

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

|  |   |                               |
|--|---|-------------------------------|
| In the Matter of                         | ) |                               |
|  | ) |                               |
| Request for Waiver and Review of         | ) |                               |
| Decision of the                          | ) |                               |
| Universal Service Administrator by       | ) |                               |
|  | ) |                               |
| St. Mary's Catholic School               | ) | File No. SLD-170197 (FY 2000) |
| Christiansted, St. Croix, Virgin Islands | ) |                               |
|  | ) |                               |
| Schools and Libraries Universal Service  | ) | CC Docket No. 02-6            |
| Support Mechanism                        | ) |                               |

To: Telecommunications Access Policy Division, Wireline Competition Bureau

**ST. MARY'S CATHOLIC SCHOOL  
PETITION FOR RECONSIDERATION**

St. Mary's Catholic School ("St. Mary's"), pursuant to Section 1.106 of the Federal Communications Commission's ("FCC" or "Commission") rules, hereby petitions for reconsideration of the Order, DA 12-241, released on February 22, 2012, in the above-captioned matter.<sup>1</sup> The Universal Service Administrative Company ("USAC") has demanded that St. Mary's reimburse funds distributed under the E-rate program to service providers *more than a decade ago*. This demand, if not overruled by the Commission, will have a detrimental financial impact on St. Mary's, including the very real possibility that St. Mary's will be forced to close or, at the very least, take drastic measures such as laying off faculty and administration or eliminating educational

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<sup>1</sup> *In the Matter of Requests for Waiver and Review of the Decision of the Universal Service Administrator by Al-Ihsan Academy, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-196013, *et al.*, CC Docket No. 02-6, Order, DA 12-241 (Wireline Comp. Bur. 2012) ("Order").

programs. St. Mary's respectfully requests that the Commission reverse USAC's decision and direct USAC to discontinue recovery actions against St. Mary's for the reasons set forth below.

## **I. BACKGROUND**

St. Mary's provides a Catholic education from kindergarten through eighth grade in the small town of Christiansted on St. Croix, an island with less than 55,000 residents. St. Mary's is located in the Catholic Diocese of St. Thomas in the Virgin Islands (the "Diocese"), which is the most impoverished Catholic Diocese in the entire United States. Due to depressed economic conditions in the area, St. Mary's students come from poverty-stricken families. Indeed, the school qualifies for the maximum E-rate discount level of 90%. Yet, despite its small size and financial difficulties, St. Mary's is committed to providing its students with a comprehensive education within the Catholic faith. Such commitment includes ensuring its students have access to the critical technological resources that are available to students and educators in more affluent areas throughout the United States.

Given its financial constraints, St. Mary's applied for assistance from the E-rate program in Funding Year 2000 to fund Internet access and internal connections for its classrooms. The school filed the requisite forms with USAC. The school conducted an open and fair competitive bidding process as required by the Commission's rules. The school selected three vendors in accordance with those rules, and the services were installed.

Many years later, in 2006, USAC sought recovery of all funds paid for Funding Year 2000 as follows: (1) Funding Request Number ("FRN") 363435 in the amount of \$33,701.31, paid to Dell Marketing LP, (2) FRN 363401 in the amount of \$2,399.62, paid to Choice Communications, LLC and (3) FRN 363382 in the amount of \$83,950.02, paid to Lindsey Electronics, Inc. In total, USAC is demanding St. Mary's pay \$120,050.95, which far exceeds

St. Mary's current resources.<sup>2</sup> USAC based its demand on four deficiencies allegedly discovered during an audit, including St. Mary's alleged failure to pay any of the non-discount portion of the funded requests.<sup>3</sup>

On January 4, 2007, St. Mary's filed a request for review of USAC's decision with the Commission.<sup>4</sup> On February 22, 2012, the Commission released the Order denying the request, stating that USAC found that the subject petitioners "violated Commission rules by failing to pay the non-discounted portion of the price of the services that they purchased under the E-rate program."<sup>5</sup>

## **II. THE COMMISSION SHOULD REVERSE USAC'S DECISION**

The Commission should reverse USAC's decision to recover the funds for the following three reasons.

