

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Joint Request for Review of Decision of the Universal Service Administrator)	CC Docket No. 02-6
)	
Los Angeles Unified School District ("LAUSD"))	File No. FCC Form 471 Application No. 337123 FRN 916850 (FY2003)
)	FCC Form 474 Invoice No. 791737
Vector Resources, Inc.)	
)	

JOINT REQUEST FOR REVIEW

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SUMMARY

This Joint Request for Review (“Joint Request” or “Appeal”) seeks reversal of a clearly erroneous decision by the Schools and Libraries Division of the Universal Service Administrative Company (“USAC”) to deny payment of an FCC Form 474 invoice submitted to USAC for Internal Connections equipment provided by Vector Resources, Inc. (“Vector”) to the Los Angeles Unified School District (“LAUSD”). In this case, the equipment consists of key components of the core switches used to provide and manage communications functions at the schools, called supervisor engines. Vector installed the supervisor engines which were the subject of its invoice in satisfaction of network specifications established by the LAUSD after approval of a Funding Commitment Decision Letter (“FCDL”) for Funding Year 2003 (“FY2003”). Such equipment serves an essential, mission-critical function in ensuring continued, uninterrupted network connectivity among teachers, students, and classrooms in 770 LAUSD schools in the event that the operation of the primary supervisor engine is unpredictably interrupted. Failure to protect against such circumstances could put LAUSD at risk and expose LAUSD schools to a loss of communications and essential educational and instructional support functions for unknown periods.

Nevertheless, USAC has denied payment of Vector’s properly submitted invoice on the cryptic grounds that the installed equipment was an “ineligible service or product.” USAC’s August 23, 2007 denial failed to articulate the grounds for purported ineligibility. Subsequently, after persistent inquiry, USAC Staff conveyed to a Vector representative that the reason the invoice was denied was because of the “inclusion of an ineligible Redundant Supervisor Engine.” USAC did not cite to any applicable Federal Communications Commission (“FCC” or “Commission”) guidelines. USAC has never further explained the basis for that classification.

Vector and LAUSD timely appeal this adverse decision. Under long-established FCC policy and precedent, the choice, including the robustness and reliability, of the technology to be deployed by schools such as LAUSD is left to the applicant, not to USAC. LAUSD selected and specified the technology that would best meet its needs pursuant to its technology plan and selected the most cost-effective solution as expressly required by the Commission's rules. USAC issued an FCDL in support of that selection. Now, several years later, USAC has declined to pay Vector for providing the equipment to LAUSD.

In addition to USAC's failure to explain in any detail its reason for classifying the equipment as redundant, USAC has cited no FCC rule or precedent that made the supervisor engines ineligible equipment at the time that they were installed. Rather, assuming that the LAUSD's equipment might permissibly be classified as redundant, USAC retroactively imposes an FCC policy first announced in the Eligible Services List ("ESL") for FY2007, long after the FCDL at issue was approved and the supervisor engines were installed.

Further, USAC's actions in denying payment of the invoice on the grounds of redundancy would be inconsistent, unreasonable, arbitrary, and capricious when the role served by the supervisor engines in the LAUSD network is closely considered. Indeed, even the current FCC guidelines permit USAC funding for equipment serving a similar essential, mission-critical role.

In light of the foregoing, USAC's denial of payment of Vector's invoice in such circumstances is clearly erroneous, without any reasonable foundation, and contrary to the intent and purpose of the Commission's rules and policies. It reflects a policy that effectively would force school districts like LAUSD to select and accept inferior network designs and capabilities, only to have to incur additional costs when network operations were unpredictably interrupted,

with accompanying consequences for students and teachers relying on those networks. For all these reasons, as further explained herein, LAUSD and Vector respectfully request the Commission to promptly grant this Joint Request and remand the Vector invoice to USAC with instructions to remit payment. In addition, because the Commission has not defined as a policy matter the definition of “redundant” in this context, it is a novel question of policy that warrants the full Commission’s attention. The Commission should find that the supervisor engines as employed by LAUSD and invoiced by Vector are not “redundant.”

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To: The Commission

JOINT REQUEST FOR REVIEW

Los Angeles Unified School District (“LAUSD” or “District”) and Vector Resources, Inc. (“Vector”) (collectively, the “Parties”), acting pursuant to Section 54.719(c) of the Federal Communication Commission’s (“Commission” or “FCC”) rules, hereby submit this Joint Request for Review (“Request” or “Appeal”) seeking reversal of a decision made by the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC” or “Administrator”) denying payment of an invoice submitted to USAC by Vector on FCC Form 474 (“Invoice”) for Internal Connections equipment (supervisor engines) that Vector provided to the District pursuant to a Funding Commitment Decision Letter (“FCDL”) issued by USAC for Funding Year (“FY”) 2003. In support of the Request, the Parties submit the following.¹

¹ The Request is timely filed. Section 54.720(b) of the Commission’s rules requires the filing of an appeal “within sixty (60) days of issuance” of a decision by USAC. USAC’s denial of the invoice by electronic message to Vector took place on August 23, 2007, and sixty (60) days thereafter is October 22, 2007.

I. STATEMENT OF THE PARTIES' INTEREST IN THIS REQUEST FOR REVIEW

The Parties have standing to file this Request because Section 54.719(c) of the Commission's rules provides that "[a]ny person aggrieved by an action taken by a division of the Administrator ... may seek review from the Federal Communications Commission."² In this case, Vector submitted the properly configured Invoice seeking the payment, which payment was denied by USAC. Vector is directly aggrieved by the USAC denial action, because Vector has in good faith provided the supervisor engines to LAUSD based upon USAC approval and, without USAC payment of the Invoice, will have incurred substantial costs for which it will not have been compensated.³ LAUSD is directly aggrieved by the USAC denial action, because it still could be held financially responsible for the cost of the equipment reflected on the Invoice, by USAC or Vector, for which it properly budgeted for more than four years ago. Thus, each of the Parties has satisfied the requirements of Section 54.719(c) of the Commission's rules.⁴

II. CONDUCT AND STANDARD OF REVIEW

The Commission's rules provide that "[r]equests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise novel questions of fact, law or policy shall be considered by the full Commission."⁵

The Parties respectfully request that this Appeal be considered by the full Commission, because it raises novel questions of fact, law, and policy that have not been previously

² 47 C.F.R. §54.719(c).

³ The amount of the Invoice was \$244,965.43; see FCC Form 474 Invoice No. 791737, dated Aug. 1, 2007, attached hereto as Exhibit 1.

⁴ 47 C.F.R. §54.719(c).

⁵ 47 C.F.R. §54.722(a).

considered by the Commission. The Commission, to date, with the exception of approving the ineligibility of “redundant” Internal Connections components in the FY2007 ESL, has never established procedures or guidelines for the Administrator or the applicants and service providers with respect to the issue set forth in this Appeal. In *Ysleta*, the Commission stated that “[t]he Commission, not SLD, establishes rules and policies governing the schools and libraries support mechanism through rulemakings and adjudicatory decisions. Pursuant to our rules, SLD administers the application process and implements procedures to ensure compliance with our rules.”⁶ However, in this case, USAC arbitrarily made a decision not based upon any FCC rulemaking or adjudicatory decision.

The rules further require the Commission to conduct a *de novo* review of the Administrator’s decisions that “involve novel questions of fact, law or policy.”⁷ However, the Commission’s rules are silent on the standard of review that applies to the Administrator in rendering a decision. Under the Administrative Procedure Act (“APA”), which governs the FCC, USAC would have to provide due process and articulate the basis for its denial in such a manner as to not be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,”⁸ the recognized standard for all government agencies that engage in rulemaking and formal

⁶*In re Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas*, Order, 18 FCC Rcd 26406, ¶47 n.130 (2003) (internal citations omitted) (“*Ysleta Order*”). Therein, the Commission cites 47 C.F.R. 54.705(a) to support SLD’s authority to administer the application process. Section 54.705 applies to the Committees of USAC’s Board of Directors. Section 54.705(a) specifically references the functions of the Schools and Libraries Committee and tasks the Committee with “overseeing the administration of the schools and libraries support mechanism by the Schools and Libraries Division.” 47 C.F.R. §54.705(a). This regulation does not specifically empower SLD with the administration of the application process.

