WINSTON
&STRAWN
LLP

1700 K Street, N.W.
Washington, D.C. 20006-3817
T: +1 (202) 282-5000
F: +1 (202) 282-5100
www.winston.com

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JUL 21 2011

Federal Communications Commission
Office of the Secretary

July 21, 2011

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002

Re: **In the matter of Request for Review by Morrow County School District of Decision of Universal Service Administrator**

CC Docket No. 02-6; CC Docket No. 96-45

Request for Review

Request for Waiver

Applicant Name: Morrow County School Dist 1
Billed Entity Name: Morrow County School Dist 1
Billed Entity Number: 145127
471 Application Numbers: 254806 and 247557
Funding Request Numbers: 633073, 633208, 628103, 627104, 628321,628701, 628804, and 629069

Dear Secretary Dortch:

This firm represents the Morrow County School District (Oregon) ("MCSD"). On behalf of our client, we hereby supplement our appeal to the Federal Communications Commission ("FCC") regarding the June 28, 2007 decisions of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC"). We also request a waiver of relevant FCC policy, rules and/or deadlines.

I. PROCEDURAL BACKGROUND

In Commitment Adjustment Letters dated March 8, 2007, USAC notified MCSD that it would seek rescission of $1.45 million in funds disbursed in Funding Year 2001 for the Funding Request Numbers ("FRNs") cited in those letters. *See* Ex. 1 (Notification of Commitment Adjustment letters). On April 25, 2007, the MCSD Superintendent, without the benefit of counsel, submitted to USAC written appeals of USAC's Notification of Commitment Adjustment letters. *See* Ex. 2 (Letters of Appeal from MCSD to USAC re: Notification of Commitment

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Adjustment Letters). On June 28, 2007, as reflected in the two attached USAC Administrator's Decisions on Appeal, USAC denied MCSD's appeals. *See* Ex. 3 (Administrator's Decision on Appeal re: Application No. 254806) and Ex. 4 (Administrator's Decision on Appeal re: Application No. 247557). Several weeks later, on July 30, 2007, MCSD informed USAC by letter of its intent to appeal to the FCC USAC's decisions to issue Funding Year 2001 Commitment Adjustment Letters for Application Nos. 254806 and 247557. *See* Ex. 5 (Notice of Intent to File Appeal to FCC).

After the denial of its appeals by USAC, MCSD undertook a search to hire counsel to represent it in its appeal to the FCC. On August 24, 2007, counsel from this firm filed an appeal with the FCC requesting review and reconsideration of USAC's decisions and, in the alternative, a waiver of the alleged violations. *See* Ex. 6 (FCC Appeal Letter). As undersigned counsel had only recently been retained, the August 24, 2007 letter indicated that counsel would supplement MCSD's appeal. The following letter represents MCSD's position on appeal.

II. QUESTION PRESENTED FOR REVIEW

Based on the following facts and arguments, Morrow County School District respectfully requests that the Federal Communications Commission review the decision of Universal Service Administrative Company, as detailed in the Commitment Adjustment Letters dated March 8, 2007 and the subsequent denial of MCSD's appeal on June 28, 2007 in the USAC Administrator's Decisions on Appeal, to rescind the E-rate funds granted to MCSD for Funding Year 2001. MCSD seeks review based on 47 C.F.R. §§ 54.719(c) and 54.722.

III. OVERVIEW OF USAC's DECISIONS ON APPEAL

In its denial letters, USAC stated the following:

> "USAC has determined that a service provider who participated in the competitive bidding process as a bidder was listed as a contact person on your FCC Form 470; therefore, assisting in the selection of your vendors for the services sought. The service provider's involvement with the preparation and submission of the Form 470 violates the competitive bidding requirements for the FRN(s) listed above. Since you violated the FCC competitive bidding rules, USAC rescinded your funding request and sought recovery of any funds disbursed."

Exs. 3 and 4 (Administrator's Decision on Appeal at page 2).

We disagree with USAC's decision for several reasons, which are fully discussed below.

IV. FACTUAL BACKGROUND

1. Overview of Morrow County School District

Morrow County School District is located in rural north-central Oregon. Although Morrow County covers more than 2,000 square miles, the population is only about 11,100 people. MCSD is comprised of nine schools, and serves the four communities of Boardman, Irrigon, Heppner and Lexington, Oregon. The school district educates approximately 2,300 students in kindergarten through 12th grade. The student population in Boardman and Irrigon is diverse and growing, with the largest minority group being Latino/Hispanic.

As an extremely disadvantaged school district, MCSD has been eligible for the following discount levels:

Funding Year	Percentage of Students Eligible for National School Lunch Program (NSLP)	E-Rate Discount Percentage
1998	48%	73% (shared)[1]
1999	47%	75% (shared)
2000	49%	75% (shared)
2001	57%	82% (shared)
2002	56%	81% (shared)
2003	61%	90% (shared)

See Ex. 27 (Dirksen Decl. at ¶¶7-8).

As shown by the chart above, the percentage of children in MCSD who are eligible for the National School Lunch Program, an indicator of poverty, has grown over the years.

2. MCSD Hired Mr. Arbogast in 1996

In 1996, two years before the E-rate program began, MCSD was fairly unsophisticated in terms of its understanding and usage of computer-based technology, and lacked qualified technology personnel to assist the students in this regard. *See* Ex. 27 (Dirksen Decl. at ¶12); Ex. 28 (Anderson Decl. at ¶¶11-12). Prior to the creation of the E-rate program, MCSD, a school district with approximately 2,300 students, plus teachers and administrators, owned or operated only approximately 100 computers, none of which were connected to a network. *See* Ex. 29 (Lorenz Decl. at ¶6).

[1]The "shared" E-rate discount percentage is an aggregate discount percentage for the individual schools within MCSD.

Prior to the inception of the E-rate program, Mr. Nate Arbogast (deceased) contacted MCSD in 1996 in regards to securing employment with the school district. In his initial letter of interest, Mr. Arbogast disclosed upfront to MCSD that he ran his own technology and computer business, Arbogast Business Services ("ABS"). *See* Ex. 28 (Anderson Decl. at ¶8); Ex. 22 (May 9, 1996 Letter from Nate Arbogast to Julie Ashbeck re: Interest in Computer Technician/Software Specialist position).

