

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries)	CC Docket No. 02-6
Universal Service Support Mechanism)	
)	
Request for Review and/or Waiver by)	Application No. 1019068
Phoenix Elementary School District 1)	
of a Funding Decision by the)	
Universal Service Administrative Company)	

**REQUEST FOR REVIEW AND/OR WAIVER
BY PHOENIX ELEMENTARY SCHOOL DISTRICT 1
OF A FUNDING DECISION BY THE
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

Pursuant to sections 54.719 and 54.722 of the Commission's rules,¹ Phoenix Elementary School District 1² (Phoenix or the District) respectfully requests a review of a Universal Service Administrative Company (USAC) decision to recover funding disbursed in Funding Year 2015.³ USAC rescinded Phoenix's 2015 funding after finding that Phoenix did not have a signed contract in place with its service provider before filing its FCC Form 471.

In fact, Phoenix did have a legally binding agreement with its service provider when it filed its FCC Form 471. Furthermore, even if it believed that Phoenix lacked a legally binding agreement when it filed its FCC Form 471, USAC should not be seeking to recover funding for a contract that has been performed in full. To do so is plainly inconsistent with the Commission's directive in the *First Modernization Order*, which sought to increase flexibility and minimize the

¹ 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a).

² Billed Entity Number 142894.

³ The FCC Form 471 number is 1019068. The FRN is 2822245.

need for waiver requests where applicants lacked a signed contract at the time of filing the FCC Form 471 by allowing as evidence of a contract the fact that the contract had already been performed. As such, there is no violation and therefore USAC would have no basis to recover funding for this reason.

For these reasons, Phoenix respectfully asks that the Commission reverse USAC's decision and direct USAC to cease recovery efforts. In the alternative, Phoenix asks that the Commission waive its rules to the extent necessary to grant the requested relief. It would be contrary to the public interest to recover nearly \$85,000 in E-rate funding on a fully performed contract simply because the school district lacked a fully executed contract when it filed its FCC Form 471.

I. BACKGROUND

Phoenix Elementary School District 1 was the first public school district in Arizona. The District's 13 schools in central Phoenix serve more than 7,000 students. The District's discount rate is 90 percent.

On January 7, 2015, Phoenix filed an FCC Form 470 seeking bids for a Wide Area Network with a connection to the Internet. After reviewing the bids it received for these services, on April 2, 2015, Phoenix selected Cox Arizona Telecom LLC (Cox) as the winning bidder.⁴ At the time, Cox was already providing these services to Phoenix under a contract signed the previous year. Paul Chase, the District's director of information systems, notified the

⁴ See Exhibit 1, email from Paul Chase to Frank Vander Horst, identifying Cox as the vendor selected for the WAN and Internet connection services.

District's consultant that Cox was selected on April 2, 2015.⁵ Mr. Chase expected the District's consultant to notify Cox of the award. On April 13, 2015, Phoenix filed an FCC Form 471 requesting \$91,033.20 in funding for Funding Year 2015.⁶

On April 20, 2015, Phoenix signed a service order from Cox for the requested services.⁷ After making minor revisions to its service request, Phoenix signed an updated service order from Cox on May 14, 2015.⁸ USAC committed the requested funding on November 30, 2015. Cox has provided all of the services associated with the FRN that is the subject of this appeal.

In May 2017, USAC sent the first of several PIA inquiries to Phoenix regarding the expiration date of the contract applicable to Phoenix's FCC Form 471 for Funding Year 2017. In the course of this 2017 PIA review, Phoenix informed USAC that its contract with Cox had been signed on May 14, 2015.

On December 20, 2017, USAC sent Phoenix a Commitment Adjustment Letter (COMAD) rescinding its 2015 funding and seeking to recover \$83,358 in disbursed funds:

[I]t has been determined that this funding commitment must be rescinded in full. The applicant did not have a contract and/or legally binding agreement in place at the time of submission of the FCC Form 471. The applicants [*sic*] contract is dated 5/14/2015 which is after the 471 certification date of 4/13/2015. . . . Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the FCC Form 471 that meets the state laws definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.⁹

⁵ *Id.*

⁶ See Exhibit 2, FRN Status Tool Spreadsheet.

⁷ Exhibit 3, April 20, 2015 Service Order.

⁸ Exhibit 4, May 14, 2015 Service Order.

⁹ Exhibit 5, Commitment Adjustment Letter, at 4.

On February 15, 2018, Phoenix filed a timely appeal of the COMAD. On May 3, 2018, USAC denied Phoenix's appeal, finding that it had not demonstrated that USAC's original decision was incorrect.¹⁰ Appeals to the Commission of USAC decisions are due within 60 days.¹¹ As such, the instant appeal is timely filed.

