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FCC Mail Room



26 April, 2010

San Marcos Consolidated Independent School District (SMCISD)
Department of Technology
511 Burleson Street
P.O. Box 1087
San Marcos, TX 78667-1087

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

Dear FCC Reviewer,

San Marcos Consolidated ISD respectfully submits this 'Request for Review' of USAC's denial of the SMCISD appeal to USAC's denial of funding for FRN 1883426.

ADMINISTRATIVE DATA

CC Docket No. 02-06
Billed Entity Number: 141733
471 Application Number: 655683
Funding Request Number (FRN): 1883426
SMCISD Contact Information: Greg Hubenak, Director of Technology
Email address: greg.hubenak@smcisd.net
Telephone Number: 512.393.6905 Fax: 512.392.7095

Please note that this is the second FCC appeal submitted by SMCISD for denial of funding for Internet Access-Web Hosting from vendor D2SC. As of 26APR2010, the first appeal for FY11 (2008-2009), dated 14SEP2009, is currently being reviewed by the FCC and no resolution has been issued.

APPEAL

Our appeal to the USAC SLD was denied on March 8, 2010. In chronological order, all of the following documents are attached for reference:

- Item 21 Attachment
- PIA information request
- PIA information response. (The attachment has been omitted to avoid ambiguity. The attachment is the previously mentioned pending FCC appeal which includes a detailed cost allocation matrix and supporting vendor invoice.)
- FCDL
- SMCISD's original appeal to the USAC SLD
- The USAC 'denied in full' response

In simple terms, the foundation of our appeal is that the vendor (D2SC) has confidently provided the cost allocation that specifies which portions of their service are eligible for e-Rate reimbursements according to the Eligible Services List, and SMCISD has submitted administratively sound applications in good-faith based upon that cost allocation. SMCISD cannot determine which of the following scenarios is the fundamental basis of USAC's denial:

- A) FRN's are denied because 30% or more of our request for reimbursement is for ineligible services.
- B) ALL components of service from vendor D2SC are completely ineligible, and there is no opportunity to request reimbursement for cost allocated Internet Access/Web Hosting by any K-12 organization that receives the same services as SMCISD. In other words, the USAC position is that SMCISD is attempting to *"...change an intrinsically ineligible service to partially eligible service."*
- C) USAC reviewers evaluated the provided cost allocation and determined that it did not *"meet the criteria of being based on tangible criteria that provides a realistic result."*

If the reason is Scenario A, 0% of the SMCISD request is for ineligible components based upon the cost allocation provided. In the Item 21 Attachment, both the eligible and in-eligible component summaries were provided, and only components reported as eligible have been submitted for reimbursement. Interestingly, 30.8% of the total invoice from D2SC is for ineligible services, however all of these components were cost allocated out of the request for reimbursement so that the 30% rule would not apply.

If the reason is Scenario B, SMCISD requests a clear statement of this fact with an effective date to serve as a benchmark for all pending reimbursement requests. USAC funded and disbursed reimbursement for the same services from D2SC in Funding Year 9 (2006-2007), and has recently communicated their intent to reverse the funding decision.

If the reason is Scenario C, this explanation has not been provided to SMCISD in a manner appropriate to cause us to re-submit an amended cost allocation. PIA questions and FCDL both indicate a violation of the '30% rule', while the USAC Administrators Decision on Appeal states that D2SC Web Hosting is ineligible, and SMCISD had been given an opportunity to provide documentation but failed to do so. Conversely, SMCISD

did provide a detailed matrix of the cost-allocation as well as vendor invoices that support our Item 21 submission. If the cost-allocation itself is challenged, it seems appropriate to allow SMCISD, D2SC, and USAC to work from an amended cost-allocation matrix, and SMCISD be given the opportunity to adjust all pending requests for reimbursement according to the approved and re-published cost-allocation.

Point of contact for this correspondence is Greg Hubenak, Director of Technology, SMCISD. Greg.hubenak@smcisd.net, 512.393.6905.

Respectfully,

A handwritten signature in black ink that reads "Greg Hubenak". The signature is written in a cursive style with a large, looped "G" and "H".

GREG HUBENAK
Director of Technology
SMCISD

Item 21 Attachment

Internet Access Funding Year 2009

Applicant Name **SAN MARCOS CONS INDEP SCH DIST**
 Billed Entity Number **141733**
 Form 471 Application Number **655683**
 Funding Request Number **1883426**
 Service Provider **EdSoft Software Corporation (D2SC)**
 Service Provider Identification Number **143028266**
 Attachment Number **IA1_Item21_C**

Narrative description of this Funding Request:

Web Hosting portion of an assessment data management and reporting service. Online service provides secure, dedicated, web-based access to student grades, assessment data, and custom reports.