The MCSD School Board hired Mr. Arbogast as the MCSD Technician/Software Specialist (also known as the Technology Coordinator) at the School Board meeting on June 10, 1996. *See* Ex. 27 (Dirksen Decl. at ¶9); and Ex. 23 (Nate Arbogast Employment Contract, signed by Superintendent Starr on 7/10/96 and by Scott Bauska, Chairman of the School Board on 7/8/96).

Based on a review of the records of MCSD, former MCSD Superintendent Bruce Anderson confirms that the school district hired Mr. Arbogast according to normal MCSD procedures. *See* Ex. 28 (Anderson Decl. at ¶9). Based on his resume and other information he submitted to MCSD, Mr. Arbogast was well-qualified for the position of Technology Coordinator. *See* Ex. 28 (Anderson Decl. at ¶12); Ex. 7 (Nate Arbogast's resume indicating that he held a degree in business from Portland State University (1994), a post-baccalaureate minor in Business/Computer Education from Eastern Oregon State College (1995) and had relevant work experience).

The position Mr. Arbogast held reported to the MCSD Superintendent. *See* Ex. 28 (Anderson Decl. at ¶10). Upon his hiring in 1996, Mr. Arbogast reported to MCSD Superintendent Chuck Starr. At the outset, Mr. Arbogast's duties included facilitating and implementing Local Area Networks (LAN) and Wide Area Networks (WAN), coordinating and providing software training, coordinating installation of all software, and maintaining a high level of computer-related training for employees of MCSD. *See* Ex. 29 (Lorenz Decl. at ¶9) and Ex. 24. (96-97 Goals & Criteria, Nate Arbogast).

In 1998, two years after MCSD hired Mr. Arbogast, MCSD filed its first E-rate application. *See* Ex. 28 (Anderson Decl. at ¶15). Chuck Starr (deceased) was the superintendent at the time. Mr. Arbogast continued to report to Superintendent Starr until the Superintendent's resignation in 1999. *See* Ex. 28 (Anderson Decl. at ¶10).

MCSD experienced significant turnover of superintendents during the time Mr. Arbogast was employed by the school district. Over the course of his eight year employment with MCSD, Mr. Arbogast reported to five different superintendents: as noted, he first reported to Superintendent Chuck Starr from 1996 to 1999; then to Superintendent Bruce Anderson from 1999 to 2002; then to Superintendent Jack Crippen from 2002 to 2003; then to Interim Superintendent George Murdoch from 2003 to 2004; and finally to Superintendent Mark Burrows in 2004. *See* Ex. 27 (Dirksen Decl. at ¶11). Dirk Dirksen took over the job of superintendent from Mark Burrows in 2011. Although Mr. Arbogast reported to the

superintendent, none of the superintendents had any particular E-rate or technology expertise, and were charged with being the chief executive officer of MCSD, dealing with a myriad of other issues on a day-to-day basis. *See* Ex. 27 (Dirksen Decl. at ¶12); Ex. 28 (Anderson Decl. at ¶17).

3. E-Rate Began in 1998

When the E-rate program began in 1998, Mr. Arbogast, as MCSD's Technology Coordinator, was tasked with drafting the district's technology plan and navigating the E-rate application process. *See* Ex. 29 (Lorenz Decl. at ¶10). His job description for 1998 included a requirement that he coordinate E-rate documentation. *See* Ex. 29 (Lorenz Decl. at ¶10); Ex. 25 (MCSD Job Description for Computer Technician, signed 9/8/98 by Nate Arbogast).

Due to the fact that the E-rate program was new and access to Internet technology and individuals who had expertise in that area were scarce in rural Oregon, MCSD relied heavily on Mr. Arbogast's knowledge and expertise. *See* Ex. 28 (Anderson Decl. at ¶¶16-17); Ex. 29 (Lorenz Decl. at ¶ 12).

Mr. Arbogast did not receive any formal or informal training on E-rate from MCSD. Mr. Arbogast's job required him to be self-taught and his primary sources of E-rate information were the USAC SLD website and the E-rate helpline. *See* Ex. 29 (Lorenz Decl. at ¶ 11). Mr. Arbogast endeavored to understand and keep MCSD informed of the evolving rules and regulations published by USAC and the FCC in relation to the E-rate program. *See* Ex. 28 (Anderson Decl. at ¶18); Ex. 29 (Lorenz Decl. at ¶12). As MCSD's Technology Coordinator, Mr. Arbogast was the most knowledgeable person regarding MCSD's technology plan and its E-rate participation. Therefore he was listed as the contact person on MCSD's Form 470. *See* Ex. 28 (Anderson Decl. at ¶20).

4. MCSD Made a Good Faith Effort to Comply with Applicable Law, Policy and Rules

Mr. Arbogast was the key MCSD employee responsible for all aspects of MCSD's participation in E-rate, including compliance, bidding and operations. MCSD relied on Mr. Arbogast to inform it of relevant E-rate rules and policy; at that time MCSD did not have the budget, nor believe it was necessary, to hire outside compliance experts or lawyers. Additionally, all other MCSD employees who had interaction with Mr. Arbogast believed the school district was in compliance with all such applicable rules, including Oregon state law, MCSD policy, as well as E-rate regulations. *See* Ex. 28 (Anderson Decl. at ¶19); Ex. 29 (Lorenz Decl. at ¶12 and ¶15).

5. Due to its Rural Location and Small Size, MCSD Did Not Receive Unsolicited Bids from E-Rate Vendors

As noted, MCSD is located in a remote and rural area of Oregon. Due to its rural location and the relatively small student population in the school district, during the early years of E-rate there were very few technology companies that were interested in bidding on MCSD's proposed E-rate projects. *See* Ex. 28 (Anderson Decl. at ¶21). MCSD did not have many computer users, and consequently, did not have the large technology projects that would attract technology companies. During the first few years of the E-rate program, MCSD never received any unsolicited bids in response to its Form 470 postings. *See* Ex. 28 (Anderson Decl. at ¶22).

In order to comply with Oregon state law and MCSD policy, MCSD posted its E-rate call for bids in the local Oregon newspaper. *See* Ex. 28 (Anderson Decl. at ¶23); Ex. 14 (Announcement for call for bids published in Heppner Gazette-Times, January 10, 2001). This method seldom resulted in bid responses. *See* Ex. 28 (Anderson Decl. at ¶23). Hence, MCSD had to affirmatively contact E-rate service providers for bids because in the relevant time period, MCSD always received fewer than the three bids strongly advised by Oregon state law.[2] *See* Ex. 28 (Anderson Decl. at ¶24); Ex. 20 (Oregon Revised Statute § 279C.414).

