

In support of this appeal, the appellants' papers consist of this letter of appeal, the attached appeal appendix documents, and the accompanying, September 17, 2009 affidavit of Scott DeCarolis, president of Future, which is also included in the appendix for the Commission's ease of reference. Pa1-9.

SCOPE OF THE APPEAL: ADJUSTMENTS OF FUNDING REQUESTS

HOLY ROSARY ELEMENTARY ACADEMY (UNION CITY, NJ)	
Notice of Commitment Adjustment Letters (3):	April 24, 2009 (Pa1 - Pa9)
Funding Request Numbers:	1260032 1262669 1262686
Billed Entity Name:	Holy Rosary Elementary Academy
FCC Registration Number from Letter:	0012004933
Billed entity number:	7008
Form 471 Application Numbers:	458734, and 459674
SPIN Name / Number:	Future Generation, Inc. / 143007891

Summary and Analysis of Adjustments Sought			
Funding Req. No.	Contract No.	Requested Amount	Actual Funding
1260032	1729	\$369.50	\$332.55
1262669	1509	\$9,900.00	\$8,910.00
1262686	1511	\$3,795.00	\$1,707.75
Total Commitment Adjustment:			\$10,950.30

NATURE OF THE APPEAL

This appeal concerns the inability of both the applicant for services and the service provider to find signed, written contracts for the three Funding Request Numbers identified above, and the demand of the Universal Service Administrator of the applicant, a long closed elementary school, for funding recovery with respect to each of the contractual payments. Pa10. While the provider, at USAC's request, has marshaled more than 150 contracts and other documents related to other applicants, it has only been able to locate unsigned, computer generated copies of the Holy Rosary contracts in question. Pa11.

STATEMENT OF RELEVANT FACTS

The contract for FRN 1260032, #1729, was awarded on February 5, 2005, more than four years ago. Pa14-20 The Form 471 for this service includes a certification made at the time by Holy Rosary's principal, Martha Velez, stating that:¹

I certify that I and the entity(ies) I represent have complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. There are signed contracts covering all of the services listed on this Form 471. . . . I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities. [Emphasis added.] Pa 19.

The contracts for FRN 1262686, #1511, and for FRN 1262669, #1509, were both awarded on January 31, 2005. Pa25-28 The Form 471 for these services also includes the same certification under oath made at the time by Holy Rosary's principal, Martha Velez, that, "There are signed contracts covering all of the services listed on [the] Form 471." Pa27.

The Order operated the applicant, Holy Rosary Elementary Academy, a private, Roman Catholic PK - 8 school for a number of years, including Funding Year 2005. The school was closed

¹ There is also a certification by Ms. Velez that she will maintain the records related to the application for a period of 5 years following the last date of service. Pa 27. However, as noted by the accompanying affidavits, the school is closed, Ms. Velez is out of a job, and did not maintain the records. Nonetheless, it is important to note that USAC is not seeking a commitment adjustment based on a violation of record keeping standards but only on the assumption that there was no signed contract at the time. In the absence of the actual document, however, under the Best Evidence Rule, her certification, especially when coupled with the closure of the school and the destruction of its records, establishes the existence of the contract and refutes the mere assumption by USAC that no contract was signed and extant at the time of the application for discount funding.

at the end of the 2006 school year. Pa31. Martha Velez, who certified to USAC and the FCC that there were signed contracts in her possession at the time when she filed the Forms 471, acted as its principal through to the end of her employment. Pa35. When asked, Ms. Velez asserted that she maintained no documents in her personal possession and that she could no longer give anyone advice on where the signed contracts might be stored. Pa35.

Similarly, Sister Olivia Reginella, whose affidavit accompanied the appeal to USAC, made diligent inquiry through the school's archived documents (most of which relate to students and faculty) but was unable to find the contracts with Future Generation. Pa29 - Pa32. However, she has admitted that in the closure process the school's personnel did shred documents and it is likely that the relevant contracts were among the shredded items. Pa 31. It's worth noting that the school's documents entailed and encompassed over fifty (50) years of operation in the heavily urban environment of Union City, New Jersey. Pa31.

