



SEP 11 2009

FCC Mail Room

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ELECTRIC & WATER UTILITIES

September 10, 2009

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Request for Review

CC Docket Nos. 96-45 and 02-6

Funding Year 2003-2004
FRN: 924263
Billed Entity Name: Cumberland Co Public Library
Form 471 Application Number: 342528
Billed Entity Number: 126974

Appellant: Public Works Commission of the City of Fayetteville
SPIN: 143025382
FCC Registration Number: 0001916634

Dear Ms. Dortch:

This letter is a Request for Review of the Universal Service Administrative Company (USAC) Administrator's Decision on Appeal, issued on July 13, 2009 in respect of the above cited application. A copy of that Decision has been attached for your convenience. The original appeal was filed by the service provider on this FRN, the Public Works Commission of the City of Fayetteville

The FRN in question was originally filed by the applicant as "Telecommunication Services." At some point during Program Integrity Assurance (PIA) review USAC changed the category of service to "Internet Access." The original Form 470 that was cited by the applicant (No. 383030000386269) was changed (to No. 521720000420641) but both the original Form 470 and the substituted Form 470 included requests for both Telecommunications Services and Internet Access.

The original Funding Commitment Decision Letter was dated May 1, 2003. It indicated that funding was approved and that the FRN was modified by SLD. It stated:

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"The category of service was changed from Telecom to Internet Access in accordance with program rules. The estimated one-time and/or monthly charge was changed to reflect the documentation provided by the applicant." (There is no dispute that the final amounts contained in the FCDL accurately reflect the monthly pre-discount cost of \$425/facility and that there are six facilities, for a total pre-discount request of \$30,600.00.)

Subsequently, on May 7, 2009, USAC issued a Notification of Commitment Adjustment Letter which rescinded the funding for this FRN by finding that the category of service had been incorrectly changed. PWC filed an appeal with USAC on July 1, 2009 based on that Notification.

On July 13, 2009, USAC issued its decision on the appeal. In that Administrator's Decision, USAC states:

"Further examination of the Item 21 and additional documentation reveals that the requested PVC and point-to-point Fiber Service are in fact Telecommunications Services."

The Administrator's Decision then goes on to state that the Public Works Commission of the City of Fayetteville (PWC) is not an eligible provider of Telecommunications Services.

PWC does not dispute that it is not an eligible provider of Telecommunications Services, as it does not operate on a common carrier basis. However, PWC does dispute the finding that "the requested PVC and point-to-point Fiber Service are, in fact, Telecommunications Services. Instead, these are technologies that provide broadband (basic conduit) access to the Internet.

According to the Eligible Services List dated October 10, 2003 (which governed applications for the Funding Year 2003-2004), Broadband Internet Access is defined as: "An integrated information service that provides high speed transmission through T-1 lines, DSL, Frame Relay, cable modems, wireless facilities, **or other technologies** may be eligible for funding as Internet access if that offering is the most cost-effective means of accessing the Internet." (emphasis added)

The broadband services here constitute a connection between the library facilities and the backbone ring which provides access to the Internet. As such, this is an eligible service, even when provided by an entity that is not an eligible provider of Telecommunications Services. Therefore, USAC acted correctly in the first instance, when it changed the category of service from Telecommunications Services to Internet Access.

We respectfully request your review of the Administrator's Decision and we would be happy to provide any further information required.

You may contact:

Ms. Charlotte Morrison
Supervisor, Information Systems
Public Works Commission
955 Old Wilmington Road
Fayetteville, NC 28301
Telephone: 910.223.4320
Fax: 910.323.4832
Email: charlotte.morrison@faypwc.com

A copy of this appeal has been shared with the contact person for the applicant, Kenneth Young at the Cumberland Co Public Library.

Sincerely,



Barney McClure
Director, Information Systems
Public Works Commission of the City of Fayetteville

~~2/19/2009~~

Received & Inspected

SEP 11 2009



Universal Service Administrative Company
Schools & Libraries Division

FCC Mail Room

Administrator's Decision on Appeal – Funding Year 2003-2004

July 13, 2009

Charlotte Morrison
Public Works Commission
955 Old Wilmington Road
Fayetteville, NC 28301

Re: Applicant Name: CUMBERLAND CO PUBLIC LIBRARY
Billed Entity Number: 126974
Form 471 Application Number: 342528
Funding Request Number(s): 924263
Your Correspondence Received: July 01, 2009

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2003 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 924263
Decision on Appeal: **Denied**
Explanation:

- USAC has determined that the above FRN was categorized under the Telecommunications Service category, but was then incorrectly approved under the Internet Access Service Category. Further examination of the Item 21 and additional documentation reveals that the requested PVC and point-to-point Fiber Service are in fact Telecommunications Services. Only basic conduit access to the Internet or services that are integral component part of basic conduit access to the Internet are eligible in the Internet Access category of service. Therefore, PVC and point-to-point Fiber Service are considered a Telecommunications Service. Per Program Rules, the vendor providing the Telecommunications Service must meet the FCC eligible common carrier designation requirements to be deemed as an eligible carrier in the USAC database. The service provider listed for the FRN was deemed an ineligible Telecommunications provider in the

USAC database. It is the responsibility of the applicant to ensure that all requested telecommunications services are provided by an Eligible Telecommunications Provider (ETP). Additionally, as is noted at <http://www.usac.org/sl/about/commitments-adjustments.aspx>, "USAC may discover that certain funds were committed in error. In order to be sure that no funds are used in violation of program rules, USAC must then adjust those funding commitments."

- An Eligible Telecommunications Provider (ETP), a USAC term used for "telecommunications carrier," is an entity that provides telecommunications services, i.e., transmission services on a common carriage" basis. To be a telecommunications carrier, the carrier must (1) allow the customer to transmit information of its own design and choosing, without change in the form or content of the information, and (2) provide that capability for a fee directly to the public, or to such classes of users as to be effectively available to the public (i.e., hold itself out to serve indifferently all potential users). USAC makes commitments for Telecommunications Services for applicants when the service provider is identified in USAC's database as an ETP; but, notwithstanding that identification, it is the service provider that is responsible for ensuring it meets these requirements in all instances of discounted telecommunications services. All telecommunications carriers are required under FCC rules to file an FCC Form 499A. By filing a Form 499A and checking at least one of the boxes on line 227, USAC may designate a service provider as an eligible telecommunication provider in its database. Since your appeal has not brought forth persuasive information that SLD has erred in its determination, your appeal is denied.
- Your Form 471 indicates that you selected a service provider that has not been designated as an eligible telecommunication carrier in the USAC database: Public Works Commission of the City of Fayetteville. FCC regulations provide that telecommunications carriers are eligible for universal service support. 47 C.F.R. § 54.501(a). The FCC has determined that to be eligible to receive universal service support for telecommunications services, the provider must provide telecommunications services on a common carrier basis. Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, FCC 97-157 ¶ 134 (rel. May 8, 1997)

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

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

Schools and Libraries Division
Universal Service Administrative Company

cc: Kenneth C. Young