6. Faced with a Shortage of Bidders, and Believing in Good Faith that ABS Could Permissibly Bid on MCSD's E-Rate Needs, MCSD Requested Bids from ABS

Faced with a shortage of E-rate service providers that were interested in bidding on MCSD projects, the school district did not have many options if it wanted to participate in the E-rate program. Due to the remote location of the school district, there was a period of time when ABS was the only Cisco-authorized partner in Morrow County. *See* Ex. 28 (Anderson Decl. at ¶25). The fact that ABS was the only Cisco authorized partner was significant because Cisco held the patent for the routers that MCSD required. *See, id.* Henc e, as one of the only companies able or willing to provide services to MCSD, ABS was approached by the school district to bid on MCSD's E-rate projects. *See* Ex. 28 (Anderson Decl. at ¶29).

Before placing any bids on behalf of ABS, and to ensure that ABS could permissibly bid on MCSD's E-rate projects, Mr. Arbogast met with MCSD employees including MCSD Business Manager Rhonda Lorenz to discuss the applicable competitive bidding rules in place at the time. *See* Ex. 29 (Lorenz Decl. at ¶14). Mr. Arbogast and Ms. Lorenz reviewed the Oregon Revised Statutes on competitive bidding as well as relevant MCSD policies on conflict of interest and purchasing.[3] After these meetings, Ms. Lorenz believed that ABS could properly bid on MCSD projects. *See* Ex. 29 (Lorenz Decl. at ¶15). Ms. Lorenz discussed the issue with Superintendent Anderson, and he saw no prohibition on ABS bidding on E-rate work for MCSD. *See* Ex. 28

[2] Oregon Revised Statutes § 279C.414 does not require three bids if three quotes are not reasonably available, but does require the contracting agency to make a written record of the effort made to obtain the quotes. USAC rules at the time did not require a minimum number of bids. If one or no bids were received, so that no comparison can be made, the SLD suggested that the applicant prepare a "memo to file" noting the posting of the Form 470 and the lack of competing bids. http://www.e-ratecentral.com/archive/News/News2008/weekly_news_2008_0107.asp.

[3] E-rate rules in place at the time (47 C.F.R. §54.504) required compliance with state and local competitive bid requirements. *See* Ex. 21.

(Anderson Decl. at ¶28) and Ex. 29 (Lorenz Decl. at ¶16). Mr. Arbogast also discussed his potential conflict of interest with Superintendent Anderson and the School Board, and all agreed that the bid was permissible even though Mr. Arbogast was the owner of ABS, because no profit was going in Mr. Arbogast's pocket. *See* Ex. 26 (August 20, 2001 Minutes from Executive Session Board Meeting, Nate Arbogast's Presentation to the Board); Ex. 28 (Anderson Decl. at ¶30). Superintendent Anderson and the involved MCSD employees believed that MCSD was in full compliance with the E-rate competitive bidding requirements, as well as those of MCSD and those provided in the Oregon Revised Statutes. *See* Ex. 28 (Anderson Decl. at ¶34) and Ex. 29 (Lorenz Decl. at ¶15).

As per MCSD policy and Oregon law, Mr. Arbogast, whenever submitting a quote for products or services, was required to declare openly the conflict to his immediate supervisor, work at all times in joint capacity with another employee to solicit such quotes, and have no final authority in the decision to award such contracts. The decision to award contracts was made solely by Mr. Arbogast's immediate supervisor, and/or the Board of Directors. *See* Ex. 9 (MCSD District Purchasing Policy) and Ex. 10 (Oregon Revised Statute 244.120); *See also* Ex. 28 (Anderson Decl. at ¶29-31).

7. USAC Was Aware that ABS Was an E-Rate Service Provider and that Mr. Arbogast Was MCSD's Form 470 Contact

ABS was an E-rate authorized Service Provider for Funding Years 1998, 1999, and 2000. *See* Ex. 8 (Service Provider Annual Certification status for ABS for 1998, 1999, 2000).

However, ABS was not certified as a Service Provider for Funding Years 2001, 2002 or any year thereafter. *See* Ex. 8 (Service Provider Annual Certification status for ABS for 2001 and 2002 showing status of "not received").

MCSD solicited bids from ABS and ultimately awarded the project to ABS. *See* Ex. 28 (Anderson Decl. ¶32 and ¶35). Before MCSD became aware that ABS was ineligible to bid on E-rate services and prior to any disbursements to ABS, ABS informed MCSD that it would not be able to complete the contracted-for services. *See* Ex. 28 (Anderson Decl. ¶36). On August 20, 2001, Morrow Development Corporation ("MDC") was awarded the high speed internet services contract, with the understanding that funding would be obtained for the project. *See* Ex. 30 (Agreement between MCSD and MDC for High Speed Internet Access Project). On October 11, 2001, MCSD wrote a letter to USAC requesting a SPIN change from ABS to MDC. *See* Ex. 16 (Letter from MCSD to USAC re: SPIN Correction Request). USAC did not request the adjustment of funds from MCSD until March 8, 2007. *See*, Ex. 1 (Notification of Commitment Adjustment Letters).

USAC rejected MCSD's funding request for Funding Year 2002. Prior to USAC's denial of MCSD's request, MCSD was completely unaware that it was a per se violation of the E-rate

competitive bidding process for the person listed as the contact person on the Form 470 to have any association with a Service Provider listed on the Form 471. *See* Ex. 28 (Anderson Decl. at ¶34); Ex. 29 (Lorenz Decl. at ¶18). Yet, USAC gave no notice of the Funding Year 2001 violation to MCSD until 2007, after previously approving funding for the project when Arbogast's name was on the Form 470. *See* Ex. 1 (Notification of Commitment Adjustment Letters at page 5).

Citing this inadvertent violation, USAC refused to provide discounts for any services listed on MCSD's Funding Year 2002 Form 471 Application Number 319456, despite the fact that USAC had already approved the project, Mr. Arbogast was no longer associated with ABS, and ABS was no longer an E-rate authorized Service Provider. *See* Ex. 11 (Nate Arbogast's letter of resignation from Arbogast Business Services); Ex. 8 (Service Provider Annual Certificate Funding Year 2002 for ABS showing status of "not received"). USAC has informed MCSD that USAC intends to rescind approximately $1.45 million in funds distributed in Funding Year 2001 based on the same competitive bidding violation as it had identified in 2002. Ex. 1 (Notification of Commitment Adjustment Letter). The argument against that decision is below.

