

**Before the  
Federal Communications Commission**

In the Matter of the ) File No. SLD -  
)  
Appeal of the Decision of the )  
)  
Universal Service Administrator by )  
)  
CUMBERLAND COUNTY SCHOOL )  
DISTRICT ) CC Docket No. 02-6

Appeal and/or Request for Waiver  
Request for Expedited Relief

May 2, 2011

Ms. Marlene H. Dortch  
Secretary, Federal Communications Commission  
445 12th Street, S.W., Washington, D.C. 20554

This is an appeal from a decision by the USAC Administrator and  
waiver request.

**(1) Funding Commitment Decision on Invoice Extension Deadline**

Form 471 Application Number: 599731  
Funding Year 11: 07/01/2010-06/30/2011  
BEN: 126975  
Date of Denial Notice: April 15, 2011  
Date of Appeal: May 2, 2011

**(2) SLD Contact Information**

Currie A. Sutton  
Cumberland County School District  
Ste 260-27600 Chagrin Blvd.  
Cleveland Ohio 44122-4449  
Tel. (216) 682-0169  
Fax. (216)514-3337

**(3) Funding Request Numbers Appealed**

FRN:1655138

**(4) USAC's Reason for Denial of Deadline Extension Request**

Invoice Number: N/A                      Line(s): N/A  
Decision on Request:                      **Denied**

Explanation: Current guidelines and procedures require Invoice Deadline Extension requests to be filed by the end of the relevant invoice receipt period for the service category of the FRN requiring an extension (120 days after the end of the service delivery date). The extension request was not filed in a timely manner, so it is denied.

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**(5) Issue**

Is it unjust, unreasonable and contrary to the Telecommunications Act of 1996 and Congressional policy for the USAC to deny reimbursement to an Applicant where that Applicant has paid the service provider in full and it is the service provider that created an error in the FCC Form 472 process which resulted in denial of reimbursement by the USAC for Applicant?<sup>1</sup>

**(6) Facts**

The USAC mailed "FORM 472 (BEAR) Notification Letter" to the service provider on November 3, 2010 with a copy to the Applicant. Exhibit A While FRN 1655138 was funded, reimbursement was denied because the "Invoice received date 10/26/2010 Later Than."

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<sup>1</sup> Form 472 is the Billed Entity Applicant Reimbursement Form (BEAR), which is used by the applicant, or Billed Entity, to request reimbursement for discounts on eligible services for which the applicant has already paid the service provider. "BEAR payments are reimbursements for services that have already been provided to and paid for by a school or library. The structure of the schools and libraries support mechanism necessitates that reimbursement must flow to the applicant through the services provider. BEAR payments are not the property of the service provider, which has been paid in full." *FCC 03-191, para 51*

On October 12, 2010 the service provider sent an e-mail to the Applicant asking if the "Applicant received reimbursement." Please note that all reimbursements flow through service providers this particular provider should have known this. Exhibit A

On October 13, 2010 the Applicant responded to the service provider's e-mail stating that no reimbursement had been received. This demonstrates that Applicant was unfamiliar with e-rate rules. Exhibit A

On October 13, 2010 the service responded to Applicant's e-mail stating that the USAC sent the reimbursement check to the service provider but it was never received. The service requested another reimbursement check but apparently the USAC did not do that but instead cancelled the original check. The USAC told the service provider that another BEAR must be submitted. The USAC never communicated this to the Applicant. Exhibit A

The BEAR issue has been a cause of great concern for the Commission for some time. It was stated in *FCC 03-101*, that "[t]he Administrator has received many complaints about service providers failing to remit the BEAR payments in a timely fashion or, in some cases, at all." *FCC 03-101, para 51* And it is still a concern.

