

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of:)	
)	
Request for Review of the)	Administrator Correspondence
Decision of the)	June 5, 2017 and June 22, 2017
Universal Service Administrator by)	
)	
DRAW Academy)	
Houston, Texas)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

TO: Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, D.C. 20554

In accordance with Sections 54.719 through 54.721 of the Commission's Rules, DRAW Academy (The Academy) appeals an Administrator's Decision on Appeal dated June 22, 2017 regarding a recent Commitment Adjustment (COMAD) issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). USAC issued a COMAD on June 5, 2017 rescinding, in-full, the commitment for Funding Year 2002 Funding Request 791631. According to USAC, The Academy's alleged E-rate consultant at the time, Mr. Will Evans, had an inappropriate relationship with the service provider, Raynor Services (Raynor). The COMAD letter charges that the consultant

received a finder's fee from Raynor, who provided services to The Academy in Funding Request Number (FRN) 791631.

The Academy denies even having an E-rate consultant during the 2002-2003 funding year and also questions the Administrator's timing of this action, more than 14 years after the final date of service.

This Federal Communications Commission (FCC or Commission) appeal comes timely submitted within 60 days of the Administrator's appeal decision dated June 22, 2017.

Requestor: DRAW Academy

Billed Entity Number: 227102

FCC Registration Number: 0020663431

FRN: 791631

FCC Form 471: 305897

In correspondence dated June 5, 2017, the Administrator issued a Notification of Commitment Adjustment Letter retroactively rescinding funding for Funding Year 2002 FRN 791631, listed in this appeal.¹ The Administrator claimed The Academy was using a consultant who was receiving finder's fees from the service provider, Raynor. At no time prior to, during the 2002-2003 funding year, or after that time did The Academy have a relationship with the accused E-rate consultant and had no knowledge of the consultant receiving finder's fees from Raynor on their behalf. The Administrator made an egregious leap based on pattern analysis, to come to the conclusion which led to the COMAD.

Additionally, the COMAD Letter comes over 14 years after the services have been concluded and well beyond historic and current Commission document retention requirements, which places The Academy at an untenable disadvantage in preparing an appeal to the Commission. The Academy believes the evidence provided in this appeal is sufficient to conclude no E-Rate program violation occurred and the Administrator should dismiss this COMAD. This COMAD, in violation of Commission

¹ See "DrawAcademyFCCAppealAttachment-1.pdf", for June 5, 2017 COMAD letter.

regulations, is issued more than five years after the final date to receive service and must be dismissed.² The Academy respectfully requests that the Commission reconsider the COMAD decision that was made on June 5, 2017 and the Administrator's Decision on Appeal made on June 22, 2017.

In May of 2006, the FCC granted waivers on 30 appeals of USAC decisions to rescind funding on the grounds that the applicant violated the Commission's competitive bidding rules.³ Specifically, the order stated that USAC should review these applications fully, and should not issue summary denials of requests for funding solely because applications contain similar language. If an entity is able to demonstrate that it fully complied with all program rules and did not, for example, violate the Commission's competitive bidding rules, then USAC should not deny funding on the basis of the "pattern analysis" procedure. If the Commission does not find enough factual evidence in this appeal to grant it solely on fact, The Academy requests a waiver of the Competitive Bidding rule. Since there is no indication that USAC made any formal findings or gathered additional facts prior to retroactively denying The Academy's FY 2002 request for funding, USAC has not demonstrated with evidence that The Academy violated E-rate program rules in any way. The Academy followed the Commission's rules and there is no waste, fraud or abuse on their part. In the Fourth Report and Order, the Commission concluded that, "recovery actions should be directed to the party or parties that committed the rule or statutory violation in question." In FCC 04-181, USAC was directed to determine which party was in a better position to prevent the rule violation. In this situation, the service provider, Raynor was in a

² Fifth Report and Order, FCC 04-190, rel. August 13, 2004, CC Docket Number 02-6 at 32: Under the policy we adopt today, USAC and the Commission shall carry out any audit or investigation that may lead to discovery of any violation of the statute or a rule within five years of the final delivery of service for a specific funding year.

