

July 11, 2014

Paul C. Besozzi  
Direct: 202-457-5292  
Paul.Besozzi@squirepb.com

**VIA ELECTRONIC FILING**

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

**Re: Appeal of USAC Notification of Commitment Adjustment in CC Docket No. 02-6 – St. Nicholas Tolentine School (BEN 10708) - Funding Year 2012.**

**Applicant Name: St. Nicholas Tolentine School**  
**Billed Entity Number: 10708**  
**Funding Year: 2012**  
**FCC Registration Number: 0011990165**  
**Form 471 App. Number(s): 858249, 829699**  
**Funding Request Numbers: 2335367, 2335376 (Form 471# 858249)**  
**2254214, 2254206 (Form 471# 829699)**

Dear Ms. Dortch:

St. Nicholas Tolentine School (“St. Nicholas” or “School”), acting through counsel and pursuant to Sections 54.719-54.721 of the Commission’s rules<sup>1</sup>, hereby timely files this Request for Review or Waiver (“Appeal”). The Appeal requests Commission review of the adverse decisions of the Administrator of the Universal Service Administrative Company (“USAC”) seeking to rescind previously-approved and previously-disbursed E-Rate Program support funds for Funding Year 2012.<sup>2</sup>

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<sup>1</sup> 47 C.F.R. §§ 54.719-54.721. St. Nicholas is a K-12 elementary school which is one of the Catholic schools in the Archdiocese of New York.

<sup>2</sup> The relevant Notification of Commitment Adjustment Letters, each dated May 13, 2014, are attached at Exhibit 1 (“COMADs”). This Appeal is timely filed within sixty (60) days of the date of the COMADs, which, under the Commission’s rules, would be July 12, 2014, a Saturday, thereby permitting filing by Monday, July 14, 2014.

Ms. Marlene H. Dortch  
July 11, 2014  
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More specifically, on May 13, 2014, USAC's Schools and Libraries Division ("SLD") issued the COMADs, asserting that the School had failed to (a) retain and make available to USAC certain records relating to the competitive bidding process for the referenced FCC Form 471 applications and (b) respond to a request for information from a potential bidder (only related to FRN 2335367). Therefore, USAC proposes to rescind the E-Rate commitments provided pursuant to the referenced FRNs and seeks recovery in full of the funds disbursed, as well as rescission of undisbursed support.

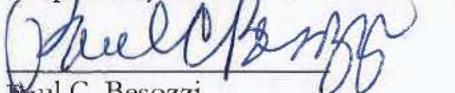
St. Nicholas is aggrieved by the COMADs and the Archdiocese has only recently engaged the undersigned counsel to assist in this matter. Therefore, St. Nicholas is timely submitting this Appeal and reserving the right to supplement the same with a full discussion of the facts, the School's position and supporting arguments.

The School intended in good faith to conduct a fair and open competitive bidding process, seeking always to adhere to the relevant FCC rules, including the consideration of all bids. St. Nicholas respectfully believes that the relevant FCC Form 470 seeking Basic Maintenance Of Internal Connections services provided a reasonably sufficient description under the Commission's rules on which bids could be submitted.

Even if there was a technical violation of the Commission's rules relating to the document retention or competitive bidding process, there is no evidence of any waste, fraud and abuse or deliberate attempt to circumvent the Commission's rules. There was a change in leadership at the School and the prior leadership did not leave any records. The E-Rate support approved and disbursed was used for the purpose for which it was approved. Further, the requirement to reimburse the requested funds would be a financial hardship on St. Nicholas, which qualified at the 90% discount rate. There is no evidence that the School acted other than in good faith. St. Nicholas respectfully submits that requiring repayment would not further the purpose of preserving and advancing access to universal service support. Under the circumstances, a waiver of any technical rule violation is appropriate and as a result the COMADs should be rescinded.

Again, St. Nicholas reserves the right to supplement this Appeal with a full discussion of the facts, the School's position and further supporting arguments.

Respectfully submitted,



Paul C. Besozzi

*Counsel to Archdiocese of New York and St. Nicholas Tolentine School*  
Squire Patton Boggs (US) LLP  
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Washington, DC 20037  
(202) 457-5292  
[Paul.Besozzi@squirepb.com](mailto:Paul.Besozzi@squirepb.com)

cc: Roderick Cassidy, Esquire

# EXHIBIT 1



Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2012: July 1, 2012 - June 30, 2013

May 13, 2014

Richard Senturia  
ST NICHOLAS-TOLENTINE SCHOOL  
9666 Olive Blvd.  
Suite 215  
Olivette, MO 63132 3032

Re: Form 471 Application Number: 858249  
Funding Year: 2012  
Applicant's Form Identifier: StNickTolNY12 P-2  
Billed Entity Number: 10708  
FCC Registration Number: 0011990165  
SPIN: 143005216  
Service Provider Name: All County Business Machines Corporation  
Service Provider Contact Person: Donald Gallant

Our routine review of Schools and Libraries Program (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 required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the 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 that 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." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC 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 email 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 Number(s) (FRN) you are appealing. Your letter of appeal must include the
  - Billed Entity Name,
  - 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 USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 S. Jefferson Rd.  
P. O. Box 902  
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the 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 by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. 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.