Future is a service provider engaged in the business of providing computer, telecommunications and networking services to various schools and libraries throughout the State of New Jersey. Pa34. Its services include system and software sales, technical and network administration services, complete networking services (copper, fiber optic, and wireless), comprehensive maintenance and support, as well as training. Pa34. Future has been engaged as a service provider to K - 12 educational organizations in the E-rate program since 1998. Pa34.

In each instance, the Commitment Adjustment Letters outlined above relate:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. This determination was based on attempts at contact with the applicant (school closed), Archdiocese of Newark, Sisters of the Catholic Apostolate and the service providers who responded with contracts with no signatures. FCC rules require applicants to have a valid contract as defined by the applicants' state laws at the time they submit the Form 471. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471 that meets the state laws' definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds. Pa4; Pa8; Pa9.

Contrary to the conclusion of USAC staff, both the Order and Future maintain that the services rendered under the relevant funding requests were contracted with a writing and that, moreover, the Velez certifications and the parties' actual performance under the contract(s) was

sufficient evidence of a binding, enforceable contractual obligation under New Jersey law. Pa 39 - Pa 47. The inability to locate the documents, however, does not support the baseless supposition of USAC that there was no contract or contracts in place at the time.

Interestingly, too, it should not be overlooked that with respect to FRN 1262686, the actual amount committed by USAC, \$3,415.50, was not entirely drawn down because during the course of the engagement, which concerned internal connections, Future found that its costs declined and chose to pass the savings onto both the school and USAC, billing only \$1,707.75.² Pa 40; Pa 35-Pa 36.

Likewise, as described in the accompanying affidavit of Scott DeCarolis, three other Holy Rosary FRNs, 1262653, 1262679, and 1262691, approved by USAC and totaling approximately \$40,000, were never funded because Future determined upon inspection of the school and its technology needs that the services/equipment were unnecessary and impractical.³ Pa 36; Pa 40.

Under these last two circumstances, it would seem plain that no fraud or other wrongdoing could be asserted against either Holy Rosary or Future with respect to their USAC dealings. After all, had there been some sort of conspiracy afoot to dupe USAC, neither party would have been likely to have walked away from a \$40,000 engagement, settling instead for \$10,000 worth of work. Pa 36; Pa 40.

UNIVERSAL SERVICE PROCEDURAL BACKGROUND

The USAC is the not-for-profit corporation responsible for administering the Universal Service Fund and the four federal universal service programs, one of which is Schools and Libraries. The schools and libraries support mechanism, also known as the E-rate program, is administered under FCC oversight. *See generally, Fifth Report and Order, CC Docket No. 02-6 (FCC 2004).* Under the program, eligible schools may receive discounts for certain telecommunications services, voice mail, Internet access and internal connections. *See, 47 CFR §§ 54.502, 54.503.* Before applying for discounted services, the eligible applicant must first develop a technology plan to ensure that any services it purchases will be effectively used. The applicant must then submit a completed FCC Form 470, which will identify the applicant and the services it desires to obtain. *Fifth Report and Order, supra.*

² Such a reduction in costs would certainly counter any concern that the Commission or the Administrator might harbor that this matter is somehow infected with fraud, misuse or abuse of USAC funding procedures.

³ This, too, negates any concern of fraud.

Thereafter, the applicant must comply with the FCC's competitive bidding requirements — which do not require the use of RFPs — and, after obtaining the lowest responsible bid, enter into pertinent agreements with service providers and file FCC Form 471, which notifies the USAC of the services ordered, the provider hired, and an estimate of the funds needed to cover the discounts available for the services. *Id.* As noted at 47 C.F.R. Sec. 54.504 (c):

Filing of FCC Form 471. An eligible school . . . seeking to receive discounts for eligible services under this subpart shall, upon signing a contract for legible services, submit a completed FCC Form 471 to the Administrator. A commitment of support is contingent upon the filing of FCC Form 471.