II. PHOENIX HAD A LEGALLY BINDING AGREEMENT WITH COX WHEN IT FILED ITS FCC FORM 471

Phoenix acknowledges that the contract between Phoenix and Cox for the FRN at issue in this appeal was signed after Phoenix filed its FCC Form 471. However, Phoenix respectfully argues that USAC has erred in seeking recovery of funding after the contract has been performed in full.¹² USAC failed to take into account evidence of a legally binding agreement, which the Commission explicitly directed USAC to do in the *First Modernization Order*. These facts make it clear that there was a legally binding agreement in place when the FCC Form 471 was filed, even in the absence of a signed contract. In addition, USAC's attempt to recover funding for a fully performed contract is contrary to the Commission's directive and policy goals that prompted the Commission to ease the signed contract rule. Accordingly, Phoenix asks that the Commission reverse USAC's finding and direct USAC to cease its recovery efforts.

¹⁰ Exhibit 6, Administrator's Decision on Appeal.

¹¹ 47 C.F.R. § 54.720(a).

¹² The contract that Cox and Phoenix signed in 2015 is a five-year contract. For purposes of this appeal, "performed in full" means that the services described in the contract were provided as described in Funding Year 2015, pursuant to the Commission's requirement that "receipt of services consistent with the offer and with the applicant's request for E-rate support will also constitute evidence of the existence of a sufficient offer and acceptance." *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8950-51 ¶ 204 (2014) (*First Modernization Order*). The request for E-rate support is made on an annual basis.

The Commission's rules require applicants to have a signed contract or other "legally binding agreement" in place prior to submitting their FCC Forms 471 to USAC.¹³ In the *First Modernization Order*, when adopting this rule, the Commission acknowledged that "there are many instances where applicants have an agreement in place with their service provider or are already receiving services, but have difficulty obtaining signatures prior to the submission of their FCC Forms 471."¹⁴

The requirement that a contract or legally binding agreement be in place when the FCC Form 471 ensures that an agreement has been reached between the parties, and thus supports program goals. Specifically, requiring that a contract with the service provider be in place before an E-rate application is filed ensures that applicants (1) know the scope of the services being provided; (2) know that the services are eligible for E-rate funds; and (3) accurately request the amount of funding they need for those services.¹⁵

Here, there is no serious question that Phoenix knew the scope of services being requested, knew their E-rate eligibility, and requested the proper amount of funding. Cox submitted a detailed proposal for the requested services on March 12, 2015, in response to the FCC Form 470,¹⁶ and by April 2, 2015 Phoenix had evaluated the bids it received and selected Cox as the winning bidder.¹⁷ On April 2, the District notified its consultant that Cox was selected¹⁸ with the expectation that Cox would be notified before the District's E-rate application

¹³ See 47 C.F.R. § 54.504(a).

¹⁴ *First Modernization Order*, 29 FCC Rcd at 8950 ¶ 203.

¹⁵ *Id.*

¹⁶ Exhibit 7, Cox E-rate Proposal for Priority One Services.

¹⁷ See Exhibit 1, Email from Paul Chase to Frank Vander Horst.

¹⁸ *Id.*

was filed. On April 16, three days after Phoenix submitted its FCC Form 471 Cox sent Phoenix an email with a service order to be signed, which shows Cox's understanding that a legally binding agreement was in place and that it was merely awaiting signature.

Phoenix recognizes that, ideally, it would be able to produce an email or comparable written acceptance of Cox's offer that it sent to Cox that predates the filing of its FCC Form 471. Phoenix has been unable to locate any such document, given that the acceptance was conveyed by its former consultant. However, given that the District selected Cox as its provider on April 2 and given that Cox sent Phoenix a service order on April 16 that was fully consistent with the terms of its bid, it seems highly unlikely that the District had not notified Cox of its selection prior to April 13. Because Cox had offered its terms and the District had accepted, there would have been a legally binding agreement in place on April 13, when Phoenix filed its FCC Form 471.

Even more important, though, there is no question that the parties to the contract performed their obligations under the contract, which USAC should have accepted as evidence of the existence of a contract. The Commission stated in the *First Modernization Order* that "after a commitment of funding, an applicant's receipt of services will also constitute evidence of the existence of a sufficient offer and acceptance."¹⁹ This language plainly requires USAC to consider performance of a contract as evidence that a sufficient contract exists. Phoenix ordered services from Cox, and Cox delivered those services. But USAC gave no indication, in its COMAD or elsewhere, that it had considered the fact that the contract had been fully

¹⁹ *First Modernization Order*, 29 FCC Rcd at 8951 ¶ 204.

performed.²⁰ With evidence of the existence of a contract, there is no rule violation and therefore no basis for recovery. Phoenix respectfully argues that USAC's failure to consider the evidence of the contract's performance constitutes reversible error.

Given that Phoenix had selected Cox as the winning bidder by April 2, 2015 and signed a Cox service order within a week after filing the FCC Form 471, coupled with the fact that the contract was subsequently performed in full, it is clear that Phoenix and Cox had a legally binding agreement in place when the FCC Form 471 was filed.

In the *First Modernization Order*, the Commission expressed an unambiguous desire to reduce the number of E-rate applications denied on the basis of imperfectly executed contracts. USAC's rescission of funding for a fully performed contract is directly contrary to the Commission's explicit purpose for revising the contract rule. Because USAC's recovery efforts are inconsistent with both the letter and the spirit of the *First Modernization Order*, Phoenix respectfully requests that the Commission reverse USAC's decision and direct USAC to cease its recovery efforts.

III. IN THE ALTERNATIVE, A WAIVER OF THE COMMISSION'S RULES IS IN THE PUBLIC INTEREST

As explained above, the evidence demonstrates that Phoenix had a legally binding agreement with Cox when it filed its FCC Form 471. If, however, the Commission believes that Phoenix has not shown that its evidence is sufficient to preclude recovery, Phoenix respectfully requests a waiver of that rule.

²⁰ USAC quoted this language in its appeal denial, but did not address it in its analysis. *See* Administrator's Decision on Appeal at 2 ("In addition, after a commitment of funding, an applicant's receipt of services consistent with the offer and with the applicant's request for E-rate support will also constitute evidence of the existence of a sufficient offer and acceptance.").

Any of the Commission's rules may be waived if good cause is shown.²¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²³

The Commission noted in the *First Modernization Order* that it “has consistently waived the requirement of a signed contract for petitioners who have demonstrated that they had a legally binding agreement in place for the relevant funding year.”²⁴ In *Bayfield School District*, for example, the Bureau found that four applicants had a legally binding agreement in place when they filed their FCC Forms 471 and granted a waiver of the rule that, at that time, required a signed contract.²⁵ Similarly, in *Barberton City School District*, the Bureau found that several applicants had a legally binding agreement in place when they submitted their FCC Forms 471.²⁶ More recently, the Bureau granted an appeal in which the applicant essentially argued that the contract was awarded before the FCC Form 471 was filed even though it was signed and dated

²¹ 47 C.F.R. § 1.3.

²² *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁴ *First Modernization Order*, 29 FCC Rcd at 8951 ¶ 203.

²⁵ *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Bayfield School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 15890 (Wireline Comp. Bur. 2012).

²⁶ *See Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, 23 FCC Rcd 15526 (Wireline Comp. Bur. 2008).

later.²⁷ Consistent with these precedents, the Commission should waive the contract rule for Phoenix to the extent necessary to grant the requested relief.

Finally, while Phoenix understands that Commission regulations and program procedures are important for an orderly administration of E-rate, seeking recovery of E-rate funding in this case does not serve the public interest. Phoenix is a school district with a 90 percent discount rate due to the socioeconomic status of its students and community. It would be a significant economic hardship for Phoenix to have to repay \$83,000 in E-rate funding, and the District's students would suffer as a result.

The Commission has noted in an order on the contract requirement that as long as there is no evidence of a misuse of funds, "rigid adherence to certain E-rate rules and requirements that are 'procedural' in nature does not promote the goals of section 254 of the [Telecommunications] Act . . . and therefore does not serve the public interest."²⁸ There was no waste, fraud, or abuse in this case. Indeed, Phoenix complied fully with the Commission's competitive bidding rules and selected the most cost-effective vendor. The only transgression USAC identified was that Phoenix had not signed its contract with Cox before filing its FCC Form 471, and the Commission expressly eased the signed contract requirement in 2014. At worst, the circumstances here are exactly the type of situation the Commission sought to remedy when it revised section 54.504(a) of its rules in the *First Modernization Order*. The Commission recognized that school districts and libraries often require flexibility when trying to comply with

²⁷ *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket No. 06-122, Public Notice, DA 18-299, at 3 (rel. Mar. 30, 2018).

²⁸ *Requests for Waiver of the Decision of the Universal Service Administrator by Adams County School District 14, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 6019 ¶ 10 (2007).

Commission rules and their own policies and procedures.²⁹ As noted above, Phoenix had identified a few minor errors in the draft contract that needed to be revised before it could be completed. It is contrary to the public interest to demand recovery of E-rate funding under these circumstances.