V. ARGUMENT ON APPEAL

In its denial letter, USAC cited *Request for Review by Mastermind Internet Services, Inc.*, CC Docket No. 96-45, 16 FCC Rcd 4028, FCC 00-167 (May 23, 2000) [hereinafter "*Mastermind*"] for the proposition that "[a]n application violates the FCC's competitive bidding requirements when it surrenders control of the bidding process to a service provider who participated in the competitive bidding process as a bidder." Ex. 4 (Administrator's Decision on Appeal at page 2). According to USAC, MCSD violated the competitive bidding requirements because "a service provider who participated in the competitive bidding process as a bidder was listed as a contact person on your FCC Form 470; therefore, assisting in the selection of your vendors for the services sought." *Id.* Contrary to USAC's decision, MCSD did not violate the competitive bidding rules because: (1) ABS was not an E-rate eligible service provider during Funding Year 2001, and therefore Mr. Arbogast's signature on the Form 470 was not contrary to USAC rules; (2) MCSD did not surrender control of the bidding process to a Service Provider; and (3) the competitive bidding process was fair and open.

1. ABS Was Not an E-Rate Certified Service Provider for Funding Year 2001

The fact that ABS was not an E-rate eligible service provider during Funding Year 2001 means that Mr. Arbogast's signature on the Form 470 did not violate competitive bidding practices. A prior decision from the FCC has held that such a signature by an employee of an ineligible Service Provider need not result in denial of E-rate funds.

In its denial letter, USAC cited *Mastermind* for the proposition that "[a]n applicant violates the FCC's competitive bidding requirements when it surrenders control of the bidding

process to a Service Provider that participated in the competitive bidding process." Ex. 4, (Administrator's Decision on Appeal at page 2). According to the Form 473 instructions, "[a] Service Provider is any provider of eligible services or products to an eligible entity – a school, school district, library, library consortium or consortia of multiple entities." Ex. 12, (Form 473 Instructions at page 3). In order to be considered a Service Provider for E-rate purposes, an eligible company must obtain a Service Provider Identification Number ("SPIN") and submit a Form 473 (Service Provider Annual Certification Form). See *Common Carrier Bureau Releases Report to Monitor Impacts of Universal Service Support Mechanisms*, DA No. 98-2540, CC Docket No. 98-202, 1998 FCC LEXIS 6547, *7 (December 22, 1998) [hereinafter "*Common Carrier Bureau*"] ("Service Providers must also complete two forms to receive reimbursement from the Administrator: the FCC Form 473, or Service Provider Annual Certification Form, and the FCC Form 474, or the Service Provider Invoice Form"). Because ABS failed to file FCC Form 473, it was not an E-rate eligible Service Provider for Funding Year 2001. See Ex. 8 (Service Provider Annual Certification status for ABS for 2001 and 2002).

When an employee of an ineligible Service Provider also signs a school district's Form 470, USAC cannot deny funding to that school district for the error. In *Request for Review by Banning Unified School District*, CC Docket No. 02-6, 20 FCC Rcd 12873 (July 27, 2005) [hereinafter "*Banning*"], Banning appealed a USAC decision to deny funding for its Funding Year 2001 and 2002 applications because USAC determined that Banning had violated the competitive bidding rules by listing as the contact person on Form 470 an employee of a Service Provider. The FCC granted Banning's appeal because it found that

> "ATG was not eligible to participate in the schools and library program in Funding Years 2000 and 2001 because it was not an eligible service provider. Specifically, the record reveals that ATG did not obtain a SPIN until February 12, 2001. As such, ATG could not have participated in the competitive bidding process as a bidder before that time."

Id. at *13.

The same is true in this case. Even though Mr. Arbogast signed the Form 470 against USAC guidelines, that fact is irrelevant because ABS did not submit a Form 473 for Funding Year 2001 and, as such, could not have participated in the competitive bidding process for that year. *See* Ex. 8 (Service Provider Annual Certification status for Funding Year 2001). The relevant USAC Guidelines state:

> "...there is a rebuttable presumption that the Service Provider is participating in the competitive bidding process if the Form 470 seeks the type of services furnished by the Service Provider. The applicant *can rebut the presumption by proving that, in fact, the Service Provider did not participate in the competitive bidding.*" (emphasis added)

MCSD can rebut the presumption of this rule because ABS was in fact ineligible to bid on the project. ABS could not actually respond to MCSD's Request for Services or participate in the competitive bidding process for the reasons stated above. Therefore, as was the case in *Banning*, the fact that Mr. Arbogast signed the Form 470 should not prevent the school district from receiving funds from USAC.

2. MCSD Did Not Surrender Control of the Bidding Process to a Service Provider

Unlike the company in *Mastermind*, MCSD did not surrender control of its competitive bidding process to ABS. In *Mastermind*, the employee of Mastermind not only signed the applicant's Form 470, but also prepared and distributed RFPs to potential bidders. *Mastermind,* 16 FCC Rcd 4028 at ¶10. The FCC held that because other prospective bidders may have withheld bids based on the contact name on the Form 470, or that the Mastermind employees may have withheld information in the RFPs, the applicant had surrendered control of the bidding process to Mastermind. *Id.,* at ¶¶10-11. This case is factually distinct from *Mastermind* because the superintendent and school board of MCSD retained control over the crucial parts of the bidding process, even though Mr. Arbogast's name was on the Form 470. *See* Ex. 28 (Anderson Decl. at ¶31).

The *Banning* decision also sheds some light on what it means to control the bidding process. In *Banning,* the FCC found that "a competitive bidding violation occurs 'when a service provider is listed as the contact person on the FCC Form 470 and also participates in the competitive bidding process as a bidder,'" *Banning,* 20 FCC Rcd 12873 at ¶7. The agency also "observed that the contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested. On this basis, the FCC found that when an applicant delegates that power to an entity that also participates in the bidding process as a prospective Service Provider, the applicant impairs its ability to hold a fair competitive bidding process." *Id,* at ¶7. Again, the present case is distinct because MCSD did not delegate power over the bidding process to Mr. Arbogast. *See* Ex. 28 (Anderson Decl. at ¶31).

