**Before The Federal Communication Commission**

**Washington DC**

**In the Matter of:**

)

Request for Review of a decision )

by the Schools and Libraries Division ) Administrator Correspondence Dated

for Miller County Public Schools, ) May 24, 2017

Georgia )

)

)

Schools and Libraries Universal Service ) CC Docket No. 02-6

Support Mechanism )

**Request for Review**

In accordance with Sections 54.719 through 54.721 of the Commission’s Rules, Miller County Public Schools (Miller) appeals a decision of the Schools and Libraries Division of the Universal Service Administrative Company (Administrator). This appeal comes timely submitted within 60 days of the Administrator decision. Commission precedent in Kings Canyon should apply in this case, in addition to other arguments presented here.[[1]](#footnote-1)

**Requestor: Miller County Public Schools**

**Billed Entity Number: 127512**

**FCC Registration Number 0011708666**

**Fundng Request Number: 2209152**

**Form 471 Number: 813142**

In correspondence dated May 24, 2017 the Administrator denied an appeal filed by United Data Technologies (UDT) and is seeking recovery from both UDT and Miller. In its denial, the Administrator did not address an appeal filed by Miller for the same FRN, rather the Administrator addressed only arguments in the UDT appeal, which Miller was not privy to at the time of the Administrator correspondence decision. Miller has received no communication from the Administrator regarding the Miller appeal and must appeal to the Commission based solely on Administrator denial language.

The Administrator addressed numerous UDT arguments in its decision but ultimately upholding the denial and determining that Miller was also in violation of gift rules. The Administrator did not address any of Miller’s arguments in the decision. The Administrator decision concluded:

USAC finds that MCSD and UDT are both responsible for these rule violations because an MCSD employee accepted gifts in violation of the FCC’s gift rules and a UDT employee offered gifts in violation of the FCC’s gift rules. FCC rules clearly prohibit service providers from offering or accepting gifts that are not modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, or items worth less $20 or less. For the reasons discussed above, this appeal is denied.[[2]](#footnote-2)

Funding for the above referenced FRN was rescinded for the following stated reason:

…it has been determined that this funding commitment must be rescinded in full because documents provided by the service provider indicates that, throughout the contractual relationship with the service provider listed on the FRN, the applicant was offered and accepted gifts, meals, gratuities, entertainment including a hotel stay on 2/21/11 for a total of $106.12, A dinner on 2/21/11 for a total of $29.79 and two lunches on 2/25/11 and 8/25/11 both for $10.60 from the service provider which resulted in a competitive bidding process that was not fair and open.[[3]](#footnote-3)

Miller disputes this conclusion and asserts its right to appeal the Administrator’s demand that Miller return over $872,000 disbursed to the vendor through the Service Provider Invoice (SPI) payment method for equipment purchased and services rendered.

Miller County is in rural southern Georgia with agriculture and forestry as two major industries. Miller County income is far below the national average with over 90 percent of Miller students eligible to participate in the National School Lunch Program. The FRN here under review represents the largest infrastructure project for Miller County Schools since the inception of the E-Rate program. Discounted funding was vital for Miller to undertake this project.

**Background**

The FRN here under review resulted from a detailed procurement request for data equipment for a new Miller school and was the largest single technology project in the history of the school district. Miller, through its E-Rate consultant, posted a Form 470 on January 18, 2011 providing sufficient detail for vendors to submit bids for equipment and services.

Miller received four viable bids and evaluated each with the price of eligible equipment and services weighted highest. Based on Miller’s technology needs, existing infrastructure and vendor technology solution, United Data Technologies (UDT) received the highest score on the evaluation sheet, dated March 10, 2011. In accordance with Miller procurement policy, the superintendent selected UDT as the vendor best suited to provide equipment and services and a contract was signed on March 21, 2011. Miller submitted the Form 471 on March 24, 2011.

After submission the application was scrutinized by the Administrator for compliance with program rules and a funding commitment was issued on March 13, 2012. Equipment was delivered and installed and UDT submitted an invoice to the Administrator for the discounted portion through the SPI process.

The Administrator initiated a further review of this funding request beginning in February 2013. In correspondence dated May 29, 2013, the Administrator requested specific information about a hotel stay and meals for the five items cited above. Two years later, a Funding Commitment Adjustment letter dated June 13, 2015 rescinded all funding for this project and demanded Miller and UDT repay over $872,000.

**Discussion**

The Administrator bases the Commitment Adjustment and demand for return of funds on four alleged gifts from the vendor – a hotel stay and dinner on February 21, 2011 and lunches on February 25, 2011 and August 25, 2011. The Administrator concluded that these gifts violated new gifting regulations enacted by the Federal Communications Commission in the Sixth Report and Order, FCC 10-175, effective date January 3, 2011.

In response to questions from the Administrator regarding these items, Miller informed the Administrator that Jeff Hatcher, the subject of the Administrator inquiry, explaining that the hotel stay was in conjunction with a training event conducted by UDT to provide a briefing and information update on Cisco equipment installed in Miller schools. Such briefings were necessary to stay abreast of changing technologies. This briefing was necessary for the continued efficient operation of existing equipment at the school district and not related in any way to future procurements.