IV. CONCLUSION

For the foregoing reasons, Phoenix respectfully requests that the Commission grant this appeal. In the alternative, Phoenix asks that the Commission waive the contract rule to the extent necessary to grant the requested relief.

Respectfully submitted,



Gina Spade
Broadband Legal Strategies
1629 K Street, NW Suite 300
Washington, DC 20006
202-789-3530
gina@broadbandlegal.com

Counsel for Phoenix Elementary School District 1

June 29, 2018

²⁹ *First Modernization Order*, 29 FCC Rcd at 8950 ¶ 203.

CERTIFICATE OF SERVICE

This is to certify that on this 29th day of June, 2018, a true and correct copy of the foregoing Request for Review was sent via email to the Schools and Libraries Division, Universal Service Administrative Company at the Appeals@sl.universalservice.org address.

/s/ Theresa Schrader

Theresa Schrader

ATTACHMENTS

Affidavit of Paul Chase

- Exhibit 1 Email from Paul Chase to Frank Vander Horst, Dated April 2, 2015
- Exhibit 2 FRN Status Tool Spreadsheet
- Exhibit 3: April 20, 2015, Service Order
- Exhibit 4 May 14, 2015 Service Order
- Exhibit 5 Commitment Adjustment Letter
- Exhibit 6 Administrator's Decision on Appeal
- Exhibit 7 Cox E-rate Proposal for Priority One Services dated March 12, 2015

Affidavit of Paul Chase

I, Paul Chase, swear:

1. That I am the Director of MIS of Phoenix Elementary School District 1. I have been with Phoenix Elementary School District 1 since August 20, 2001.
2. That I have read the foregoing appeal and avow that the information stated therein is true and correct to the best of my knowledge and belief.

Paul Chase

Paul Chase
Director of MIS
Phoenix Elementary School District 1
1817 N 7th Street
Phoenix, AZ 85006

Subscribed and sworn to before me this 27th day of June, 2018.

[Seal]



FRANCES T. RIVAS
Notary Public - Arizona
Maricopa County
Expires 01/31/2020

Frances T. Rivas

Notary Public

Exhibit 1

Paul CHASE

From: Frank Vander Horst <Frank.Vander.Horst@yavapai.us>
Sent: Friday, April 3, 2015 3:20 PM
To: Paul CHASE
Subject: RE: Erate 471

I will start on this tomorrow morning. I will call your cell phone if I have any questions.

Frank Vander Horst
E-Rate Manager
Office: 928-649-6298
Mobile: 928-499-8421
Fax: 928-649-6270

Yavapai County



Education Service Agency

The First Choice for Educational Services

From: Paul CHASE [mailto:Paul.CHASE@phxschools.org]
Sent: Thursday, April 02, 2015 11:04 AM
To: Frank Vander Horst
Cc: Rocky BERUMEN; Larry WEEKS
Subject: Erate 471

Below are the vendors selected for Erate for 2015-2016. I've attached the quotes associated with the selected vendors.

The worksheet **OPT LIC WLC** for WWT should not be included in the Item 21 listing.

Category 1 services

Vendor	Description	Additional Info.	Monthly Cost	Contract Length	Notes
Verizon Wireless	Cell Phones		2,878.80	Annual	Vendor Selected
T Mobile	Cell Phones		1,268.01	Annual	Don't think the plan includes all needed options
Sprint	Cell Phones		3,585.78	Annual	
TW Telecom	Internet Connectivity	3 GB	9,150.40	60	Requires another vendor to provide connectivity between sites (Not recommended)
Zayo	WAN Connectivity	1GB between 18 sites	35,500.00	60	10 GB to provider is insufficient. Would require an

		10 GB to provider			additional 10GB at 2,200.00 Month Requires another vendor to provide Internet connectivity (Not recommended)
Century Link	PRI-POTS-Long Distance		Approx: 12,000.00	??	I didn't get a quote from Century Link for these services. Nothing has changed. Do I just need to get you copies of the invoices from last year? Vendor Selected
Century Link	WAN Connectivity	1GB between 18 sites	31,212.00	60	
Century Link	Internet Connectivity & 20GB to provider	3GB to Internet	22,818.00	60	Insufficient bandwidth to provider. I added an additional 10GB to provider at a cost of 6,500.00 per month. (Included in monthly cost column)
Cox	WAN Connectivity	1 GB between 18 sites	29,178.00	60	Vendor Selected
Cox	Internet Connectivity & 20GB to provider	3GB to Internet	20,481.00	60	Vendor Selected

category 2 equipment

Vendor	Description	Cost	Notes
Logicalis	Wireless equipment upgrade	1,568,528.62	Has 2960 switches in the quote instead of 3760. Would cost an additional \$130,000.00 to make that change to 66 switches.
WWT	Wireless equipment upgrade	1,590,461.67	This includes the 1GB Uplink optics option and the 4500X 10GB Core Switches Vendor Selected

ASU Prep and Ott Elementary should NOT be on the 471. Monterey Park should be added to the 471.

