Tom Norris
Executive Director

Terry Marak
Chief Financial Officer
Financial Services

Sandra Nolan
Senior Director
Quality & Planning

Lisa McCray
Director
Executive Services

Cathey George
Director
TPESC Services

November 12, 2010

Letter of Appeal
Schools and Libraries Division – Correspondence Unit
30 Lanidex Plaza West
P.O. Box 685
Parsippany, NJ 07054-0685

To Whom It May Concern:

We are writing to appeal the Commitment Adjustment Letter (COMAD) dated October 19, 2010 addressed to Education Serv Ctr-Region 12, funding year 2007 for Funding Request: 1595436, FCC form 471: 558544.

Appellant

Contact Name:	Terry Marak, CFO
Address:	Waco, TX 76712
Telephone Number:	254-297-1212
Fax Number:	254-666-0691
Email Address:	tmarak@esc12.net
Appellant Name:	Education Service Center Region 12 (ESC 12)
Billed Entity Number:	141138
471 Application Number:	558544
Funding Request Number (FRN):	1595436

Explanation of Appeal:
We are writing to appeal the decision made by the Schools and Libraries Division (SLD) of the Universal Services Administration Company (USAC) to recover funding commitments made on the above mentioned funding request. The reason given for the denial was: "*After a thorough investigation, it has been determined that this funding commitment must be rescinded in full.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 service provider contact information appeared on the cited Form 470. Service Provider contact information appears on the cited Form 470 (Number: 913830000608590) and is associated with EDLINK 12 Telecommunications Network, (EDLINK12). The applicant did not clearly demonstrate that there is separate functionality from the service provider. EDLINK12 was selected a service provider pursuant to the posting of this Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct*

www.esc12.net
2101 W. Loop 340, Waco, TX 76712 • 254.297.1212 • Fax: 254.666.0823

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a fair and open process. If the applicant has posted a Form 470 that contains contact information for a service provider that requirement, and FCC rules consider this Form 470 to be tainted. All Funding Requests that relate to this Form 470 are required to be denied because the Form 470 is tainted. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds".

This FRN is for the funding of Telecommunication Services via Birch Telecom for ESC 12. It is our opinion that the COMAD should be reversed and the SLD should allow the commitment of $9,147.05 to remain as funded. The applicant, ESC 12 is an ESA and falls under special eligibility conditions to receive services. EDLINK 12 is an ISP housed in the same building as the ESA (ESC 12) that provides Internet access to many member districts, one of which is ESC 12. Further, EDLINK 12 being an ISP, is not and has never been eligible to provide Telecommunication Services. We can see how the SLD investigation could find confusion in this FRN, not knowing that ESC 12 was an ESA. In addition, please note that EDLINK12 did not bid on this application at any time. They are merely located at the same address as ESC 12. We further attest that there is no intention to defraud the E-Rate system in any way by this appeal request.

Background:

According to the SLD website: *"Federal law defines an ESA as a "regional public multiservice agency authorized by State statute to develop, manage, and provide services or programs to local educational agencies." To determine whether an ESA is eligible to receive Schools and Libraries support as an applicant, FCC rules governing the program require USAC to determine whether the ESA provides elementary or secondary education as determined under state law. USAC determines whether the entity provides elementary or secondary education to its student population and whether the ESA facility is eligible for support because elementary or secondary education, as defined in state law, is provided at that facility. FCC rules do not specifically define or address ESAs.*

USAC conducts a biennial survey of states and territories to determine whether ESAs are eligible to receive funding. State and territory officials are asked to describe the programs served by ESAs and whether ESAs operate facilities that they either own or lease that contain classrooms. The officials are asked to provide legal support for the information they supply and to certify the accuracy of their determinations. The Eligibility Table for Educational Service Agencies (http://www.usac.org/sl/applicants/step01/esa-guidelines/esa-

eligibility-table.aspx) includes the most recent information provided by the states and territories"

We submit that according to the Texas Education Agency, Texas has always been a recognized ESA and indicated as such at the above indicated SLD website.

The SLD website continues its information concerning: "Potential Conflict": *When ESAs function as service providers, two potential conflicts may raise concerns:*

- *In some states, state law or regulation permits school district to select services provided by ESA's on a non-competitive basis.*
- *Some states provide subsidies so that ESA's may provide discounted rates to public schools.*

These roles raise potential conflict of interest issues, primarily with respect to complying with the FCC's competitive bidding requirements, and assuring that ESAs with the dual roles of providing Technology Plan development services and approving Technology Plans are not compromising the Technology Plan process.

In the case of ESC12 and EDLINK12, ESC 12 is the ESA with vendor services included within the organization. Since EDLINK12 did not bid on this service, and are merely located at the same address, the SLD guidance supports this arrangement.

In the appeal of Banning Unified SD, Banning CA (SLD File No.: 295351 et seq. and FCC#: DA05-2175) submitted on 7/27/05, the vendor's telephone number was provided on the FCC Form 470 as the contact person's telephone number although a school district employee was named as the contact person.

The appeals that were filed were granted because the record shows that the vendor was ineligible to participate in either the FY 2000 or FY 2001 procurements and in fact did not do so.

We conclude that the situation in our COMAD notification is identical to the situation in the Banning Unified SD appeal and respectfully request that our appeal be granted and that the commitment granted in Wave 18 of funding year 2007 remain funded.

Sincerely,

Terry Marak
Chief Financial Officer

TM/cg

Enclosure(s): COMAD APP 558544_FRN 1595227.pdf

cc:
Nicole Scarberry McKee
Birch Telecom, Inc.

RECEIVED
OCT 25 2010
BY:

USAC
Universal Service Administrative Company

Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2007: July 1, 2007 - June 30, 2008

October 19, 2010

Cathey George
EDUCATION SERV CTR-REGION 12
2101 W LOOP 340
WACO, TX 76712

Re: Form 471 Application Number:	**558544**
Funding Year:	**2007**
Applicant's Form Identifier:	**Telecommunications Yr 10**
Billed Entity Number:	**141138**
FCC Registration Number:	**0007130214**
SPIN:	**143001254**
Service Provider Name:	**Birch Telecom, Inc.**
Service Provider Contact Person:	**Nicole Scarberry McKee**

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 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: Nicole Scarberry McKee
Birch Telecom, Inc.

Funding Commitment Adjustment Report for
Form 471 Application Number: 558544

Funding Request Number:	1595436
Services Ordered:	TELCOMM SERVICES
SPIN:	143001254
Service Provider Name:	Birch Telecom, Inc.
Contract Number:	T
Billing Account Number:	100413-1
Site Identifier:	141138
Original Funding Commitment:	$12,927.60
Commitment Adjustment Amount:	$12,927.60
Adjusted Funding Commitment:	$0.00
Funds Disbursed to Date	$9,147.05
Funds to be Recovered from Applicant:	$9,147.05

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 service provider contact information appeared on the cited Form 470. Service Provider contact information appears on the cited Form 470 (Number: 913830000608590) and is associated with EDLINK 12 Telecommunications Network, (EDLINK12). The applicant did not clearly demonstrate that there is separate functionality from the service provider. EDLINK12 was selected a service provider pursuant to the posting of this Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. If the applicant has posted a Form 470 that contains contact information for a service provider that participates in the competitive bidding process, the applicant has violated this requirement, and FCC rules consider this Form 470 to be tainted. All Funding Requests that relate to this Form 470 are required to be denied because the Form 470 is tainted. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds.