

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of )  
 )  
Request for Waiver by )  
 )  
Salinas City Elementary School District )  
Salinas, California )  
 )  
Schools and Libraries Universal Service )  
06 )  
Support Mechanism )  
 )

CC Docket No. 02-

**ADMINISTRATION**

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Superintendent

**GERALD STRATTON**  
Assistant Superintendent  
Business Services

**JUVENAL LUZA, Ph.D.**  
Assistant Superintendent  
Educational Services

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Director, Personnel Services

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**GENARO CARLOS**

**REQUEST FOR WAIVER**

Funding Year 2007 (July 1, 2007 to June 30, 2008)  
Billed Entity Name: Salinas City Elementary School District  
Billed Entity No.: 144081  
Billed Entity FCC Registration No.: 0009074105  
Form 471 No.: 546537  
Funding Request Number: 1509261

We respectfully request a review of the Notice of Improperly Disbursed Funds ("Notice") issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) dated January 24, 2011 in respect of the above-referenced Funding Request Number (FRN)<sup>1</sup>. The Notice states that "the applicant did not pay the entire discounted portion" of the FRN and indicates that USAC will seek recovery of \$47,842.94, which is the amount it believes was improperly disbursed. We seek a waiver of the FCC rule which requires applicants to pay the non-discount portion of the cost of the products or services purchased with universal service discounts within 90 days after completion of such services.

840 South Main Street  
Salinas CA 93901  
Phone (831) 753-5600  
Fax (831) 753-5610

<sup>1</sup> Please see attached.

## I. Introduction and Background

Salinas City Elementary School District (Salinas) is a California public school district, eligible to participate in the Schools and Libraries Universal Service Support Mechanism (commonly known as "the E-rate program"). It has a discount percentage of 84%. There are 12 schools within the District. It is located in Monterey County, on the Central California coast, in a mostly agricultural area.

For Funding Year 2007, Salinas entered into a contract with Pacific Bell Telephone Company<sup>2</sup> to provide fiber circuits to the school district. The service was new and complicated and AT&T indicated that it would be providing discounted bills to Salinas (and, in turn, submitting Service Provider Invoice (SPI) forms to USAC for the discounted portion of the bills).

These bills were incorrect almost from the onset. The result was a bill in excess of \$1,000,000 at one time being issued to Salinas. We knew that there were problems with the billing process, but it was AT&T that generated the bills and we could never get them to reconcile the bills in a timely or understandable manner.

### A. Compliance Attestation Examination

In January 2009 Salinas was selected to receive a compliance attestation examination, which was performed by KPMG. The FRN cited above was one of the FRNs subject to examination.

KPMG made a finding with regard to FRN 1509261 that Salinas "has not paid the non-discount portion because it is currently in dispute with the service provider regarding billing errors related to FRN 1509261 that the [applicant] has not been able to resolve with the service provider."

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<sup>2</sup> The specific services provided by Pacific Bell were assumed by AT&T Data Comm. The service provider for this FRN shall be hereafter referred to as AT&T.

As to the monetary impact, KPMG stated "the full \$233,064 disbursed under FRN 1509261 was inappropriate." It is important to note that these disbursements were made pursuant to SPI forms. KPMG went on to state "We note that the service provider reimbursed \$166,706 of the amount disbursed subsequent to the fiscal year under examination." The total amount thus disbursed was \$66,358 or the difference between the full disbursements and the amount reimbursed.

We believe that the fact AT&T reimbursed USAC is supporting evidence of the underlying billing errors. Unfortunately our efforts at resolving the billing errors were frustrated by a lack of clarity on both sides, lapses in billing records and long delays in communications.

#### B. USAC Response

In November 2009, USAC management responded to the audit of Salinas. It's response to the finding on FRN 1509261 was "USAC will reach out to the Beneficiary and service provider to determine if the billing dispute has been settled and the non-discount portion paid. If the non-discount portion has not been paid, USAC will seek recovery of \$66,358."

#### C. 10 Day Letter

The next we heard from USAC was a letter dated February 16, 2010 sent by Karen Hulmes, with the Program Compliance unit<sup>3</sup>. The letter stated USAC was "in the process of reviewing all Funding Year 2007 form 471 application for schools and libraries discounts to ensure that they are in compliance with the rules of the Universal Service program."