Emerson Court Welcome Center was listed on the last 471. It needs to remain; however, it's the district office. It's just titled incorrectly.

Please call if you have questions.

Thank You,

Paul Chase
Director Of MIS

Paul.chase@phxschools.org

Exhibit 2

471 Application Number	FRN	470 Application Number	471 Form Status	470 Form Status	Applicant Name	BEN	Application Type	Applicant City	Applicant State	Service Provider Name	Commitment Status	FCDL Comment	Funding Year	FCDL Date	Contract Exp Date	Orig FRN Service Type	Orig Commitment Request	Committed Amount	Cmt'd Commitment Request	Total Authorized Disbursement	Wave Number
1019068	2822245	703730001282088	CERTIFIED	CERTIFIED	PHOENIX ELEM SCHOOL DISTRICT 1	142894	DISTRICT	PHOENIX	AZ	Cox Arizona Telcom, LLC	FUNDED		2015	11/30/2015	6/30/2020	INTERNET ACCESS	\$91,033.20	\$0.00	\$91,033.20	\$83,358.00	27

Exhibit 3

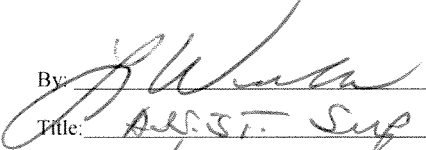
Service Order

This Service Order ("Service Order") is by and between Phoenix Elementary School District ("Customer") and Cox Arizona Telcom, LLC ("Cox"). This Service Order is effective as of the date of Customer's signature. The undersigned represents that he/she is authorized to sign this Service Order.

Cox Account Rep:	Ann Newman	Cox System Address: 1550 W. Deer Valley Rd Phoenix, AZ 85027 Tax ID: 582327142			
Phone Number	623.328.4197				
Fax Number:	623.328.4030				
Customer Information			Authorized Customer Representative Information		
Legal Name:	Phoenix Elementary School District	Full Name:			
Street Address:		Billing Contact:			
City/State/Zip:		Fax:			
Billing Address:	1817 N 7 th Street	Contact Number:			
City/State/Zip:	Phoenix, AZ 85006	Email Address:			
Cox Account #:					
Taxes and Fees Not Included					
Service Description	Quantity	Term (Months)	Type	Monthly Recurring Charges	One Time Activation & Setup Fees
Cox Optical Internet – 3Gbps	1	60	Fiber	\$8,429.00	\$0
Cox Metro Ethernet – 1Gbps	18	60	Fiber	\$29,178.00	\$0
Cox Metro Ethernet – 10Gbps	2	60	Fiber	\$12,052.00	\$0
Totals:				\$49,659.00	\$0
Special Conditions					
<p>This Service Order is subject to the terms of the State of Arizona Contract ADSP015-088473 which Customer adopts, as its own separate and independent agreement. Internet use by the Customer shall comply with Cox's Cox Acceptable Use Policy located at http://ww2.cox.com/aboutus/policies/business-policies.cox.</p> <p>3 year term with (2) optional one year extensions.</p>					

Customer: Phoenix Elementary School District

Cox: Cox Arizona Telcom, LLC

By: 
 Title: ASST. Sup Bnd.
 Date: 4/20/15

By: _____
 Title: _____
 Date: _____

Exhibit 4

Service Order

This Service Order ("Service Order") is by and between Phoenix Elementary School District ("Customer") and Cox Arizona Telecom, LLC ("Cox"). This Service Order is effective as of the date of Customer's signature. The undersigned represents that he/she is authorized to sign this Service Order.

Cox Account Rep:	Ann Newman	Cox System Address:
Phone Number	623.328.4197	1550 W. Deer Valley Rd
Fax Number:	623.328.4030	Phoenix, AZ 85027
		Tax ID: 582327142

Customer Information			Authorized Customer Representative Information		
Legal Name:	Phoenix Elementary School District	Full Name:			
Street Address:		Billing Contact:			
City/State/Zip:		Fax:			
Billing Address:	1817 N 7 th Street	Contact Number:			
City/State/Zip:	Phoenix, AZ 85006	Email Address:			
Cox Account #:					