Among other things, a Form 471 shall include the “certification under oath” of the person authorized to order telecommunications and other supported services for the eligible school, that, *inter alia*,

The entities listed in the application have complied with all program rules and acknowledge that failure to do so may result in denial of discount funding and/or recovery of funding. *See, 47 C.F.R. Sec. 54.504 (c)(1)(vi).*

Quite plainly, the certification of Ms. Velez which appeared on the three Forms 471 at issue in this matter, and which is quoted above, addresses this Code requirement.

Once a Form 471 is posted to the Administrator, then, depending on factors not relevant to the instant appeal, funding will issue from USAC to pay the provider's bills in whole or part. *Id.*

The crux of this matter as expressed by USAC in its adjustment letter is twofold:

- (1) FCC rules require applicants to have a valid contract as defined by the applicants' state laws at the time they submit the Form 471; and
- (2) The applicant was unable to demonstrate that they [sic] had a contract in place at the time of submission of the Form 471 that meets the state laws' definition of a valid contract.

Significantly, the adjustment in this case is not based on a failure to maintain the contracts as relevant documents under the five year storage of document requirement. Nor, importantly, does it involve any fraud or misuse of funds. Nonetheless, in response to the appeal to the Administrator made by the Order and Future, USAC responded with its denial as follows:

. . . The service provider provided a contract that was not signed. Therefore, USAC was not able to determine if Holy Rosary Elementary Academy had a signed contract in place with the service provider at the time of the filing of the Form 471. . . . Applicants must be able to demonstrate that it had a signed contract in place at the time it submitted the completed Form 471. On appeal, you confirm that a copy of the signed contract cannot be located. You also state that the applicant has complied with state law. Although applicants must comply with state and/or local contract law, applicants must also comply with FCC rules. Pa 48-49; Pa 50-51.

SLD has determined that, at the time you submitted your Form 471 application, you did not have a signed contract for services in place with your service provider(s) for services other than tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." 47 C.F.R. § 54.504(c). . . . You did not provide evidence with your appeal that, at the time you signed your Form 471, you had signed a contract for eligible services. Consequently, SLD denies your appeal. [Emphasis added.] Pa 49; Pa 51.

Legal Argument

POINT I

THE BEST EVIDENCE AVAILABLE REBUTS USAC'S SUPPOSITION THAT NO CONTRACT EXISTED AND THEREFORE EITHER IT MUST BE REVERSED ON APPEAL OR A WAIVER MUST BE GRANTED

Essentially, USAC seeks an adjustment *in toto*, based on its supposition that there were no signed contracts in place when the Form 471s were submitted. The only proof it offers for this is that neither Holy Rosary, nor any of its affiliates, has a copy of the contracts. As demonstrated hereinafter, this conclusion is baseless as a matter of fact and law and the decision grounded upon it to rescind the USAC funding is arbitrary, capricious and unreasonable.

Countervailing the Administrator's view is that the Form 471 was certified, including Ms. Velez's certification under oath that she had signed contracts in her possession for each of the FRNs, that the services were actually delivered to the school by the service provider, that the service provider had digital versions of the contracts in final form actually unsigned by Ms. Velez, and that Future's performance and delivery of the goods and services ordered were billed and paid for as many as four years ago.

This is a very different case from one in which an application was rejected by the Administrator because the applicant had no binding contract in place for the funding requested. *Cf. In the Matter of Request for Review by Waldwick School District*, 18 F.C.C.R. 22994, 18 FCC Rcd. 22994, 2003 WL 22493912 (FCC) (Form 471 submitted with a proposed contract that school board subsequently did not finalize or authorize entry into, rendering the contract submission moot). In the Holy Rosary case, the principal of the school filed and signed two separate Forms 471 in which she certified the existence of the signed contracts.⁴