On November 17, 2010 the Applicant ONCE again asked the service provider about the USAC's reimbursement. Exhibit A

On December 13, 2010 the service provider responded to the Applicant's e-mail stating that the service provider had been talking to the USAC and explained that (i) the reimbursement check had not been received by the service provider; (ii) that the mix up was not the Applicant's fault; and (iii) the Applicant needed to file for an "extension". Exhibit B Also, at that time the service told the Applicant to submit the BEAR under a different SPIN. Exhibit B

On January 20, 2011 Applicant asked for an "invoice deadline extension" but this was denied by the USAC on April 15, 2011. Exhibit B Note that the Applicant by this time had acquired a consultant but the error that had been made and compounded could not be corrected.

## **(7) Law and Argument**

This is an Appeal and Waiver Request.

In *Glendale Unified School District, DA 06-244, Rel February 1, 2006*, this Commission stated

[t]he Commission may waive any provision of its rules on its own motion and for good cause shown. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. \*\*\*waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule." *Para 4*

Applicant submits that the special circumstances here warrant the granting of this appeal and waiver.

The *Conference Report on S. 652* (which resulted in the *Telecommunications Act of 1996*) not only identified the particular services for discount but stated policy that Congress intended to be included in universal service for schools:

The ability of K-12 classrooms, \*\*\*to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal basis. The provisions of subsection (h) will help open new worlds of knowledge, learning and education to all Americans – rich and poor, rural and urban. They are intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of an illness, to Americans everywhere via schools \*\*\*. This universal access will ensure that no one is barred from benefiting from the power of the Information Age. . . .

New subsection (h)(2) requires the Commission to establish rules to enhance the availability of advanced telecommunications and information services to public institutional telecommunications users. For example, the Commission could determine that telecommunications and information services that constitute universal service for classrooms \*\*\*shall include dedicated data links and the ability to obtain access to education materials, research information, statistics, information on Government services, reports developed by Federal, State and local governments, and information services which can be carried over the Internet.

*H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. ("Conf. Rep.") at 132-133 (1996).*

Given this Congressional policy, this Commission implemented the rules and regulations for the *Telecommunications Act of 1996*. In doing so, among other regulations, it established two invoicing methods:

- Form 472, Billed Entity Applicant Reimbursement (BEAR) Form: applicant pays for services in full and then requests reimbursement from the USAC
- Form 474, Service Provider Invoice (SPI): Service provider discounts customer (applicant) bills and then requests discount amount from the USAC

“Under existing law and Commission procedure, the Administrator of the universal service support mechanism does not provide funds directly to schools and libraries, but rather, provides funds to eligible service providers who offer discounted services to eligible schools\*\*\*.” See, *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291, paras. 8-9 (rel. October 8, 1999)*; *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21 and 96-45, Order, FCC 00-350 (rel. October 26, 2000)*. Also, see *FCC 03-101, para 42*

Since no funds are ever paid by the USAC directly to the applicant, the Applicant is at the mercy of the service provider with both FCC methods. “The Commission previously noted in the *Universal Service Order* that requiring schools \*\*\*to pay in full could create serious cash flow

problems for many schools \*\*\*would disproportionately affect the most disadvantaged schools and libraries." *Para 47, FCC 03-101; Universal Service Order, 12 FCC Rcd at 9083, para. 586.*

Under e-rate the schools contract with service providers to do eligible services work. USAC, through the Universal Service Fund (USF), either pays the discount to the service provider directly (if the approved schools have not already paid in full) or reimburses the schools for part of the cost (if the projects have been approved and the schools have paid the service provider for the work). In the latter case, USAC actually makes its payment to the service provider, who in turn shall pass the funds through to the school. *FCC 03-10, Second Report and Order and Further Notice of Proposed Rulemaking, Rel April 30, 2003* In effect the service provider functions merely as a vehicle to deliver the reimbursement to the applicant. Failure to provide the reimbursement in a timely fashion may result in the service provider facing enforcement action by this Commission. *FCC 03-101*

First, as applied to the special circumstance in this Appeal and Waiver Request, the issue of non-reimbursement was created by the service provider and USAC. The proper BEAR was filed with the USAC and the USAC mailed the reimbursement check to the service provider. While the service provider alleges that the check was never received, there should have been a prompt follow up with the USAC for the whereabouts

of the \$148,055.18 check. This was not done. The service provider took the lead in discussing the matter with the USAC and never apprised the Applicant of the issue until valuable time had passed. Here since the reimbursement had been issue pursuant to an appropriate BEAR, the USAC should have issued another check. It did not do so.