First, USAC's assertion that St. Mary's did not pay the non-discount portion is incorrect. St. Mary's submitted documentation with the Request for Review to demonstrate that the non-discount portion payments were made to Choice Communications and, promptly upon learning

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<sup>2</sup> Two other schools in the Diocese, St. Joseph High School and St. Patrick Elementary School, are concurrently filing similar Petitions for Reconsideration. The total recovery demanded from these three Diocesan schools is nearly \$400,000.

<sup>3</sup> See Exhibit A.

<sup>4</sup> See *St. Mary's Catholic School*, Request for Review and Petition for Waiver, CC Docket No. 02-6 (Jan. 4, 2007) ("*Request for Review*").

<sup>5</sup> See Order at ¶ 1. The Order did not address the other three alleged deficiencies in St. Mary's E-rate application process related to certification of financial resources, document retention and technology planning, findings which St. Mary's expressly appealed and refuted in its Request for Review. Indeed, the Order disposes of St. Mary's Request for Review as follows, "[W]e find that the other 16 petitioners [which includes St. Mary's] did not pay their portion of the purchase price." *Id.* Accordingly, the Commission denied the Request for Review based solely on the alleged failure to pay the non-discount portion. To the extent necessary, however, St. Mary's preserves its right to appeal other matters raised in the Request for Review that were not discussed in the Order.

that the payment had not yet been made, to Dell Marketing. Indeed, St. Mary's paid Dell not only the non-discount portion, but additional funds that USAC had failed to pay Dell, for a total of 17% (rather than the required 10%) of the funded amount. The Order made no mention of, nor did it analyze, St. Mary's arguments or documentation with respect to these two providers. The Commission has granted appeals for other E-rate applicants that stated the non-discount portion was paid, even after USAC initiated recovery of funds.<sup>6</sup> Indeed, in the same Order denying St. Mary's appeal, the Commission granted an appeal filed by Fairfield County School District which, like St. Mary's, submitted that it had paid the service provider (and that payment was made after USAC sought recovery).<sup>7</sup> St. Mary's expects to be treated the same as similarly situated applicants and must therefore presume (since the Order does not specify) that the denial of its appeal is based on the FRN associated with Lindsey Electronics. At a minimum, the three FRNs at issue should be treated independently. St. Mary's has demonstrated payment of the non-discount portion for FRNs 363435 and 363401. It should not be required to reimburse funds for those two FRNs because the third provider, Lindsey Electronics, has disappeared.

Second, this is not a case where the school did not have sufficient funds or intent to pay the non-discount portion. To the best of St. Mary's knowledge, Lindsey Electronics never invoiced St. Mary's for the non-discount portion.<sup>8</sup> However, as soon as St. Mary's became

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<sup>6</sup> See Order at ¶ 1 (granting request for review filed by Fairfield County School District). The Commission has also afforded applicants the opportunity to submit additional documentation showing payment of non-discount portions. See, e.g., Order; *In the Matter of Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy*, File No. SLD-148011, CC Docket No. 02-6, Order, 23 FCC Rcd. 15466 (Wireline Comp. Bur. 2008).

<sup>7</sup> See Order at ¶ 1.