⁷ 47 C.F.R. §54.723(b).

⁸ 5 U.S.C. §706(2)(A) (2005). The lack of APA procedures for informal adjudications presents a problem for reviewing courts. APA §706(2)(A) requires a reviewing court to “hold, unlawful and set aside agency action ... found to be-- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance

adjudication.⁹ While the APA does not impose procedures on agencies engaging in informal adjudications, the statute requires a prompt and brief statement of the grounds for denial.¹⁰

As set forth below, the facts reveal that USAC did not go so far as to even issue a brief statement articulating the grounds for denial of payment of the Invoice.

III. INTRODUCTION

USAC reviewed LAUSD's FY2003 Form 471 application and approved the Funding Request Number ("FRN") that included these supervisor engines during the application review process and issued an FCDL on December 16, 2003.¹¹ On August 23, 2007, USAC first denied payment of the Invoice without any reasonable explanation beyond the general label "ineligible product or service."¹² That denial cited no FCC rule or policy. After persistent inquiry, Vector was finally told that payment was denied, because USAC concluded that the supervisor engines were redundant equipment.

with law." 5 U.S.C. §706(2)(A). However, a reviewing court cannot adequately determine whether an agency action is arbitrary and capricious if there is no record of why the agency acted as it did. APA §706(2)(A) applies to the FCC's administrative decisions. In such, the Commission must produce a sufficient factual record to demonstrate that its decision was not arbitrary, capricious, or an abuse of discretion. USAC should be held to no lesser standard.

⁹ APA, 5 U.S.C. §553 (2005). APA §551(5) defines rule making as the "agency process for formulating, amending, or repealing a rule." 5 U.S.C. §551(5). A "rule" is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganization thereof, prices, facilities, appliances, services or allowances therefore or of valuations, costs, or accounting, or practices bearing on any of the foregoing." 5 U.S.C. §551(4).

¹⁰ 5 U.S.C. §555(e).

¹¹ Vector Funding Commitment Decision Letter dated Dec. 16, 2003 ("FCDL") that contains the SLD's Funding Commitment Report approving funding to LAUSD, FRN916850. See Exhibit 2.

¹² E-mail to KMorales@vectorusa.com from USACStatement@universalservice.org, dated Aug. 23, 2007 ("Denial"), attached hereto as Exhibit 3.

As set forth below, such denial is not based on any FCC rule or policy regarding redundant Internal Connections equipment applicable to USAC support funding for FY2003. Further, the USAC denial flies in the face of the long-established policy that applicants have the maximum flexibility to select the technology for which they seek support, including equipment based on industry standards or best industry practices. The denial also flies in the face of the fact that USAC supports other equipment that serves a similar essential role in ensuring uninterrupted system operations. Thus, USAC's decision to deny payment for the supervisor engines embodies an inconsistent and arbitrary policy regarding such equipment. Finally, a reasonable assessment of the role served by the supervisor engines which are the subject of the Invoice demonstrates that they are not beyond what is normal or necessary in this day and age for complex networks such as that installed and operated by LAUSD.

IV. STATEMENT OF KEY FACTS

A. The Parties.

Vector is an established provider of Internal Connections products and services that has been selected, after competitive bidding, by LAUSD and other school districts as a service provider under the Schools and Libraries Support Mechanism ("E-Rate Program") administered by USAC. Vector has received USAC-approved funding support under the E-Rate Program and participated as a service provider in that Program since 2000, including FY2003 to which the Invoice relates.

LAUSD is a public school district in Los Angeles, California. The District operates and supports some 770 school sites. Voice, video, and data communications capability in each of the LAUSD schools are accomplished through a network with design specifications set by LAUSD consistent with its technology plan and accepted industry standards for reliability and

connectivity. LAUSD has participated as an applicant in the E-Rate Program since 1998, again including FY2003.

B. The LAUSD Network And The Role Of Supervisor Engines.¹³

The typical school enterprise network design allows for voice, video, and data communications in and among the classrooms and, thus, the students and teachers of each school and includes a core switch that resides at the site main distribution center established and maintained at each facility. Because these communications functions are critical to the performance of the educational mission of the school, LAUSD specified that each of these core switches be configured so as not to have a single point of failure that would result in the total loss of these functions, leaving the school without any means of communications.

At the heart of each core switch is the supervisor engine. This component is the key element for the functionality of the core switch and without it the core switch will not function. The supervisor engine effectively manages all the other components that reside in the core switch, including all configurations, all route information, all device addresses, and a host of other information necessary to run the core switch.

Because of the vital functions performed by the core switch and the essential role of the supervisor engine therein, consistent with industry practice by the leading core switch manufacturers such as Cisco, Alcatel, Foundry, 3Com, and others, the LAUSD design specified and included dual supervisor engines be incorporated in each such switch. The primary and auxiliary supervisor engines are in constant contact and communication, with the former constantly transmitting information to the latter so that the auxiliary can maintain a current copy

¹³ The description of the LAUSD network and the role of the supervisor engines are based on the Declarations of Mark S. Allen and Dr. James Alther attached hereto as Exhibit 4 and Exhibit 5, respectively.

of data related to the management of ongoing communications activities. This is necessary so in the event of an unpredicted interruption in the function of the primary supervisor engine, the auxiliary will continue all current communications sessions on the network while they are in progress. This capability ensures that critical sessions such as communications, accounting for student attendance, critical learning activities or distance learning sessions continue without disruption.

Without the auxiliary supervisor engine in place, in the event of an unpredicted interruption in the operations of the primary supervisor engine, the schools must rely on the availability of the LAUSD maintenance support mechanism, which can delay the school in coming back on-line for a period of 24 hours or more. During a delay of any such duration, LAUSD and schools served by the network will not have access to any mission critical network applications then supported by the network, including internal and external voice, data, and video services.

An auxiliary supervisor engine does not serve as a passive redundant technology, in a standby mode, that only becomes active if the primary component fails. Each auxiliary engine actively and constantly maintains and updates a current backup of critical information required to ensure continuous communications.

C. The Vector Invoice And Denial.

On August 1, 2007, Vector submitted the Invoice to USAC.¹⁴ The Invoice covered supervisor engines that Vector had installed at LAUSD schools pursuant to a USAC-approved FRN for FY2003. Three weeks later, on August 23, 2007, Vector received a cryptic electronic

¹⁴ A copy of FCC Form 474 Invoice No. 791737 is attached as Exhibit 1. Regarding the submission and denial of the Invoice, see attached Declaration of Karla D. Morales at Exhibit 6.

message in which was contained the indication that USAC had denied the Invoice based on “ineligible product or service.”¹⁵ The message contained no further written explanation.

Rather, when Vector inquired as to the basis for USAC’s denial, USAC’s Senior Program Manager of Invoicing sent a further electronic message that the reason the invoice was denied was because these supervisor engines were considered redundant equipment, ineligible under current FCC guidelines.¹⁶ Neither of the Parties has received any further written or other explanation as to the basis for this USAC conclusion.

V. ARGUMENTS

There are a number of sound arguments that fully justify the grant of this Request. USAC is retroactively applying a policy against redundant Internal Connections equipment that the FCC only first adopted in the FY2007 ESL. Moreover, in the absence of such an FCC policy, USAC is not empowered to affect such a policy by extrapolating from other FCC orders.¹⁷ Even if USAC were permitted to do so, USAC’s denial of payment here reflects an inconsistent and arbitrary application of such a policy, when USAC has funded other equipment serving comparable roles. Moreover, permitting USAC to in effect dictate the level of network reliability in LAUSD’s network violates the inveterate principle that applicants are in the best position to determine the technology that meets their needs and forces LAUSD to a lowest common denominator of network reliability, one below today’s established industry standards. Finally, the FCC has not defined the term “redundant” for purposes of Internal Connections component ineligibility. However, the Parties respectfully submit that a reasonable person’s assessment of the mission-critical function played by the supervisor engines in question only

¹⁵ See Denial at Exhibit 3.