Ms. Hulmes asked for verification of payment of the non-discounted portion of the FRN (1509261).

On March 2, 2010 Salinas responded to Ms. Hulmes. Attached to our letter we sent a copy of a Salinas purchase order dated November 7, 2009 in the amount of \$60,230, indicating it had been issued subsequent to the audit.

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<sup>3</sup> Please see attached.

We also stated "The School District has been in negotiations with AT&T Data Comm to determine the exact amount of the non-discounted portions of the subject bills, while taking offsetting credits. We expect this matter to be closed with AT&T within 10 working days, at which time the School District will issue a check against this PO to resolve payment of non-discounted portions of the subject billing from Year 10."<sup>4</sup>

**D. Final Check**

Salinas issued check number 12-772767 in the amount of \$60,230 dated March 4, 2010 to AT&T. The check was cashed on March 11, 2010.

Both Salinas and AT&T regarded this as settlement of the disputed bills and a final resolution of Salinas needing to pay the non-discount portion of FRN 1509261.

**E. Notice**

Salinas regarded this matter as closed until receipt of the Notice of Improperly Disbursed Funds was received in early February this year. After more than 10 months with no word from USAC we were surprised and dismayed to receive this Notice.

**II. Discussion**

USAC's Notice was not only surprising in light of the circumstances outlined above, but also vague in its reasoning.

The Notice states:

"After a thorough investigation, it has been determined that funds were improperly disbursed on this funding request. During the course of an audit it was determined that the applicant did not pay the entire non-discounted portion. The entire non-discounted portion is \$12, 639.67 and the applicant only paid \$3,526.73. FCC rules require applicants to pay

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<sup>4</sup> Please see attached.

the non-discount portion of the cost of the products or services purchased with universal service discounts. Applicants that do not pay the non-discount portion more than 90 days after completion of services have violated this rule. Consequently, the program rules have been violated. Since the applicant only paid \$3,536.73 of the non-discounted portion, they are only eligible to receive a discount of \$18,515.33 (amount of non-discounted portion paid divided by the quantity one minus the discount percentage minus the amount of the non-discounted portion paid ( $\$3,526.73/16\%$ )- $\$3,526.73$  ). Accordingly, USAC is seeking recovery of \$47,842.94 (amount disbursed (\$66,358.27) less the amount the applicant is eligible to receive (\$18,515.33) based on the amount of the non-discounted portion that was paid), which was improperly disbursed."

We take issue with two aspects of this letter. First, USAC was aware that we had been trying to resolve our issues with AT&T, so it wasn't as if our nonpayment of the non-discounted portion was willful or inappropriate. Second, USAC never inquired whether or not we followed through with the steps outlined in our March 2, 2010 letter. In fact we had no communication with them on this subject until the January 2011 Notice. It would seem that the first step should have been to determine whether or not Salinas issued the check as a result of its purchase order.

While we admit that more than 90 days after the completion of services had elapsed, our withholding of the non-discounted portion of the FRN amount was due to the fact that we were trying to work with AT&T to get a clear picture of what was owed. To force applicants to pay the non-discounted portion within 90 days of the completion of service *regardless of extenuating circumstances* would have the effect of denying applicant's their rights and remedies secured through contracts or under state law. We cannot believe that this is the outcome the Commission would prefer to see.

Full compliance with the E-rate program can be a challenge for some entities. To further complicate the process by interfering in the relationship between the applicant and the service provider would seem to be of little benefit and could impose additional constraints

on some entities. It is difficult enough for a relatively small district such as Salinas to deal with a behemoth provider such as AT&T; to interfere with our problem resolution process further frustrates our efforts.

### III. Prayer for Relief

Given the facts and circumstances described above, waiver would better serve the public interest than strict adherence to the general rule. *See Northeast Cellular*, 897 F.2d at 1166. First, the denial of funding will inflict undue hardship on Salinas and the schools it serves. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, ¶ 11 (rel. May 19, 2006). Salinas serves many poor, rural students. Neither Salinas nor its participating schools have reserved the money necessary to repay the funding commitments made in 2007, especially given that what Salinas considered a final payment was made to the service provider in March 2010. To repay these commitments, Salinas will be required to use funds that otherwise would be spent in the classroom, and thus, the denial of a waiver will negatively impact the education of innocent children.