Taxes and Fees Not Included					
Service Description	Quantity	Term (Months)	Type	Monthly Recurring Charges	One Time Activation & Setup Fees
Cox Optical Internet - 3Gbps	1	60	Fiber	\$8,429.00	\$0
Cox Metro Ethernet - 20Mbps	1	60	Fiber	\$464.00	\$0
Cox Metro Ethernet - 1Gbps	17	60	Fiber	\$27,557.00	\$0
Cox Metro Ethernet - 10Gbps	2	60	Fiber	\$12,052.00	\$0
Totals:				\$48,502.00	\$0

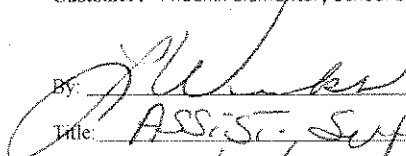
Special Conditions

This Service Order is subject to the terms of the State of Arizona Contract ADSP015-088473 which Customer adopts, as its own separate and independent agreement. Internet use by the Customer shall comply with Cox's Cox Acceptable Use Policy located at <http://ww2.cox.com/aboutus/policies/business-policies.cox>.

3 year term with (2) optional one year extensions.

Customer: Phoenix Elementary School District

Cox: Cox Arizona Telecom, LLC

By: 
 Title: ASSIST. SUP. BUS.
 Date: 5/14/15

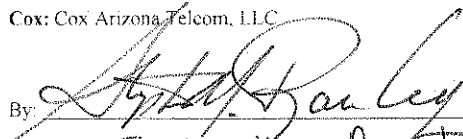
By: 
 Title: Senior Vice President
 Date: 5/21/2015

Exhibit 5

PAUL CHASE
PHOENIX ELEM SCHOOL DISTRICT 1
1817 N 7TH ST
PHOENIX, AZ 85006 - 2133



Commitment Adjustment Letter

PAUL CHASE
PHOENIX ELEM SCHOOL DISTRICT 1
1817 N 7TH ST
PHOENIX, AZ 85006 - 2133

12/20/2017

Our review of your Schools and Libraries Universal Service Support Program (or E-rate) funding request has determined funds were committed in violation of Federal Communications Commission (FCC) rules. You have 60 days from the date of this letter to appeal the following decision(s). For more detailed information see below.

Total commitment adjustment: \$91,033.20

Total amount to be recovered: \$83,358.00

<i>FCC Form 471</i>	<i>FRN</i>	<i>Commitment adjustment</i>	<i>Total amount to be recovered</i>	<i>Explanation(s)</i>	<i>Party to recover from</i>
1019068	2822245	\$91,033.20	\$83,358.00	No Binding Agreement	Applicant

See Attached Adjustment Report for more information on the specific FRNs and Explanations listed above.

Commitment Adjustment

FCC rules require the Universal Service Administrative Company (USAC) to rescind commitments and recover funding when it is determined that funding was committed and disbursed in violation of the rules. This letter notifies you that USAC will be adjusting your funding commitment(s) and provides information on how to appeal this decision.

This is NOT a bill. If disbursed funds need to be recovered, USAC will issue a Demand Payment Letter. The debt referenced in the Demand Payment Letter will be due within 30 days of that letter's date. Failure to pay the debt may result in interest, late payment fees, and administrative charges and will invoke the FCC's "Red Light Rule."

FCC's Red Light Rule

The FCC Red Light Rule requires USAC to dismiss pending FCC Form 471 applications, appeals, and invoices or to net disbursements offsetting the debt if the entity responsible for paying the outstanding debt owed to the FCC has not paid the debt or made satisfactory arrangements to pay the debt within 30 days of the Demand Payment Letter. For information on the Red Light Rule, see

<https://www.fcc.gov/licensing-databases/fees/debt-collection-improvement-act-implementation>

To Appeal This Decision

If you wish to contest any part of this letter, you must first file an appeal with USAC to seek review of the decision. Parties that have filed an appeal with USAC and received an adverse decision may, if they choose, appeal USAC's decision to the FCC. Parties seeking a waiver of a codified FCC rule should file a request for waiver directly with the FCC because USAC cannot waive FCC rules. Your appeal to USAC or waiver request to the FCC must be filed within 60 days of the date of this letter.

All appeals filed with USAC must be filed in EPC by selecting "Appeal" from the menu in the top right hand corner of your landing page and providing the requested information.

Your appeal should include the following information. (Because you file the appeal through your EPC account, the system will automatically fill in some of these components for you).

- 1) Name, address, telephone number, and email address for the contact person for this appeal.
- 2) Indicate specifically that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., Commitment Adjustment Letter) and the decision you are appealing:
 - a. Appellant name;
 - b. Applicant name and service provider name, if different from appellant;
 - c. Applicant BEN and Service Provider Identification Number (SPIN);
 - d. FCC Form 471 Application Number and the Funding Request Number (FRN) or Numbers as assigned by USAC;
 - e. "Commitment Adjustment Letter," AND the exact text or the decision that you are appealing.



