serves to clarify that recovery of schools and libraries funds

¹⁰ See Declaration of Rina M. Gonzales attached and hereafter referred to as Exhibit "F."

¹¹ Letter from Pierre Pendergrass, General Counsel, Spectrum Communications Cabling, Inc., to Federal Communications Commission (August 30, 2004) (on file with Federal Communications Commission). A true and correct copy of the Spectrum Appeal #2 is attached and referred to hereafter as Exhibit "G".

¹² Letter from Rina M. Gonzales, Attorney, Riverside County Office of Education, to Federal Communications Commission (October 1, 2004) (on file with Federal Communications Commission). A true and correct copy is attached and hereafter referred to as Exhibit "H".

¹³ A true and correct copy of the memo and FCC Decision No. DA 05-498 is attached and hereafter referred to as Exhibit "I."

disbursed in violation of an applicable statute or a rule should be directed to the entity that is responsible for the statutory or rule violation.

RCOE is filing this current Application for Review on the grounds that the Telecommunications Access Policy Division has committed an erroneous finding as to an important or material question of fact, and seeks a determination that there is no need to remand this matter to USAC/SLD on the issue of what party is responsible for the statutory or rule violation at issue, since Spectrum admits that it was responsible for calculating the fair market value of the trade-in equipment, and USAC has already heard, and denied Spectrum's appeal on the grounds that USAC exceeded its authority in adopting a new policy without FCC Guidance that would be applied retroactively to Spectrum.

III. QUESTIONS PRESENTED FOR REVIEW

A. **Whether Spectrum Can Be Identified, Without Further Consideration by USAC, as the Party Responsible for the Rule Requiring that Fair Market Value Be Calculated on the Date a Service Provider Takes Possession of Trade-In Equipment, but not Earlier than the Beginning of the Fund Year.**

The only basis upon which USAC seeks recovery of funds is on the grounds that trade-in equipment was assigned an improper fair market value which led to uncovered charges that the SLD now attempts to recover. While the Fourth Report and Order has clarified that the USAC/SLD seek recovery against schools *when the school is responsible for the statutory or rule violation*, it is unnecessary to remand the RCOE and Spectrum files for further consideration by USAC/SLD since it is already clear that Spectrum is the sole party responsible for the valuation.

1. **Spectrum Admits They Were the Party Responsible for Calculating the Fair Market Value of Trade-In Equipment**

There is no dispute that Spectrum calculated the fair market value of all trade-in equipment at issue and represented to RCOE how this would determine RCOE's obligations under the E-Rate Program. In fact, to support its argument that it was in the best position to

make such a determination, it has asserted before USAC that: "Spectrum, based upon its considerable expertise in the purchase and sale of new and used technology equipment, calculated the fair market value of Riverside's trade-in equipment as of March 1999." (Exhibit "G" at 1). Spectrum may have a fair argument that the SLD and USAC exceeded their authority when they established a SLD Program rule regarding the timing of fair market valuations for trade-in equipment to E-Rate services that were provided years earlier, however, this does not change the fact that Spectrum was the party responsible for calculating the value of the trade-in equipment, which is the only issue for remand.

Spectrum's own factual assertions, in both of its appeals, demonstrate that it is the responsible party in this matter. Spectrum admitted that it calculated the fair market value of RCOE's equipment based upon its previous experience and has also argued that Spectrum's valuation of the equipment at the time the parties entered into their agreement in March of 1999 was subsequently substantiated by an independent third-party appraisal. (See Exhibit "G" at i, 4, 6, 7, 9, 10, 19; see also Exhibit "E" at 2, 3, 5, 6, 8, 9). These direct admissions are significant as USAC's sole reason for seeking recovery of allegedly erroneous disbursed monies is due to the timing of the valuation.

Spectrum has also freely stated that its fair market valuation created the best proposal for RCOE. As an experienced technology service provider, Spectrum assisted the districts in determining what technology was required, provided pricing for that technology as a California's Multiple Award Schedule (CMAS) vendor, and provided what it represented to be the fair market value of all trade-in equipment.

Given the very short time frame available to proceed with the project for the school districts, RCOE and the school districts relied on Spectrum's experience implementing the district's technology goals, awareness of the district's existing technology, knowledge of the fair market value of that technology, and evaluation of district needs regarding upgrades. Spectrum

was selected by RCOE to be the service provider in part due to Spectrum's counsel that the school districts could trade-in, and Spectrum would accept existing equipment for the new equipment, and that based upon the fair market value they determined, such trade-ins would meet some or all of their required 33% match obligation.