Ms. Velez's certification cannot be taken lightly in a "lost instrument" case such as this one. Because all diligent inquiry has been futile in finding the documents among the files of the closed school, the certification constitutes the best evidence of the existence of the contract under New Jersey law and under the Rules of Evidence, including the Federal Rules. A contemporaneous, certified statement by a person with knowledge of, as well as the signer of, the existence of signed writings is plainly admissible under Rule 1004 to prove their existence at the time of the certification upon a showing that the writings have been lost or destroyed without fraudulent intent. *See, Nerney v. Garden State Hospital*, 229 N.J. Super. 37, 40, 550 A.2d 1003 (App. Div. 1988); *see also, Lubarr v. Royal Woodwork, Inc.*, 70 N.J. Super. 1, 7, 174 A. 2d 627, 629-630 (App. Div. 1961).

As long ago as 1880, this has been the law when an instrument is lost. In *Johnson v. Arnwine*, 42 N.J.L. 451, 454 (Sup. Ct. 1880), objection was made at trial to admission of sworn copies of secondary evidence, that is, copies rather than the originals. In speaking to secondary evidence generally, it was held by the Court:

The theory on which evidence of a secondary grade is admitted is, that the production of the primary evidence is out of the party's power. The loss or destruction of a paper is the occasion on which

⁴ Block 6 of the Form 471 requires that Item 30 be signed by the person who will certify to the accuracy of the information. If the Form is filed electronically, the certifying person is to mail a signed Block 6 to the SLD at an address in Iowa City. A request was made of USAC under the Freedom of Information Act request for a copy of Ms. Velez's signed Block 6's for Holy Rosary, but to date no document has been produced by the Administrator.

this rule is most frequently invoked, yet, in the practical application of the rule to lost papers, proof of loss or destruction so fully as to exclude every hypothesis of the existence of the original, is not required. It is not necessary to prove, in the effort to procure the original, before evidence of its contents is resorted to. As a general rule, the party is expected to show that he has, in good faith, exhausted, in a reasonable degree, all the sources of information and means of discovery which the nature of the case would naturally suggest, and which were accessible to him.

Once a party has shown its due diligence, a copy may be received to prove the fact asserted or, in the absence of a copy, "the party may resort to parol proof of the contents of the instrument," that is, to testimony or, as we have here, a sworn, certified statement. See, Smith v. Axtell, 1 N.J. Eq. 494, 498 (Ch. 1832).

In this case, there is no dispute that the parties, including USAC's own investigator, have made a diligent inquiry into the location of the contracts. It appears beyond peradventure from the affidavit submitted by the Order that the contracts have been lost or destroyed during the process of closing the school down. In lieu of the documents themselves, however, the appellants may rely upon the contemporaneous certified statement of Ms. Velez asserting the contracts' existence. Indeed, the Form 471 even identifies the contracts specifically by their numbers, something which would not be possible if the contracts were merely "vapor."

The loss of the documents, after closure of the institution and years after their execution by the parties, is a mistake which does not warrant the complete rejection or adjustment of the school's E-rate funding. See generally, Request for Waiver of the Decision of the Universal Administrator by Adams County School District 14, etc., 22 FCC Rcd 6019, at 6023-24, para.10 (2007). Because USAC has made its adjustment demand based on the loss of the previously existing contracts — each of which have been fully performed, the violation at issue is procedural and after-the-fact, not substantive. Cf., Requests for Waiver and Review of decisions of the Universal Administrator by Acorn Public Library District, File Nos. SLD-637819, et al., CC Docket No. 02-6 (2008). Accordingly, a complete readjustment of the four year old funding commitment is not warranted. Id.; in accord, Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District, File Nos. SLD-400938, et al., CC Docket No. 02-6, DA 08-2382 (2008).

Moreover, given the substantial evidence in support of the existence of agreements, USAC has erred in concluding that no agreements existed at the time of the Form 471. The substantial and complete performance by both Holy Rosary and Future which followed the filing of the Form 471

also constitute good evidence of a binding, enforceable contract between the parties — in fact, such performance would itself constitute the contract even if there were some dispute under the Statute of Frauds.

