

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of:)
)
Request for Review)
) CC Docket No. 02-6
by)
)
Syracuse City School District)
Syracuse NY)

TO: Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Syracuse City School District ("SCSD") respectfully requests that the Federal Communications Commission (FCC or Commission) review a Universal Service Administrative Company (USAC) Funding Commitment Decision for Funding Request Number (FRN) 2353203. The Request for Review is made pursuant to 54.719 through 54.723 of the Commission's rules.¹

Basic Information:

Billed Entity Number:	124483
FCC Form 471 Application Numbers:	832114
Funding Request Number Appealed:	2326223
Date of Administrator's Decision of Appeal Letter:	March 10, 2014

¹ 47 C.F.R. §§ 54.719–54.723
Syracuse City School District FY2012 Request for Review – building eligibility

Contact Information:

Michele Scaduto
Educational Funding Group, Inc.
CRN 16043587
Consultant to Syracuse City School District
26650 Renaissance Parkway, Suite 2
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541-683-5246 (Direct - Pacific Time Zone)
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STATEMENT IN SUPPORT OF APPEAL

In June 2013 Syracuse City School District's (SCSD) E-rate consultant and duly authorized contact, Educational Funding Group, Inc. (EFG), received a Program Integrity Assurance (PIA) inquiry concerning SCSD applications 832114 and 832121 (EFG's Letter of Agency is attached hereto as Exhibit A). Pertinent to this appeal was Question I of the PIA, which concerned H. W. Smith K-8 School, an instructional facility undergoing renovation during FY2012. The question stated:

Based on documentation that you have provided during the review of your Funding Year 2012 FCC Form 471 # 832114 and 832121, there are costs included in funding requests for services to entity #14602 (H W SMITH K-8 SCHOOL). Since the HW Smith site was closed for instructional use for the entire 2012-2013 funding year, the services to that site are not eligible for funding. Your funding requests will be reduced by the following costs that you identified for services to the HW Smith site:

- FRN 2259499 for \$146.90/month
- FRN 2326210 for \$170.46/month
- FRN 2326223 for \$815.31/month
- FRN 2326228 for \$17.21/month
- FRN 2326240 for \$72/month
- FRN 2326282 for \$810.83/month

SCSD elected to respond under Option II, which gave it the opportunity to disagree with the proposed reductions. SCSD's response agreed with the reductions for FRN 2326210 (DIDs), 2326228 (Long Distance) and 2326282 (Basic Maintenance of Internal Connections) and disagreed

with the reductions for FRNs 22529499 (Centrex), 2326223 (1-Gbps circuit) and 2326240 (Internet Access).

SCSD's reasons for disagreeing were based on its administrative and facilities staff occupying the building while supervising the renovations, which meant the building retained its eligibility as a Non-Instructional Facility ("NIF") for Priority One services, including the 1-Gbps circuit. In fact, USAC actions demonstrate it agreed that the building was a NIF because although filed for as an instructional facility, the current view of the Block 4 of Application 832114 on the USAC website now reflects H. W. Smith as a NIF. The conversion from an instructional facility was done on USAC's initiative, not at SCSD's request.

On August 28, 2013, EFG received an email from the PIA reviewer stating:

Based upon the documentation you have provided during the review of your Funding Year 2012 FCC Form 471 application # 832114, FRN 2326223 will be modified because it contains an entity, H. W. Smith, which is closed and is therefore ineligible to receive E-rate discounts. We intend to modify the Funding Year 2012 FRN to remove the costs associated with the closed entity. The pre-commitment monthly funding request has been reduced by \$815.31 to reflect this change.

Please note that services to H.W. Smith that were requested in FRN(s) 2259499 and 2326240 will be funded.

Since, as a NIF, the building retained eligibility for Priority One services, EFG asked the reviewer why Centrex (FRN 22529499) and Internet Access (FRN 2326240) were funded and the 1-Gbps circuit was denied. He informed EFG that "USAC reviewed the issue" and decided to handle it this way. EFG requested that he submit the matter for review a second time, which he did; USAC's decision remained unchanged. See the email exchange attached hereto as Exhibit B.

The original PIA question contained the statement: "Since the HW Smith site was closed for instructional use for the entire 2012-2013 funding year, the services to that site are not eligible for funding." Since the current view of the Form 471 #823114 shows USAC converted H. W. Smith to NIF, for the PIA to say that the services to the site are not eligible for funding because it was

closed for instructional use is inconsistent and contradictory. The very definition of a NIF is that it is a NON-INSTRUCTIONAL Facility – so how USAC can deny funding for FRN 2326223 on the basis that H.W. Smith wasn't used for instructional purposes is perplexing.

SCSD is truly at a disadvantage in understanding this conclusion since USAC's decision for the FRN seemed arbitrary and is contrary to the information provided on the USAC website regarding eligibility of NIFs, which is the only significant guidance available to an applicant.