¹⁶ E-mail from Michael Kraft, USAC, to Catherine Banker, Vector, dated Sept. 17, 2007. See Exhibit 7.

¹⁷ 47 C.F.R. §54.702(c).

leads to the conclusion that the equipment does not, in this day and age, exceed what is necessary or normal.¹⁸

A. USAC’s Failure To Articulate The Specific Reasons For Its Denial Of The Invoice Is Inconsistent With The Commission’s Requirements For Administering The E-Rate Program.

USAC denied the Invoice with the general, four-word explanation “ineligible product or service.”¹⁹ There was no further written explanation in that initial communication. But for Vector’s persistent efforts to obtain a further explanation, Vector presumably never would have received one. Even then, USAC has never explained its rationale for classifying the equipment as redundant and how it fits within the policy that USAC has chosen to retroactively apply.

The Commission has increasingly warned USAC about summarily denying funding without providing an applicant with a substantive explanation of alleged deficiencies and providing a reasonable opportunity for the applicant to respond and/or take corrective action.²⁰ The Commission has also expressly instructed USAC that its denial decisions must be based upon a Commission rule violation.²¹ Yet here USAC summarily denied the Invoice with no

¹⁸ In a recent Decision, the Commission has also acknowledged that “relevant technologies and service offerings are constantly improving and evolving,” noting that the eligible services list is modified by the Commission on an annual basis. *In re Requests for Review of the Decisions of the Universal Service Administrator by Aiken County Public Schools, Aiken, SC et al.*, Order, 22 FCC Rcd 8735, ¶9 (2007) (“*Aiken Order*”); see also 47 C.F.R. §54.522.

¹⁹ Denial at Exhibit 3.

²⁰ See e.g., *In re Requests for Review of Decisions of the Universal Service Administrator by Academy of Excellence*, Order, 22 FCC Rcd 8722 (2007) (explanation and opportunity to address questions regarding applicant resources); *In re Requests for Review of Decisions of the Universal Service Administrator by Bootheel Consortium*, Order, 22 FCC Rcd 8747 (2007) (explanation and opportunity to address questions regarding eligible entities); *In re Requests for Review of the Decision of the Universal Service Administrator – Academia Claret, Puerto Rico, et al*, Order, 21 FCC Rcd 10703 (2006) (explanation and opportunity to respond to alleged defects in applicant conducted surveys).

²¹ *In re Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technologies San Antonio, TX, et al. and Schools and Libraries Universal Service Support Mechanism*, Order, 21 FCC Rcd 5348, ¶8 (2006) (USAC must determine whether funding is warranted and whether an applicant actually violated program rules) (“*Pattern Analysis Remand Order*”).

explanation of what was the nature or reason for the alleged ineligibility. This treatment is inconsistent with the standards that the Commission has set for administering the E-Rate Program.

B. There Is No Commission Rule Or Policy Making The Invoiced Equipment Ineligible For FY2003 Funding Support As Redundant Equipment.

The Invoice seeks payment for equipment supported by FY2003 USAC funding approval.²² In denying payment of the Invoice, USAC has cited to no then-applicable FCC rule or policy that proscribed E-Rate Program support for such supervisor engines in FY2003. Nor does USAC point to any decision, order, or list governing FY2003 funding support that establishes the ineligibility of such equipment. That is because there is none to support USAC's action.

Indeed, it was not until the proposed ESL for FY2006 that USAC recommended to the Commission that certain redundant equipment be listed as ineligible for funding as Internal Connections.²³ The FCC, which ultimately decides the content of the ESL, rejected USAC's recommendation and did not include such ineligibility in the Commission's FY2006 ESL.²⁴

USAC made the same recommendation with respect to the proposed ESL for FY2007.²⁵ It was only then, roughly a year ago, that the Commission accepted such recommendation.²⁶

²² FCDL at Exhibit 2.

²³ *Pleading Cycle Established for Eligible Services List for Universal Service Mechanism for Schools and Libraries*, Public Notice, 20 FCC Rcd 14168, 14230-31 (2005).

²⁴ *Release of Funding Year 2006 Eligible Services List for Schools and Libraries Universal Service Mechanism*, Public Notice, 20 FCC Rcd 18745, 18807 (2005) ("FY2006 ESL").

²⁵ *Pleading Cycle Established for Eligible Services List for Universal Service Mechanism for Schools and Libraries*, Public Notice, 21 FCC Rcd 8412, 8431 (2006).

²⁶ The FY2007 ESL stated that "components that are installed in a standby mode, redundant, not active and online, or otherwise not an essential element in the transmission of information within the school or library are not eligible." *Release of Funding Year 2007 Eligible Services List for Schools and Libraries*

Nothing in that acceptance by the FCC reflects its intent that the new policy decision was to be applied retroactively to approved funding applications for FY2003 and related invoices. Yet USAC's denial of the Invoice, based on alleged redundancy, engages in precisely such retroactive application.²⁷ The Commission cannot allow such retroactive application to stand.

C. USAC Cannot Unilaterally, Without Commission Authorization, Impose Its Own Policy Regarding Redundant Equipment.

In the absence of an explicit FCC policy determination, USAC may not unilaterally apply its own home-grown policy regarding redundant equipment to FY2003, relying on USAC's internal interpretation or extrapolation of earlier, general FCC orders.²⁸ In this case, USAC completely failed to establish and articulate a basis or rationale for its denial. The auxiliary supervisor engines sometimes include the word "redundant." But, the mere use of the word redundant cannot and should not, on its face, lead to denial of funding.²⁹

USAC has traditionally held that components that begin operation upon failure of a primary component are not eligible as Internal Connections, because they are not an "essential element" in the operation of a network, relying on the terms of the FCC's May 1997 *Universal*

Universal Service Mechanism, Public Notice, 21 FCC Rcd 12310, 12326-27 (2006) ("FY2007 ESL"). In doing so the FCC did not define the parameters of what it considered to be redundant equipment; it left the term undefined.

²⁷ The law generally disfavors retroactive application of new administrative rules. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.") (internal citations omitted).

²⁸ USAC is not empowered to fill-in ambiguities in the FCC's rules or make its own decisions about what should and should not be categories of eligible services. *See* 47 C.F.R. §54.702(c) (USAC "may not make policy, interpret unclear provisions of the statute or rules or interpret the intent of Congress.").

²⁹ *See Aiken Order*, ¶6 n.19 (rejecting USAC's basis for denial simply because "the vendor labeled the service as 'redundant' circuits").

Service Order.³⁰ However, the FCC has not provided a specific definition of “essential,” but, rather, has made independent determinations regarding specific technologies that establish a working understanding of this term. Further, as noted above, prior to the determination in connection with the FY2007 ESL, the FCC has never determined that redundant equipment is automatically ineligible because it is not “essential” or for any other reason

Nevertheless, USAC staff apparently has previously made its own determination that “redundancy” is not eligible because it is not essential, despite the prior absence of guidance or directive from the FCC that would affirm this view. As noted above, USAC is without authority to do so.

Moreover, as noted in Section III.B above and as discussed further in Section V.G below, the supervisor engines that were the subject of the Invoice serve as an active and essential component in the provision and maintenance of reliable communications services to the LAUSD schools. They are not excessive or unnecessary components. Thus, even to the extent that USAC has attempted to exclude this “redundant” equipment under the FCC’s broad statements about essential elements, USAC’s justification on that basis must fail on the facts.³¹

³⁰ *In re Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶459 (1997) (“*Universal Service Order*”).