Strict compliance with these decisions under the unique facts in the present case would be inconsistent with the purpose underlying the regulation. While it is true that Mr. Arbogast was listed as the contact person on Form 470 and was also an employee of ABS, the FCC's concerns regarding potential unfairness in the competitive bidding process are not warranted in this situation. First, the only information disseminated by MCSD in relation to its RFP for high speed internet services was that which was contained in the Form 470 and the call for bids placed in the local newspaper. Since no Service Providers responded to either posting, Mr. Arbogast was never in a position to affect the quality of communication regarding the services requested. Second, ABS did not submit a bid for Funding Year 2001 in response to the Form 470 or the advertisement placed in the newspaper. ABS was specifically requested to submit a bid so that MCSD would remain compliant with Oregon state law and MCSD policy requiring at least three

bids for all services retained through competitive bidding. *See* Ex. 28 (Anderson Decl. at ¶ 24); Ex. 20 (Oregon Revised Statute § 279C.414). Because Mr. Arbogast, through ABS, did not make a profit on services rendered to MCSD, he had no incentive to taint the competitive bidding process. *See* Ex. 28 (Anderson Decl. at ¶30). In every FCC appeal applying the reasoning in *Mastermind*, the contact person listed on the relevant Form 470 was actually a paid employee of an E-rate eligible Service Provider and had an incentive to interfere with the fairness and openness of the competitive bidding process.[4] However, in this case, Mr. Arbogast would not have been paid by an E-Rate eligible Service Provider, as ABS was not an eligible Service Provider for Funding Year 2001. Even if ABS had been an eligible Service Provider, Mr. Arbogast was not making a profit from the MCSD project. *See* Ex. 28 (Anderson Decl. at ¶30). There was no opportunity or incentive for Mr. Arbogast to tamper with the competitive bidding process.[5]

3. The MCSD Competitive Bidding Process Was Fair and Open and Complied with all Oregon State Laws and Local MCSD Policy

FCC regulation 47 C.F.R. 54.504 delineates the requirements for competitive bidding under the E-rate program. The October 1, 2000 version of this regulation stated that "...an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart....These competitive bid requirements apply in addition to state and local competitive bid requirements and are not

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[4] *See, e.g., In the Matter of Request for Review of the Decision of USAC by A. R. Carethers SDA School, Houston, Texas*, CC Docket Nos. 96-45, 97-21, 16 FCC Rcd 6943 (May 22, 2002) (contact person was paid employee of service provider); *In the Matter of Request for Review of the Decision of USAC by Dickenson County Public Schools, Clintwood, Virginia*, CC Docket Nos. 96-45, 97-21, File No. SLD-239447, DA 02-1212 (May 22, 2002) (same); *In the Matter of Request for Review of the Decisions of the Universal Service Administrator by Consorcio de Escuelas y Bibliotecas de Puerto Rico, San Juan, Puerto Rico*, CC Docket Nos. 96-45, 97-21, File No. SLD-228216, DA 02-1676 (July 15, 2002) (same); *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Lafayette Township School, Lafayette, New Jersey*, CC Docket No. 02-6, Order, File No. SLD-231717, DA 0-299 (Feb. 6, 2004) (same); *In the Matter of Request for Review of St. Margaret's School, Middle Village, New York*, CC Docket No. 02-6, Order, File No. SLD-368113, DA 05-1127 (Apr. 22, 2005) (same); *In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Academy of Careers and Technologies, San Antonio, TX, et al.*, CC Docket No. 02-6, Order, File Nos. SLD-418938 *et al.*, FCC 06-55 (May 19, 2006) (same); *In the Matter of Requests for Review of the Decisions of the Universal Service Administrator by Send Technologies LLC*, CC Docket No. 02-6, Order, SPIN - 143010002, DA 07-1270 (Mar. 13, 2007) (same).

[5] It should also be noted that in all the FCC appeals interpreting *Mastermind*, the Commission was denying a request for funding. In this case, the funds have already been disbursed and USAC is seeking the return of those funds. Although in its Fifth Report and Order released on August 13, 2004 the FCC states that "we should recover the full amount disbursed for any funding requests in which the beneficiary failed to comply with the Commission's competitive bidding requirements..." that report was published more than two years after the alleged program violation by MCSD. *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order (August 13, 2004), at ¶19. The FCC announced that its Fifth Report and Order serves as "advance notice to all stakeholders that violation of these rules will result in recovery," therefore, application of the 2004 policy to the alleged violation occurring in Funding Year 2001 would be inappropriate, because no such notice was given to MCSD. *Id.* at ¶18.

intended to preempt such state or local requirements." Ex. 21 (47 C.F.R. 54.504(a) (2000)). This regulation also required school districts to post the FCC Form 470 prior to opening up the bidding process, and to post the FCC Form 471 once Service Providers were selected. Ex. 21 (47 C.F.R. 54.504 (b)(vii)(4) and 54.504(c)). Morrow County School District followed the then-applicable FCC requirements for competitive bidding as well as the Oregon state and MCSD competitive bidding requirements, as demonstrated below. Accordingly, the competitive bidding process was fair and open and no program violation was committed.

A. FCC Competitive Bidding Requirements Were Satisfied

47 C.F.R. 54.504(b) requires an E-rate eligible school, library, or consortium to submit a valid Form 470 which includes, *inter alia*, a signed certification that:

> (i) The school or library is an eligible entity under Secs. 254(h)(4) and 254(h)(5) of the Act and the rules adopted under this subpart;
> (ii) The services requested will be used solely for educational purposes;
> (iii) The services will not be sold, resold, or transferred in consideration for money or any other thing of value;
> (iv) If the services are being purchased as part of an aggregated purchase with other entities, the request identifies all co-purchasers and the services or portion of the services being purchased by the school or library;
> (v) All of the necessary funding in the current funding year has been budgeted and approved to pay for the "non-discount" portion of requested connections and services as well as any necessary hardware or software, and to undertake the necessary staff training required to use the services effectively;
> (vi) The school, library, or consortium including those entities has complied with all applicable state and local procurement processes; and
> (vii) The school, library, or consortium including those entities has a technology plan that has been certified by its state, the Administrator, or an independent entity approved by the Commission.

47 C.F.R 54.504(b) (2000). After the Form 470 is submitted, the Administrator of the E-rate program is required to post the Form 470 on the website and the school is required to wait four weeks before deciding upon a Service Provider. Once a Service Provider is contracted, an eligible school is required to file a Form 471 in order to obtain a commitment of support from USAC.

Morrow County School District satisfied all of the FCC competitive bidding requirements for Funding Year 2001, as evidenced by the filed Form 470 on December 12, 2000 as well as the (at least initially) approved Form 471 on January 17, 2001. *See* Ex. 13 (MCSD Funding Year 2001 Forms 470); Ex. 18 (Funding Year 2001 Form 471).

