

February 18, 2013

Letter of Appeal
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

The applicants listed in Appendix A hereby appeal the USAC denial of requests to change service providers during the funding year (“SPIN change”). We ask that the Commission clarify that the SPIN change rules in the Sixth Report & Order apply only to services under contract. In the event that the appeal is not granted, the applicants request a waiver.

The applicants also requests leave to plead outside the normal appeal window. Since the issues are identical, in the interest of saving the Commission’s time, we wanted to present an omnibus appeal, and so we held this appeal until the last denial was received.

The person who can most readily discuss this with you is the district’s E-Rate consultant:

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After the Commission changed the rules concerning changing service providers in the Sixth Report & Order, On-Tech sent repeated warnings to its clients that they only change service providers during the E-Rate filing window. However, for the applicants listed in Appendix A, our warnings and USAC’s notification of the change did not reach the correct individuals within the applicants, or those individuals were not able to keep the change in mind when a new, more cost-effective service became available.

In every case, the applicants found a more cost-effective alternative to their current service, and made a switch to a provider which provided a more cost-effective service

If the Commission upholds USAC’s interpretation of the SPIN change rules in the Sixth Report & Order, it will have the effect of limiting applicants’ ability to obtain better

service at a lower cost. While the SPIN change rules are arguably effective in improving competition for contracted services, for services which are not delivered under contract, the new rules block applicants from receiving more cost-effective services. In every case in this appeal, the applicants selected a vendor as the most cost-effective at the time that the Form 471 was submitted, but subsequently learned of a more cost-effective solution. Under USAC's current interpretation of the rules, applicants are locked into one provider for at least 16 months following the filing of the Form 471 (applicants who file early in the window are locked in for 18 months).

We believe it is in the public interest to allow applicants to change service providers during the funding year for those services which are not delivered under contract, and ask that the Commission clarify that the new SPIN change rules in the Sixth Report & Order apply only to contracted services. Given the downward trend in the cost of telecommunications and Internet services, locking applicants into a particular provider for a year and a half increases costs for the applicants, and increases demand on the Universal Service Fund. Allowing applicants more flexibility would better serve the public.

In the event the Commission intended to apply the new rules to non-contracted services, the applicants request a waiver of the rules. The Sixth Report & Order made a drastic change in procedures, and despite the best efforts of USAC and On-Tech to notify applicants of the new rules, the applicants listed below were not aware that switching to a more cost-effective service would result in the loss of E-Rate funding. It is not in the public interest to penalize these applicants for an honest mistake.

Thank you for your attention to this matter.

Sincerely,



Daniel E. Riordan
President

Appendix A

FRNs appealed

| Funding Year | FRN | Form 471 | BEN | Applicant |
|---------------------|------------|-----------------|------------|---------------------------------|
| 2011-2012 | 2112681 | 779360 | 122801 | Allendale School District |
| 2011-2012 | 2120432 | 783610 | 122901 | Closter School District |
| 2011-2012 | 2124557 | 785227 | 123149 | Harding School District |
| 2011-2012 | 2130380 | 787307 | 122690 | Kenilworth School District |
| 2011-2012 | 2130382 | 787307 | 122690 | Kenilworth School District |
| 2011-2012 | 2130530 | 787342 | 123299 | Lenape School District |
| 2011-2012 | 2135989 | 789547 | 122684 | Hoboken School District |
| 2011-2012 | 2137331 | 790130 | 123139 | Mendham Borough School District |
| 2011-2012 | 2137360 | 790130 | 123139 | Mendham Borough School District |
| 2011-2012 | 2140823 | 791321 | 7742 | Moriah School of Englewood |
| 2011-2012 | 2140904 | 791355 | 122709 | Mountain Lakes School District |
| 2011-2012 | 2153912 | 795934 | 123030 | Rumson School District |
| 2011-2012 | 2167710 | 800154 | 13215401 | Unity Charter School |
| 2011-2012 | 2180272 | 804290 | 7878 | Saint James Elementary School |
| 2011-2012 | 2180490 | 804389 | 7879 | Red Bank Catholic High School |
| 2011-2012 | 2183170 | 805247 | 122967 | Red Bank School District |