³¹ Although not raised by USAC as a justification for its denial, the *equipment* which is the subject of the Invoice cannot be deemed ineligible by now categorizing it as a duplicative *service*. Although USAC might ignore this distinction in now attempting to so categorize the supervisor engines, that distinction is supported by FCC discussion of the scope of the duplicative service concept. See *In re Schools and Libraries Universal Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9273 (2003) (Separate Statement of Commissioner Adelstein) (noting that the Commission decision on duplicative services does not extend to duplicative equipment) (emphasis added).

D. USAC's Current Funding Treatment Of Equipment Redundancy Is Inconsistent and Arbitrary.

USAC appears to apply a “know it when I see it” approach to determining when equipment, even though it might be redundant and non-essential, can still be funded. Such an administrative methodology produces inconsistent, irrational, and arbitrary outcomes.³²

Thus, for example, USAC funds tape backup and battery backup equipment, even though these components do not meet the literal definition of being “essential” and clearly appear to provide redundant capabilities. This is because USAC and ultimately the FCC recognized that the intent of the FCC’s “essential element” language does not demand a strict literal interpretation/definition. As a result, under this more relaxed standard, USAC has clearly decided to fund certain types of equipment despite their obvious redundancy, while denying funding to others.³³

Yet, as noted in Section III.B above, the supervisor engines at issue are kept active and online, in the same way that an eligible battery backup is active and online, able to continue without interruption management of the core switch functions when necessary. Under the FCC’s long-standing commitment to technological neutrality, protection of a network through a supervisor engine should be treated in the same way as protection of a network with a battery

³² Assuming such an approach were justifiable, it is not consistent with basic tenets of administrative law. See e.g., *Green Country Mobilephone, Inc. v. FCC*, 765 F.2d 235, 237 (D.C. Cir. 1985) (citing *NLRB v. Washington Star Co.*, 732 F.2d 974, 977 (D.C. Cir. 1984)) (“A ‘sometime-yes, sometimes-no, sometimes maybe policy of [deadlines] cannot ... be squared with our obligation to preclude arbitrary and capricious management of [an agency’s] mandate.”) (alternation in original); see also *Aiken Order*, ¶6 (finding that USAC made wrong determinations by denying eligibility in at least 8 cases, where the products and services were eligible.).

³³ See e.g., *Comments of the E-Rate Service Providers Association*, in response to *Comment Sought on Draft Eligible Services List for Schools and Libraries Universal Service Mechanism*, Public Notice, 22 FCC Rcd 14134 (2007), at pp.5-7 (Aug. 10, 2007) (cataloging various instances in which USAC has funded equipment performing redundant functions).

backup. They are both data protection components that guard against significant network failure and, thus, need to be treated comparably.³⁴

Furthermore, USAC's current treatment of redundant components is arbitrary. For example, USAC will fund redundant power supplies in computers, redundant hard drives (under technologies known as mirroring and duplexing), and network switches and routers that perform duplicating and overlapping functions. Many network switches and routers are built to allow various modules to be inserted into a core chassis. While USAC will fund additional and redundant network ports for this type of equipment, it will not fund other modules that provide improved reliability. Such sometimes-yes, sometimes-no decisions by USAC are arbitrary and contrary to the FCC's well-established intent that E-Rate Program funding not favor one technology or approach over others.³⁵ USAC cannot be in the business, by its arbitrary decisions, of effectively preventing schools from employing many useful technologies and protecting against unpredicted interruptions of key communications functions. Yet, USAC's denial of the Invoice conveys a will to do so with LAUSD.

³⁴ In general, USAC has found major components that provide data protection to be eligible for funding. This has been the case even though the data protection is provided by an equipment design that incorporates redundant features (and such redundancy is a standard part of such equipment designs). As noted above, all the prominent core switch manufacturers build in dual supervisor engine components. It is the industry standard. *See* Allen Declaration at Exhibit 4.

³⁵ *In re Schools and Libraries Universal Support Mechanism*, Fifth Report and Order and Order, 19 FCC Rcd 15808, ¶61 (2004) (acknowledging that "applicants are free to switch from wireline to wireless technologies, from high to even higher transmission speeds, and to make other similar changes in the services they order as long as those services are designed to deliver the educational applications they have prepared to provide").

E. USAC's Denial Is Inconsistent With The Flexibility Of LAUSD To Provide Reliable Technology To Its Schools.

A fundamental tenet of the E-Rate program is that the applicants, not USAC, choose the eligible services and technology that best meets their specific educational goals.³⁶ USAC, in denying payment of the Invoice, implies that LAUSD violated the Commission's rules by requesting funding for impermissible equipment. This implicit rationale is at odds with a fundamental precept of the E-Rate Program, namely that "schools and libraries should have maximum flexibility to purchase the package of services they believe will most effectively meet their communication needs."³⁷ As the Commission has more recently recognized – "[T]he applicant is the best entity to determine what technologies are most suited to meet the applicant's specific educational goals. The applicant's specific goals and technology plans are therefore unique to the applicant."³⁸

In this case, LAUSD purchased supervisor engines on a district-wide basis after determining the needs for its network. There is no indication, nor does or could USAC contend, that those needs are excessive or unjustified. LAUSD adopted a network design that incorporated features wholly consistent with its technology plan emphasizing availability and reliability and accepted industry best practices. As a result, its initial request for funding was approved by USAC.³⁹

Indeed, the Commission has recognized that the eligibility of equipment and services

³⁶ See *Universal Service Order*, ¶¶425 & 432.

³⁷ *Id.*, ¶425.

³⁸ *Ysleta Order*, ¶30.

³⁹ FCDL at Exhibit 2.

under the E-Rate Program must take into consideration the emergence of new technologies and evolving standards for reliability and performance, based on current industry practice and standards.⁴⁰ This evolution is demonstrated in the decision to make network firewalls eligible in the FY2004 ESL. Prior to this time, a network firewall was not eligible for E-Rate funding, but the FY2004 ESL indicated eligibility “because a firewall is necessary for continued operation of the network.”⁴¹ Similarly, and ostensibly because the equipment had become commonplace, the FCC for the FY2006 ESL indicated that Virtual Private Network (VPN) components were newly eligible.⁴²

The fact is that with advances in technology, components that were at one time considered not essential have become “essential” under the FCC’s standard. In a similar way, a host of technologies have become available that improve the overall reliability and uptime of networks. Routers can be (and need to be) configured in ways so that if one router stops operating, another router can automatically step in to provide the needed functionality. Whereas at one time this feature was sophisticated and complex, it is now a standard part of competent and accepted network design. Indeed, USAC recognizes that multiple routers provide these features and provides funding for such configurations.

In a similar way, USAC must recognize that many standard equipment configurations provide the same type of improved reliability in a single equipment chassis. USAC should not discriminate against a single chassis configuration, insisting that E-Rate Program eligibility can be provided only with the extra expense of a multiple chassis design. Such a determination

⁴⁰ See *Aiken Order*, ¶9.

⁴¹ *Funding Year 2004 Eligible Services List for Schools and Libraries Universal Service Mechanism* at p.11 http://www.universalservice.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList_101003.pdf.

⁴² *FY2006 ESL* at 18799.

ignores technological progress and potentially limits school districts to a choice of technologies that are less efficient and cost effective. USAC should not be permitted to pick and choose what elements of a cost effective network or system they believe are redundant and thereby jeopardize or dilute system functionality and the District's needs.

F. USAC Cannot Require Sub-Standard Reliability For Complex Networks As A Standard For E-Rate Eligibility.

It is a technological fact of life that complex networks require more sophisticated solutions to ensure network reliability. Parallel components are an accepted industry best practice for obtaining this necessary availability and reliability. For complex networks, a greater degree of protection is required than for smaller networks, because the more equipment that makes up a network, the greater the potential for unpredicted interruption of network operations.