That there was a form of agreement in place at the time that the Form 471 was submitted and during the relevant funding year, militates a reversal of the commitment adjustment letters, particularly since this appeal does not involve a misuse of funds. *See, In the Matter of Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District, 23 FCC Rcd 15526, 15530-15531 (FCC 2008), DA 08-2382*, where the Commission granted the appeal even though there were questions concerning whether there was a signed contract. In its decision, the Commission noted:

The Commission recently found in the Bishop Perry Order that, under certain circumstances, rigid adherence to certain E-rate rules and requirements that are “procedural” in nature does not promote the goals of Section 254 of the Act — ensuring access to discounted telecommunications and information services to schools and libraries — and, therefore, does not serve the public interest. We find that, for these applicants, denying or rescinding their requests for funding would create undue hardship and prevent these otherwise eligible schools and libraries from receiving E-rate funding. [Citations omitted.]

Based on this reasoning, the Commission granted a limited waiver to the appellants and remanded the matter to the USAC with direction that it process their applications consistent with the FCC’s decision.

Although USAC may not be able to grant such a waiver, in this case, the question of whether there were signed contracts in existence at the relevant time which were subsequently lost must be resolved in favor of the appellants based on all of the best evidence available. Accordingly, this appeal must be granted and the commitment adjustment letters must be withdrawn.

Alternatively, given the singular circumstances of this case, the Commission must grant a waiver for Holy Rosary. The Commission may waive any provision of its rules on its own motion and for good cause shown. *See, 47 C.F.R. § 1.3*. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Cellular Telephone Co. v. FCC, 897 F. 2d 1164, 1166 (D.C.Cir. 1990)*. The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C.Cir. 1969), aff’d 459 F.2d 1203 (D.C. Cir. 1972)*.

As the Commission note in *Barberton, supra at fn. 16*, “[W]aiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.”

In the present circumstances, the contracts have been lost with the passage of time and the unfortunate event of the school’s closing. The service provider, which performed the contractual requirements years ago, has only been able to locate digital copies of the contracts, yet those should stand as adequate evidence for a fully performed agreement. Moreover, because the school is closed like so many parochial schools in the Archdiocese of Newark, N.J., it is not even clear who would be responsible for making the adjustment. The Order, which has shrunk in membership due to attrition and is already burdened with the advancing age of its remaining members, would find it to be a double hardship if, ultimately, it is found to be liable for the adjustment and reimbursement of USAC for a school it no longer operates. All of these factors should be taken into consideration by the Commission.

POINT II

EVEN IF IT CAN BE SHOWN THAT THERE WERE NO SIGNED AGREEMENTS, COMPLETE PERFORMANCE UNDER ORAL AGREEMENTS MEETS THE REQUIREMENTS OF STATE LAW

As to the second of USAC’s articulated grounds for rescission of its funding of the Holy Rosary FRNs, New Jersey state law would recognize the existence of agreements not only under its evidence rules but also substantively as a matter of law. In fact, even if no signed, written agreement existed between Holy Rosary and Future, the subject matter of the contracts is such that an oral agreement would be binding and enforceable under New Jersey law. See, *Comerata v. Chaumont, Inc.*, 52 N.J. Super. 299, 305, 145 A.2d 471 (App. Div. 1958), holding:

. . . parties may orally . . . agree upon all the essential terms of a contract and effectively bind themselves thereon, if that is their intention, even though they contemplate the execution later of a formal document to memorialize their undertaking.

This is particularly the case where the parties have a prior history of dealings, and have long ago completed their respective performances under the relevant agreements, with Future delivering the goods and services and Holy Rosary paying its specified monies in tandem payment with

USAC's distribution of funds. *Id.*, at 306:

It is strongly implied in New Jersey cases that even where parties, having agreed upon all the terms of their contract, mean to have them reduced to writing and signed before being bound, they will nevertheless become bound if substantial acts are performed under the agreement by either side. The undertaking of performance, concurred in by the other party, is generally taken as strongly probative of an intention on the part of parties who have orally agreed to terms of a contract to be bound thereby notwithstanding the later execution of a formal contract is contemplated. [Citations omitted.]