Quantity	Product or Service Description	Unit Cost	ELIGIBLE		IN-ELIGIBLE	
			Extended Pre-Discount Cost		Extended Pre-Discount Cost	
			Recurring	Non-Recurring	Recurring	Non-Recurring
1	Annual Web Hosting fee	\$35,562.00		\$35,562.00		
1	Annual Software Application fee	\$14,838.00				\$14,838.00
1	Year End Rollover Services	\$1,000.00				\$1,000.00
		SUB-TOTALS	\$0.00	\$35,562.00	\$0.00	\$15,838.00
TOTAL PRE-DISCOUNTED FUNDING REQUEST ON 471			\$35,562.00			

Further Information:

Ineligible one time fees, and ineligible portions of annual fees have been removed from the request.

Greg Hubenak

From: Shaban, Marjorie [MSHABAN@sl.universalservice.org]
Sent: Thursday, January 28, 2010 6:48 AM
To: Greg Hubenak
Cc: cgeorge@esc12.net
Subject: E-Rate App 655683 for San Marcos Cons ISD - Reminder Letter

Dear Greg Hubenak:

Response Due Date: **2/4/10**

You were recently sent a written request for additional information needed by the Program Integrity Assurance (PIA) team to review your Funding Year 2009 Form 471 application to ensure that it is in compliance with the rules of the Universal Service program. This is a reminder that the response due date is approaching. To date, none of the requested information has been received. The information needed to complete the review is listed below.

I. Based upon review of your FY2009 Form 471 application, we were not able to validate your requested discount percentage of **80% for PHOENIX LEARNING CENTER**. You may validate your requested discount percentage of 80%, by providing the appropriate documentation listed in one of the following options.

Option 1. If the school participates in a National School Lunch Program (NSLP), please provide a signed copy (preferably by the Principal, Vice-Principal, Superintendent or chief school official, or Director of Food Services) of a Reimbursement Claim Form that the school sends to the state each month. Make sure that the following 3 items are identified:

- a. The Entity name
- b. The total number of students enrolled at the entity
- c. The total number of students eligible for Free/Reduced Lunch Program for the entity

If the school district fills out an aggregate claim form for the school district, also provide a signed letter from a school official (preferably the Superintendent or chief school official) that lists the enrollment and Free/Reduced information for each school in the district. The enrollment and Free/Reduced information provided in your letter should match the claim form.

Option 2. If the discount percentage was determined by information obtained from an income survey/application (National School (Free & Reduced) Lunch Application forms cannot be used as survey instruments), please provide the following information in writing on school letterhead signed by a school official (such as the Principal, Vice Principal, Superintendent or Director of Food Services):

- a. Total number of students enrolled
- b. Total number of surveys/applications sent out
- c. Number of surveys/applications returned
- d. Total number of students qualified for NSLP per the returned surveys/applications
- e. Are the surveys/applications and results kept on file.

Provide a sample copy of a **FILLED OUT SURVEY/APPLICATION** with the child's personal information crossed out for confidentiality. **Be advised that in order for a survey to be acceptable it must contain the name of the family and students, the size of the family and the income level of the family.**

A signed certification that reads: "I certify that only those students who meet the Income Eligibility Guidelines of the National School Lunch Program have been included in Column 5 of Item 9a, of Block 4 of the Form 471."

Option 3: Provide a letter from your State Department of Education (on letterhead and signed) verifying the enrollment and the free and reduced figures are accurate.

Option 4: Provide a letter from the State Food/ Nutrition Service Authority officials (on letterhead and signed) verifying the enrollment and the free and reduced figures are accurate.

Option 5: If the discount was determined using a different method than what was identified above, please specify the survey method that was used and provide all relevant data.

II. Based on the documentation that you have provided, **FRN 1883426** will be denied. The FRN will be denied because the request is for ineligible product(s)/service(s). Listed below are the ineligible product(s)/service(s):

Edsoft/D2SC hosting of the district's gradebook system

Do you agree with our determination? ____ Yes or ____ No

If you disagree with our determination and you have alternative information, please provide third party supporting documentation (e.g., vendor bill, contract, service agreement, etc.).

If you fail to respond to this email within 15 days, we will perform the action(s) listed above.