3) Identify the problem and the reason for the appeal and explain precisely the relief sought. Please keep your appeal to the point, and provide supporting documentation. Be sure to keep a copy of your entire appeal, including any correspondence and documentation. A copy will automatically be saved for you in EPC. USAC will reply to your appeal submission to confirm receipt.

For more information on submitting an appeal to USAC including step by step instructions on how to file the appeal through EPC, please see "Appeals" in the Schools and Libraries section of the USAC website.

As mentioned, parties seeking a waiver of FCC rules or that have filed an appeal with USAC and received a decision may file a request for waiver or appeal USAC's decision to the FCC. Waiver requests or appeals to the FCC must be made within 60 days of the issuance of USAC's decision and include all of the information referenced above for appeals to USAC.

The FCC recommends filing appeals or waiver requests with the Electronic Comment Filing System (ECFS) to ensure timely filing. Electronic waiver requests or appeals will be considered filed on a business day if they are received at any time before 11:59 PM ET. If you have questions or comments about using the ECFS, please contact the FCC directly at (202) 418-0193.

For more information about submitting waiver requests or appeals to the FCC, including options to submit the waiver request or appeal via U.S. mail or hand delivery, visit the FCC's website.

Schools and Libraries Division

cc: Derrick Hanson
Cox Arizona Telcom, LLC

Adjustment Report

FCC Form 471 Application Number: 1019068
Funding Request Number: 2822245
Commitment Adjustment: \$91,033.20
Total Amount to Be Recovered: \$83,358.00
Explanation(s): No Binding Agreement

Party to Recover From: Applicant
Funding Year: 2015
Billed Entity Number: 142894
Services Ordered: INTERNET ACCESS
Service Provider Name: Cox Arizona Telcom, LLC
SPIN: 143014467
Original Funding Commitment: \$91,033.20
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$83,358.00

Funding Commitment Adjustment Explanation

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. The applicant did not have a contract and/or legally binding agreement in place at the time of submission of the FCC Form 471. The applicants contract is dated 5/14/2015 which is after the 471 certification date of 04/13/2015. FCC rules require applicants to have a valid contract as defined by the applicants state procurement laws and regulations at the time they submit the FCC Form 471. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the FCC Form 471 that meets the state laws definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

Exhibit 6

**Rosanna Hidalgo
Phoenix Elem School District 1
1817 N. 7th Street
Phoenix, AZ 85006**

**Billed Entity Number: 142894
Form 471 Application Number: 1019068
Form 486 Application Number:**



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2015-2016

May 03, 2018

Rosanna Hidalgo
Phoenix Elem School District 1
1817 N. 7th Street
Phoenix, AZ 85006

Re: Applicant Name: PHOENIX ELEM SCHOOL DISTRICT 1
Billed Entity Number: 142894
Form 471 Application Number: 1019068
Funding Request Number(s): 2822245
Your Correspondence Dated: February 15, 2018

After review of the information and documentation provided, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's decision to adjust the funding commitment amount for the FCC Form 471 Application and funding request number(s) (FRN(s)) referenced above. This letter provides an explanation for USAC's decision. The date of this letter also begins the sixty (60) day time period for appealing this decision. If your Letter of Appeal included more than one FCC Form 471 Application Number, please note that you will receive a separate decision for each funding application.

Funding Request Number(s): 2822245
Decision on Appeal: **Denied**
Explanation:

- After a thorough investigation, USAC determined to rescind the funds committed under the above listed Funding Request Number (FRN) in full. The applicant did not have a contract and/or legally binding agreement in place at the time of submission of the FCC Form 471. The applicant's contract is dated 5/14/2015 which is after the 471 certification date of 04/13/2015. FCC rules require applicants to have a valid contract as defined by the applicant's state procurement laws and regulations at the time they submit the FCC Form 471. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the FCC Form 471 that meets the state laws definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant. On appeal, you argue that Phoenix Elem School District 1 had a legally binding agreement in place and

provided a contract signed on 3/26/14 as the basis for your argument. However, the contract provided does not support the above listed FRN. FRN 2822245 is a request for 1 WAN circuit at 3 GB. The contract provided does not include that service.