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. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC 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 the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

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. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits 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: Donald Gallant  
All County Business Machines Corporation

Funding Commitment Adjustment Report for  
Form 471 Application Number: 858249

Funding Request Number: 2335367  
Services Ordered: INTERNAL CONNECTIONS MNT  
SPIN: 143005216  
Service Provider Name: All County Business Machines Corporati  
Contract Number: SNT10708-bm-1213  
Billing Account Number:  
Site Identifier: 10708  
Original Funding Commitment: \$15,884.96  
Commitment Adjustment Amount: \$15,884.96  
Adjusted Funding Commitment: \$0.00  
Funds Disbursed to Date \$15,884.96  
Funds to be Recovered from Applicant: \$15,884.96  
Funding Commitment Adjustment Explanation:

After multiple requests for documentation, it has been determined that this funding commitment must be rescinded in full. The applicant failed to produce at the request of the Administrator the following documentation pertaining to its competitive bidding process: copies of bids received and documentation to support the vendor evaluation and selection process. FCC rules require schools and libraries as well as service providers to retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least five years after the last day of service delivered in a particular Funding Year and to produce such records upon a request of an auditor or other authorized representative. FCC rules further provide that a non-compliance with the FCCs recordkeeping and auditing rules by failure to retain records or to make available required documentation is a rule violation that warrants recovery of any disbursed funds for the time period for which the information/documentation is being sought. Since you failed to produce the above specified documentation upon request of an authorized representative, your compliance with competitive bidding requirements could not be determined. As a result, your funding commitment has been rescinded in full and USAC will seek recovery of \$15,884.96 from the applicant.

Additionally, USAC received information showing that a potential bidder contacted you within the 28 day bidding window seeking information about your Basic Maintenance of Internal Connections (BMIC) requirements. Documentation provided during review indicates you did not respond to the potential bidder with the information sought. It has been determined that the maintenance services as requested on FCC Form 470# 309940000999500 contains maintenance service descriptions which are insufficiently detailed to allow prospective bidders to provide a bid responsive to the maintenance services which were subsequently requested by the school in FRN 2335367. Since you did not respond with the information sought by the service provider and since the provider would not have been able to provide a responsive bid without the additional information, a fair and open competitive bidding process was inhibited. Since you posted FCC Form 470#309940000999500, which included a request for BMIC, you are obligated to receive and assess all bids and to provide potential service providers with requested information so that they may provide responsive bids. The competitive bidding process is not fair and open, as required by FCC Rules, when you discourage potential bidders from submitting a bid in response to the services requested on the FCC Form 470. Therefore, the applicant has violated the competitive bidding program rules and your funding commitment will be rescinded in full. USAC will seek recovery of any disbursed funds from the applicant.

Funding Request Number: 2335376  
Services Ordered: INTERNAL CONNECTIONS  
SPIN: 143005216  
Service Provider Name: All County Business Machines Corporati  
Contract Number: SNT10708-ic-1213  
Billing Account Number:  
Site Identifier: 10708  
Original Funding Commitment: \$40,050.00  
Commitment Adjustment Amount: \$40,050.00  
Adjusted Funding Commitment: \$0.00  
Funds Disbursed to Date: \$40,050.00  
Funds to be Recovered from Applicant: \$40,050.00  
Funding Commitment Adjustment Explanation:

After multiple requests for documentation, it has been determined that this funding commitment must be rescinded in full. The applicant failed to produce at the request of the Administrator the following documentation pertaining to its competitive bidding process: copies of bids received and documentation to support the vendor evaluation and selection process. FCC rules require schools and libraries as well as service providers to retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least five years after the last day of service delivered in a particular Funding Year and to produce such records upon a request of an auditor or other authorized representative. FCC rules further provide that a non-compliance with the FCCs recordkeeping and auditing rules by failure to retain records or to make available required documentation is a rule violation that warrants recovery of any disbursed funds for the time period for which the information/documentation is being sought. Since you failed to produce the above specified documentation upon request of an authorized representative, your compliance with competitive bidding requirements could not be determined. As a result, your funding commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.