It is important that we receive all of the information requested so the PIA team can complete its review. Please fax or email the requested information to my attention. If you have any questions, do not understand what we are requesting, or feel that you have already responded, please feel free to contact me.

If we do not receive the requested information by 2/4/10, your application(s) will be reviewed using the information currently on file. Failure to respond may result in a reduction or denial of funding.

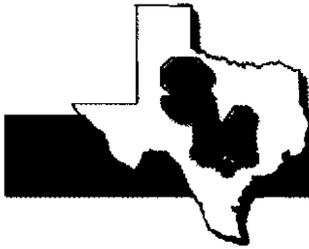
Should you wish to cancel your Form 471 application, or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s); along with the Form 471 application number(s) and/or funding request number(s), and the complete name, title and signature of the authorized individual.

A copy of this correspondence is being forwarded to your State E-Rate Coordinator for informational purposes only.

Thank you for your cooperation and continued support of the Universal Service Program.

Marjorie Shaban
Schools and Libraries Division
Program Integrity Assurance
Phone: 973-581-5085
FAX: 973-599-6579
Email: mshaban@sl.universalservice.org

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Dedicated to Education... Committed to Excellence

28 January, 2010

Department of Technology
511 Bursleson Street
P.O. Box 1087
San Marcos, TX 78667-1087

Marjorie Shaban
Schools and Libraries Division
Program Integrity Assurance
100 S. Jefferson Rd
P.O. Box 902
Whippany, NJ 07981

Ms. Shaban,

This correspondence is the SMCISD response to your PIA review and information request due February 4, 2010.

ITEM 1

Question:

“Based upon review of your FY2009 Form 471 application, we were not able to validate your requested discount percentage of **80% for PHOENIX LEARNING CENTER...**”

Response:

Note that a recent BEN change caused BEN 91766 to incorrectly be listed as ‘Phoenix Learning Center’. This has been corrected back to ‘Hernandez Elementary’. Per conversation with Marjorie Shaban, BEN 91766 is the school in question so this response is for Hernandez (BEN 91766, TEA District/Charter/Campus Number 105902107, NCES Number 483897004451).

SMCISD calculated the discount for this school using the percentage of students eligible for free and reduced lunches under the National School Lunch Program (NSLP). The source of the data was the Texas Education Service Center 12, Technology Planning and Erate Support Center.

<http://tpesc.esc12.net/erate/nslpdata.html>

From this web site, selecting FY12 (2009-2010), and entering ‘San Marcos’ for district name produces the following table of data from the Texas Education Agency.



Texas Education Agency
 Educational Technology
 E-Rate Data Used For 2009-2010

District/ Charter Number	District/Charter Name	Campus Number	Campus Name	Region	**Free and Reduced	Total Enrollment	Percent Free and Reduced
105902	SAN MARCOS CISD	105902001	SAN MARCOS H S	13	982	1912	51
105902	SAN MARCOS CISD	105902002	PRIDE HIGH SCHOOL	13	29	66	44
105902	SAN MARCOS CISD	105902004	HAYS CO JUVENILE JUSTICE ALTERNAT	13	**	**	**
105902	SAN MARCOS CISD	105902041	GOODNIGHT J H	13	344	515	67
105902	SAN MARCOS CISD	105902043	MILLER J H	13	304	563	54
105902	SAN MARCOS CISD	105902101	BOWIE EL	13	497	716	69
105902	SAN MARCOS CISD	105902102	CROCKETT EL	13	443	718	62
105902	SAN MARCOS CISD	105902103	DEZAVALA EL	13	464	686	68
105902	SAN MARCOS CISD	105902104	BONHAM PK	13	374	413	91
105902	SAN MARCOS CISD	105902105	TRAVIS EL	13	522	690	76
105902	SAN MARCOS CISD	105902107	HERNANDEZ INT	13	709	1098	65

Hernandez reported 1098 students enrolled, with 709 eligible for Free & Reduced lunch. The resulting 65% eligibility rate equates to the 80% discount according to the Discount Matrix.

ITEM 2

Question:

“Based on the documentation that you have provided, **FRN 1883426** will be denied...Do you agree with our determination?”

Response:

SMCISD does not agree that this FRN should be denied at this time. During Funding Year 2008-2009, SMCISD appealed the denial of E-Rate support for EdSoft/D2SC (FRN 1748626) to the FCC. If the FCC agrees with our appeal and approves funding for FRN 1748626, we affirm that the subsequent FRN 1883426 should also be funded. If the FCC upholds the denial of FRN 1748626, then we will agree to the denial of subsequent FRN 1883426. Please see the attached FCC appeal for reference.

