



S a n M a r c o s
Consolidated Independent School District

Dedicated to Education... Committed to Excellence

November 29, 2010

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

FCC
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 1956291.

ADMINISTRATIVE DATA

CC Docket No. 02-6
Billed Entity Number: 141733
471 Application Number: 711410
Funding Request Number (FRN): 1956291
SMCISD Contact Information: Greg Hubenak, Director of Technology
Email address: greg.hubenak@smcisd.net
Telephone Number: 512-393-6905 Fax Number: 512-392-7095

Please note that this is the third FCC appeal submitted by SMCISD for denial of funding for Internet Access-Web Hosting from vendor D2SC. As of 29NOV2010, the first appeal for FY11 (2008-2009) dated 14SEP2009 and the second appeal for FY12 (2009-2010) dated 26APR2010, are currently being reviewed by the FCC and no resolution has been issued.

APPEAL

Our appeal to the USAC SLD was denied on September 29, 2010. In chronological order, all of the following documents are attached for reference:

Item 21 Attachment
PIA information request
FCDL
SMCISD's original appeal to the USAC SLD
The USAC's 'denied in full' response

In simple terms, the foundation of our appeal is that the vendor (D2SC) has confidently provided the cost allocation that specified 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."

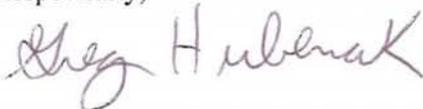
If the reason is Scenario A, 0% of the SMCISD request is for ineligible components based upon the cost allocation provided. In the Item 21 Attachment, both the eligible and in-eligible component summaries were provided, and only components reported as eligible have been submitted for reimbursement. Interestingly, 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 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 indicated a violation of the '30% rule', while the USAC Administrators Decision of Appeal states that D2SC Web Hosting is ineligible, and SMCISD had been given the 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,



GREG HUBENAK
Director of Technology
SMCISD



Feb 24, 2010

Greg Hubenak
SAN MARCOS CONS INDEP SCH DIST

Telephone:

(512) 3936905

Application Number

721315, 711410 and 766358

Response Due Date: 03/11/2010

The Program Integrity Assurance (PIA) team is in the process of reviewing all Funding Year 2010 Form 471 Applications for schools and libraries discounts to ensure that they are in compliance with the rules of the Universal Service program. We are currently in the process of reviewing your Funding Year 2010 Form 471 Application. To complete our review, we need some additional information. The information needed to complete the review is listed below **I of V.**

Based upon review of your Form 471 application and/or the documentation you provided, we were not able to determine the eligibility of < **TEACHING AND LEARNING CENTER**>. In order to be eligible to receive discounted services, per the rules of this program, the entity providing classroom instruction must be considered part of an elementary or a secondary school found in the No Child Left Behind Act of 2001 (20 U.S.C. Section 7801 (18) and (38)) which is not operating as a for-profit businesses, and does not have an endowment exceeding \$50 million. Please provide documentation that will verify that the entity meets the definition provided above.

If this entity is a non-instructional facility, it can be eligible for services under certain circumstances. For Applications 721315, 711410 and 766358 please provide a written Yes/No response indicating whether either of these two following descriptions accurately and completely describes your school, school district or library's situation, and if so, which one or both:

1. Is the non-instructional facility used solely for school, school district or library business?
 Yes No
2. Do only school, school district or library employees use the non-instructional facility?
 Yes No
3. If the FRN is a request for Priority 2 services, are the Internal Connections and/or Basic
 - a. Maintenance in the non-instructional facility essential for the effective transport of data and information to an instructional building of a school or to a non-administrative building of a library? Yes No

(Note: Your response should be based on the amount of funds you are requesting, which may be after cost-allocation has taken place. For example, a school could identify the school portion of a combined church/school phone bill and identify that portion that is "used for school business by school employees.")

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.

III of V.

Based upon review of your FY2010 Form 471 application # 711410 and/or the documentation you provided, we were not able to determine the eligibility of < **HERNANDEZ ELEMENTARY SCH**>. Is this entity a Juvenile Justice, Adult Education (offering elementary or secondary education to adults) or Pre-K? If another type of facility, please specify the type. Is the building that houses this entity a part of (a component of) an elementary or secondary school or is it a stand-alone facility?