<sup>8</sup> More than a decade has passed since Lindsey Electronics installed the project and the relevant St. Mary's employees from that time have changed positions, so St. Mary's is unable to consult the original persons involved in this matter. Even the Commission's five-year documentation-retention requirement has long expired here. See 47 C.F.R. § 54.516.

aware that the non-discount portion was outstanding, it made extraordinary efforts to attempt to locate the owner of Lindsey Electronics in order to pay him. He could not be found.<sup>9</sup> St. Mary's went even further and placed the non-discount portion for this FRN in third party *escrow*, where it remains today and has not been used, even despite St. Mary's financial straits.<sup>10</sup> The Commission has previously recognized that service providers have an obligation to invoice the E-rate applicant for the non-discount portion and to follow up in efforts to collect payment.<sup>11</sup> Here, an entire school may close because a service provider not only did not pursue payment but could not even be found to receive payment. As a result, that payment continues to sit in escrow for years. These facts are quite different from the precedent cited in the Order.<sup>12</sup> In *IOSCO*, the applicant committed multiple rule violations, including not paying for the non-discount portion *despite* having apparently received invoices from the service provider. IOSCO's consultant was also an employee of the service provider and the entire process was tainted. Most importantly, there was no indication that IOSCO could not locate the provider to pay it, as is the unusual case here.

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<sup>9</sup> The Request for Review outlines these efforts in detail, including efforts by St. Mary's to locate the owner of the company through online locator services, mail, contacts with other vendors and review of permitting and licensing records.

<sup>10</sup> St. Mary's actually placed in escrow 13% of the amount disbursed by USAC to Lindsey Electronics, when only 10% payment was required.

<sup>11</sup> See *In the Matter of Request for Review of a Decision of the Universal Service Administrator by Hispanic Information and Telecommunications Network, Inc.*, File No. SLD-194580, CC Docket No. 02-6, Order, 23 FCC Rcd. 15432 (Wireline Comp. Bur. 2008).

<sup>12</sup> *Request for Review of the Decision of the Universal Service Administrator by IOSCO Regional Educational Service Agency, Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-108653, et al., CC Docket No. 02-6, Order, 24 FCC Rcd 12735 (Wireline Comp. Bur. 2009) ("*IOSCO*").

Third, USAC erred in applying a Commission policy retroactively to St. Mary's. While St. Mary's did not pay all of the non-discount portions within 90 days of the date of service, that is simply irrelevant. The 90-day time period was not adopted by the Commission until 2004 – well after Funding Year 2000 and when services were delivered to St. Mary's.<sup>13</sup> The Commission has repeatedly made clear that new E-rate policies may not be applied to applications initiated prior to the adoption of the policy.<sup>14</sup> Furthermore, the Commission plainly stated in 2004 that the new 90-day policy would be applied “*prospectively*.”<sup>15</sup> Prior to 2004, the Commission's rules contained no specific time frame for determining when an E-rate beneficiary has failed to pay its non-discounted share.<sup>16</sup> The 90-day period, or indeed any specific period, is not applicable to St. Mary's Funding Year 2000 application. This fact is critical because St. Mary's stands ready, as it has been from the start, to pay the non-discount portion of \$9,327.78 to Lindsey Electronics if it can be found.<sup>17</sup> Indeed, this amount remains in escrow. In the meantime, St. Mary's should not be penalized for the negligence and apparent dissolution of the

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<sup>13</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15816, ¶ 24 (2004) (“*Fifth Report and Order*”).

<sup>14</sup> See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Keyport School District*, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 24 FCC Rcd 12702 (Wireline Comp. Bur. 2009); *Requests for Review of Decisions of the Universal Service Administrator by Colegio Nuestra Senora del Carmen, et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15568 (Wireline Comp. Bur. 2008).

<sup>15</sup> *Fifth Report and Order*, 19 FCC Rcd at 15818.