Second, since Salinas has indeed paid the service provider, albeit not within the 90 days after completion of services deadline, to impose a financial penalty at this point would be tantamount to making Salinas pay twice for the services. While we are aware that we could seek repayment from AT&T, given our past history of difficulty in resolving billing disputes, engaging in such a process is most certainly going to be time-consuming, frustrating and unlikely to be successful in the end.

Therefore, again, we seek a waiver of the rule.

Respectfully submitted,



Gerald J. Stratton  
Assistant Superintendent of Business Services  
Salinas City Elementary School District



Notification of Improperly Disbursed Funds Recovery Letter  
Funding Year 2007: July 1, 2007 - June 30, 2008

January 24, 2011

Fred Brakeman or Amie Campbell  
SALINAS CITY ELEMENTARY SCHOOL DISTRICT  
1800 30th Street, Suite 175  
Bakersfield, CA 93301 1624

Re: Form 471 Application Number: 546537  
Funding Year: 2007  
Applicant's Form Identifier: Yr 10 - 1  
Billed Entity Number: 144081  
FCC Registration Number: 0009074105  
SPIN: 143002665  
SPIN Name: Pacific Bell Telephone Company  
Service Provider Contact Person: Michael Swisher

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were disbursed 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 recover these improper disbursements. The purpose of this letter is to inform you of the recoveries as required by Program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the Program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error.

This is NOT a bill. The next step in the recovery of improperly disbursed funds 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 to option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Notification of Improperly Disbursed Funds 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 Improperly Disbursed Funds Recovery Letter and the funding request numbers 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 Funding Disbursement Recovery Report included with this 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 USAC by email, email your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org). USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

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 DISBURSEMENT RECOVERY REPORT

On the pages following this letter, we have provided a Funding Disbursement Recovery Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from the application for which recovery is 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 the service provider for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action. The Report explains the exact amount the applicant is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc:Michael Swisher  
Pacific Bell Telephone Company

Funding Disbursement Recovery Report  
for Form 471 Application Number: 546537

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Funding Request Number: 1509261  
Services Ordered: TELCOMM SERVICES  
SPIN: 143002665  
Service Provider Name: Pacific Bell Telephone Company  
Contract Number: N/A  
Billing Account Number:  
Site Identifier: 144081  
Funding Commitment: \$233,063.61  
Funds Disbursed to Date: \$66,358.27  
Funds to be Recovered from Applicant: \$47,842.94

Disbursed Funds Recovery Explanation:

Finding 1

After a thorough investigation, it has been determined that funds were improperly disbursed on this funding request. During the course of an audit it was determined that the applicant did not pay the entire non-discounted portion. The entire non-discounted portion is \$12,639.67 and the applicant only paid \$3,526.73. FCC rules require applicants to pay the non-discount portion of the cost of the products or services purchased with universal service discounts. Applicants that do not pay the non-discount portion more than 90 days after completion of services have violated this rule. Consequently, the program rules have been violated. Since the applicant only paid \$3,526.73 of the non-discounted portion, they are only eligible to receive a discount of \$18,515.33 (amount of non-discounted portion paid divided by the quantity one minus the discount percentage minus the amount of the non-discounted portion paid ( (\$3,526.73/16%)-\$3,526.73 ). Accordingly, USAC is seeking recovery of \$47,842.94 (amount disbursed (\$66,358.27) less the amount the applicant is eligible to receive (\$18,515.33 ) based on the amount of the non-discounted portion that was paid), which was improperly disbursed.



Schools and Libraries Division

February 16, 2010

Terry Ryan

Applicant - Salinas Elementary School District

471 Application Number: 546537

FRNS: 1509261

Response Due Date: March 02, 2010

As previously discussed, we are currently in the process of reviewing all Funding Year 2007 form 471 applications for schools and libraries discounts to ensure that they are in compliance with the rules of the Universal Service program. To complete my review I need some additional information. The information needed to complete the review is listed below.

Item 1 – Verification of non-discounted portion

Please provide the front and back of cancelled checks is allowable to verify payment. Make sure to include a statement in the request that the check(s) should reconcile to the amount under review. If not, check reconciliation to the recovery amount should be included.