Please let me know if this information is sufficient, or if additional data is required. Point of contact for this correspondence is Greg Hubenak, Director of Technology, SMCISD. Greg.hubenak@smcisd.net, 512.393.6905.

Respectfully,

GREG HUBENAK
 Director of Technology
 SMCISD

Attachment to SMCISD response (28JAN2010) to PIA information request (4FEB2010) has been omitted to avoid ambiguity. This attachment was the entire FCC appeal which is still pending.

Applicable documents from this attached appeal include a DETAILED COST ALLOCATION MATRIX, as well as VENDOR INVOICES #886 & #888 which both outline specific cost allocation of eligible and ineligible components of service.

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FUNDING COMMITMENT REPORT
Billed Entity Name: SAN MARCOS CONS INDEP SCH DIST
BEN: 141733
Funding Year: 2009

Comment on RAL corrections: The applicant did not submit any RAL corrections.

Form 471 Application Number: 655683
Funding Request Number: 1883426
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 208470000646785
SPIN: 143028266
Service Provider Name: EdSoft Software Corporation
Contract Number: N/A
Billing Account Number: San Marcos ISD
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2009
Service End Date: N/A
Contract Award Date: 02/05/2008
Contract Expiration Date: 06/30/2010
Shared Worksheet Number: 1051779
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$35,562.00
Pre-discount Amount: \$35,562.00
Discount Percentage Approved by the USAC: 81%
Funding Commitment Decision: \$0.00 - Ineligible Services/Products
Funding Commitment Decision Explanation: DRI: 30% or more of this FRN includes a request for Edsoft/D2SC which is an ineligible product(s)/service(s) based on program rules.

FCDL Date: 02/09/2010
Wave Number: 039
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2010



March 1, 2010

Department of Technology
511 Burleson Street
P.O. Box 1087
San Marcos, TX 78667-1087

Letter of Appeal
100 S. Jefferson Rd
P.O. Box 902
Whippany, NJ 07981

Sir or Madam,

This correspondence constitutes our appeal to the denial of FRN 1883426 per the FCDL dated February 9, 2010.

Applicant Name: San Marcos Cons Indep Sch Dist
Service Provider Name: EdSoft Software Corporation
also known as (D2SC)

Applicant BEN: 141733
Service Provider Identification Number (SPIN): 143028266
Form 471 Application Number: 655683

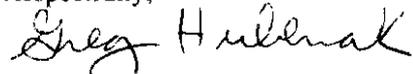
We are appealing the decision (*The amount, \$28,805.22 is "Denied."*) for FRN 1883426.
We are appealing the Funding Commitment Decision Explanation: (*DRI: 30% or more of this FRN includes a request for Edsoft/D2SC which is an ineligible product(s)/service(s) based on program rules.*)

We understand that the FRN was denied due to a violation of the "30% rule". This rule outlines that "*the FRN will be denied if...30% OR MORE of the FRN is for ineligible products or services*". However, according to the cost allocation provided by the vendor the ineligible components of the service were removed before submitting the FRN. In the context of this cost allocation, 100% of the funding request is for eligible services so we feel that the 30% rule doesn't directly apply. Vendors detailed cost allocation and subsequent invoice is attached.

Due to heightened attention to Internet Access Web Hosting and the repeated denial of funding for services SMCISD receives from D2SC, it appears that USAC is challenging the cost allocation data provided by D2SC. SMCISD has never included any ineligible products or services for reimbursement, and certainly not 30% or more. We've only submitted for eligible products and services according to the vendor description of services and cost allocation. SMCISD cannot derive an independent cost allocation, and must rely on the data provided by D2SC. If USAC challenges the vendor and negotiates modified cost allocation, we would apply the new cost allocation to all pending and future FRNs for services from D2SC.

Point of contact for this correspondence is Greg Hubenak, Director of Technology, SMCISD.
Greg.hubenak@smcisd.net, tel: 512-393-6905, fax: 512.392.7095.

Respectfully,

A handwritten signature in cursive script that reads "Greg Hubenak".