<sup>16</sup> *Id.*

<sup>17</sup> St. Mary's requests that the Commission reverse USAC's decision to recover the entire application amount, but would have no objection if the Commission imposed a condition that St. Mary's remit the non-discount portion to Lindsey Electronics, if it can be found upon commercially reasonable efforts, or to USAC if it cannot be found within ninety days of the Commission's grant of this Petition.

service provider, particularly when St. Mary's has made extraordinary efforts to adhere to the program rules.<sup>18</sup>

### **III. THE RELIEF REQUESTED IS IN THE PUBLIC INTEREST AND A WAIVER IS JUSTIFIED**

The denial of this Petition will have dire consequences to St. Mary's and possibly the Diocese itself. If the Commission deems it necessary to grant the relief requested herein, a waiver of Section 54.523 and such other Commission rules as are necessary is appropriate given the facts of this case and the significant hardship that would otherwise result.<sup>19</sup>

The grant of this Petition will further the public interest and will not undermine the policy behind the applicable rules. The Commission adopted the rule that E-rate beneficiaries must contribute at least ten percent of the cost of products and services in order "to encourage them to avoid unnecessary and wasteful expenditures because they will be unlikely to commit their own funds for purchases that they cannot use effectively. A percentage discount also encourages schools and libraries to seek the best pre-discount price and to make informed, knowledgeable choices among their options."<sup>20</sup>

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<sup>18</sup> As stated above, St. Mary's should, at a minimum, be relieved from recovery for FRNs 363435 and 363401.

<sup>19</sup> The Commission's authority to grant waivers to further the public interest is well established. *See, e.g.*, 47 C.F.R. § 1.3; *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972) ("*Wait Radio*"). A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*"). The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio*, 418 F.2d at 1157. 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. *Northeast Cellular*, 897 F.2d at 1166; *accord NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

<sup>20</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9036 (1997) (subsequent history omitted).

St. Mary's did not engage in wasteful or unnecessary expenditures or operate under the belief that it would not have to share in the cost of the products and services. St. Mary's expected to pay the non-discount portion and did pay two of the service providers. The fact that Lindsey Electronics could not be found for receipt of payment surprised St. Mary's, and did not in any way influence St. Mary's competitive bidding process. St. Mary's good faith is amply demonstrated by the fact that it paid Dell more than the ten percent share and has escrowed more than the ten percent share associated with Lindsey Electronics – even at a time when funds are desperately needed for St. Mary's educational expenses. There was no fraud, waste or abuse by St. Mary's. Rather, St. Mary's appears to be stuck between the proverbial rock and a hard place. USAC seeks recovery of over \$120,000 even though St. Mary's did pay two service providers and wants to but cannot pay the third provider *through no fault of its own*.

The consequences of USAC's recovery demand cannot be underestimated. The amount sought by USAC well exceeds St. Mary's current cash position, which is already operating at a significant deficit. According to the attached Affidavit by Jerry Esterson, the Director of Finance for the Diocese, St. Mary's is in severe financial straits and may be forced to close if required to pay these funds.<sup>21</sup> St. Mary's is, in short, stunned that it might be required to pay \$120,000 of funds that were paid to third parties over *eleven years ago* because one service provider disappeared (and that provider apparently had no interest at the time in obtaining the payment). Surely, St. Mary's is entitled to some certainty and would not be expected to budget to make such payments eleven years later.<sup>22</sup>

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<sup>21</sup> See Exhibit B.

<sup>22</sup> The Commission recognized the inherent fairness in providing E-rate beneficiaries certainty and closure in E-rate applications and funding processes. *Fifth Report and Order*, 9 FCC Rcd 15808.

The public interest is far better served by a waiver in the instant case, than strict application of the rule.<sup>23</sup> St. Mary's provides impoverished students a strong education for nine years of their lives grounded in Catholic teachings. The loss of this school, or a financial burden that might compromise its educational programs, will significantly impact St. Croix's small community. And if the Diocese attempted to pay the recovery on St. Mary's behalf, the amount due would severely undermine the Diocese's financial position, possibly forcing it to declare bankruptcy.

The Commission has granted other E-rate applicants waivers based, in part, on the undue hardship that would follow if the waivers are not granted.<sup>24</sup> As the Commission has observed in other cases, the relief requested for Funding Year 2000 will have minimal effect on the overall Universal Service Fund because the monies in question were not only already collected, but actually disbursed by USAC with no intention, at the time of such disbursement, of recovering such funds.<sup>25</sup>

#### **IV. CONCLUSION**

St. Mary's respectfully requests that the Commission reverse USAC's commitment adjustments for Funding Year 2000 and direct USAC to discontinue recovery actions against St. Mary's.