★ IV of V. Please provide quote/bill or contract – 711410

For FRN(s) **1956291** the documentation provided in the Item 21 Attachments is not sufficient to determine the eligibility of your request. The documentation does not clearly identify the products/services being requested in this FRN. Please provide more detailed documentation that identifies the actual products and services being requested. Your documentation should identify the specific products and services such as make, model, and description of the product/service being delivered. If you do not have this information, you will need to contact your vendor and request such documentation. The vendor should be able to provide you with detailed documentation.

Any documentation provided should clearly identify all eligible and ineligible charges that were cost allocated out of your request. If you are unable to justify the eligibility of charges requested on your Form 471, the funding request may be reduced or denied.

V of V.

USAC has not yet received the Item 21 Attachments for your FY2010 Form 471 application # 766358. In order to process the Form 471, we must receive the Item 21 Attachments.

If you are unsure what constitutes an Item 21 Attachment, please refer to the Form 471 Instructions available at: Step 7: Submit Application for Support
<http://www.universalservice.org/sl/applicants/step07/form471-attachments.aspx>

If you have not yet submitted the Item 21 Attachments, please do so using our online system available at www.sl.universalservice.org/menu.asp and then notify us when you have completed and submitted the Online 21 Attachment. If you prefer, you may forward the Item 21 Attachments to our attention at the fax number indicated below.



March 1, 2010

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

Program Integrity Assurance
100 S. Jefferson Rd
P.O. Box 902
Whippany, NJ 07981

Sir or Madam,

In response to your letter requesting additional information due 11MARCH2010, we're providing clarification for FRNs 731315, 711410, and 766358. Please note that the San Marcos Consolidated ISD went through a re-alignment and recently modified several Billed Entity Numbers (BENs) to reflect the new organization structure. Since several BEN names were changed, we will include the BEN with each response to ensure we are discussing the same entity.

Part I of V

TEACHING AND LEARNING CENTER (BEN 91768)

Previously called PRIDE High School, this facility is now a Non-Instructional Facility.

YES - This NIF is used solely for school district business.

YES - Only school district employees use the NIF

N/A - The FRN does not request any priority 2 services.

Part II of V

HERNANDEZ ELEMENTARY SCH (BEN 91766)

Total Enrollment: 812

Eligible for Free or Reduced-Price Meals: 615

Source: PEIMS report PRF5C048 (attached)

MENDEZ ELEMENTARY SCHOOL (BEN 16049590)

Total Enrollment: 508

Eligible for Free or Reduced-Price Meals: 432

Source: PEIMS report PRF5C048 (attached)

Part III of V

HERNANDEZ ELEMENTARY SCH (BEN 91766)

This is a traditional elementary school for students grade K-5, that also serves Pre-K students. The attached report PRF5C048 from Part II provides the detailed enrollment information.

Part IV of V

FRN 1956291, Edsoft Software Corporation (D2SC)

- The first page of the vendors bid/contract is attached. This bid clearly indicates eligible and ineligible components of services for this FRN.
- The most recent invoice from this vendor is also attached, which also reflects the same eligible and ineligible components.
- The vendor (D2SC) has reviewed the Eligible Services List (ESL) to determine which components of their service are e-rate eligible and which portions are ineligible. They have provided SMCISD with a 'cost allocation' of their services documented with the ESL categories. A detailed 'DESCRIPTION OF SERVICES' has been provided to USAC for questions regarding FRNs with D2SC for multiple funding years, and is offered below:

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 |

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FUNDING COMMITMENT REPORT
Billed Entity Name: SAN MARCOS CONS INDEP SCH DIST
BEN: 141733
Funding Year: 2010

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

Form 471 Application Number: 711410
Funding Request Number: 1956291
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: 07/01/2010
Service End Date: N/A
Contract Award Date: 02/05/2008
Contract Expiration Date: 06/30/2011
Shared Worksheet Number: 1168990
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: 83%
Funding Commitment Decision: \$0.00 - Ineligible Services/Products
Funding Commitment Decision Explanation: DR1: 30% or more of this FRN includes a request for D2SC web hosting for assessment data management and reporting service {which is an ineligible product(s)/service(s) based on program rules; which is an ineligible use based on program rules}.