In either event, then, an oral agreement reached before the filing of the Form 471 would constitute a "legally binding agreement" "for all services" between applicant and service provider within the meaning of the "Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form." See, *In the Matter of Request for Review by Richmond County School District, Hamlet, NC*, 21 FCC Rcd 6570, 6571 (FCC 2006) (appeal granted on the merits with respect to two of the district's contracts and waiver granted on good cause with respect to a third).

Finally, and most importantly, the Commission is also referred to its January 16, 2009 letter advise to the Administrator, DA 09-86, WC Docket No. 02-06, in which it directly discussed the issue of signed contracts (Pa 52):

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

In a nutshell, then, by its January 2009 advise, the Commission has already chided the Administrator for turning a minor violation of a record keeping requirement into a substantive ground for recovery of previously distributed funding.

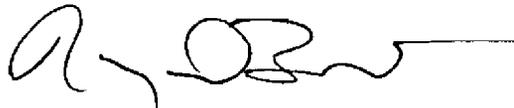
As demonstrated above, under New Jersey law the question of whether there ever existed a contract between Holy Rosary and Future, must be resolved in the affirmative. As the Commission noted elsewhere, the school and its service provider "had some form of an agreement in place during the relevant funding year prior to the filing of . . . applications." *In the Matter of Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District, supra.*

Therefore, insofar as USAC seeks rescission based on a conclusion that no legally enforceable contract existed between the parties at the time of the filing of the Form 471, this appeal should be granted as a matter of law or, alternatively, the Commission must grant a waiver for the benefit of Holy Rosary.

CONCLUSION

Based on the foregoing analysis of the facts and discussion of pertinent law, the parties' appeal must be granted in all respects and the Commitment Adjustment Letter must be withdrawn.

Respectfully submitted,



RAYMOND BARTO

pc: Future Generation, Inc.

Donald Onorato, Esq., attorney for the Order

Sr. Olivia Reginella
Sisters of the Catholic Apostolate
98 Harriman Heights Road
Monroe, NY 10950

Contact Person: For the Order and Future and each of the following, I am the person with whom you can most readily discuss these appeals. I am an attorney at law and my name is Raymond Barto. My address, telephone number, and fax number are set forth above. My preferred email address is Raymondbarto@hotmail.com. My signature on this appeal is authorized by the Order and Future.

HOLY ROSARY ELEMENTARY ACADEMY: FCC APPEAL APPENDIX

Document Description	Appendix Page Number
April 24, 2009 USAC Notification of Commitment Adjustment Letter to Holy Rosary Elementary Academy re Form 471 Application # 458734	Pa1
April 24, 2009 USAC Notification of Commitment Adjustment Letter to Holy Rosary Elementary Academy re Form 471 Application # 459674	Pa5
September 17, 2009 Affidavit of Scott DeCarolis on appeal to FCC	Pa10
Holy Rosary Form 471 Application # 458734	Pa14
Holy Rosary Form 471 Application # 459674	Pa21
June 5, 2009 Affidavit of Sr. Olivia Reginella in Support of Appeal to USAC	Pa29
June 9, 2009 Affidavit of Scott DeCarolis in Support of Appeal to USAC	Pa33
Spreadsheet of Maintenance Visits by Future Generation to Holy Rosary (Exh. A to affidavit of June 9, 2009 Scott DeCarolis)	Pa37
February 15, 2008 Fax Memo, Raymond Barto, Esq., to Gary Tarantino of USAC	Pa39
Spreadsheet of Holy Rosary Funding Requests of USAC	Pa40
Various dates, Computer stored and generated copies of the contracts submitted by Future Generation to Mr. Tarantino of USAC	Pa41
March 15, 2006 Funding Commitment Report for FRN 459674	Pa47