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<sup>23</sup> See *Northeast Cellular*, 897 F.2d at 1166.

<sup>24</sup> See, e.g., *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District et al., Schools and Libraries Universal Service Support Mechanism*, File No. SLD-297249, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (Wireline Comp. Bur. 2007); *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School et al., Schools and Libraries Universal Service Support Mechanism*, File No. SLD-487170, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5326 (Wireline Comp. Bur. 2006) ("*Bishop Perry*").

<sup>25</sup> See, e.g., *Bishop Perry*, 21 FCC Rcd at 5317, ¶ 2.

Respectfully submitted,

**ST. MARY'S CATHOLIC SCHOOL**

By: /s/ Donna A. Balaguer  
Donna A. Balaguer  
Fish & Richardson P.C.  
1425 K Street, N.W.  
11<sup>th</sup> Floor  
Washington, DC 20005  
(202) 783-5070

March 23, 2012

Counsel to the Catholic Diocese of  
St. Thomas in the Virgin Islands

# EXHIBIT A

**Schools & Libraries Division****Notification of Commitment Adjustment Letter****Funding Year 2000: 7/01/2000 - 6/30/2001**

September 13, 2006

**Elizabeth Heking  
ST MARY'S CATHOLIC SCHOOL  
PO BOX 4090  
CHRISTIANSTED, VI 00822**

**Re: Form 471 Application Number: 170197  
Funding Year: 2000  
Applicant's Form Identifier: Internet  
Billed Entity Number: 208686  
FCC Registration Number: 0013245139  
SPIN Name: Dell Marketing LP  
Service Provider Contact Person: Craig Jackson**

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](mailto: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: Craig Jackson  
Dell Marketing LP

## 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.

**Funding Commitment Adjustment Report for  
Form 471 Application Number: 170197**

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|                                       |                      |
|---------------------------------------|----------------------|
| Funding Request Number:               | 363435               |
| Services Ordered:                     | INTERNAL CONNECTIONS |
| SPIN:                                 | 143004340            |
| Service Provider Name:                | Dell Marketing LP    |
| Contract Number:                      | 471-208686           |
| Billing Account Number:               | 773-0117             |
| Site Identifier:                      | 208686               |
| Original Funding Commitment:          | \$38,357.51          |
| Commitment Adjustment Amount:         | \$38,357.51          |
| Adjusted Funding Commitment:          | \$0.00               |
| Funds Disbursed to Date:              | \$33,701.31          |
| Funds to be Recovered from Applicant: | \$33,701.31          |

**Funding Commitment Adjustment Explanation:**

After a thorough review, it was determined that this funding commitment must be rescinded in full. FCC rules require the billed entity to certify on behalf of the entities listed on the Form 471 application that the entities have secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make effective use of the services purchased, as well as to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. This requires the applicant to pay the service provider the full cost of the non-discounted portion that is owed to the service provider from the funds budgeted within that funding year. During the course of an audit the applicant failed to demonstrate that at the time of filing the Form 471 the financial resources necessary to pay the non-discounted charges on your application, as well as the rest of the items that you outlined in your technology budget, had been secured. The applicant agreed with this finding and acknowledged that it did not pay its non-discounted share. The applicant also failed to keep records to prove competitive bidding occurred. Lastly, the school's technology plan was deficient because it did not adequately address the five technology plan elements that USAC guidance required for technology plan approval. Consequently, the commitment has been rescinded in full and SLD will seek recovery of any disbursed funds.

