



September 7, 2014

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

Subject: CC Docket 02-6, Request for Review/Waiver
Funding Commitment Adjustment Funding Year 2013
Applicant Name: Fullerton Elementary School District
Billed Entity Number: 143792
Funding Year: 2013
Form 471 Application Number: 881837
Funding Request Number(s): 2480311
Service Provider: Haiku Learning Systems, Inc.
Service Provider SPIN: 143034807

Dear Sir or Madam:

INTRODUCTION

The Fullerton Elementary School District appeals the denial of the Universal Service Administrative Company (USAC) to rescind the "Notification of Commitment Adjustment Letter" and requests that funding be restored to FRN 2480311.

BACKGROUND

Table with 2 columns: Date and Description. Rows include: Fall 2012 (competitive bidding process), March 2013 (funding breakdown table), September 18, 2013 (FCDL received), March 24, 2014 (notice of rescinded funding), April 18, 2014 (contract response).

May 1, 2014	District receives Notification of Commitment Adjustment Letter for FRN 2480311
June 24, 2014	District files appeal of COMAD including contract and Haiku submission of eligibility for 2011.
July 14, 2014	District receives denial of Appeal

The denial of appeal contained the following justification:

- You FCC Form 471 application included costs for the following ineligible products and/or services: Haiku Learning Management System. USAC has given you an opportunity to provide the appropriate additional documentation demonstrating the eligibility of the products and/or services requested. However, in your appeal, you did not show that USAC's determination was incorrect. Consequently, your appeal is denied.
- FCC rules provide that funding may be approved only for eligible projects and services. See 47 C.F.R. secs. 54.502. The USAC website contains a list of eligible products and services. See Eligible Services List posted in the Reference Area of the SLD section of the USAC website. FCC rules further require that if 30% or more of the applicant's funding request includes ineligible products and/or services, then the funding request must be denied, otherwise the funding request will be reduced accordingly. See 47 C.F.R. sec. 54.504(b). The FCC's Aiken County Public Schools Order directed USAC to permit the applicant 15 calendar days from the date of receipt of notice in writing by USAC to revise its funding request to remove the ineligible services or to allow the applicant to provide additional documentation to show why the services are eligible. See Requests for Review of the Decisions of the Universal Service Administrator by Aiken County Public Schools, Aiken, South Carolina, et.al., Schools Libraries Universal Service Support Mechanism, File Nos. SLD-397612, et al., CC Docket No. 02-6 Order, 22 FCC Rcd 8735, FCC 07-61 para. 11 (May 8, 2007)

Fullerton appeals the COMAD on the grounds that

1. The COMAD does not explain how Haiku, who provides the District with web hosting for its sites, went from 81% eligibility to 0% eligibility.
2. The District was not given a chance to break out the additional ineligible portion.
3. Haiku is an eligible web-hosting package and the District cost-allocated out the non-eligible functionality.
4. Haiku submitted their product for cost-allocation, participated in a full and open review process with USAC, and received a determination that their product was 79% eligible, beginning in Funding Year 2011. USAC provided no specifics as to why that determination was in error, thus making it very difficult to prepare an appeal.
5. All of the features that were determined to be eligible in 2013 have been cost allocated out of the District's 471 application. All of the features that were determined to be eligible in 2011 are still listed in the FY 2013 Eligible Services List
6. A review of the Eligible Services List of 2013 and the 6th Report and Order provides no basis for the denial of the eligible portions of the Haiku Contract.

Per the Eligible Services List of 2013:

Web Hosting is defined as: "service that provides a means for a school or library to maintain a website on the Internet is eligible. This will include storage, access, and website administration tools for the creation and maintenance of the website. In addition, web hosting may include password-protected pages, interactive communication features such as blogging and webmail,

and other features that facilitate real-time interactive communication, such as instant messaging and chat.”

This is the portion that the District has applied for discounts on. Per Haiku’s contract in 2013 (see attached), these eligible web hosting services account for 81% of their product.

In addition the Eligible Services List of 2013 list the costs that must be cost allocated out of the request.

Ineligible charges related to web hosting

- Costs attributable to the creation or modification of information, or design such as a web site creation fee or content maintenance fees.
- Content supplied as part of a web hosting service created by third-party vendors or the web hosting service provider itself and any features or software involving data input or retrieval other than the provision of applicant-created content for an educational purpose (e.g. teacher webpages or blogs).
- The parts of a web hosting service including, but not limited to, any portion of tools, capabilities or integration with other systems such as: Student Information Systems(SIS); databases; student attendance or grades or grade management; course scheduling; tests or testing systems; on-line/interactive education systems; and learning/education management systems. (An eligible web hosting service will also not include support for the applications necessary to run online classes or collaborative meetings).

The District has complied and cost allocated out those items that are NOT eligible per the vendor’s calculations of 19% ineligible.

There is **NO** wording in the Eligible Services List that says that learning/education management systems are not eligible. The Eligible Services simply lists those elements of a web hosting service that are ineligible:

-Ineligible charges related to web hosting.....

“The parts of a web hosting service including, but not limited to, any portion of tools, capabilities or integration with other systems such as: Student Information Systems(SIS); databases; student attendance or grades or grade management; course scheduling; tests or testing systems; on-line/interactive education systems; and learning/education management systems.”

The Eligible Services List refers to the 6th Report and Order. At no point in the 6th Report and Order does it indicate that a web hosting service that contains ineligible items is 100% ineligible. In fact, the 6th Report and Order states that “Web hosting, as the commenters have shown, is an example of a service that can provide a substantial educational impact for a relatively small cost.” The Report goes further and states “We remind applicants, however, that content – including content created by third-party vendors, and any features involving data input or retrieval – including searching of databases for grades, student attendance files, or other reports – remains ineligible.” Again, it specifies that those parts of the service are ineligible. At no point is there any indication of 100% ineligibility of web hosting services.

I have included the submission by Haiku to USAC in 2011 that outlines the % of their product that is eligible and that which is not eligible. At that time the eligible services accounted for 79%. Since 2011 several districts have been funded for Haiku services.

The District was funded in September 18, 2013 and continued with their contract with Haiku for the 2014-15 funding year. The District continued with Haiku for the 2014-15 school year due to having received the funding commitment letter for the previous year, as their contract was an extendable contract. The decision to continue with Haiku would have been reevaluated if they had not been funded. Rescinding funding commitments wreaks havoc with the procurement process at both the local, state and national level.

We request that the **FUNDING COMMITMENT ADJUSTMENT** be retracted and that the District be funded for that portion of Haiku that meets the eligible services list criteria.

For all questions regarding this appeal please contact:

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Respectfully Submitted,



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Attachment: FSD Haiku Contract
Haiku submission for eligibility 2011
FESD Haiku Appeal denial 7-14-14
Fullerton Haiku Funding Denial COMAD