B. State and Local Competitive Bidding Requirements Were Satisfied

Oregon Revised Statutes §§ 279C.330, 335, 340, 345, 350, and 355 require all public contracts to be procured through the competitive bidding process. ORS §244.120 lists the requirements for dealing with situations in which conflicts of interests arise. That statute requires that a conflicted individual announce publicly the nature of the conflict and refrain from participating in any discussion or debate on the issue out of which the conflict arises. Mr. Arbogast followed this procedure for bids submitted by ABS. *See* Ex. 28 (Anderson Decl. at ¶ 26); Ex. 26 (August 20, 2001 Minutes from Executive Session Board Meeting). Further, MCSD District Purchasing Policy states that "[a] person shall not be automatically disqualified because of his/her position as Board member, officer or employee of this school district or family of such person, from entering into a contract with the Morrow County School District." Ex. 9 (MCSD District Purchasing Policy at ¶12). By allowing ABS to bid for services, MCSD was simply following its state and local competitive bidding rules. When a bid from ABS was requested, the Board was informed by Mr. Arbogast of the potential conflict of interest and MCSD made all necessary efforts to exclude Mr. Arbogast from the bid reading and/or selection process. *See* Ex. 28 (Anderson Decl. at ¶29); Ex. 26 (August 20, 2001 Minutes from Executive Session Board Meeting).

Because MCSD complied with FCC regulations as well as state and local competitive bidding requirements, the bidding process for the E-Rate project was open and fair. Therefore, the FCC's concerns about effectuating a fair bidding process are unnecessary in this case.

VI. ARGUMENT FOR WAIVER

In the alternative, it is entirely consistent with the public good, and especially the public good of the students of MCSD, for the FCC to grant a waiver in the instant case. The FCC has the authority to waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. In *Request for Waiver of the Decision of the Universal Service Administrator by Illinois School for the Visually Impaired*, CC Docket No. 02-6, 21 FCC Rcd 3536, ¶5 (April 3, 2006), the FCC explained its authority to grant waivers:

> "The Commissioner 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. In sum, 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."

Morrow County School District respectfully submits that a waiver of program rules is particularly appropriate in the instant case. Principles of equity as well as the potential for

extreme hardship warrant a deviation from the general rules in favor of the public interest. Arguments in favor of a waiver are set forth below.

1. The Facts of This Case Make Strict Compliance with the Ruling in *Mastermind* Inconsistent with the Public Interest

A. MCSD Devoted Significant Time to Ensuring that it was in Compliance with the Ever-Changing E-rate Rules and Regulations Such That the Equities Weigh in Favor of Waiver

In 2005, the FCC acknowledged that "the E-rate program is fraught with complexity from the perspective of beneficiaries, and the program rules and guidelines have changed many times."[6] The Commission was concerned that "the complexity of the application process leads some small schools and libraries to choose not to participate in the E-rate program."[7]

These concerns were even more pronounced in the early years of the program, when school districts, especially small and rural ones, were grappling with the complexities of the E-rate program. MCSD tasked Mr. Arbogast with devoting time and resources to navigating the day-to-day E-rate activities, including the Form 470 application process and keeping abreast of the evolving rules and regulations. *See* Ex. 28 (Anderson Decl. at ¶¶18-20); Ex 29 (Lorenz Decl. at ¶12). Without Mr. Arbogast's dedication, MCSD would not have been able to participate at all in the E-rate program. Mr. Arbogast was the only MCSD employee with the expertise necessary to even attempt compliance with all program directives. *See* Ex. 28 (Anderson Decl. at ¶20).

When MCSD first began soliciting bids for its E-rate eligible products and services, it became clear that the district's remote location was a disadvantage. Indeed, it was several years before any Service Providers responded to any of MCSD's Form 470 postings. *See* Ex. 28 (Anderson Decl. at ¶¶21-22). As required by the FCC, MCSD waited 28 days before selecting a vendor for its E-rate eligible products and services. In this time period and in order to obtain the best price for products and services, MCSD placed a call for bids in the local newspaper. *See* Ex. 28 (Anderson Decl. at ¶23). Many times neither the Form 470 nor the newspaper advertisement would result in any bidders. MCSD had to take the initiative and directly contact

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[6] *Request for Waiver by Greenfield Public School District*, CC Docket No. 02-6, Order, File Nos. SLD-431911, SLD-431129, DA 06-487 (Feb. 28, 2006), citing *Comprehensive Review of Universal Service Fund, Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005).

[7] *Comprehensive Review of Universal Service Fund, Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005).

various vendors for quotes. *See* Ex. 28 (Anderson Decl. at ¶24). As ABS was the only Cisco authorized vendor in the area and one of the only businesses in Morrow County equipped to provide the technological products and services the school district required, MCSD would often request a quote from ABS.

Concerned about the potential conflict of interest, Mr. Arbogast sat down with Rhonda Lorenz (MCSD's Business Manager) and Julie Ashbeck (MCSD's Human Resources Director) to consult Oregon state competitive bidding laws and MCSD policy. *See* Ex. 29 (Lorenz Decl. at ¶14). The conclusion of that meeting was that ABS was not prohibited from bidding on E-rate eligible services. This understanding was consistent with Oregon Revised Statutes 279C and 244.120, as well as MCSD's policy that a person is not automatically disqualified from contracting with MCSD because of his position as an employee of the school district. *See* Ex. 28 (Anderson Decl. at ¶¶26-27); Ex. 29 (Lorenz Decl. at ¶ 15).

Mr. Arbogast declared publicly his potential conflict of interest. *See* Ex. 28 (Anderson Decl. at ¶ 26-27). By doing so, Mr. Arbogast complied with state law, leading to the presumption that the bidding process was lawful.[8] Additionally, Mr. Arbogast did not have the authority to select the winning vendor; that was the responsibility of the superintendent and the MCSD Board. *See* Ex. 28 (Anderson Decl. at ¶31). To eliminate any further perceived impropriety, ABS did not make a profit on E-rate goods/services provided to MCSD. *See* Ex. 28 (Anderson Decl. at ¶30). These facts prove that MCSD made every effort to comply with federal and state laws. *See* Ex. 29 (Lorenz Decl. at ¶19).