The Funding Commitment Decision Letter (FCDL) issued on December 30, 2014. The Funding Commitment Decision Explanation for FRN 2326223 stated that the requested funding of \$815.31 per month for the 1-Gbps circuit was denied because H.W. Smith was an ineligible entity. On February 11, 2014, SCSD submitted a timely appeal to USAC. In its appeal, SCSD questioned USAC's deeming the same NIF as an eligible entity for Centrex and Internet Access services while at the same time deeming it ineligible for the 1-Gbps circuit that brings the Internet Access into the building. SCSD stated that it felt that to do so was discordant with the very core of E-rate program rules regarding eligibility of Non-Instructional Facilities. USAC denied the appeal stating that based on information provided during PIA, funding was "restored" for FRNs 2259499 and 2326240 but was deemed insufficient to prove the eligibility of H.W. Smith and affirmed the funding denial for the 1-Gbps circuit. The Administrator's Decision on Appeal Letter stated that absent new information there was no basis to change the decision to deny funding so the appeal was denied. Never did USAC provide an explanation of its reasoning underlying the denial of the 1-Gbps circuit. Since it obviously differed from that underlying the other Priority One FRNs for which funding was awarded, it left SCSD little ability to understand USAC's decision. Without this understanding, SCSD lacked the ability to adequately appeal the issue on appeal. Further, since USAC recognized the

building eligible for Centrex and Internet Access, SCSD completely fails to understand why new information would even be needed for USAC to extend the eligibility to the 1-Gbps circuit.

The Commission has stated that a funding denial explanation should allow an applicant to be able to understand the rationale underlying the USAC's decision to deny funding², which in this case is impossible. USAC's decision to deny funding for the 1-Gbps circuit based on the building being ineligible is inconsistent with its decision to find the building eligible for Centrex and Internet Access Services. Also inconsistent is USAC's decision to change H.W. Smith's status to a NIF and deny funding on the basis that that the building wasn't used for instructional purposes. Despite these inconsistencies, no explanation of USAC's rationale has been forthcoming. All the information SCSD has looked at concerning eligibility of buildings supports a NIF as being eligible for Priority One services. To the best of SCSD's knowledge, nowhere in E-rate program rules, FCC Orders or USAC guidance is there a provision for "splitting" eligibility of a building based on the type of Priority One services requested. USAC's decision to have H.W. Smith K-8 School deemed an eligible entity for Centrex and Internet Access, but ineligible for the 1-Gbps circuit that brings the internet to the building, is not only contradictory to E-rate program rules, but since no explanation of this decision was provided, it leaves SCSD unable to make sense of USAC's inconsistent actions, which in turn, impedes its ability to adequately address the issue in this Request For Review.

CONCLUSION

Throughout its application process, SCSD demonstrated compliance with E-rate program rules and regulations. It followed all core E-rate program requirements and intended no fraud, abuse or waste of E-rate funds. Since funding was awarded for Centrex and Internet Access,

² See *Request For Review of the Decision of the Universal Service Administrator by Terral School District 3, DA. 00-2123*; *Request For Review of the Decision of the Universal Service Administrator by Mississippi Department of Education, DA 00-2576*; and *Request For Review of the Decision of the Universal Service Administrator by Henkels and McCoy, Inc., Little Rock School District , DA No. 06-1463*;

USAC's decision to deny funding for the 1-Gbps circuit that carries the Internet to the building seems capricious, is against the public interest and will create undue hardship for the school district.

Therefore, for the reasons contained herein, Syracuse City School District, by and through its duly authorized E-rate consultant, Educational Funding Group, Inc., respectfully requests that the Commission:

1. Find that H.W. Smith K-8 building is an eligible entity entitled to receive the Priority One funding for the 1-Gbps circuit requested in FRN 2326223;
2. Instruct USAC to award funding for FRN 2326223 in the amount of \$815.31 per month;
3. Remand the application to USAC for further processing;
4. Instruct USAC to issue a Revised Funding Commitment Decision Letter reflecting the funding award; and
5. Waive any procedural rules necessary to effectuate the Commission's resultant Orders.

Thank you for your consideration.

/s/Michele Scadato

EXHIBIT A

EXHIBIT B

From: Averill, Christopher [Christopher.AVERILL@sl.universalservice.org]
Sent: Wednesday, December 11, 2013 2:02 PM
To: 'Michele Scaduto'
Subject: RE: ERate-832114- notification 8-28 (Syracuse 2012 P1)_c0bN

Hi Michelle,

USAC reviewed the issue and the original decision stands. FRN 2326223 will be reduced by \$815.31/month to remove the costs for the 1 GB circuit to H.W. Smith.