**PLEASE SEND A COPY OF THIS PAGE WITH YOUR  
CHECK TO ENSURE TIMELY PROCESSING**



## Schools & Libraries Division

### Notification of Commitment Adjustment Letter

Funding Year 2000: 7/01/2000 - 6/30/2001

September 13, 2006

**Elizabeth Heking**  
**ST MARY'S CATHOLIC SCHOOL**  
**PO BOX 4090**  
**CHRISTIANSTED, VI 00822**

**Re: Form 471 Application Number: 170197**  
**Funding Year: 2000**  
**Applicant's Form Identifier: Internet**  
**Billed Entity Number: 208686**  
**FCC Registration Number: 0013245139**  
**SPIN Name: Choice Communications, LLC**  
**Service Provider Contact Person: Jamila Miller-Rhymer**

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of program rules.

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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](mailto: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: Jamila Miller-Rhymer  
Choice Communications, LLC

## 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.

**Funding Commitment Adjustment Report for  
Form 471 Application Number: 170197**

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|                                       |                            |
|---------------------------------------|----------------------------|
| Funding Request Number:               | 363401                     |
| Services Ordered:                     | INTERNET ACCESS            |
| SPIN:                                 | 143020216                  |
| Service Provider Name:                | Choice Communications, LLC |
| Contract Number:                      | 4090                       |
| Billing Account Number:               | 773-0117                   |
| Site Identifier:                      | 208686                     |
| Original Funding Commitment:          | \$2,699.57                 |
| Commitment Adjustment Amount:         | \$2,699.57                 |
| Adjusted Funding Commitment:          | \$0.00                     |
| Funds Disbursed to Date:              | \$2,399.62                 |
| Funds to be Recovered from Applicant: | \$2,399.62                 |

**Funding Commitment Adjustment Explanation:**

After a thorough review, it was determined that this funding commitment must be rescinded in full. FCC rules require the billed entity to certify on behalf of the entities listed on the Form 471 application that the entities have secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make effective use of the services purchased, as well as to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. This requires the applicant to pay the service provider the full cost of the non-discounted portion that is owed to the service provider from the funds budgeted within that funding year. During the course of an audit the applicant failed to demonstrate that at the time of filing the Form 471 the financial resources necessary to pay the non-discounted charges on your application, as well as the rest of the items that you outlined in your technology budget, had been secured. The applicant agreed with this finding and acknowledged that it did not pay its non-discounted share. The applicant also failed to keep records to prove competitive bidding occurred. Lastly, the school's technology plan was deficient because it did not adequately address the five technology plan elements that USAC guidance required for technology plan approval. Consequently, the commitment has been rescinded in full and SLD will seek recovery of any disbursed funds.

**PLEASE SEND A COPY OF THIS PAGE WITH YOUR  
CHECK TO ENSURE TIMELY PROCESSING**

**Schools & Libraries Division****Notification of Commitment Adjustment Letter  
Funding Year 2000: 7/01/2000 - 6/30/2001**

September 13, 2006

**Elizabeth Heking  
ST MARY'S CATHOLIC SCHOOL  
PO BOX 4090  
CHRISTIANSTED, VI 00822**

**Re: Form 471 Application Number: 170197  
Funding Year: 2000  
Applicant's Form Identifier: Internet  
Billed Entity Number: 208686  
FCC Registration Number: 0013245139  
SPIN Name: Lindsey Electronics, Inc  
Service Provider Contact Person: Ronald Lindsey**

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.
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Schools and Libraries Division  
Universal Services Administrative Company

cc: Ronald Lindsey  
Lindsey Electronics, Inc

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

**Funding Commitment Adjustment Report for  
Form 471 Application Number: 170197**

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|  |                          |
|--|--------------------------|
| Funding Request Number:                    | 363382                   |
| Services Ordered:                          | INTERNAL CONNECTIONS     |
| SPIN:                                      | 143012478                |
| Service Provider Name:                     | Lindsey Electronics, Inc |
| Contract Number:                           | 8686                     |
| Billing Account Number:                    | 773-0117                 |
| Site Identifier:                           | 208686                   |
| Original Funding Commitment:               | \$83,950.02              |
| Commitment Adjustment Amount:              | \$83,950.02              |
| Adjusted Funding Commitment:               | \$0.00                   |
| Funds Disbursed to Date:                   | \$83,950.02              |
| Funds to be Recovered from Applicant:      | \$83,950.02              |
| Funding Commitment Adjustment Explanation: |                          |