Although *Mastermind* has now made it clear that the contact person on the Form 470 may not be associated with a Service Provider who participates in the competitive bidding process, during the application process for Funding Year 2001, MCSD was not aware of and did not have access to this information. *See* Ex. 28 (Anderson Decl. at ¶34). MCSD was not assisted with E-rate compliance by attorneys or E-rate consultants or experts. As a small, rural school district, staying abreast of the ever-changing rules was a task that was quite difficult and perhaps beyond the abilities of Mr. Arbogast and the various secretaries who assisted him. Further, MCSD believed that it went beyond what was required by the program in ensuring that there was a competitive bidding process. It did so by securing more than one quote, and taking great care to ensure that the fact that the school district was forced to rely on ABS to bid for services did not affect the fairness of the competitive bidding process.

B. There Is No Evidence of Waste, Fraud, Abuse, Misuse of Funds, or a Failure to Adhere to Core Program Requirements

[8] Disclosure of conflict is required by Oregon Revised Statute §244.120(c). *See also, Request for Waiver by State of Wyoming Department of Administration and Information, Cheyenne, Wyoming*, CC Docket No. 02-6, Order, File Nos. SLD-202111, 218236, DA 06-484 (February 28, 2006) (finding that "there is a presumption that if an entity is in compliance with state procurement law, that the competitive bidding process is lawful and in compliance with our rules").

As the Commission has stated, "the competitive bidding rules are a central tenet of program funding and a tool for preventing waste, fraud, and abuse."[9] Although USAC claims that MCSD has violated the competitive bidding rules, there is no evidence or suggestion of waste, fraud, abuse, misuse of funds, or a failure to adhere to core program requirements. ABS never received any disbursement of funds for Funding Year 2001 and, because it was not a E-rate Service Provider, could not have received such disbursements. The FCC has been inclined to waive program violations in narrow instances where there is a violation that does not undermine "the statutory goal mandated by Congress of preserving and advancing universal service among schools and libraries most in need of support." *Request for Review and/or Waiver by Glendale Unified School District, Glendale, California*, CC Docket No. 02-6, Order, File No. SLD-143548, DA 06-244 (February 1, 2006). Because MCSD did not receive many bids for any of their E-rate eligible products and services, there was no way for Mr. Arbogast to taint the competitive bidding process. *See* Ex. 28 (Anderson Decl. at ¶22 and ¶31). On the contrary, both MCSD and Mr. Arbogast were focused on making sure the process was as competitive as possible in an effort to supply the school district with the tools needed to compete in the age of technology. *See* Ex. 29 (Lorenz Decl. at ¶6 and ¶9).

When MCSD was made aware of the per se competitive bidding violation in a Funding Commitment Decision Letter from USAC dated June 2002 denying all funding requested for Funding Year 2002, it had already ceased soliciting bids from ABS. To ensure future program compliance, MCSD began working with the Umatilla-Morrow Education Service District, an outside entity that specializes in assisting applicants with the E-rate application process. However, since Funding Year 2002 was the first time MCSD was made aware of the *Mastermind* violation, there was no way to go back and correct the violation for Funding Year 2001.

C. The Potential for Extreme Hardship Weighs in Favor of Waiver

As stated earlier, MCSD is an extremely disadvantaged school district located in rural Oregon and serves 2,300 students. The majority of those students are eligible for the National School Lunch Program. *See* Ex. 27 (Dirksen Decl. at ¶7). When MCSD developed its budget for the 2008-2009 school year, it faced a nearly $1 million loss in federal and English Language Learner ADM funding while also facing an increase in expenses. Ex. 19 (MCSD 2008-2009 Budget Message). This revenue loss will significantly affect the quality of education available to the students in the district. Additionally, the MCSD faced several large, necessary maintenance projects that undercut the budget as well as the district's reserves. *Id.* If MCSD is forced to rescind over $1.45 million in funding, there is no way that the school district would be able to recover. It is likely that there would be extreme personnel cuts and a drastic reduction in programming for the already disadvantaged students, and a real possibility that the school district would be forced to cease its operations. This result would not be in the public interest nor would it be consistent with the intent of the E-rate program.

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[9] See, *In the Matter of Requests for Waiver of the Decision of the Universal Service Administrator by Adams County School District 14, Commerce City Colorado*, CC Docket No. 02-6, Order, File Nos. SLD-425151, 425211, 425303, 425352, 426285, *et al.* (March 28, 2007)

Due to the unique circumstances in this case, MCSD respectfully requests a waiver of the alleged program violation. Under the particular facts of this case, MCSD believes that the rescission of funds disbursed during Funding Year 2001 would be contrary to the purposes of Section 254(h) of the Telecommunications Act of 1996 and would be contrary to the public interest.

VI. CONCLUSION AND PRAYER FOR RELIEF

Morrow County School District requests that the Federal Communications Commission overturn the June 28, 2007 decisions of the Schools and Libraries Division of the Universal Service Administrative Company, which denied the appeals of the Commitment Adjustment Letters requesting rescission of $1.45 million in funds disbursed in Funding Year 2001 for Funding Request Numbers 633073, 633208, 628103, 627104, 628321,628701, 628804, and 629069. MCSD seeks this relief based on 47 C.F.R. §§ 54.719(c) and 54.722. Contrary to USAC's decisions in these cases, MCSD did not violate the competitive bidding rules because ABS was not an E-rate eligible Service Provider during Funding Year 2001, and therefore Mr. Arbogast's signature on the Form 470 was not contrary to USAC rules; MCSD did not surrender control of the bidding process to a Service Provider; and the competitive bidding process was fair and open. In the alternative, MCSD requests a waiver of relevant FCC policy, rules and/or deadlines because strict compliance with USAC guidelines in this case would be inconsistent with the intent of the E-Rate program, against public interest, and would cause extreme hardship on the school district.

