**Before the**
**Federal Communications Commission**
**Washington, DC**

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| In the Matter of | ) | |
| | ) | |
| Request for Review of the Decision of the Universal Service Administrator and Waiver by | ) | |
| | ) | |
| Hampstead Hill Academy<br>Baltimore, MD | ) | File Nos. SLD-691971<br>635081; 693282 |
| | ) | |
| Schools and Libraries Universal Service Support Mechanism | ) | CC Docket No. 02-6 |

# REQUEST FOR REVIEW AND WAIVER

Hampstead Hill Academy ("HHA") requests that the FCC review and reverse the Decision of the Administrator ("USAC") in the above-captioned matter[1] and direct USAC to terminate its Demand Payment proceeding against HHA. Alternatively, HHA requests that the FCC reach the same result by waiving its rules, as strict compliance would not be in the public interest in these particular circumstances.

This appeal should be consolidated with the Request for Review and Waiver filed by HHA on February 16, 2018.[2] In that appeal, HHA explained to the FCC why USAC's decision, which appeared to dismiss as untimely its Letter of Appeal in connection with FRN 1756678, was incorrect. Here, in one its decisions dated February 23, 2018, USAC considered HHA's appeal of FRN 1756678 on the merits. Therefore, USAC's previous decision in connection with that FRN is moot.

In our Letter of Appeal to USAC, we set forth all of the relevant facts and issues, discussed them in detail, and explained to USAC why HHA did not violate program rules as USAC continues to allege. Accordingly, we direct the FCC's attention to our Letter of Appeal, which is attached hereto as Exhibit 2, as well as to our February 16th Request for Review and the discussion below.

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[1] Exhibit 1, *Administrator's Decisions on Appeal* dated February 23, 2018. Also included are the *Administrator's Decisions on Appeal* dated February 23, 2018, which are directed toward the vendor, Neighborhood Computer Center Corporation.
[2] https://www.fcc.gov/ecfs/filing/102162775903079

## Summary of USAC's Decisions

Decisions Addressed to HHA

1. Form 471 No. 691971 -- FY 2009
   FRN No. 1898266
   "During an audit, it was determined that you did not pay your non-discounted portion."

2. Form 471 No. 693282 – FY 2009
   FRN No. 1902433, 1902674
   "During an audit, it was determined that you did not pay your non-discounted portion."

3. Form 471 No. 635081 – FY 2008
   FRN No. 1756678
   "The following equipment purchased with E-Rate discounts for FY 2008, FRN 1756678 could not be located."

Decisions Addressed to Neighborhood Computer Center Corporation ("NCCC")

1. Form 471 No. 691971 -- FY 2009
   FRN 1898266
   "...funds were improperly disbursed...for ineligible maintenance charges.... On the SPAC Form, the authorized person certifies at Item 10 that the service provider has billed its customer for services deemed eligible for support."

2. Form 471 No. 693282 -- FY 2009
   FRNs 1902433, 1902674
   "...funds were improperly disbursed...for ineligible maintenance charges.... On the SPAC Form, the authorized person certifies at Item 10 that the service provider has billed its customer for services deemed eligible for support."

## DISCUSSION

### I. USAC Should Direct It's Recovery Action For Payments Made Improperly to the Vendor for Ineligible Maintenance Services to the Vendor, the Party Responsible for the Alleged Rule Violations.

USAC decided that the vendor, NCCC, billed USAC for ineligible maintenance services in violation of its service provider certification.[3] If correct, NCCC was the party responsible for the rule violation. If the FCC agrees that NCCC violated the rule in this regard, then USAC should be instructed to: (1) recover from NCCC the money it paid to

[3] FRNs 1898266, 1902433 and 1902674.

NCCC; and (2) stop any further action to recover that money from HHA. USAC may have already decided to do this, but, from its decisions, we cannot be certain.

## II. USAC Decisions Against NCCC and HHA Are Logically Inconsistent: Applicants Cannot Violate Program Rules by Failing to Pay the Non-Discounted Portion of the Cost of Services That USAC finds are Ineligible for E-rate Discounts.

USAC contends that NCCC provided <u>ineligible</u> services to HHA, and that HHA violated program rules by failing to pay NOCC for the non-discounted portion of the cost of those ineligible services.[4] <u>That is impossible</u>. There is no non-discounted portion of a service that is ineligible for discounts. An ineligible service – painting a school for example -- has neither a discounted nor a non-discounted share.

Therefore, <u>if USAC is correct</u> and NCCC provided ineligible maintenance services to HHA, there was no non-discounted portion of anything eligible for HHA to pay. And if there was no non-discounted amount to pay, it follows logically that HHA could not possibly have violated the E-rate program rule that requires applicants to pay the non-discounted part of the cost of an <u>eligible</u> service.

On the other hand, <u>if USAC is incorrect</u> – i.e., NCCC provided eligible maintenance services to HHA -- then HHA still could not have violated program rules by failing to pay its non-discounted share. That is because NCCC never billed HHA for those services. NCCC had little if any respect for FCC rules governing the delivery of eligible maintenance services and violated those rules in numerous respects -- one of which was by neglecting to invoice HHA for the non-discounted cost of that service.