In response to the Administrator May 29, 2013 inquiry regarding meals and hotel stay, Miller explained that the briefing had been scheduled long before a Form 470 for equipment had been posted. Severe budget restrictions imposed by the district after the trip had been scheduled jeopardized Mr. Hatcher’s ability to attend this vital training. Miller stated:

This singular expense for one room fee resulted from the fact that the briefing had already been scheduled but the district had just implemented cost savings steps that eliminated payment for such expenses. UDT paid for this one fee in recognition of the value of the event and the district’s new cost saving steps.

Jeff Hatcher personally paid for other travel expenses as the district would not reimburse expenses at this time.[[4]](#footnote-4)

The hotel stay and meals were not “gifts” *per se.* The hotel stay was a one-time event resulting from drastic budget cuts the district imposed due to effects of the Great Recession. Attendance at the event was absolutely necessary for the efficient and effective operation of existing equipment previously installed at Miller schools.

Because this expense has now been deemed a violation of gift rules, Miller has taken steps to reimburse UDT for the cost of the hotel stay and meals.

Miller reiterated in its appeal to the Administrator that Mr. Hatcher was unaware that UDT paid for a hotel stay in violation of gift rules.[[5]](#footnote-5) It is unclear whether Mr. Hatcher was aware that UDT paid for the meals in question but the amount paid for the meals did not violate gift rule regulations. Specifically, gift rules limit the dollar amount paid during each Fund Year (July 1 through June 30)[[6]](#footnote-6). Mr. Hatcher had resigned his position as Technology Director with Miller effective October 31, 2012 and was not in a position to refute claims made by the Administrator.

The alleged gift rule violation for the hotel stay occurred in February 2011 – one month after the Commission’s gift rules took effect, January 3, 2011. Plans for the hotel stay had been made before the effective date of the new gift rules. While Miller disputes the hotel stay as a “gift” to Mr. Hatcher, Miller was not aware the new gift rules had become effective. It is unclear when Commission gift rules were incorporated into the Commission’s online regulations as the repository for Commission regulations was transferred after January 3, 2011 from the Commission to the U.S. Government Publishing Office (GPO) in the form of the “Electronic Code of Federal Regulations” Miller has not been able to locate the online regulations of mid-February, 2011.[[7]](#footnote-7) Miller does note that the Commission was concerned that Commission Orders were not timely codified and addressed the issue:

Given the complexities associated with modernizing the E-rate program, modifying our

rules, and the other programmatic changes we adopt in this Report and Order, we delegate authority to the Bureau to make any further rule revisions as necessary to ensure the changes to the program adopted in this Report and Order are reflected in our rules.[[8]](#footnote-8)

Regardless of whether the hotel stay is determined to be a gift, the Commission recognized that strict adherence to inflexible rules could have catastrophic unintended consequences. As noted in the Modernization Order: “…as our rules have expanded, the risk to applicants of having USAC or the Commission seek full reimbursement of previously disbursed funds based on a rule or program violation has also grown, and sometimes full reimbursement is

not commensurate with the violation incurred.[[9]](#footnote-9)

**Conclusion**

Commission Regulations require the Administrator to recoup improperly disbursed funding from the party responsible for the rule infraction. Miller asserted during an Administrator investigation and on appeal that it was completely unaware any expenses paid by UDT were in violation of any E-Rate regulation. Any violation of regulations should be assessed against UDT.

Precedent in King’s Canyon should prevail in this case.

Miller conducted a fair and open procurement and selected the most cost effective vendor.

Full reimbursement is not commensurate with the alleged violation of a single hotel stay for one night to attend training.

Miller is appealing an Administrator decision of a UDT appeal. The Administrator has not rendered a decision on the Miller appeal to the Administrator dated August 21, 2015.

Miller reserves the right to further amend this appeal should additional information become available.

Respectfully submitted July 24, 2017,

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1. Kings Canyon Decision, DA 12-604, Rel. April 12, 2012, CC Docket 02-6, “Based on our review of the record, we find that Kings Canyon conducted a fair and open competitive bidding process under Commission rules.” [↑](#footnote-ref-1)
2. Administrator Decision Letter Dated May 24, 2017, page 4. [↑](#footnote-ref-2)
3. Administrator Commitment Adjustment Letter dated June 23, 2015 [↑](#footnote-ref-3)
4. Miller response to Administrator letter from Courtney Santiago dated May 29, 2013, page 2. [↑](#footnote-ref-4)
5. Miller response to Administrator May 29, 2013 letter: “Neither Jeff Hatcher or Billy Merchant were at all aware that these expenses were paid by UDT in violation of any E-rate regulation.” [↑](#footnote-ref-5)
6. FCC Sixth Report and Order, FCC 10-175, Rel. September 28, 2010, Ordering Clause § 54.511(d)(1) “…the value of these items received by any individual does not exceed $50 from any one service provider per funding year. The $50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in subparagraph (2)(ii).” [↑](#footnote-ref-6)
7. E-CFR frequently asked questions: “Starting on January 1, 2015, each update that is posted to the e-CFR by the OFR is captured and can be retrieved along with the most current e-CFR data. By default, the current e-CFR is always displayed on the landing page.” [↑](#footnote-ref-7)
8. Report and Order and Further Notice of Proposed Rulemaking, Rel. July 14, 2014, FCC 14-99, WC Docket 13-184 at 265. [↑](#footnote-ref-8)
9. *Modernizing the E-rate Program for Schools and Libraries*, Notice of Proposed Rulemaking, 28

   FCC Rcd. 11304 at ¶ 253 (2013) [↑](#footnote-ref-9)