FCDL Date: 06/29/2010

Wave Number: 006

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011



August 13, 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 1956291 per the FCDL dated August 29, 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: 711410

We are appealing the decision (*\$0 – Ineligible Services/Products*) for FRN 1956291.
We are appealing the Funding Commitment Decision Explanation: (*DRI: 30% or more of this FRN includes a request for D2SC webhosting for assessment data management and reporting service {which is an ineligible product(s)/service(s) based on program rules; which is an ineligible use based on program rules}.*)

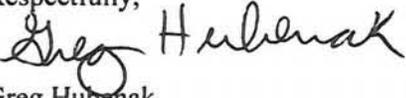
We understand that the FRN was denied due to a violation of the “30% rule”. This rule outlines that “*the FRN will be denied if...30% OR MORE of the FRN is for ineligible products or services*”. However, according to the cost allocation provided by the vendor the ineligible components of the service 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 is denying the vendor-provided cost allocation based upon internal criteria,

SMCISD requests that these details be provided and that we are given an opportunity to apply a revised 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 black ink that reads "Greg Hubenak". The signature is written in a cursive style with a large, stylized "G" and "H".

Greg Hubenak
Director of Technology
SMCISD

D2 Data Driven Software Corporation

900 Jackson St. 380
Dallas, TX 75202

Invoice

| | |
|-----------|-----------|
| Date | Invoice # |
| 7/28/2010 | 3809 |
| Terms | Due Date |
| Net 15 | 8/12/2010 |

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

| |
|----------|
| P.O. No. |
| |

| Item | Description | Hrs/Units | Rate | Amount |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|------------|
| System Subscrip... | Web Hosting Services July 1, 2010 thru August 31, 2010 2010-11 Subscription - D2SC Web Hosting Services - eRate Eligible expenses | 1 | 5,927.00 | 5,927.00 |
| System Subscrip... | 2010-11 Subscription - D2SC Web Hosting Services - eRate ineligible expenses | 1 | 2,473.00 | 2,473.00 |
| IMPLEMENTATION | Year Roll over in preparation of SY 2010-11 | 1 | 1,000.00 | 1,000.00 |
| Subtotal | | | | \$9,400.00 |
| Sales Tax (1.5%) | | | | \$0.00 |
| Total | | | | \$9,400.00 |
| Payments/Credits | | | | \$0.00 |
| Balance Due | | | | \$9,400.00 |

D2 Data Driven Software Corporation

900 Jackson St. 380
Dallas, TX 75202

Invoice

| | |
|----------|-----------|
| Date | Invoice # |
| 9/1/2010 | 3810 |
| Terms | Due Date |
| Net 15 | 9/16/2010 |

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

| |
|----------|
| P.O. No. |
| |

| Item | Description | Hrs/Units | Rate | Amount |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|-----------|-----------|-------------|
| System Subscrip... | Web Hosting Services September 1, 2010 thru June 30, 2011 2010-11 Subscription - D2SC Web Hosting Services - eRate Eligible expenses | 1 | 29,635.00 | 29,635.00 |
| System Subscrip... | 2010-11 Subscription - D2SC Web Hosting Services - eRate ineligible expenses | 1 | 12,365.00 | 12,365.00 |
| Subtotal | | | | \$42,000.00 |
| Sales Tax (1.5%) | | | | \$0.00 |
| Total | | | | \$42,000.00 |
| Payments/Credits | | | | \$0.00 |
| Balance Due | | | | \$42,000.00 |



Administrator's Decision on Appeal – Funding Year 2010-2011

September 29, 2010

Greg Hubenak
San Marcos Cons Indep Sch Dist
P.O. Box 1087
511 Burlison Street
San Marcos, TX 78667-1087

Re: Applicant Name: SAN MARCOS CONS INDEP SCH DIST
Billed Entity Number: 141733
Form 471 Application Number: 711410
Funding Request Number(s): 1956291
Your Correspondence Dated: August 13, 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 2010 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): 1956291
Decision on Appeal: **Denied**
Explanation:

- According to our records, this funding request is for D2SC/EdSoft Software Corp Web Hosting, which is considered to be an ineligible product and/or service according to the rules of this support mechanism. This request is for the hosting of the District's gradebook system. During the Program Integrity Assurance review process USAC gave you an opportunity to provide the appropriate additional documentation demonstrating the eligibility of the requested product and/or service and you failed to do so. Accordingly, your funding request was denied. In your appeal, you did not show that USAC's initial 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