

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Appeal for denial of 2010 funding by USAC Schools) CC Docket No. 02-6
and Libraries Division to the Appleton Area School)
District)

**—APPEAL—
REQUEST FOR REVIEW AND WAIVER OF DECISION
OF THE UNIVERSAL SERVICE ADMINISTRATOR**

Appellant:

Appleton Area School District
PO Box 2019
Appleton, WI 54912-2019
Billed Entity Number 133461
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RE: Appeal for denial of 2010 funding for the following funding request:

FRN: 1968729
Form 470: 464830000776447
Form 471: 726578
Category of service: Internet Access
Service provider: WiscNet Spin# 143004351

To Whom It May Concern:

The Appleton Area School District is appealing the denial of 2010 funding for the above referenced funding request. The denial was in a funding commitment letter we received dated October 13, 2010.

USAC reason for denying the funding request:

USAC determined, that at the time the Appleton Area School District submitted FCC Form 471, it did not have a contract with the service provider, which meets state and local or the FCC's definition of a contract.

District's rebuttal of USAC's reason for denying the request:

A clerical misstep committed by the school district's E-rate Coordinator while electronically filing the application prior to having a signed contract in hand, resulted in SLD's denial of the application. The clerical misstep occurred when the E-rate Coordinator prematurely filed the on-line 471 application on January 27, 2010 instead of waiting until January 29, 2010 – approximately 48 hours.¹ In the rush to submit the application and signed certification before the filing window closed, no one noticed that the contract award date on Block 5, Item 18 of the 471 application was later, by 48 hours, than the application's submittal date. Once submitted, the application was electronically accepted and processed by SLD despite the fact that crucial dates were out of sync. Even the SLD's Form 471 Receipt Acknowledgment Letter dated February 5, 2010 didn't identify the filing error and the school district wasn't aware of the problem until PIA review in August, 2010.²

We respectfully request that consideration be given to the fact that no individual involved in 471 Application 726572 harbored any intent to defraud the USAC/SLD. In fact, due diligence was exercised in the review of all vendor proposals. No contract was signed before the "Allowable Contract Date," November 24, 2009.

While USAC claims that no contract was in place when the 471 was filed, we think it is very important to note that no contract is required for this service. That is, neither Wisconsin state law, our local school board policy, or the service provider (WiscNet) requires a contract for this service. And USAC also does not require a contract because "month-to-month" service is an option in the E-rate program. In addition, in our school's establishing 470 we checked that we were seeking either a contract or month-to-month service. Taking all of these factors into consideration, because no contract is required for this service, we do not think USAC can claim there is a contract violation.

However, if the Commission still finds that the district violated the contract rules, we request that it then allow the district to change this funding request to a month-to-month service. There is precedent for this request because such a change has been done for other applicants as part of the application review process. For example, the Hartland/Lakeside (WI) Joint District #3 (BEN 132737) for the 07/01/2009 - 06/30/2010 funding year filed a form 470 (#574750000704386) on 11/26/2008 with an allowable contract date of 12/24/2008. However, the contract the district

¹ The Commission's Aberdeen School District decision provides some precedent in support of our appeal. In Aberdeen (par 9) several schools signed contracts just "a minimal number of days (i.e., one to three days)" before the 28-day open bid period ended and their appeals were granted. Given this latitude, we think the Commission should grant our appeal when we were only 48 hours late in signing the contract. See *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District*, Aberdeen, WA, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-297249, et al., CC Docket No. 02-6.

² The Commission's 2006 Bishop Perry Order documents fully the issues that many applicants have dealing with the E-rate's complex time frame and application process. See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School*, et al. File Nos. SLD-487170, et al., CC Docket No. 02-6.

awarded for the service was 04/12/2007, approximately twenty months *before* the allowable contract date. The comment in the Data Retrieval Tool states, “MR1: The FRN was modified from CONTRACT to MTM to agree with the applicant documentation. MR2: The Contract Award Date was changed from 04/12/2007 to N/A to agree with the applicant documentation.” This application was funded. We can also provide other examples where a change from an initially stated contract service to a month-to-month service was allowed. Considering this clear fact, we ask that the Commission grant our appeal.

We hope you will grant our request to waive the Commission's rules in this area and direct USAC to proceed with review of our funding request for the benefit of our school district of 15,000 students with over one third of its population on free and reduced lunch.

Thank you for your consideration of this matter. Please contact me if you have any questions.³

Sincerely,

Lee Blahnik
E-rate Coordinator
Appleton Area School District

³ I have given Robert Bocher, the state’s E-rate Coordinator from the Wisconsin Department of Public Instruction, permission to file this appeal on our behalf.