Improved and "redundant" components (such as the auxiliary supervisor engines at issue in this case), including standard industry practices for failsafe systems, are an important and accepted element of today's network architecture and designs. This is particularly true when the networks are complex. To find otherwise would improperly and incorrectly subject complex networks to less-than-industry-best-practice reliability and availability standards. USAC cannot be permitted, in the guise of labeling equipment as redundant, to dictate to schools that complex networks and simple networks all must have the same basic level of sophistication and reliability. Permitting USAC to play such a role is again inconsistent with the stated Commission's *Universal Service Order* that applicants are "empowered to make their own decisions regarding which technologies would best accommodate their needs[] [and] how to deploy those technologies" ⁴³

⁴³ *Universal Service Order*, ¶457.

USAC has an important function in ensuring that funding requests specify eligible technologies. Presumably in approving LAUSD's FY2003 request, USAC fulfilled that responsibility. However, in administering this responsibility, USAC cannot impose its own standard for what technology configuration LAUSD "ought" to use or not use in a particular case, particularly if USAC's approach would be more costly with no offsetting benefit (as would be the case with a multiple router configuration as opposed to a smaller number of highly reliable routers). If an applicant's desired technical configuration achieves the same level of network reliability as a more complex and costly configuration that would be deemed acceptable by USAC, then the FCC policy of allowing applicant discretion mandates that the applicant's configuration be found acceptable.

G. The Supervisor Engines Which Are The Subject Of The Invoice Do Not Meet The Definition Of Redundant Equipment.

Even assuming that it were permissible for USAC to apply retroactively the Commission's determination regarding the eligibility of redundant Internal Connections equipment, the supervisor engines which are the subject of the Invoice arguably do not fall within the exclusion.

As noted above, for the first time in the Commissions' FY2007 ESL, redundant "[c]omponents that are installed in a standby mode, redundant, not active and online, or otherwise not an essential element in the transmission of information within the school or library" were deemed ineligible.⁴⁴

⁴⁴ *FY2007 ESL* at 12327.

The supervisor engines in question are always actively receiving information from the primary supervisor engine, constantly active and online so as to be able to automatically prevent any shut off of access to the LAUSD network at a particular school.

Moreover, the FCC in adopting the definition regarding redundancy did not define the term redundant. The primary Webster's definition is "exceeding what is necessary or normal."⁴⁵ LAUSD incorporated in its network design what, according to today's industry standards, is necessary or normal to ensure the reliability of complex and costly communications networks. In the case of batteries and other equipment examples set out above, the FCC and USAC have recognized that to be the case and seemingly applied that definitional concept. There is no basis for the Commission to permit USAC to apply its own, narrower, different version, in the case of the auxiliary supervisor engine.

VI. CONCLUSION AND REQUEST FOR RELIEF

The Parties respectfully submit that USAC's denial of Vector's Invoice is not supported by the facts or law. LAUSD selected the technology that best meets its needs in FY2003 and redundancy was not added to the ESL as a disqualifying factor until 2007. USAC cannot make this recent policy retroactively applicable to FY2003 funding requests or invoices. LAUSD should not be required to accept an unsatisfactory network that is below acceptable standards for network reliability because of USAC's arbitrary, nondisclosed, and inconsistent administration of equipment redundancy. Finally, when the role of the auxiliary supervisory engines in question is examined, they do not fit the definition of redundant equipment.

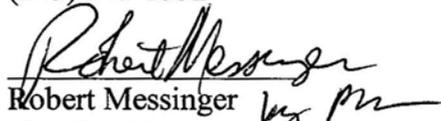
As noted above, the Commission has not defined as a policy matter the definition of "redundant" in this context. It is a novel question of policy that warrants the Commission's

⁴⁵ Webster's Ninth New Collegiate Dictionary 988 (9th Ed. 1983).

attention. The Parties respectfully request the Commission find that the supervisor engines as employed by LAUSD and invoiced by Vector are not “redundant.” For this and all the other reasons outlined herein, the full Commission must reverse the USAC denial and return the Invoice to USAC with the instruction to remit payment within thirty (30) days.

Respectfully submitted,


Dr. James Alther
Chief Technology Director
Los Angeles United School District
333 S. Beaudry, 10th Floor
Los Angeles, CA 90017
(213) 241-1332


Robert Messinger
Vice President
Vector Resources, Inc.
3530 Voyager Street
Torrance, California 90503
(310) 436-1000


Cynthia B. Schultz
Paul C. Besozzi
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-6000

Counsel to Vector Resources, Inc.
(Service Provider to LAUSD)

October 22, 2007

CERTIFICATE OF SERVICE

I, Carly T. Didden, certify on this 22nd day of October, 2007, a copy of the foregoing Joint Request for Review has been served via electronic mail or first class mail, postage pre-paid, to the following:

Michelle Carey
Senior Legal Advisor to Chairman Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Michelle.Carey@fcc.gov

Randy Clarke
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Letter of Appeal
Schools and Libraries Division-
Correspondence Unit
100 S. Jefferson Road
P.O. Box 902
Whippany, NJ 07981



Carly T. Didden

Exhibit 1

FCC Form 474	Do not write in this space.	Approval by OMB 3060 – 0856 Estimated time per response: 1.5 hours
Schools and Libraries Universal Service Service Provider Invoice Form 474 This form can be filled online or by mail.		
Please read instructions before completing.		Form 474 Invoice # <u>791737</u> (To be inserted by administrator)
Block 1: Service Provider Information		
1. Service Provider Name Vector Resources, Inc.		
2a. Service Provider Identification Number (SPIN) 143020726		
3. Contact Person's Name Michael Momoh		
4. Contact Telephone Number Area Code: 310 Phone Number: 9223776 Ext.:		
Contact Fax Number Area Code: 310 Fax Number: 3717340		
Contact Email Address mmomoh@vectorusa.com		
5. Invoice Number 25949		
6. Invoice Date to USAC 08/01/2007		
7. Total Invoice Amount 244965.43		

SPIN <u>143020726</u>						
Service Provider Form Identifier <u>25949</u>						
Contact Person <u>Michael Momoh</u>						
Contact Telephone Number <u>310-9223776</u>						
Block 2: Funding Request Number Information						
8. Form 471 Application Number (from Funding Commitment Decision Letter)	9. Funding Request Number (FRN) (from Funding Commitment Decision Letter)	10. Bill Frequency (e.g., Monthly, Quarterly, Annually, One-time, Other)	11. Customer Billed Date (mm/yyyy)	12. Shipping Date to Customer or Last Day of Work Performed (mmdyyy)	13. Total (Undiscounted) Amount for Service per FRN (14.2 digits max.)	14. Discount Amount Billed to USAC (14.2 digits max.)
			For each FRN, there should be an entry in Column 11 or Column 12 but NOT BOTH			
337123	916850	MONTHLY		09/30/2005	272183.81	244965.43

Persons willfully making false statements on this form can be punished by fine or forfeiture, under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

FCC NOTICE FOR INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

Part 54 of the Commission's Rules authorizes the FCC to collect the information on this form. Failure to provide all requested information will delay the processing of the application or result in the application being returned without action. Information requested by this form will be available for public inspection. Your response is required to obtain the requested authorization.

The public reporting for this collection of information is estimated to range from 1 to 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD-PER, Paperwork Reduction Act Project (3060-0856), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to PRA@fcc.gov. PLEASE DO NOT SEND YOUR RESPONSE TO THIS FORM TO THIS ADDRESS.

Remember – You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0856.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, PUBLIC LAW 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

Please submit this form to:

**SLD SPI Form 474
P.O. Box 7026
Lawrence, KS 66044-7026**

For express delivery services or U.S. Postal Service, Return Receipt Requested, mail this form (pages 1 - 4) to:

**SLD Forms
ATTN: SLD SPI Form 474
3833 Greenway Drive
Lawrence, KS 66046
888-203-8100**

Form 474 Menu

Question/Purchase

[Home](#) | Client Service Bureau: 1-888-203-8100

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Exhibit 2

IMPORTANT REMINDERS & DEADLINES

Date: December 16, 2003
SPIN: 143020726

The following information is provided to assist you and your customer throughout the application process. We recommend that you keep it in an easily accessible location and that you share it with the appropriate members of your organization.