- USAC has determined, that at the time you submitted your FCC Form 471 application, you did not have a contract or a legally binding agreement with your service provider(s), which met your state and local or the FCC's definition of a contract or a legally binding agreement. *See* 47 C.F.R. sec. 54.504(a). Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that applicants submit a completed FCC Form 471 "upon entering into a signed contract or other legally binding agreement for eligible services." The existence of a written offer from the service provider containing all the material terms and conditions and a written acceptance of that offer is considered evidence of the existence of a legally binding agreement. In addition, after a commitment of funding, an applicant's receipt of services consistent with the offer and with the applicant's request for E-rate support will also constitute evidence of the existence of a sufficient offer and acceptance. *See* In the Matter of Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 para. 204 (rel. Jul. 23, 2014). The services you requested are not non-contracted tariff or month-to-month services and you did not demonstrate that there is a contract or a legally binding agreement in place for those services. In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

If you wish to appeal this decision, you may file an appeal pursuant to 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:
<http://www.usac.org/sl/about/program-integrity/appeals.aspx>.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Exhibit 7



Business Contact Information

Your Account Executive

Business Name: Phoenix Elementary School District 1
Customer Contact: Paul Chase
Service Address: 1817 N 7th Street
City, State, Zip: Phoenix, AZ 85006
Primary Phone: 602-257-3790
Primary Email: paul.chase@phxelem.k12

Account Executive: Ann Newman
Phone: 623-328-4197
Fax: 623-328-4030
Email: ann.newman@cox.com
Date: 3/12/2015
SPIN: 143014467

Qty	Service Type	Bandwidth	Term (Yr)	Rate / Unit	Monthly Total
	Ethernet	500Mbps	5	\$ 1,031.00	\$ -
	Ethernet	600Mbps	5	\$ 1,175.00	\$ -
	Ethernet	700Mbps	5	\$ 1,302.00	\$ -
	Ethernet	800Mbps	5	\$ 1,422.00	\$ -
	Ethernet	900Mbps	5	\$ 1,535.00	\$ -
18	Ethernet	1Gbps	5	\$ 1,621.00	\$ 29,178.00
	Ethernet	2Gbps	5	\$ 2,077.00	\$ -
	Ethernet	3Gbps	5	\$ 2,662.00	\$ -
	Ethernet	4Gbps	5	\$ 3,248.00	\$ -
	Ethernet	5Gbps	5	\$ 3,834.00	\$ -
	Ethernet	6Gbps	5	\$ 4,371.00	\$ -
	Ethernet	7Gbps	5	\$ 4,841.00	\$ -
	Ethernet	8Gbps	5	\$ 5,286.00	\$ -
	Ethernet	9Gbps	5	\$ 5,706.00	\$ -
	Ethernet	10Gbps	5	\$ 6,026.00	\$ -
1	Ethernet	20Gbps (2 x 10Gbps)	5	\$ 12,052.00	\$ 12,052.00
1	Internet	3Gbps	5	\$ 8,429.00	\$ 8,429.00
	Internet	4Gbps	5	\$ 10,461.00	\$ -
	Internet	5Gbps	5	\$ 12,326.00	\$ -
				Monthly Grand Total:	\$ 49,659.00

One-Time / Non-Recurring Charges			Term (yr)	Rate / Unit	Total
	Install	Installation Waived	n/a	\$ -	\$ -
	Install	Special Construction Waived	n/a	\$ -	\$ -
			One-Time Charge Grand Total:		\$ -

Locations	Address	Bandwidth
District Office - Internet	1817 N 7th St	3Gbps
District Office - Ethernet	1817 N 7th St	10Gbps x 2
Capital	330 N 16th St	1Gbps
Bethune	3010 S 15th Ave	1Gbps
Edison	804 N 18th St	1Gbps
Emerson	915 E Palm Ln	1Gbps
Falk North	910 E Washington	1Gbps
Garfield	811 N 13th St	1Gbps
Heard	2301 W Thomas Rd	1Gbps
Herrera	1350 S 11th St	1Gbps
PPA	735 E Fillmore	1Gbps
Kenilworth	1210 N 5th Ave	1Gbps
Lowell	1121 S 3rd Ave	1Gbps
Magnet	2602 N 23rd Ave	1Gbps
Maint - Ops	120 E Grant St	1Gbps
Maint - Warehouse	90 E Grant St	1Gbps
Monterey Park	2301 N 3rd Ave	1Gbps
Shaw	123 N 13th St	1Gbps

Whittier	2000 N 16th St	1Gbps
Dunbar	707 W Grant St	1Gbps *
Rates based on State of Arizona Telecommunications Carrier Services Agreement ADSPG10-000400		
Funding Year:	2015-2016	
Service Start Date:	7/1/2015	
Service End Date:	6/30/2020	
Term: 3 year term with (2) two optional (1) one year extensions.		
Tax estimate for Ethernet is 12%. Internet is not a taxable service.		