³ FCC 06-55, Paragraph 4.

better position to prevent the rule violation as they were the alleged payer of the finder's fees to Mr. Will Evans.⁴

Background and Discussion:

On August 31, 2011, USAC's Special Compliance team reached out to The Academy advising them of FCC rules on the fair and open competitive bidding process, explaining that a conflict of interest exists when an individual associated with an applicant is simultaneously associated with the service provider.⁵ Specifically, USAC alleged that The Academy had elected Mr. Will Evans (Evans) of Evans Consulting as their E-rate consultant and that he had an improper relationship with The Academy's service provider, Raynor, Service Provider Identification Number (SPIN) 143022999. USAC further explained to the Academy that previously, on May 21, 2010, Evans provided information to USAC stating that he had functioned as an E-rate consultant for The Academy and that he received a finder's fee from Raynor. USAC further alleged that Evans stated that he was responsible for completing and submitting the FCC Forms 470 for a number of schools. This finding came as a shock to The Academy, as Fernando Donatti, CEO and Superintendent, who personally built the school from the ground up and has been active in the day to day activities for 16 years, has been the sole person involved with the procurement process and FCC Form filings for The Academy. The Academy has never, since its inception, had an agreement with Mr. Will Evans or Evans Consulting. The Academy responded to the Special Compliance team on September 2, 2011, denying the above allegations.⁶ During the 2002-2003 school year, the Academy functioned as an independent Charter school contracted by the Houston Independent School District (Houston), Billed Entity Number (BEN) 141223. The only contact The Academy had with Evans was to attend a series of meetings arranged by Houston ISD and other Charter schools with the purpose

⁴ FCC 04-181, Fourth Report and Order, Paragraph 10. Based on the more fully developed record now before us, we conclude that recovery actions should be directed to the party or parties that committed the rule or statutory violation in question.

⁵ See "DrawAcademyFCCAppealAttachment-2.pdf", page 1 for August 31, 2011 USAC correspondence.

⁶ See "DrawAcademyFCCAppealAttachment-2.pdf", page 2 for September 2, 2011 Academy's response.

of providing guidance to new schools in a variety of topics such as; required liability insurance, 403B retirement plans, medical insurance, special education, lunch program, audits, and CASE Harris County program, amongst others. At one of those meetings, Evans presented information and provided guidance regarding the E-rate program. The Academy HAS NEVER had a relationship, formal or otherwise, with the Mr. Will Evans or Evans Consulting.

All FCC Forms, E-rate correspondence and the E-rate procurement process were prepared, completed and certified by employees of The Academy and by no outside party, including Evans or Evans Consulting. The Academy posted FCC Form 470 number 690330000395603 on December 10, 2001 requesting Internal Connections equipment including wiring, hubs, switches, routers, servers, a PBX system as well as security protection.⁷ Evans was not listed as a contact on FCC Form 470 number 690330000395603 nor did he have any involvement in the preparation of this form or evaluation of bids submitted in response to it. In response to the Form 470, President of Raynor, Grafton Al Spinks, submitted a proposal on January 15, 2002 which included a quote for equipment The Academy requested on FCC Form 470 number 690330000395603.⁸ The Academy received one bid in response to their Internal Connections FCC Form 470 request, and after documenting the fact that only one bid was received and a thoughtful and thorough evaluation of the pricing provided to determine cost-effectiveness and LCP, The Academy awarded the contract to Raynor. The Academy signed a contract on January 15, 2002 and proceeded to file FCC Form 471 number 305897 which was certified and postmarked on January 17, 2002.⁹ The FCC Form 471 was filed and certified well after the Allowable Contract Date (ACD) of January 7, 2002 allowing bidders more than the required 28 day waiting period to send a bid response to The Academy. Services were provided as requested, within the normal Service

⁷ See "DrawAcademyFCCAppealAttachment-3.pdf", DRAW Academy's FCC Form 470 number 690330000395603.

⁸ See "DrawAcademyFCCAppealAttachment-2.pdf", page 22-28 for Raynor bid dated January 15, 2002.

⁹ See "DrawAcademyFCCAppealAttachment-7.pdf" for the Raynor signed and dated contract. See "DrawAcademyFCCAppealAttachment-4.pdf", for FCC Form 471 number 305897.

Delivery schedule. The last date to provide services under the FRN was September 30, 2003, and the last date to invoice was January 28, 2004.

Seven years following the Service Delivery Deadline, a Special Compliance Review was conducted – a violation of the five year limitation set by the FCC in the Fifth Report and Order. Six years following the conclusion of the Special Compliance Review and 14 years after the Service Delivery Deadline, The Academy received a COMAD letter from USAC on June 5, 2017 seeking recovery of funds in the amount of \$194,193.07.¹⁰

On June 7, 2017, The Academy appealed to USAC the June 5, 2017 COMAD decision.¹¹ USAC sent an Administrator's Appeal Acknowledgement Letter on June 13, 2017 confirming that USAC would review submitted correspondence, consult with Program Integrity Assurance (PIA) and would respond in writing as to whether the appeal is approved, denied or approved in part.¹²

On June 22, 2017, USAC issued the "Administrator's Decision on Appeal-Funding Year 2002" letter and denied the appeal.¹³ The denial did not provide any additional information to substantiate the allegations that were made to The Academy. The appeal denial simply notified The Academy that USAC did not demonstrate that their initial determination was incorrect. Considering the quick turn-around time in coming to a decision, it appears that USAC did not review or consider the documentation that was submitted in with the appeal. The Academy has provided detailed information regarding the procurement and competitive bidding process from FY 2002 and has demonstrated that no consultant was involved during this process. The Academy has requested evidence from USAC to support these accusations that The Academy used Mr. Will Evans or Evans Consulting as their consultant. USAC, to this

¹⁰ See "DrawAcademyFCCAppealAttachment-1.pdf", for June 5, 2017 COMAD letter.