FORM 473 - Invoices received by the SLD will not be paid unless the SLD has a Service Provider Annual Certification Form 473 (SPAC) on file for the funding year associated with the invoice.

FORM 498 - USAC needs to have current, complete and accurate contact and address information in order to properly make payments to service providers. The Form 498, Service Provider Information Form, is the official record of service provider contact and address information.

FORM 486 DEADLINE - The Form 486 must be postmarked no later than 120 days after the Service Start Date featured in the Form 486 Notification Letter or no later than 120 days after the date of the Funding Commitment Decision Letter, whichever is later.

INVOICE DEADLINE - Invoices must be postmarked no later than 120 days after the last date to receive service - including extensions - or 120 days after the date of the Form 486 Notification Letter, whichever is later. Invoices should not be submitted until the invoiced products and services have been delivered and billed, and (for BEAR Forms) the service provider has been paid.

RETAIN DOCUMENTATION - Applicants and service providers must retain documentation, including but not limited to, documents showing:

- compliance with all applicable competitive bidding requirements,
- products and/or services delivered (e.g., customer bills detailing make, model and serial number),
- the specific location of each item of E-rate funded equipment, and
- the applicant has paid the non-discount portion.

These documents must be retained and available for review for five years.

OBLIGATION TO PAY NON-DISCOUNT PORTION - Applicants are required to pay the non-discount portion of the cost of the products and/or services. Service providers are required to bill applicants for the non-discount portion. The FCC has stated that requiring applicants to pay their share would ensure efficiency and accountability in the program. The non-discount portion must not be donated, forgiven, or otherwise credited without payment. If the applicant is using a trade-in as part of the non-discount portion, please refer to the SLD web site.

FREE SERVICES ADVISORY - Applicants and service providers are prohibited from using the Schools and Libraries Support Mechanism to subsidize the procurement of ineligible or unrequested products and services, or from participating in arrangements that have the effect of providing a discount level to applicants greater than that to which applicants are entitled.

Complete program information, reminders, forms, instructions, and tools are posted to the SLD web site at www.sl.universalservice.org. Information is also available by contacting the SLD Client Service Bureau by e-mail at question@universalservice.org, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.



FUNDING COMMITMENT DECISION LETTER

(Funding Year 2003: 07/01/2003 - 06/30/2004)

December 16, 2003

Vector Resources, Inc.
Brett Botts
3530 Voyager Street
Torrance, CA 90503

Re: Service Provider Name: Vector Resources, Inc.
Service Provider Identification Number: 143020726

Thank you for participating in the E-rate program for Funding Year 2003 (07/01/2003 - 06/30/2004). This letter is your notification of our decision(s) regarding applications that listed your company's Service Provider Identification Number (SPIN) as providing service(s) for which discounts are being sought.

NEW FOR FUNDING YEAR 2003

The Important Reminders and Deadlines immediately preceding this letter are provided to assist you and your customers throughout the application process.

NEXT STEPS

- File Form 473 (SPAC)
- Work with customer to provide appropriate invoicing to the SLD
- File Form 498, if appropriate
- Invoice the SLD - Service Provider Invoice (Form 474) or Billed Entity Applicant Reimbursement (Form 472)

ADDRESS INFORMATION

USAC needs to have current, complete and accurate contact and address information in order to properly make payments to service providers. The Form 498, Service Provider Information Form, is the official record of service provider contact and address information. If USAC determines that the contact or address information listed is not current, we will be unable to process payments. The Form 498 and its instructions are posted on the SLD web site under SL Forms. Service provider forms are found toward the bottom of the page. You may submit a Form 498 to revise contact and/or address information by fax to 202-772-5202. Label your fax cover sheet "FORM 498 REVISION".

Please refer to the Funding Commitment Reports on the page following this letter for specific funding request decisions and explanations for customers listing your SPIN in their Form 471 applications. Each report contains detailed information extracted from the applicant's Form 471.

Once you've reviewed this letter, we urge you to contact your customers to begin any necessary arrangements regarding start of services, billing of discounts or any other administrative details for implementation of E-rate services. As a reminder, only eligible services delivered in accordance with Federal Communications Commission (FCC) rules on service delivery periods are eligible for these discounts.

Any appeal of the funding decisions detailed in a Funding Commitment Decision Letter must be postmarked within 60 days of the date on the Funding Commitment Decision Letter. Information on the appeal process can be found in the "Appeals Procedure" posted in the

Reference Area of the SLD web site www.sl.universalservice.org. Therefore, prompt communication with your customer is essential.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Universal Service Support Mechanism. Applicants who have received funding commitments continue to be subject to audits and other reviews that the SLD and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. The SLD may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by the SLD, the applicant, or the service provider. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC), may pursue enforcement actions and other means of recourse to collect erroneously disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division
Universal Service Administrative Company

A GUIDE TO THE FUNDING COMMITMENT REPORT

A report for each E-rate funding request featuring your SPIN is attached to this letter. We are providing the following definitions for the items in that report.

FUNDING REQUEST NUMBER (FRN): A Funding Request Number is assigned by the SLD to each Block 5 of the applicant's Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.

FORM 471 APPLICATION NUMBER: A unique identifier assigned to a Form 471 application by the SLD.

FORM 470 APPLICATION NUMBER: A unique identifier assigned by the SLD to a Form 470 as listed in Block 5, Item 12 of the Form 471.

NAME OF 471 APPLICANT: Name of entity that applied to the SLD, from Block 1, Item 1 of the Form 471.

ADDRESS OF 471 APPLICANT: Address of entity that applied to the SLD from Block 1, Item 4 of the Form 471. Includes street address and city, state and zip code.

ENTITY NUMBER: A unique identifier assigned by the SLD to the Billed Entity, from Block 1, Item 3 of the Form 471.

NAME OF CONTACT PERSON: The name of the contact person from Block 1, Item 6a of the Form 471.

PREFERRED MODE OF CONTACT: The preferred mode of contact from Block 1, Item 6 of the Form 471, i.e., telephone, fax, or e-mail.

CONTACT INFORMATION: The telephone number, fax number, or e-mail address based on preferred mode of contact.

FUNDING YEAR: The funding year for which discounts have been requested. Funding years begin on July 1 and end on the following June 30. Funding years are designated by the calendar year in which they begin.

FUNDING STATUS: Each FRN will have one of the following definitions:

1. An FRN that is "Funded" will be approved at the level that the SLD determined is appropriate for that item. The funding level will generally be the level requested unless the SLD determined during the application review process that some adjustment is appropriate.
2. An FRN that is "Not Funded" is one for which no funds will be committed. The reason for the decision will be briefly explained in the "Funding Commitment Decision," and amplification of that explanation may be offered in the section, "Funding Commitment Decision Explanation." An FRN may be "Not Funded" because the request does not comply with program rules or because the total amount of funding available for this funding year was insufficient to fund all requests.

CONTRACT NUMBER: The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.

SERVICES ORDERED: The type of service ordered from the service provider, as shown on Form 471.

SITE IDENTIFIER: The Entity Number listed in Form 471, Block 5, Item 22a will be listed. This will appear only for "site specific" FRNs.

BILLING ACCOUNT NUMBER: The account number that you have established with your customer for billing purposes. This will be present only if a Billing Account Number was provided on Form 471.

ALLOWABLE VENDOR SELECTION / CONTRACT DATE: The earliest date the applicant was permitted to sign a contract for services after posting a Form 470.

CONTRACT AWARD DATE: The date that the contract for this service was awarded.

EARLIEST POSSIBLE EFFECTIVE DATE OF DISCOUNT: The first possible date of service for which the SLD will reimburse service providers for the discounts for the service.