Respectfully submitted,

Ryan S. Spiegel, Esq.
WINSTON & STRAWN LLP
1700 K Street, N.W.
Washington, D.C. 20006
Tel. (202) 282-5000
Fax (202) 282-5100
email: rspiegel@winston.com

Attachments

CERTIFICATE OF SERVICE

I, Ryan S. Spiegel, an attorney, hereby certify that on July 21, 2011, I caused one original and one copy of the foregoing Letter of Appeal in the matter of Request for Review by Morrow County School District of Decision of Universal Service Administrator to be served by personal delivery on the Secretary of the Federal Communications Commission at the address below:

Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002

I also certify that I have this day caused one copy of this Letter of Appeal to be sent to the Universal Service Administrative Company by FedEx to the address below:

High Cost Low Income Division
Universal Service Administrative Company
2000 L Street NW, Suite 200
Washington, DC 20036

Date: July 21, 2011

Ryan S. Spiegel, Esq.
Counsel for Morrow County School District

MCSD FCC Appeal Exhibit List

1. Notification of Commitment Adjustment Letters from USAC to MCSD, March 8, 2007
    a. CenturyTel of Eastern Oregon, Inc.
    b. Qwest Corporation
    c. Shared Communications Services, Inc.
    d. Cingular Wireless
    e. Morrow Development Corp.
2. Letters of Appeal from MCSD to USAC April 25, 2007
    a. CenturyTel of Eastern Oregon, Inc.
    b. Qwest Corporation
    c. Shared Communications Services, Inc.
    d. Cingular Wireless
    e. Morrow Development Corp.
3. Administrator's Decision on Appeal re: Application No. 254806, June 28, 2007
4. Administrator's Decision on Appeal re: Application No. 247557, June 28, 2007
5. Notice of Intent to File Appeal to FCC, July 30, 2007
6. FCC Appeal Letter, August 24, 2007
7. Nate Arbogast's Resume
8. Service Provider Annual Certification status for ABS for 1998, 1999, 2000, 2001, and 2002
9. MCSD District Purchasing policy, adopted October 12, 1998
10. Oregon Revised Statutes §244.120
11. Nate Arbogast's Letter of Resignation from Arbogast Business Services, August 1, 2001
12. Form 473 Instructions
13. MCSD Funding Year 2001 Form 470
14. Announcement for Call for Bids published in Heppner Gazette-Times, January 10, 2001
15. Solicitation emails from MCSD requesting quote for high speed internet service, January 2001, and MCSD quote for OC3 internet service for 8 Morrow County schools.
16. Letter from MCSD to USAC re: Spin Correction Request
17. USAC Guidelines, Chapter 5
18. MCSD Funding Year 2001 Forms 471
19. MCSD 2008-2009 Budget Message
20. Oregon Revised Statutes § 279C.414
21. 47 C.F.R §54.504. FCC Requests for services.
22. May 9, 1996 Letter from Nate Arbogast to Julie Ashbeck re: Interest in Computer Technician/Software Specialist position
23. Arbogast Employment Contract, signed by Superintendent Starr on 7/10/96 and by Scott Bauska, Chairman of the School Board on 7/8/96
24. 96-97 Goals & Criteria, Nate Arbogast
25. Morrow County School District Job Description for Computer Technician, signed 9/8/98 by Nate Arbogast
26. Minutes from Executive Session Board Meeting, Nate Arbogast's Presentation to the Board, August 20, 2001
27. Declaration of Dirk Dirksen
28. Declaration of Bruce Anderson
29. Declaration of Rhonda Lorenz
30. Agreement between MCSD and MDC for High Speed Internet Access Project, August 20, 2001.

Exhibit 1

EXHIBIT 1

Notification of Commitment Adjustment Letters
From USAC to MCSD
March 8, 2007

USAC
Universal Service Administrative Company

Schools & Libraries Division

Notification of Commitment Adjustment Letter
Funding Year 2001: 7/01/2001 - 6/30/2002

March 8, 2007

Nate Arbogast
MORROW COUNTY SCHOOL DIST 1
270 W MAIN ST
LEXINGTON, OR 97839

Re: Form 471 Application Number:	**254806**
Funding Year:	**2001**
Applicant's Form Identifier:	**MCSD0102ISP**
Billed Entity Number:	**145127**
FCC Registration Number:	**0012534509**
SPIN Name:	**Morrow Development Corp**
Service Provider Contact Person:	**Eileen Hendricks**

Our routine review of Schools and Libraries 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 adjustments to your funding commitment 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 (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 the Demand Payment 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." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at http://www.universalservice.org/fund-administration/tools/latest-news.aspx#083104 for more information regarding the consequences of not paying the debt in a timely manner.

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter, 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 e-mail 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 Numbers you are appealing. Your letter of appeal must include the Billed Entity Name, the 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 the SLD to more readily understand your appeal and respond appropriately. Please keep your letter specific and brief, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.

4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal electronically, please send your appeal to appeals@sl.universalservice.org using your organization's e-mail. If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Dept. 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Appeals Area of the SLD section of the USAC web site or by contacting the Client Service Bureau at 1-888-203-8100. We strongly recommend that you use the electronic appeals options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (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 of 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 web site, or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

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. Immediately preceding the Report, you will find a guide that defines each line of the Report.

The SLD 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 these Funding Request Numbers, a separate letter will be sent to the service provider detailing the necessary service provider action.

Please 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. Please note the Funding Commitment Adjustment Explanation in the attached Report. It explains why the funding commitment is being reduced. Please ensure that any invoices that you or your service provider submit 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: Eileen Hendricks
Morrow Development Corp

A GUIDE TO THE FUNDING COMMITMENT ADJUSTMENT REPORT

A report for each E-rate funding request from your application for which a commitment adjustment is required is attached to this letter. We are providing the following definitions for the items in that report.

FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each individual request in your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.

SERVICES ORDERED: The type of service ordered from the service provider, as shown on Form 471.

SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

SERVICE PROVIDER NAME: The legal name of the service provider.

CONTRACT NUMBER: The number of the contract between the applicant and the service provider. This will be present only if a contract number was provided on your Form 471.

BILLING ACCOUNT NUMBER: The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.

SITE IDENTIFIER: The Entity Number listed in Form 471, Block 5, Item 22a. This number will only be present for "site specific" FRNs.

ORIGINAL FUNDING COMMITMENT: This represents the original amount of funding that SLD had reserved to reimburse you for the approved discounts for this service for this funding year.

COMMITMENT ADJUSTMENT AMOUNT: This represents the amount of funding that SLD has rescinded because of program rule violations.

ADJUSTED FUNDING COMMITMENT: This represents the adjusted total amount of funding that SLD has reserved to reimburse for the approved discounts for this service for this funding year. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.

FUNDS DISBURSED TO DATE: This represents the total funds that have been paid to the identified service provider for this FRN as of the date of this letter.

FUNDS TO BE RECOVERED FROM APPLICANT: This represents the amount of improperly disbursed funds to date as a result of rule violation(s) for which the applicant has been determined to be responsible. These improperly disbursed funds will have to be recovered from the applicant.

FUNDING COMMITMENT ADJUSTMENT EXPLANATION: This entry provides an explanation of the reason the adjustment was made.