Thanks,

Chris Averill
Associate Manager, PIA Reviewer
30 Lanidex Plaza West | Parsippany, NJ 07054
T: 973.581.5342 | F: 973.599.6513
caveril@sl.universalservice.org

From: Michele Scaduto [mailto:Michele.Scaduto@naa.com]
Sent: Thursday, November 21, 2013 12:00 PM
To: Averill, Christopher
Subject: RE: ERate-832114- notification 8-28 (Syracuse 2012 P1)_aMSB

Okay, thanks for checking.

Michele Scaduto
Educational Funding Group
541-683-5246 (Direct - Pacific Time Zone)
216-831-2626 (Main Office - Cleveland)
216-831-2822 (Fax)
michele.scaduto@naa.com

From: Averill, Christopher [mailto:Christopher.AVERILL@sl.universalservice.org]
Sent: Thursday, November 21, 2013 11:34 AM
To: 'Michele Scaduto'
Subject: RE: ERate-832114- notification 8-28_aMSB

No word yet.

Chris Averill
Associate Manager, PIA Reviewer
30 Lanidex Plaza West | Parsippany, NJ 07054
T: 973.581.5342 | F: 973.599.6513
caveril@sl.universalservice.org

From: Michele Scaduto [mailto:Michele.Scaduto@naa.com]
Sent: Wednesday, November 20, 2013 6:07 PM
To: Averill, Christopher
Subject: RE: ERate-832114- notification 8-28_EtVJ

Any word on this one yet?

Michele Scaduto
Educational Funding Group
1/23/2014

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michele.scaduto@naa.com

From: Michele Scaduto [<mailto:michele.scaduto@naa.com>]
Sent: Thursday, August 29, 2013 10:56 AM
To: 'Averill, Christopher'
Subject: RE: ERate-832114- notification 8-28_EtVJ

Thanks, Chris. I'll wait to hear from you.

Michele Scaduto
Educational Funding Group
541-683-5246 (Direct - Pacific Time Zone)
216-831-2626 (Main Office)
216-831-2822 (Fax)
michele.scaduto@naa.com

From: Averill, Christopher [<mailto:Christopher.AVERILL@sl.universalservice.org>]
Sent: Thursday, August 29, 2013 9:56 AM
To: 'Michele Scaduto'
Subject: RE: ERate-832114- notification 8-28_EtVJ

Sure, we will take another "look" based on your e-mail.

Thanks

Chris Averill
Associate Manager, PIA Reviewer
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caveril@sl.universalservice.org

From: Michele Scaduto [<mailto:michele.scaduto@naa.com>]
Sent: Wednesday, August 28, 2013 5:06 PM
To: Averill, Christopher
Subject: RE: ERate-832114- notification 8-28_MaPj

Internet should remain. Our confusion stems from internet access being funded while the pipe that transports it to the building is denied (i.e., without the pipe over which internet travels, there is no internet). Can this be looked at again by USAC?

Michele Scaduto
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216-831-2822 (Fax)
michele.scaduto@naa.com

From: Averill, Christopher [<mailto:Christopher.AVERILL@sl.universalservice.org>]
Sent: Wednesday, August 28, 2013 4:46 PM
To: 'Michele Scaduto'
Subject: RE: ERate-832114- notification 8-28_MaPj

USAC reviewed this issue and approved the funding for the Centrex and IA and denied the 1 GB circuit funding. Please let me know if the charges for the Internet Access should also be removed.

1/23/2014

Chris Averill
Associate Manager, PIA Reviewer
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T: 973.581.5342 | F: 973.599.6513
caveril@sl.universalservice.org

From: Michele Scaduto [<mailto:michele.scaduto@naa.com>]

Sent: Wednesday, August 28, 2013 4:39 PM

To: Averill, Christopher

Subject: RE: ERate-832114- notification 8-28_bk1U

Christopher,

The internet access to HW Smith comes over the 1-Gb circuit that is for FRN 2326223. Why is that FRN reduced while the other two for Centrex and Internet Access are okay?

Michele Scaduto
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216-831-2822 (Fax)
michele.scaduto@naa.com

From: Averill, Christopher [<mailto:Christopher.AVERILL@sl.universalservice.org>]

Sent: Wednesday, August 28, 2013 4:15 PM

To: 'michele.scaduto@naa.com'

Subject: ERate-832114- notification 8-28_bk1U

Hi Michele,

Based upon the documentation you have provided during the review of your Funding Year 2012 FCC Form 471 application # 832114, FRN 2326223 will be modified because it contains an entity, H. W. Smith, which is closed and is therefore ineligible to receive E-rate discounts. We intend to modify the Funding Year 2012 FRN to remove the costs associated with the closed entity. The pre-commitment monthly funding request has been reduced by \$815.31 to reflect this change.

Please note that services to H.W. Smith that were requested in FRN(s) 2259499 and 2326240 will be funded.

Thanks

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1/23/2014