



## **(5) Law and Argument**

A. ALERTNOW is a communication system that is allowable because it uses either web-based service (e-mail), landline phones, or cell phones for security purposes.<sup>2</sup> Telecommunications/Internet Access for security purposes, with a security message,<sup>3</sup> is allowable. *Id.*

Student security and safety is always an important aspect of delivering education to the classroom. "Educators should concentrate on violence-prevention strategies that are child-focused and support learning. We must balance building security with efforts to foster student resiliency, connectedness, and social competence. The core principles of such a plan are the same as those underlying sound educational policies and practices that address the quality of the learning environment and the needs of the whole child. \*\*\* Central to this effort is helping students and their families feel valued and personally invested in keeping their school safe." *From Education Week Vol. 26, Issue 14, Pages 30-31, Published: December 6, 2006, Commentary School Safety: A Learning Matter By Cathy Paine*  
[Emphases added.]<http://www.nasponline.org/press/EdWeekDec2006.pdf>

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<sup>2</sup> Any authorized administrator, such as school principals or communications officers, can record and send a message with one phone call or by using a secure, password-protected Internet site.  
[http://www.alertnow.com/03\\_01.html](http://www.alertnow.com/03_01.html)

<sup>3</sup> It is unknown whether the Administrator is objecting to the telecommunications/Internet platforms or to the message that is transmitted over those platforms.

Security is essential “[t]o create respectful school environments and ensure the right to education for all students\*\*\*”

<http://www.nyclu.org/schooltoprison/ssa>

For comparison purposes, ALERTNOW is similar if not identical to paging service<sup>4</sup> for security purposes is eligible for discount. Again, by way of comparison, “paging services are eligible when integral, immediate, and proximate to the education of students. Services occurring at eligible locations are presumed to meet this standard, as well as, for example, paging services used by a bus driver delivering students to school, a library staff member in a mobile van, and teachers on field trips.” [Emphases added] [http://www.e-ratecentral.com/FCC/eslArchive/ESL\\_2010.pdf](http://www.e-ratecentral.com/FCC/eslArchive/ESL_2010.pdf).

The Joint Board stated “[g]iven the varying needs and preferences of different schools and libraries and the relative advantages and disadvantages of different technologies, we agree with the Joint Board that individual schools and libraries are in the best position to evaluate the relative costs and benefits of different services and technologies.” *Recom Dec, 12 FCC Rcd at 322-23.*

B. From a regulatory/ USF perspective ALERTNOW is provided over a telecommunications or internet access vehicle. The Administrator ignored

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<sup>4</sup> Paging service defined at:  
[http://wireless.fcc.gov/services/index.htm?job=service\\_home&id=paging](http://wireless.fcc.gov/services/index.htm?job=service_home&id=paging)

the fact that telecommunications for security is allowable where provided over a telecommunications vehicle, e.g., paging service.

C. Telecommunications, Internet access and cell service are Priority One services. ALERTNOW fits into the Internet access and cell service categories.

D. The *Joint Explanatory Statement of the Committee of the Conference* makes it clear that "the ability of K-12 classrooms\*\*\* to obtain access to advanced telecommunications services is critical." *Conference Report 104-230, 104<sup>th</sup> Congress 2d Session, February 1, 1996, page 113.* Further, the Bishop Perry offers guidance here. The Bishop Perry Order states, in relevant part,:

\*\*\* rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest.<sup>5</sup> We therefore grant these appeals and remand them to USAC for further processing consistent with this Order. *FCC 06-54, Bishop Perry Middle School, Released: May 19, 2006*

E. *The Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, Sec (6) of 254 states, in relevant part, that Elementary and Secondary schools and classrooms should have access to advanced telecommunications services\*\*\*; and Sec(7) states that the Commission shall take into account advances in telecommunications and information technologies and services.

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<sup>5</sup> See 47 U.S.C. § 254(h)

This Commission has stated "Congress imposed no limits whatsoever on the telecommunications services for which eligible schools and libraries could arrange to receive discounts. We see no reason for limiting the nature of the telecommunications services that are covered under section 254(h)(1)(B) or the role they play in the operations of the institution. Eligible schools and libraries are equally free to obtain support under section 254(h)(1)(B) for plain old telephone service (POTS) lines to enable teachers to receive calls in the classroom, ISDN services that connect classroom and library computers with information services, private lines for connecting two school libraries to each other, or paging services to enable school security officials promptly to respond to hallway disturbances." *FCC 97-157 Report and Order RCC Docket No. 96-45 Rel.: May 8, 1997*