CONTRACT EXPIRATION DATE: The date the contract expires. This will be present only if a contract expiration date was provided on Form 471.

MONTHLY RECURRING CHARGES: The total monthly charges for the recurring service.

PORTION OF MONTHLY RECURRING CHARGES THAT IS INELIGIBLE: Total charges associated with ANY ineligible services, entities, or uses included in the monthly recurring charges for this service.

ELIGIBLE MONTHLY PRE-DISCOUNT AMOUNT FOR RECURRING CHARGES: Total eligible monthly recurring charges approved for the funding year.

NUMBER OF MONTHS RECURRING SERVICE PROVIDED IN FUNDING YEAR: Number of months the service will be provided in the funding year.

ANNUAL PRE-DISCOUNT AMOUNT FOR ELIGIBLE RECURRING CHARGES: Eligible monthly pre-discount amount for recurring charges multiplied by number of months recurring service provided in the funding year.

ANNUAL NON-RECURRING CHARGES: The total amount of non-recurring (one-time) pre-discount charges for this service.

PORTION OF ANNUAL NON-RECURRING CHARGES THAT IS INELIGIBLE: Total cost associated with ANY ineligible services, entities, or uses included in the annual non-recurring charges.

ANNUAL PRE-DISCOUNT AMOUNT FOR ELIGIBLE NON-RECURRING CHARGES: Annual eligible non-recurring charges approved for the funding year.

TOTAL PROGRAM YEAR PRE-DISCOUNT AMOUNT: The total eligible recurring and non-recurring charges under the program for the funding year.

APPLICANT'S APPROVED DISCOUNT PERCENTAGE: This is the discount rate that the SLD has approved for this service.

FUNDING COMMITMENT DECISION: This represents the total amount of funding that the SLD has reserved to reimburse you for the approved discounts for this service through the pertinent funding year service delivery date. It is important that you and the Form 471 applicant both recognize that the SLD should be invoiced and the SLD may direct disbursement of discounts only for eligible, approved services actually delivered and installed.

FUNDING COMMITMENT DECISION EXPLANATION: This entry may amplify the comment in the "Funding Commitment Decision" area.

TECHNOLOGY PLAN APPROVAL STATUS: This reports whether the applicant indicated in Block 6, Item 27 of the Form 471 that the technology plans of the entities included in the Form 471 application have received approval, are pending, or are not needed. Consortium applications may feature both "approved" and "pending approval" status.

WAVE NUMBER: The number of the grouped mailing in which the applicant's Funding Commitment Decision Letter was included.

APPLICANT LETTER DATE: The date on the applicant's Funding Commitment Decision Letter.

FUNDING COMMITMENT REPORT

Service Provider Name: Vector Resources, Inc.
Service Provider Identification Number: 143020726

Funding Request Number: 916850
Form 471 Application Number: 337123
Form 470 Application Number: 392460000450078
Name of 471 Applicant: LOS ANGELES UNIFIED SCHOOL DISTRICT
Applicant Street Address: 333 S BEAUDRY AVE
10TH FLOOR, ROOM 171

Applicant City: LOS ANGELES

Applicant State: CA

Applicant Zip: 90017

Entity Number: 143454

Name of Contact Person: JAMES ALTHER

Preferred Mode of Contact: EMAIL

Contact Information: james.althers@lausd.net

Funding Year: 2003 (07/01/2003 - 06/30/2004)

Funding Status: Funded

Contract Number: PC D-3-00294193

Services Ordered: Internal Connections

Billing Account Number: 310-436-1008

Allowable Vendor Selection/Contract Date: 02/05/2003

Contract Award Date: 02/05/2003

Earliest Possible Effective Date of Discount: 07/01/2003

Contract Expiration Date: 06/30/2004

Monthly Recurring Charges: \$0.00

Portion of Monthly Recurring Charges that is Ineligible: \$0.00

Eligible Monthly Pre-Discount Amount for Recurring Charges: \$0.00

Number of Months Recurring Service Provided in Funding Year: 12

Annual Pre-Discount Amount for Eligible Recurring Charges: \$0.00

Annual Non-Recurring Charges: \$27953658.20

Portion of Annual Non-Recurring Charges that is Ineligible: \$0.00

Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$27953658.20

Total Program Year Pre-Discount Amount: \$27953658.20

Applicant's Approved Discount Percentage: 90

Funding Commitment Decision: \$25158292.38 - FRN approved; modified by SLD

Funding Commitment Decision Explanation: The estimated one-time charge was changed to reflect documentation provided by applicant and also reduced to disallow the upgrade by applicant from Cisco 2950 to Cisco 3550, applicant error in computation of sales tax, and to remove RMON licenses and electrical ground wires.

Technology Plan Approval Status: Approved

Wave Number: 018

Applicant Letter Date: 12/16/2003

Exhibit 3

143020726|Vector Resources,
Inc.|kmorales@vectorusa.com|usacstatement@universalservice.org|C000290220|2|2008
4.94|08/23/2007|N
143020726|916903|26832|20084.94|"SLD Invoice Number:791729;Line Item Detail
Number:2929438;Amount Requested:20084.94;"
143020726|916850|25949|.00|"SLD Invoice Number:791737;Line Item Detail
Number:2929443;Amount Requested:244965.43;Ineligible service or product;277;"

Exhibit 4

DECLARATION OF MARK S. ALLEN
VECTOR RESOURCES, INC.

1. My name is Mark S. Allen. I am the Director, Network Engineering & Business Development, of Vector Resources, Inc. ("Vector"), a participating provider of Internal Connections and Basic Maintenance to eligible schools and libraries that participate in the E-rate program of the Schools and Libraries Division administered by the Universal Service Administrative Company ("USAC")("E-rate Program").
2. Vector is an experienced E-rate Program service provider and has been offering technology products and services for almost 20 years to schools, governments, and commercial clients. Vector has completed several projects for California school districts, including the Los Angeles Unified School District ("LAUSD"). I am providing this Declaration in connection with the Joint Petition For Review being filed by Vector and LAUSD with the FCC with respect to USAC's denial of an invoice that Vector submitted for certain Internal Connections equipment provided by Vector to LAUSD for Funding Year 2003. This equipment was properly applied for in LAUSD's Form 471 application and Item 21 attachment and approved by USAC during the application review process.
3. As Vector's Director of Network Engineering & Business Development, I am familiar with the network architecture and capabilities of the technology products and services offered and provided by Vector to LAUSD and Vector's other customers. I am also generally aware, as part of my job responsibilities, of equipment developments and standards in the information technology industry that manufactures and produces the equipment. Finally, I am familiar with Vector's efforts on behalf of LAUSD and the network specifications and architecture that LAUSD required Vector and other contractors to meet.
4. The LAUSD network architecture was designed to support over 770 school sites with E-rate Program eligible mission critical applications such as voice, video and data. Because LAUSD's network architecture would be required support the mission critical applications, LAUSD specified that all the core switches that reside in the data center of each school must be configured to not have a single point of failure. A total loss of the mission critical applications supported by the network due to a core switch failure would leave the school without any means of communications.
5. The core switch is essentially the computer that operates the network at the schools. Without the core switch there are no communications functions. The key functionality element for the core switch is the supervisor engine, in effect a command module that fits into the chassis of the core switch. A core switch is unable to operate without a supervisor engine.
6. The supervisor engine is responsible for effectively managing all of the components that reside in the core switch including, but not limited to, all configurations, route information, device addresses, and other information essential to operate the core switch.
7. To ensure that the core switches, and thus the mission critical network applications, not have a single point of failure, LAUSD incorporated the industry standard practice set forth by the

leading switch manufacturers CISCO, Alcatel, Foundry, and 3Com, and adopted by mission critical enterprises, a leading network architecture design and consulting firm, of configuring the core switches in the data centers with dual supervisor engines.