The rule that requires service providers to invoice applicants for the non-discounted share of the non-discounted price of eligible services, and the rule that requires applicants to pay those invoices are two sides of the same coin. Therefore, it makes sense that the FCC would interpret them together. A reasonable interpretation would be that not more than one party at a time can be responsible for violating it. In other words, either the service provider violated the rule by not invoicing the applicant for what it owed <u>or</u> the applicant violated the rule for not paying its service provider's invoice. It cannot be both. In this particular instance, NCCC was the rule violator

[4] FRNs 1898266, 1902433 and 1902674.

because it never sent any invoices to HHA for the maintenance services it provided, preferring instead to get all of its money from USAC.

Since NCCC was solely responsible for every alleged maintenance-related violation in issue here and, realistically, the only one of the two parties in any position to have prevented them from occurring in the first place, USAC's recovery action for all of the maintenance-related disbursements should be directed exclusively at NCCC, and that is exactly what USAC appears to be doing.[5] We would just like to be sure.

## III. USAC's Recovery Action is Invalid Because USAC Gave No Weight Whatsoever to the FCC's Policy Preference Against Initiating Recovery Actions More Than Five Years After the Last Date to Receive Service.

The last dates to receive service in this matter were the last days of the 2008 and 2009 funding years, June 30, 2009 and June 30, 2010 respectively. The FCC has explained to USAC that it prefers its program administrator not to initiate any action for the recovery of funds more than five years from the last date to receive service. Here, USAC did just that.

Nothing about this case is extraordinary. There has never been any allegation of waste, fraud, or abuse. HHA is a small, public charter school that serves an economically disadvantaged community. Therefore, in the absence of any explanation as to why USAC decided to initiate this recovery action more than five years after the last date to receive service, the FCC's policy preference against USAC seeking to recover funds in these circumstances must surely bar it. If it does not, the FCC's policy preference is totally meaningless.

In our Letter of Appeal, we argued that the FCC's five-year limit on the recovery of improperly disbursed funds bars this recovery action. In response, USAC claimed that

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[5] Please note that the amount of money that USAC is seeking to recover from HHA for the "non-payment of discounted share" is considerably more than what the FCC's Office of Inspector General ("OIG") found HHA owed and what FCC remedial rules require. Therefore, if the FCC permits USAC to seek recovery from HHA, then USAC needs to reduce the amount of funding that it is seeking to recover.

it had no obligation to terminate it, because the policy we cited is a "policy preference and does not serve as a bar to recovery for improperly disbursed funds." Granted, this policy preference may not serve as an absolute bar in every case, but it is a preference nonetheless -- one that deserves at least a modicum of attention and respect from USAC and not merely lip service.

What good is stating a policy preference if USAC is simply going to ignore it? USAC may not ignore the FCC's clearly articulated policy preferences. That, however, is exactly what USAC decided to do here and, we have been advised, in a large number of other cases too. We do not understand how the FCC can allow this practice to continue.

The FCC has made its policy preference quite clear: USAC should not seek to recover funds more than five years after the last date to receive service. It follows, therefore, that any time USAC is faced with deciding whether to pursue a recovery action that is outside this five-year time period, it must seriously take into account the FCC's policy preference, and, if it decides to pursue recovery anyway, explain to the party or parties its reasons for doing so.

USAC has never given HHA any explanation, let alone a reasonable one, as to why it decided to initiate this stale recovery action against it. By totally ignoring the FCC's policy preference against recovery actions more than five years after the last date to receive service, USAC is undercutting both the FCC's policy and authority.

## IV. If HHA's Failure to Locate an E-rate-Supported Router During the Audit Was a Rule Violation, Then the Circumstances Warrant a Rule Waiver.

The only other alleged violation against HHA involves a missing router. As discussed in much greater detail in our Letter of Appeal, HHA did not sell, transfer, move, donate, or in any other fashion dispose of it in violation of program rules. It appears that technicians working for the Baltimore Public School District, of which HHA is a part, took it by mistake – swapping it out for another router in the course of providing tech support, not realizing the significance of the asset, and thus never returning it.

The FCC does not hold schools and libraries liable for missing E-rate equipment when it is not their fault that the equipment went missing. For example, the FCC does not require schools and libraries to return E-rate funds when a piece of E-rate equipment is destroyed by a flood or is stolen.

Here, through no fault of its own, HHA's E-rate-supported router wound up getting replaced by a non-E-rate router. HHA did not purposefully dispose of the equipment or transfer it elsewhere. It was not advised of the swap and thus had no realistic opportunity to protest it, either before or afterwards. Therefore, as in the case of stolen and destroyed E-rate equipment, HHA should not be required to return the E-rate funds associated with a piece of equipment which, through no fault of its own, could not be located.

Respectfully submitted,

HAMPSTEAD HILL ACADEMY

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