After a thorough review, it was determined that this funding commitment must be rescinded in full. FCC rules require the billed entity to certify on behalf of the entities listed on the Form 471 application that the entities have secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make effective use of the services purchased, as well as to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. This requires the applicant to pay the service provider the full cost of the non-discounted portion that is owed to the service provider from the funds budgeted within that funding year. During the course of an audit the applicant failed to demonstrate that at the time of filing the Form 471 the financial resources necessary to pay the non-discounted charges on your application, as well as the rest of the items that you outlined in your technology budget, had been secured. The applicant agreed with this finding and acknowledged that it did not pay its non-discounted share. The applicant also failed to keep records to prove competitive bidding occurred. Lastly, the school's technology plan was deficient because it did not adequately address the five technology plan elements that USAC guidance required for technology plan approval. Consequently, the commitment has been rescinded in full and SLD will seek recovery of any disbursed funds.

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# EXHIBIT B

## AFFIDAVIT OF JEROME ESTERSON

I, Jerome Esterson, hereby declare and affirm that the following statements are true and correct.

1. I am over 18 years of age and competent to attest to the matters described herein. I have personal knowledge of the facts set forth herein.
2. I am the Director of Finance for the Catholic Diocese of St. Thomas in the Virgin Islands ("Diocese"). I am responsible for and familiar with the financial budgets and forecasts of the Diocese and its constituent institutions.
3. I have reviewed the financial status of three Catholic schools within the Diocese: St. Joseph High School, St. Mary's Catholic School and St. Patrick Elementary School (the "Schools"). I have reviewed the requests issued by the Universal Service Administrative Company ("USAC") to the Schools demanding repayment of E-rate funds issued to service providers for Funding Year 2000. The total demand for all three schools is nearly \$395,000. Neither the Schools, respectively, nor the Diocese has surplus funds within their budgets to pay this expense.
4. If the Schools are required to comply with USAC's recovery demands, it will have a devastating financial impact on these institutions and the Diocese's ability to support and provide Catholic education to students. This impact is likely to include shutting down schools, eliminating educational programs and laying off faculty and administration.
5. St. Joseph High School is the only Catholic high school on St. Croix. St. Joseph is currently operating under a financial deficit. As of March 20, 2012, St. Joseph is operating at a loss of over \$60,000. Student enrollment declined from last year by fifteen percent. Bishop Herbert A. Bevard and Father E. Patrick Lynch, the Superintendent of Schools, are attempting to keep the school open by the hiring of a new principal and encouraging enrollment. The unexpected USAC demand for payment may destroy these plans. If St. Joseph is required to pay all of the funds demanded, the Diocese must consider shutting the school down.
6. St. Mary's Catholic School is currently operating under a financial deficit. As of March 20, 2012, St. Mary's is operating at a loss of over \$130,000. If St. Mary's is required to pay all of the funds demanded by USAC, the Diocese must consider shutting the school down or implementing other drastic measures, such as laying off faculty and administration or eliminating educational programs.
7. St. Patrick Elementary School is currently operating under a financial deficit. As of March 20, 2012, St. Patrick is operating at a loss of over \$30,000. If St. Patrick is required to pay all of the funds demanded by USAC, the Diocese must consider

shutting the school down or implementing other drastic measures, such as laying off faculty and administration or eliminating educational programs.

*Jerome Esterson*  
SIGNATURE OF JEROME ESTERSON  
3-23-12  
DATE

WITNESS:

Signature: *Valerie Doute*  
Print Name: VALERIE Doute  
Date: March 23, 2012