RCOE also relied on Spectrum's knowledge and representations as to the value of the trade-in equipment when they made their ultimate decisions as to what new equipment to purchase and when they determined the additional funding, if any, that was necessary to secure that equipment. Finally, RCOE relied on the information provided by Spectrum in preparing the application on behalf of the school districts and representing that the school districts had secured access to all resources necessary to pay the discounted charges for eligible services.

2. USAC Has Already Considered Spectrum's Arguments Supporting its Position as to Why Spectrum's Fair Market Value Calculation should be upheld

The request for remand, set forth in DA Order No. 05-498, is not necessary with respect to the present case because USAC has already been afforded an opportunity to pass on the issue of which party is responsible in this case. USAC's decision firmly rejects all of Spectrum's arguments and found that Spectrum was the responsible party. Specifically, USAC has already evaluated the merits of Spectrum's arguments and concluded that Spectrum violated the USAC Program rule that the valuation of trade-in equipment must be based on the fair market value of the equipment, and that the valuation date should be the date the service provider took possession of the equipment, but not earlier than the beginning of the fund year. (Exhibit "A"). USAC concluded that Spectrum violated this rule because Spectrum valued the trade-in equipment prior to the commencement of the funding year and prior to the time Spectrum took possession of the equipment. (See Exhibit "B").

The Administrator's Decision carefully considered the arguments advanced by Spectrum, including the following: (1) Spectrum's assertion that "the SLD determination in this matter is

misguided and SLD should cease its attempt to recover funds disbursed"; (2) Spectrum's argument stating "that it is inherently unfair to seek recovery from Spectrum for an incorrect determination of the valuation date because no program rule of FCC guidance on this issue existed at the time the transaction occurred"; (3) Spectrum's assertion that "although the independent appraisal Spectrum provided did value equipment in the amounts indicated in the [Recovery of Erroneously Disbursed Funds] Letter, this appraisal is not more authoritative than Spectrum's opinion because Spectrum had first hand knowledge of the actual pieces of equipment in question"; and (4) Spectrum's further claim that "the [independent] appraisal is less reliable than Spectrum's opinion at the time it received the equipment because the appraisal is based upon information that is almost four years old." (See Exhibit "B"). The Administrator cited to all of these arguments, its review of the appeal letter and relevant documentation, and still found that the facts supported the SLD's decision to seek recovery for the subject funds. (Id.).

After considering these arguments, the Administrator still reasoned that Spectrum's valuation date violated the Program rule, as "the trade-in amount was based on the value of the equipment at the time of the contract, which was before the start of the funding year and several months before Spectrum was set to take possession of the equipment." (Exhibit "B"). Further, the decision also pointed out that "although the agreement was executed in March 1999, the equipment was not transferred until after the start of the Funding Year." (Id.) The Administrator concluded that "it [was] appropriate for SLD to value the equipment as of July 1, 1999." (Id.) The Administrator also emphasized that USAC must make an effort to ensure that there is "no waste, fraud and abuse." (Id.)

3. The only entity addressed by the USAC/SLD was Spectrum.

RCOE finds it significant that this decision, was the only response provided to the letters of appeal, filed by RCOE and Spectrum, separately, on December 2, 2003, (See Exhibits "D"

and "E"), and that the decision was only addressed to Spectrum's legal counsel, Pierre Pendergrass, with a courtesy copy was provided to both RCOE and RCOE's legal counsel. (Exhibit "B".)

RCOE, however, did not simply rely on the holding provided in the Administrator's Decision. Upon receipt of the Administrator's Decision, RCOE's legal counsel contacted a USAC attorney to confirm USAC's position that it would not seek recovery from RCOE because it had determined Spectrum to be the responsible party, and whether RCOE would be required to participate in any further appeals. (Gonzales Decl. ¶ 2.) RCOE was informed by a USAC attorney that RCOE's December 2, 2003 letter was not considered a true "appeal" as it had requested confirmation that recovery would be sought solely from Spectrum. (*Id.*; see also Exhibit "B" at pp. 2 and 7) Moreover, the USAC attorney stated that USAC would not provide a decision letter to RCOE. (*Id.*) Thus, while USAC had the opportunity to review a letter of appeal from Spectrum, as well as RCOE, it determined that its ruling would apply to Spectrum as the responsible party. This decision effectively dismissed RCOE from the dispute.

4. The Clarification Set forth in the Schools and Libraries Fourth Report and Order Does Not Alter USAC's Previous Conclusion that Spectrum is the Responsible Party in this Matter.