Greg Hubenak
Director of Technology
SMCISD

DESCRIPTION OF SERVICES

In response to the inquiries, we are providing our summarized understanding of the eligible and ineligible components. The total cost of service with D2SC is \$51,400. From this total amount, we understand that \$15,838 of that is ineligible and \$35,562 is eligible per the vendor's documentation. The SMCISD FRN requests reimbursements only for eligible services in the pre-discounted amount of \$35,562. Again, this FRN has all ineligible components removed and is only for 100% eligible components. We based the numbers directly on figures provided by the vendor in their proposal/contract on what portions of their service were eligible based upon guidelines set forth in the ESL.

The detailed information in the table below was provided by the vendor and reformatted by SMCISD:

D2SC Web Hosting for San Marcos Consolidated ISD	Ineligible Cost	Eligible Cost	471 Block 23h (Total FRN Pre-Discounted Amount for eligible non-Recurring charges)
Provision of web site traffic (bandwidth)		\$1,404	\$1,404
Provision of disk space for storing applicant-provided content		\$13,658	\$13,658
Providing FTP transfer capacity so that files can be maintained		\$500	\$500
Maintenance and Support of Internet Access (Items 1-3 above)		\$17,500	\$17,500
Firewalls, security, equipment and other protocols in support of Internet Access (Items 1-3 above)		\$2,500	\$2,500
Year end rollover service	\$1,000		
Access to software applications	\$14,838		
TOTAL	\$15,838	\$35,562	\$35,562



D2 Data Driven Software Corporation

900 Jackson St. 380
Dallas, TX 75202

Invoice

Date	Invoice #
5/30/2009	1058
Terms	Due Date
Net 15	6/14/2009

Customer
SAN MARCOS ISD P.O. Box 1087 San Marcos, Texas 78667-1087

P.O. No.

Item	Description	Hrs/Units	Rate	Serviced	Amount
System Subsc...	Web Hosting Services July 1, 2009 thru August 31, 2009 2009-10 Subscription - D2SC Web Hosting Services - eRate eligible expenses.	1	5,927.00		5,927.00
System Subsc...	2009-10 Subscription - D2SC Web Hosting Services - eRate ineligible expenses.	1	2,473.00		2,473.00
System Subsc...	September 1, 2009 thru June 30, 2010 2009-10 Subscription - D2SC Web Hosting Services - eRate eligible expenses.		29,635.00		29,635.00
System Subsc...	2009-10 Subscription - D2SC Web Hosting Services - eRate ineligible expenses.		12,365.00		12,365.00
IMPLEMENTA...	Year Roll over in preparation for SY 2009-2010	1	1,000.00		1,000.00

Subtotal		551,400.00
Sales Tax (1.5%)		50.00
Total		\$51,400.00
Payments/Credits		50.00
Balance Due		\$51,400.00



Administrator's Decision on Appeal – Funding Year 2009-2010

(Year 12)

March 08, 2010

Greg Hubenak
San Marcos Consolidated Independent School District
511 Burleson Street
P.O. Box 1087
San Marcos, TX 78667-1087

Re: Applicant Name: SAN MARCOS CONS INDEP SCH DIST
Billed Entity Number: 141733
Form 471 Application Number: 655683
Funding Request Number(s): 1883426
Your Correspondence Dated: March 01, 2010

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 2009 Funding Commitment Decision 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): 1883426
Decision on Appeal: **Denied**
Explanation:

- Your FCC Form 471 application included costs (\$35,562.00) for the following ineligible products and/or services: D2SC/EdSoft Software Corp Web Hosting. This is hosting of the District's gradebook system. USAC has given you an opportunity to provide the appropriate additional documentation demonstrating the eligibility of the products and/or services requested and you failed to do so. Accordingly, your funding request was denied. In your appeal, you did not show that USAC's determination was incorrect. Consequently, your appeal is denied.
- FCC rules provide that funding may be approved only for eligible products and services. See 47 C.F.R. secs. 54.502, 54.503. The USAC website contains a list of eligible products and services. See USAC website, www.usac.org/sl, Eligible

Services List. FCC rules further require that if 30% or more of the applicant's funding request includes ineligible products and/or services, then the funding request must be denied, otherwise the funding request will be reduced accordingly. *See* 47 C.F.R. sec. 54.504(d). The FCC's Aiken County Public Schools Order directed USAC to permit the applicant 15 calendar days from the date of receipt of notice in writing by USAC to revise its funding request to remove the ineligible services or allow the applicant to provide additional documentation to show why the services are eligible. *See* Requests for Review of the Decisions of the Universal Service Administrator by Aiken County Public Schools Aiken, SC, et al., Schools and Libraries Universal Service Support Mechanism, File No. SLD-397612, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8735, FCC 07-61 para. 11 (May 8, 2007).

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