Document Description	Appendix Page Number
August 5, 2006 Administrator's Decision on Appeal to Raymond Barto, Esq., concerning Holy Rosary FRN 458734	Pa48
August 5, 2006 Administrator's Decision on Appeal to Raymond Barto, Esq., concerning Holy Rosary FRN 459674	Pa50
January 16, 2009 Letter, FCC to Scott Barash of USAC, DA 09-86, with grid attachment	Pa52



Notification of Commitment Adjustment Letter
Funding Year 2005: July 1, 2005 - June 30, 2006

April 24, 2009

Martha Velez
HOLY ROSARY ELEMENTARY ACADEMY
501 15TH ST
UNION CITY, NJ 07087 3222

Re: Form 471 Application Number: 458734
Funding Year: 2005
Applicant's Form Identifier:
Billed Entity Number: 7008
FCC Registration Number: 0012004933
SPIN: 143007891
Service Provider Name: Future Generation, Inc.
Service Provider Contact Person: Susan Kopf

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have to option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to 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 by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. 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.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Susan Kopf
Future Generation, Inc.

Funding Commitment Adjustment Report for
Form 471 Application Number: 458734

Funding Request Number: 1250032
Services Ordered: INTERNET ACCESS
SPIN: 143007891
Service Provider Name: Future Generation, Inc.
Contract Number: 1729
Billing Account Number:
Site Identifier: 7008
Original Funding Commitment: \$332.55
Commitment Adjustment Amount: \$332.55
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$332.55
Funds to be Recovered from Applicant: \$332.55

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. This determination was based on attempts at contact with the applicant (school closed), Archdiocese of Newark, Sister of the Catholic Apostolate and the service providers who responded with contracts with no signatures. FCC rules require applicants to have a valid contract as defined by the applicants' state laws at the time they submit the Form 471. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471 that meets the state laws' definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds.



Notification of Commitment Adjustment Letter
Funding Year 2005: July 1, 2005 - June 30, 2006

April 24, 2009

Martha Velaz
HOLY ROSARY ELEMENTARY ACADEMY
501 15TH ST
UNION CITY, NJ 07087 3222

Re: Form 471 Application Number: 459674
Funding Year: 2005
Applicant's Form Identifier: Year 8 Internal
Billed Entity Number: 7008
FCC Registration Number: 0012004933
SPIN: 143007891
Service Provider Name: Future Generation, Inc.
Service Provider Contact Person: Susan Kopf

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest; late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have to option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to 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 by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. 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.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Susan Kopf
Future Generation, Inc.

Funding Commitment Adjustment Report for
Form 471 Application Number: 459674

Funding Request Number: 1262669
Services Ordered: INTERNAL CONNECTIONS MNT
SPIN: 143007891
Service Provider Name: Future Generation, Inc.
Contract Number: 1509
Billing Account Number:
Site Identifier: 7008
Original Funding Commitment: \$8,910.00
Commitment Adjustment Amount: \$8,910.00
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$8,910.00
Funds to be Recovered from Applicant: \$8,910.00

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. This determination was based on attempts at contact with the applicant (school closed), Archdiocese of Newark, Sister of the Catholic Apostolate and the service providers who responded with contracts with no signatures. FCC rules require applicants to have a valid contract as defined by the applicants' state laws at the time they submit the Form 471. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471 that meets the state laws' definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds.

Funding Request Number: 1262686
Services Ordered: INTERNAL CONNECTIONS
SPIN: 143007891
Service Provider Name: Future Generation, Inc.
Contract Number: 1511
Billing Account Number:
Site Identifier: 7008
Original Funding Commitment: \$3,415.50
Commitment Adjustment Amount: \$3,415.50
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$1,707.75
Funds to be Recovered from Applicant: \$1,707.75

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. This determination was based on attempts at contact with the applicant (school closed), Archdiocese of Newark, Sister of the Catholic Apostolate and the service providers who responded with contracts with no signatures. FCC rules require applicants to have a valid contract as defined by the applicants' state laws at the time they submit the Form 471. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471 that meets the state laws' definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds.