Through Order DA 05-498, the Telecommunications Access Policy Division remanded RCOE File No. SLD-148309 and Spectrum Communications Cabling Systems, Inc. ("Spectrum"), File No. SLD-148309, since USAC may now consider the fact that recovery of schools and libraries funds disbursed in violation of an applicable statute or rule can be sought from schools and libraries. However while the Fourth Report and Order clarifies this with more specificity, such a policy is essentially just an extension of USAC's practice already in existence of holding the party that has committed the statutory or rule violation be responsible. For example, when USAC has found that a school district has not followed the required competitive bidding processes, or has failed to make a bona fide request for services, or has failed in its

responsibility to ensure that the service provider it had contracted with was indeed a telecommunications provider whose status as a telecommunications provider would be appropriately reflected in its application materials, then in those situations, schools districts can be denied funding because specifically they have violated the rule requiring such a process to be followed.¹⁴

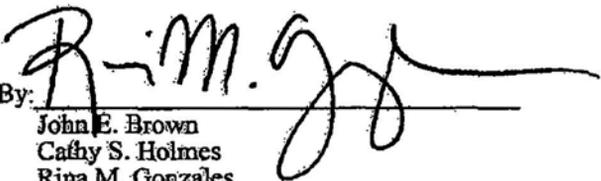
None of these potential rule violations for which school districts are responsible are currently before the USAC. Here again, the only rule at issue is SLD's Program rule that trade-in equipment must be valued at the time the equipment changed hands or on the first date of the applicable E-Rate funding year. RCOE had no involvement with the determination of the fair market value, as this was within the sole responsibility of Spectrum.

IV. CONCLUSION

For these reasons, RCOE respectfully requests that the FCC reverse DA 05-498 and find that, Spectrum's own contentions on appeal as well as the USAC Administrator's collectively have already determined that Spectrum was the party responsible for the rule violation at issue.

Dated: April 26, 2005

BEST BEST & KRIEGER LLP

By: 

John E. Brown
Cathy S. Holmes
Rina M. Gonzales
Attorneys for Riverside County
Office of Education

¹⁴See Request for Review of the Decision of the Universal Service Administrator by Pean Hills School District Pittsburgh, Pennsylvania, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD 174801, CC Docket Nos. 96-45 and 97-21, Order, DA 02-85 (rel. January 14, 2002). See also Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service, SPIN-143006149, CC Docket No. 96-45, Order, FCC 00-167, (rel. May 23, 2000).

RVPUBRMG692841.5

Price, John.

From: Ed Falkowitz [efalkowitz@universalservice.org]
Sent: Monday, March 03, 2003 7:56 AM
To: 'Price, John'
Cc: Robert Rivera; George McDonald
Subject: Riverside (Ben 143743) FY 1999 - Equipment Traded-In

We have received guidance from the FCC regarding trade-in values. The guidance is that the presumption is that equipment traded-in had a useful life of 3 years when originally purchased and that the value of the equipment declines in a straight line basis. This is a rebuttable presumption and SLD is to consider evidence to support a different fair market value. In the case of the equipment purchased by Riverside County (BEN 143743) for funding year 1999, this guidance is analyzed on the attached spreadsheet. I would appreciate your review of the attached. Let me know in the next couple of days if you have any comment on the analysis. Also, let me know if you have any additional evidence to support the fair market value of the equipment other than what you have already supplied.

Thanks,

Ed Falkowitz
Schools and Libraries Division
Phone: 202-263-1620
Fax: 202-776-0080

style of Trade In received by Spectrum
reside County (BEN 143743)