¹¹ See "DrawAcademyFCCAppealAttachment-5.pdf", for June 7, 2017 COMAD USAC Appeal letter.

¹² See "DrawAcademyFCCAppealAttachment-6.pdf", for June 13, 2017 Administrator's Appeal Acknowledgement Letter.

¹³ See "DrawAcademyFCCAppealAttachment-8.pdf", for June 22, 2017 Administrator's Decision on Appeal.

day, has failed to provide The Academy with proof of these allegations. If the Commission finds issue with the improper relationship Evans had with Raynor, they should seek recovery of funds from the actual parties at fault, not The Academy. The Academy had no relationship, formal or informal, with Evans during the procurement process, or bid evaluation and selection process. The Academy did not hire a consultant and was not aware of any finder's fees; therefore there is no indication of any inappropriate involvement between The Academy and the parties under investigation.

Summary:

In summary, we reiterate, The Academy HAS NEVER had a relationship, formal or otherwise, with the Mr. Will Evans or Evans Consulting since the foundation of the school 16 years ago. The Administrator can provide no evidence that The Academy had a relationship with a consultant. The Administrator exceeded its authority by retroactively denying The Academy's FY 2002 funding request more than 14 years after the last date of service. This demand comes long after the document retention period ended. This COMAD is in direct conflict with clear Commission direction in the Fifth Report and Order¹⁴ instituting a regulation that limits investigations and recovery of funds to no more than five years after final delivery of service for a specified funding year. In the NewNet56 Memorandum Opinion and Order¹⁵, released January 17, 2017, the FCC reiterated its duty to make sure that the E-rate program is operated efficiently and effectively for the benefit of our nation's schools and libraries in addition to safeguard against waste, fraud and abuse of the fund. The FCC also discussed the Fifth Report and Order's policy that inquiries related to wrongful E-rate program disbursements should be completed within five years of the final delivery of service for a specific funding year.¹⁶ The FCC stated in January of this year that they continue to believe that the best course is for USAC to aim to complete its

¹⁴ FCC 04-190

¹⁵ FCC 17-1

¹⁶ Schools and Libraries Universal Service Support Mechanism, C C Docket 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15819 (2004) (Fifth Report and Order)

investigations and seek recovery of funds within five years, whenever possible. The New Net56 Order cites 31 CFR § 901.1¹⁷ regarding aggressive collection actions, which specifically states that federal agencies collecting debts arising out of activities of that agency shall be undertaken ***promptly***. There is nothing prompt or efficient about demanding payment more than a decade after the last date to receive service, and almost four years after the current documentation period as established in the Second Modernization Order has ended. The document retention period that was in place in 2011, when the Special Compliance Review was conducted, was five years. Therefore, the timing of the investigation was unreasonable and outside of the five year retention period; moreover, the last date of service was before the Fifth Report and Order establishing a record retention rule.¹⁸ The COMAD letter was issued fifteen years after the Funding Commitment letter and fourteen years after the last date to deliver service. This COMAD must be dismissed in accordance with Commission regulation.

Conclusion

The COMAD must be overturned because it was issued after the five year statute of limitations for recovery of funds specified in the Fifth Report and Order and the underlying issue of The Academy using an E-rate consultant is repudiated. The Administrator has not demonstrated evidence that The Academy is guilty of Waste, Fraud and Abuse.

The FCC, in the Fifth Report and Order, established a policy that recovery of wrongful E-rate program disbursements should be completed within five years of the final delivery of service and as recently as January of this year reinforced that standard in the NewNet56 Order. Furthermore, The Academy did not use an E-rate consultant in FY 2002. The Academy conducted an open and fair procurement and awarded contracts in accordance with E-rate, local and state procurement regulations.

¹⁷ <https://www.law.cornell.edu/cfr/text/31/901.1>

¹⁸ Schools and Libraries Universal Service Support Mechanism, C C Docket 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15819 (2004) (Fifth Report and Order), Paragraph 45, Section B.1.

Thank you for your consideration of the appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fernando', written over a horizontal line.

Fernando Donatti
CEO/Superintendent
DRAW Academy