8. The dual supervisor engine configuration synchronizes all protocol states between the primary and auxiliary supervisor engine, provides industry standard network availability and maximizes network uptime.
9. The primary supervisor engine will actively and constantly transport all session state information to an auxiliary supervisor engine, which maintains a current copy at all times. As such the later is constantly actively working on a network. In this respect the auxiliary supervisor engines differs from passive redundant technologies, even those in a hot standby mode, which might require an administrator to intervene to restore communications.
10. In the event of primary supervisor engine failure, the auxiliary supervisor engine will continue all current communications sessions on the network while they are in progress, which assures that mission critical information sessions such as distance learning sessions supported by the network continue without disruption.
11. If an auxiliary supervisor engine were not present, all connections to the LAUSD network will be lost when the operation of the school's primary supervisor engine is interrupted. The school then must rely on the availability of LAUSD maintenance support services and personnel, a possible delay of 24 hours or more, to repair or replace the primary supervisor engine and to re-establish the school's connection to the LAUSD network. During a delay of any duration, LAUSD will not have access to any mission critical network applications, including internal and external voice, data, and video services supported by the network.
12. Leading equipment manufacturers will reinforce the importance and critical need for auxiliary supervisor engines in order to maintain mission critical network applications.
13. Other industries and services such as the military, aviation, prisons, power generation, waste water treatment facilities, building automation systems, and warehouses also use dual supervisor engines to ensure that mission critical information and operations are not lost or disrupted.
14. The military, which is very cost conscious and whose spending is reviewed by the United States Congress, uses dual supervisor engines because that is the industry standard and other more cost effective methods are unsuitable to ensure that the mission critical information and applications are not interrupted in the event of a single point of failure.
15. Many critical systems, such as a Redundant Array of Independent Disks ("RAID"), contain similar internal "active backup" technologies to ensure that critical information is lost. Voice over internet protocol ("VOIP") components contain active backup technologies, for example, an internal hard drive, and installing a VOIP system without such technology would be foolhardy.
16. Vector understands that USAC supports critical information being "backed up", since funding is allowed for tape drives for eligibile servers housing critical information. In

comparison, critical session state information on a network changes so frequently that it can only be "backed up" by an active electronic component in real time, such as an auxiliary supervisor engine.

17. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

Executed on this 22nd day of October, 2007.


Name: Mark S. Allen

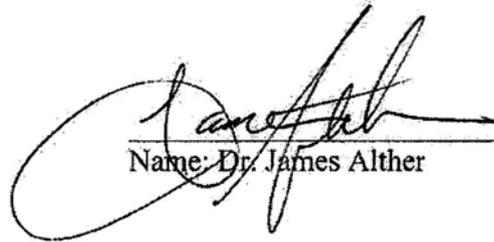
Exhibit 5

DECLARATION OF DR. JAMES ALTHER
LOS ANGELES UNIFIED SCHOOL DISTRICT

1. My name is Dr. James Alther. I am the Chief Technology Director-Infrastructure Group ("CTD"), Los Angeles Unified School District ("LAUSD"). In that position, my responsibilities include, among others, the development and deployment of the LAUSD communications network supporting 770 schools with voice, video and data connectivity ("LAUSD Network"). I have also been involved in the LAUSD process for obtaining support for that Network through the Schools and Libraries Support Mechanism administered by the Universal Service Administrative Company ("USAC") ("E-Rate Program").
2. LAUSD has been an applicant for funding support through the E-Rate Program since FY 1998. In FY2003, LAUSD selected Vector Resources, Inc. as its E-Rate Program service provider to obtain various eligible Internal Connections products and services as permitted under the E-Rate Program. I am providing this Declaration in connection with the Joint Petition For Review being filed by Vector and LAUSD with the FCC with respect to USAC's denial of an invoice that Vector submitted for certain Internal Connections equipment provided by Vector to LAUSD for Funding Year 2003. This equipment was properly applied for in LAUSD's Form 471 application and Item 21 attachment and approved by USAC during the application review process.
3. As LAUSD's CTD, I am familiar with the requirements established for the LAUSD Network and the reliability of that Network pursuant to its needs and technology plan. Because LAUSD's network architecture supports the critical communications and instructional applications, LAUSD specified that all the core switches that reside in the main distribution center of each school must be configured to ensure reliability and availability. A total loss of such vital applications due to a network failure would leave the schools without connectivity and data communications. That is not an acceptable outcome and, therefore, LAUSD took reasonable steps in the design of the LAUSD Network to protect against such occurrences.
4. To ensure that the core switches which are the key components for access and use of the LAUSD Network at each of the schools, and thus ensure reliable and available access for mission critical network applications. To ensure this, LAUSD specified that those switches incorporate the industry standard practice set forth by the leading switch manufacturers CISCO, Alcatel, Foundry, and 3Com, and recommended by leading network architecture design and consulting firms, of configuring the core switches in the main distribution centers in each LAUSD school have dual supervisor engines.
5. In my experience and judgment, this is a reasonable and indeed essential capability, necessary to protect against a total loss of connectivity and data communications functions in the event that there were unpredicted interruptions in the primary supervisor engine.

6. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

Executed on this 22nd day of October, 2007.



Name: Dr. James Alther

Exhibit 6

DECLARATION OF KARLA D. MORALES
VECTOR RESOURCES, INC.

1. My name is Karla D. Morales. I am the Contracts Manager for Vector Resources, Inc. ("Vector"), a participating provider of Internal Connections and Basic Maintenance to eligible schools and libraries that participate in the E-rate program of the Schools and Libraries Division administered by the Universal Service Administrative Company ("USAC")("E-rate Program").
2. As Vector's Contracts Manager I am familiar with the contracting process, including the submission of invoices, with USAC in connection with contracts that Vector has entered into and which are supported by funds provided under the E-rate Program, including such Vector contracts with the Los Angeles Unified School District ("LAUSD"). I am providing this Declaration in connection with the Joint Petition For Review being filed by Vector and LAUSD with the FCC with respect to USAC's denial of an invoice that Vector submitted for certain Internal Connections equipment provided by Vector to LAUSD for Funding Year 2003 ("Joint Request").
3. I have reviewed the foregoing Joint Request and I hereby declare under penalty of perjury that the statements and representations therein concerning the funding of and the submission and response to the August 1, 2007 Vector invoice for the supervisor engines, the denial of which is the subject of the Request, are true and correct to the best of my knowledge and belief.

Executed on this 22nd day of October, 2007.


Name: Karla D. Morales

Exhibit 7

-----Original Message-----

From: Michael Kraft [mailto:mkraft@usac.org]
Sent: Monday, September 17, 2007 1:27 PM
To: Banker, Catherine
Subject: RE: Redundancy issue Year 6, Year 8, Year 9

Catherine,

REDACTED

I have investigated the case found that the issues in the review surrounded the inclusion of an ineligible Redundant Supervisor Engine. The Regular Supervisor Engine was allowed. The deviation amount should have been \$244,965.43 between the invoice and the payment.

I hope this helps.

Mick

-----Original Message-----

From: Banker, Catherine [mailto:CBanker@vectorusa.com]
Sent: Monday, September 17, 2007 2:09 PM
To: Michael Kraft
Subject: FW: Redundancy issue Year 6, Year 8, Year 9

Mick,

We are trying to find out why our Year 6 invoice was denied. Can you shed some light on this case#? The information was requested on 8/24 and we are still waiting. If we have to appeal we don't want to exceed the 60 day window.

Thanks Mick,

REDACTED

Catherine

The case# is 21-629039.

We received the remittance notice on 8/24. I made my request to the SLD on the same day.

-----Original Message-----

From: Banker, Catherine
Sent: Monday, September 17, 2007 10:24 AM
To: Karla Morales Team Distribution List
Subject: FW: Redundancy issue Year 6, Year 8, Year 9

Did Michael Momoh get the information on this we need to move forward.
We want to appeal the decision on the 90% package.
Catherine

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