BEN	471 PRN#	Applicant	SPIN	Service Provider	Amount Paid	Amount Approved	Year	School	Quantity Traded-In			Trade-In Value	Paid in Cash	Total Payments by Applicant	Maximum Commitment Amount	Refund Due
									Discount	Non-Discounted	Other					
143743	148309	290371 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$190,018.55	\$190,018.55	1999	Alvard	87	389,581.23	2	27	\$ 2,338.26	\$ 24,398.26	\$ 49,409.96	\$ 140,808.87
143743	148309	290378 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$102,272.47	\$102,272.47	1999	Banning	87	\$50,868.84	1	15	\$ 13,083.35	\$ 13,083.35	\$ 28,563.17	\$ 76,709.30
143743	148309	290375 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$82,254.07	\$82,254.07	1999	Beaumont	87	\$48,458.97			\$ 46,458.89	\$ 46,458.89	\$ 92,254.31	\$ 0.50
143743	148309	290374 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$174,886.16	\$174,886.16	1999	Couchella	87	\$86,137.96			\$ 88,137.92	\$ 86,137.92	\$ 174,886.08	\$ 0.08
143743	148309	290356 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$338,988.71	\$338,988.71	1999	Corona Horco	87	\$188,478.14	4	46	\$ 43,791.33	\$ 43,791.33	\$ 89,906.87	\$ 247,087.04
143743	148309	290369 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$16,528.39	\$16,528.39	1999	Desert Center	87	\$8,138.88			\$ 8,139.87	\$ 8,139.87	\$ 16,528.40	\$ (0.01)
143743	148309	290365 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$219,851.52	\$219,851.52	1999	Desert Sands	87	\$154,822.98	4	42	\$ 41,350.74	\$ 41,350.74	\$ 83,834.83	\$ 229,976.99
143743	148309	290372 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$212,053.75	\$212,053.75	1999	Hemet	87	\$104,444.37	2	31	\$ 28,778.88	\$ 28,778.88	\$ 54,365.12	\$ 157,688.61
143743	148309	290373 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$217,582.53	\$217,582.53	1999	Juniper	87	\$107,187.86	1	14	\$ 12,473.20	\$ 12,473.20	\$ 25,324.38	\$ 192,258.15
143743	148309	290367 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$184,508.75	\$184,508.75	1999	Lake Elsinore	87	\$90,877.94	2	28	\$ 23,728.11	\$ 23,728.11	\$ 48,171.19	\$ 136,337.56
143743	148309	290367 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$44,070.38	\$44,070.38	1999	Menifee	87	\$21,706.31	0	8	\$ 4,881.19	\$ 4,881.19	\$ 9,910.28	\$ 34,160.09
143743	148309	290382 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$385,168.80	\$385,168.80	1999	Moreno Valley	87	\$194,828.38	5	53	\$ 51,893.80	\$ 51,893.80	\$ 108,982.85	\$ 288,806.28
143743	148309	290381 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$125,307.65	\$125,307.65	1999	Murrieta	87	\$81,719.89	1	39	\$ 27,728.91	\$ 27,728.91	\$ 56,294.03	\$ 69,013.62
143743	148309	290384 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$33,052.78	\$33,052.78	1999	NuView	87	\$18,278.73			\$ 18,278.73	\$ 18,278.73	\$ 33,052.78	\$ (0.01)
143743	148309	290355 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$173,482.15	\$173,482.15	1999	Palm Springs	87	\$85,451.36	2	24	\$ 22,505.81	\$ 22,505.81	\$ 45,893.82	\$ 127,588.33
143743	148309	290363 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$86,746.08	\$86,746.08	1999	Palo Verde	87	\$42,728.02	1	32	\$ 23,455.87	\$ 23,455.87	\$ 47,822.83	\$ 39,123.88
143743	148309	290377 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$44,070.38	\$44,070.38	1999	Parris Elementary	87	\$21,706.31	0	8	\$ 4,881.19	\$ 4,881.19	\$ 9,910.29	\$ 34,160.09
143743	148309	290378 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$86,746.08	\$86,746.08	1999	Parris High	87	\$42,728.88			\$	\$	\$	\$ 86,746.08
143743	148309	290353 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$248,431.29	\$248,431.29	1999	Riverside USD	87	\$121,376.80	8	28	\$ 35,519.49	\$ 35,519.49	\$ 72,115.33	\$ 174,315.93
143743	148309	290366 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$38,561.58	\$38,561.58	1999	Romoland	87	\$19,982.02	0	7	\$ 4,271.04	\$ 4,271.04	\$ 8,571.50	\$ 29,890.08
143743	148309	290359 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$75,728.48	\$75,728.48	1999	San Jacinto	87	\$37,288.11			\$	\$	\$	\$ 75,728.48
143743	148309	290379 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$179,000.95	\$179,000.95	1999	Temecula	87	\$89,184.85	2	25	\$ 23,115.96	\$ 23,115.96	\$ 46,832.41	\$ 132,068.54
143743	148309	290381 R O P - RIVERSIDE COUNTY	143010185	Spectrum Communications	\$312,806.76	\$312,806.76	1999	Val Verde	87	\$153,970.40	1	53	\$ 38,288.98	\$ 38,288.98	\$ 73,837.04	\$ 238,969.72
									33	478	\$ 420,187.78	\$ 420,187.78	\$ 1,189,787.21	\$ 2,812,198.88		

ge al Trade In 2.5 Years
Original Cost Value @ 3yr life
300 series switch \$23,888.78 \$3,831.13
hor2822 Switch \$ 3,660.89 \$ 610.15