*In Alton Community Unit School District 11, DA 10-999, Rel: June 2, 2010, "three applicants were late because of errors made by the service provider\*\*\* in three appeals, the petitioners argue that they filed their FCC Forms 472 and 474 on time, but never received funding." Para 5 This Commission grated waivers even though the 474 was late. Para 5*

Second, the *Conference Report to S.652* makes it abundantly clear that schools have access to advanced telecommunications technology and that funds for the purchase of such technology should be paid from Universal Service Funds. The reason for this is obvious because schools have trouble raising funds to fix windows and roofs on their buildings with little remaining for telecommunications technology.

Here, based on the USAC decision, and the service provider's sin of omission, the Applicant bears the burden of the expense; that is not what was intended by the Telecommunications Act of 1996, nor FCC policy.

*In Canon-McMillan School District, DA 08-2385, Rel: October 30, 2008, this Commission directed the USAC to take specific action to assist*

Applicants. The Commission specifically said “[f]or those applications where the appropriate form was not submitted to USAC previously, we direct USAC to solicit submission of the invoice form no later than 15 calendar days from the release of this order and to remit payment associated with the solicited invoice form, if warranted, no later than 90 calendar days from the receipt of the invoice form.” *Para 4 Here*, **apparently the USAC took no such action.**

CERTAINLY THERE IS A NEED FOR RULES FOR THE SAKE OF FINALITY!  
But where the circumstances demonstrate, as here through no error of its own, the Applicant is penalized to the extent of \$148,055.18 relief is warranted. **Further, there is no evidence of waste, fraud or abuse.**

The USAC had the authority to issue another check but did not. It appears that the USAC did not follow its own operating procedure.<sup>2</sup> See,

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<sup>2</sup> 47 C.F.R § 54.701(a) requires USAC to “administer[] the universal service support mechanisms in an efficient, effective, and competitively neutral manner.” *Administrative Procedure: Invoice Deadline Extension Further Detail.*

USAC grants requests for extensions of time in which to invoice USAC under the circumstances listed below:

- Authorized service provider changes;
- Authorized service substitutions;
- USAC did not provide timely notice to the applicant and/or service provider. For example, the service provider's FCC Form 486 Notification Letter is returned to USAC as undeliverable;
- USAC made an error that resulted in the invoice being received into its data systems late. For example, USAC made an error in the data entry of an invoice;
- USAC delays in data entering the form resulted in the invoice being late;

47 C.F.R § 54.701(a) Thus, not only did the service not properly follow up with the USAC, the USAC did not issue another check. Both of these errors resulted in no re-imbusement for Cumberland, and hence this Appeal and Waiver request. In *McAlester Public Schools I-80, Midwest City-Del City School District, and Oklahoma City School District I-89*; Request for Review of Qwest Corporation (Educational Service Unit No. 17) (noting that it filed its FCC Form 474 timely and, after months of trying to figure out what happened to its invoices, was told by USAC to request an extension of the invoice deadline); *Request for Waiver of Verona Board of Education* (arguing that its FCC Form 472 was filed on time, but the check was lost and USAC directed it to invoice again). See, *Alton, fn 23*

**Conclusion:**

(a) Within 90 days or less Order funding for the telecommunications services requested in the 471 Application, specifically FRN: 1655138

(b) Set aside funds to totally fund Applicant's request.

Respectfully submitted,

/S/Nathaniel Hawthorne  
/S/ Natalie L. Hawthorne  
27600 Chagrin Blvd., Ste. 265  
Cleveland, OH 44122

tel.: 216/514.4798  
E-mail: nhawthorne@telecomlawyer.com

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• Documentation requirements necessitated third party contact or certification;

Attorneys for CUMBERLAND  
Cc: CUMBERLAND