There is a absolute similarity between ALERTNOW and paging. "Paging is a service designed to deliver a message to a person whose exact location is unknown. The service employs selective radio signals that activate a paging receiver carried by the intended recipient to deliver a text, or voice message. Paging service is eligible for discount when provided for use at a place of instruction and for educational purposes or for use by security personnel. The service is not eligible when provided for uses other than instruction or security." [http://www.e-ratecentral.com/FCC/eslArchive/ESL\\_2000\\_1116.pdf](http://www.e-ratecentral.com/FCC/eslArchive/ESL_2000_1116.pdf) Security is security whether by paging or ALERTNOW. A bus driver or security personnel with

paging service with the ability to notify educational authorities in an emergency situation is no different than educational authorities notifying parents in an emergency situation. Both have a need to know and Priority One services are the vehicle. Safety is safety.

F. ALERTNOW is to "ensure campus safety" and that is directly related to delivering education to the classroom.

[http://www.alertnow.com/01\\_01.html](http://www.alertnow.com/01_01.html) Similarly, paging service is used to enable "school security officials promptly to respond to hallway disturbances." *FCC 97-157 Report and Order RCC Docket No. 96-45 Rel: May 8, 1997; and security.*" [http://www.e-ratecentral.com/FCC/eslArchive/ESL\\_2000\\_1116.pdf](http://www.e-ratecentral.com/FCC/eslArchive/ESL_2000_1116.pdf) ALERTNOW uses e-mail or landline telecommunications, by school personnel, for security purposes [http://www.e-ratecentral.com/FCC/eslArchive/ESL\\_2000\\_1116.pdf](http://www.e-ratecentral.com/FCC/eslArchive/ESL_2000_1116.pdf)

USAC's denial was unreasonable and unlawful, contrary to the rules and regulations of the Federal Communications Commission, and the Telecommunications Act of 1996.

**Conclusion:**

Windber is Requesting the following action by the FCC:

(a) Issue a ruling that ALERTNOW is eligible for USF support;

(b) Within 90 days or less Order funding for the telecommunications/Internet Access services requested in the 471 Application, specifically FRN: 1878063

(c) Set aside funds to totally fund Windber Area School District's request.

Respectfully submitted,

  
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Attorney for Windber Area School District  
Cc: Windber Area School District

Exhibit A

Notification of Commitment Adjustment Letter  
Funding Year 2009: July 1, 2009 - June 30, 2010

September 08, 2010

*Nov. 10th or 7th? Appeal deadline*

LINDA ALEXANDER  
WINDBER AREA SCHOOL DISTRICT  
STE 260-27600 CHAGRIN BLVD  
CLEVELAND, OH 44122 4449

Re: Form 471 Application Number: 686107  
Funding Year: 2009  
Applicant's Form Identifier: YR12 WINDBER#3  
Billed Entity Number: 125450  
FCC Registration Number: 0011991155  
SPIN: 143030399  
Service Provider Name: Saf-t-net, Inc  
Service Provider Contact Person: Jason Bedford

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](http://www.fcc.gov/debt_collection/faq.html).

**TO APPEAL THIS DECISION:**

You have the 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: Jason Bedford  
Saf-t-net, Inc

Funding Commitment Adjustment Report for  
Form 471 Application Number: 686107

Funding Request Number: 1878063  
Services Ordered: INTERNET ACCESS  
SPIN: 143030399  
Service Provider Name: Saf-t-net, Inc  
Contract Number: C  
Billing Account Number:  
Site Identifier: 125450  
Original Funding Commitment: \$3,336.00  
Commitment Adjustment Amount: \$3,336.00  
Adjusted Funding Commitment: \$0.00  
Funds Disbursed to Date \$0.00  
Funds to be Recovered from Applicant: \$0.00

Funding Commitment Adjustment Explanation:

After a thorough review, it was determined that the funding commitment for this request must be rescinded in full. During the course of a review it was determined that funding was provided for the following ineligible item: AlertNow. The pre-discount cost associated with this item is \$4,170.00. At the applicants 80 percent discount rate this resulted in an improper commitment of \$3,336.00. FCC rules provide that funding may be approved only for eligible products and/or services. The USAC web site contains a list of eligible products and/or services. See the web site, [www.universalservice.org/sl/about/eligible-services-list.aspx](http://www.universalservice.org/sl/about/eligible-services-list.aspx) for the Eligible Services List. Accordingly, the commitment has been reduced in full.