Please fax or email the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested within 15 calendar days so we can complete our review. Failure to do so may result in a commitment adjustment and/or recovery of previously disbursed funds.

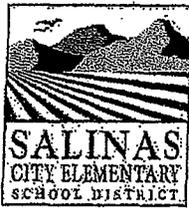
Please advise me if the Contact Person on the application(s) has changed from that on the original application. This change must include the Form 471 application number(s) and be signed by the original application's Contact Person, the original application's Authorized Person or a school official (with name and title provided).

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

Karen Hulmes  
School and Libraries Division  
Program Compliance  
Voice 973 581-5116  
Fax 973 599-6582  
Email address [khulmes@sl.universalservice.org](mailto:khulmes@sl.universalservice.org)

Schools and Libraries Division - Correspondence Unit  
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-  
0685

Visit us online at: [www.usac.org/sl](http://www.usac.org/sl)



# Salinas City Elementary School District

## Facilities Department

39 Clark St. • Salinas, CA 93901

(831) 753-5394 • FAX (831) 753-5208

March 2, 2010

Karen Hulmes  
Schools and Libraries Division, Program Compliance  
30 Lanidex Plaza West  
P.O. Box 685  
Parsippany, NJ 07054-0685

Deliver by e-mail  
with hard copy by  
Overnight Delivery

471 Application Number: 546537  
FRNS: 150926

Dear Ms. Hulmes:

This correspondence is response to your February 16, 2010 15-day correspondence, Item 1: Verification of non-discounted portion.

Attached please find:

1. A County Office of Education (COE) report dtd 3/1/2010, originating from its financial management system, showing a School District check to AT&T Data Comm in the amount of \$3,526.73 (a copy of the cancelled check has been requested from the County Office of Education Business Department);
2. An internal School District report titled *AT&T Billing Analysis FRN 1509261* dtd 11/30/09 showing:
  - a. The billing/payment/credit history for Funding Year 2007
  - b. The payment referenced in Item 1 above
  - c. A billing credit to the School District at the end of June 2008 in the amount of \$37,471.37
3. A copy of the AT&T June 2008 bill dated June 7, 2008 showing a credit to the School District of \$37,471.37
4. A copy of a School District purchase order #101443 in the amount of \$60,230 issued subsequent to the FCC Auditor General's audit of the School District by KPMG. The School District has been in negotiations with AT&T Data Comm to determine the exact amount of the non-discounted portions of the subject bills, while taking offsetting credits. We expect this matter to be closed with AT&T within 10 working days at which time the School District will issue a check against this PO to resolve payment of non-discounted portions of the subject billing from Year 10.

I trust that this information will provide an adequate response to your referenced correspondence. Please contact me if you have any questions or concerns, anytime, at 831-970-7463.

Sincerely,

Terry Ryan  
Director of Facilities  
831-970-7463  
teryan@monterey.k12.ca.us

Salinas City Elementary School District

AT&T Billing Analysis **FRN 1509261**

Fiber Optic Circuits

November 30, 2009

Legend: red values = credit to district  
no project billing

**Year 10/Funding Yr 2007**

Month	Year	Previous Bill	Adjustments	Current Charges	Total Due	Notes
Jul	2007					
Aug	2007					
Sep	2007					
Oct	2007	0.00	0.00	1,905.24	1,905.24	Initial bill
Nov	2007	1,905.24	28.58	1,592.91	3,526.73	
Dec	2007	3,526.73	(3,526.73)	54,861.76	54,861.76	District Payment
Jan	2008	54,861.76	822.93	25,227.65	80,912.34	
Feb	2008	80,912.34	1,213.69	1,202,876.00	1,285,002.03	Billing Error
Mar	2008	1,285,002.63	(208,585.09)	(1,373,642.57)	(297,225.03)	Billing Credit
Apr	2008	(297,225.03)	(61,167.78)	23,650.88	(334,741.93)	Billing Credit
May	2008	(334,741.93)	(14,137.90)	70,716.04	(278,163.79)	Billing Credit
Jun	2008	(278,163.79)	217,053.33	23,639.09	(37,471.37)	Billing Credit

3/2/10  
 Copy of  
 check (warrant)  
 been ordered.  
 10 days to  
 receive.  
 Copy of Total  
 payments report  
 referencing  
 the check (warrant)  
 attached