Notification of Commitment Adjustment Letter

Funding Year 2012: July 1, 2012 - June 30, 2013

May 13, 2014

Richard Senturia  
ST NICHOLAS-TOLENTINE SCHOOL  
9666 Olive Blvd.  
Suite 215  
Olivette, MO 63132 3032

Re: Form 471 Application Number:	829699
Funding Year:	2012
Applicant's Form Identifier:	StNickTolNY12
Billed Entity Number:	10708
FCC Registration Number:	0011990165
SPIN:	143007246
Service Provider Name:	Cablevision Systems Corporation (Education
Service Provider Contact Person:	Janeen Long-Williams

Our routine review of Schools and Libraries Program (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 required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

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Schools and Libraries Division  
Universal Services Administrative Company

cc: Janeen Long-Williams  
Cablevision Systems Corporation (Education Dept)

Funding Commitment Adjustment Report for  
Form 471 Application Number: 829699

Funding Request Number: 2254214  
Services Ordered: INTERNET ACCESS  
SPIN: 143007246  
Service Provider Name: Cablevision Systems Corporation (Educa  
Contract Number: MTM  
Billing Account Number: # 07837483089019  
Site Identifier: 10708  
Original Funding Commitment: \$5,097.60  
Commitment Adjustment Amount: \$5,097.60  
Adjusted Funding Commitment: \$0.00  
Funds Disbursed to Date \$0.00  
Funds to be Recovered from Applicant: \$0.00  
Funding Commitment Adjustment Explanation:

After multiple requests for documentation, it has been determined that this funding commitment must be rescinded in full. The applicant failed to produce at the request of the Administrator the following documentation pertaining to its competitive bidding process: copies of bids received and documentation to support the vendor evaluation and selection process. FCC rules require schools and libraries as well as service providers to retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least five years after the last day of service delivered in a particular Funding Year and to produce such records upon a request of an auditor or other authorized representative. FCC rules further provide that a non-compliance with the FCCs recordkeeping and auditing rules by failure to retain records or to make available required documentation is a rule violation that warrants recovery of any disbursed funds for the time period for which the information/documentation is being sought. Since you failed to produce the above specified documentation upon request of an authorized representative, your compliance with competitive bidding requirements could not be determined. As a result, your funding commitment has been rescinded in full.



Notification of Commitment Adjustment Letter

Funding Year 2012: July 1, 2012 - June 30, 2013

May 13, 2014

Richard Senturia  
ST NICHOLAS-TOLENTINE SCHOOL  
9666 Olive Blvd.  
Suite 215  
Olivette, MO 63132 3032

Re: Form 471 Application Number:	829699
Funding Year:	2012
Applicant's Form Identifier:	StNickToLNy12
Billed Entity Number:	10708
FCC Registration Number:	0011990165
SPIN:	143001359
Service Provider Name:	Verizon New York Inc.
Service Provider Contact Person:	Robert Kannegieser

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100 S. Jefferson Rd.  
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Whippany, NJ 07981

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Schools and Libraries Division  
Universal Services Administrative Company

cc: Robert Kannegieser  
Verizon New York Inc.

Funding Commitment Adjustment Report for  
Form 471 Application Number: 829699

Funding Request Number: 2254206  
Services Ordered: TELCOMM SERVICES  
SPIN: 143001359  
Service Provider Name: Verizon New York Inc.  
Contract Number: MTM  
Billing Account Number: # 7183645110  
Site Identifier: 10708  
Original Funding Commitment: \$3,780.00  
Commitment Adjustment Amount: \$3,780.00  
Adjusted Funding Commitment: \$0.00  
Funds Disbursed to Date \$2,659.56  
Funds to be Recovered from Applicant: \$2,659.56  
Funding Commitment Adjustment Explanation:

After multiple requests for documentation, it has been determined that this funding commitment must be rescinded in full. The applicant failed to produce at the request of the Administrator the following documentation pertaining to its competitive bidding process: copies of bids received and documentation to support the vendor evaluation and selection process. FCC rules require schools and libraries as well as service providers to retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least five years after the last day of service delivered in a particular Funding Year and to produce such records upon a request of an auditor or other authorized representative. FCC rules further provide that a non-compliance with the FCCs recordkeeping and auditing rules by failure to retain records or to make available required documentation is a rule violation that warrants recovery of any disbursed funds for the time period for which the information/documentation is being sought. Since you failed to produce the above specified documentation upon request of an authorized representative, your compliance with competitive bidding requirements could not be determined. As a result, your funding commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.