

March 4, 2013

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

Re.: Applicant Name:	Capital Region BOCES
Billed Entity Number:	124145
Funding Year:	2011
Form 471 Application Number:	821711
Funding Request Number:	2237787

Dear Ms. Dortch:

By this appeal, we ask the FCC to provide guidance to USAC regarding requests for FRN splits in light of current rules and procedures on SPIN Changes and RAL Corrections.

Background:

For FY 2011, Capital Region BOCES apply for discounts on wireless services from three separate carriers. It underestimated its use of Verizon Wireless (exhausting available funding by November 2011), but overestimated its use of Nextel of New York. On November 14, 2012, we requested a split of the Nextel FRN so as to cover a portion of the extra Verizon Wireless usage.

USAC had routinely granted FRN splits of this nature in previous funding years. Such splits effectively permitted applicants to more fully utilize approved funding for equivalent services based on actual usage throughout the funding year.

On December 12, 2012, we received an Administrator's Decision on SPIN Change Request effectively denying the FRN split. The explanation of the decision indicated that USAC applied the new requirements as of FY 2011 for Operational SPIN Changes to this split FRN request.

Later that day, we appealed USAC's denial of the FRN split arguing that the application of the operational SPIN Change rules to this split request was an inappropriate use of the new SPIN Change rules. We noted that Capital Region BOCES was not requesting an Operational SPIN Change to a new carrier. It was merely attempting to align previously estimated and approved FY 2011 funding more closely with the actual cellular carrier usage.

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On February 27, 2013, USAC denied the appeal. Interestingly, the basis for this denial was different than that for the original FRN split denial. Apparently abandoning the argument that the FRN split violated the Operational SPIN Change rules, the appeal denial stated that the split should have been requested under the FCC's Bishop Perry Order during the RAL Correction process prior to the FCDL date.

Arguments:

Since USAC's denials of Capital Region BOCES' original FRN split request and subsequent appeal rely on the supposed application of two separate and distinct E-rate rules, we will comment on both.

First: The application of the FCC's operational SPIN Change requirements to an FRN split of this nature is inappropriate. In particular, we note that situation involves no change in the underlying service provider or providers. Capital Region BOCES had already selected and been funded for Nextel and Verizon Wireless services (FRN 2237812). Thus, Capital Region BOCES was not requesting an operational SPIN Change to a new carrier. It was merely attempting to align previously estimated and approved FY 2011 funding more closely with the actual cellular carrier usage.

The purpose of the new Operational SPIN Change requirements — as we understand (and support) — is to prevent applicants from circumventing the competitive bidding process by changing service providers after the fact. Although the FCC's rule change did not explicitly address FRN splits, we could understand how the new Operational SPIN Change requirements might be interpreted to prohibit any reassignment of funds to a new provider. But that is not the case in this situation. Based on such factors as coverage and device support, Capital Region originally selected both Nextel and Verizon Wireless, and used both throughout the year. There was no operational change in carriers, only a change in its proportional usage of each from its early estimates.

Second: The application of the RAL Correction procedures to this type of FRN split request is also inappropriate. The calculation of the proper split amount relies upon the amount billed to each carrier over the course of the year. At best, these amounts could have only been estimated prior to the issuance of the FCDL. In fact, they were initially estimated just prior to the filing of the application. While it is true, in this case, that a better estimated could have been made six months or so later, prior to the FCDL date, a RAL Correction at that time, under Bishop Perry, would have required a showing that the requested change was a clerical or ministerial error — which it would not have been.

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The issue before the FCC in this instance is whether an applicant receiving comparable services from two or more service providers may utilize an FRN split to better align approved service funding with specific FRNs within the same funding year.

We argue that FRN splits should be permit in these situations. Such splits permit applicants to more carefully estimate total funding requests for equivalent services rather than apply for maximum usage of individual providers. It would also be consistent with past practice.

If the FCC agrees, we urge the FCC to clarify that requests for post-funding FRN splits among existing service providers are not governed by pre-funding RAL Correction procedures or by the new Operational SPIN Change rules effective as of FY 2011.

Thank you for your consideration.

Sincerely,



Winston E. Himsworth
Executive Director
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