

Before the  
Federal Communications Commission  
Washington, D.C.

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In the Matter of )

Request for Review of Decisions of the )  
Universal Service Administrator )

Aldine Independent School District )

Solid IT Networks, Inc. )

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CC Docket No. 02-6

SLD-421086(FY2004)

**REQUEST FOR REVIEW**

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## SUMMARY

Pursuant to Section 54.719(c) of the Federal Communications Commission's ("FCC" or "Commission") rules, Solid IT Networks, Inc. ("Solid IT") respectfully requests that the Commission reverse the Decision of the Administrator of the Universal Service Administrative Company ("USAC") of July 17, 2008, denying the COMAD Appeal of Aldine Independent School District ("Aldine" or "District") issued to Aldine and to Solid IT ("USAC's COMAD Denial").

Solid IT complied with the requirements of the Aldine RFP and FCC rules. The contract for basic maintenance of internal connections covered **all locations** of the District and covered the quantity, make, model number, item description, unit price and extended price for each piece of equipment. In addition, Aldine's Purchase Order and Solid IT's RFP bid response and invoices provided the Funding Year 2004 ("FY2004") Aldine Application Number for Basic Maintenance that identified every school district. USAC approved funding for basic maintenance of internal connections and, upon reliance of that funding, Solid IT provided these services in full and in good faith to eligible locations for the entire District for all equipment covered by the contract.

As described in more detail below, USAC's COMAD Denial cannot stand, because it has no basis in law. First, and most significantly, on appeal, USAC found that Aldine met the location contract requirements. Therefore, USAC should never have denied Aldine's appeal and never have issued a COMAD. Despite USAC's finding that the contract location programmatic requirement was met, USAC issued a denial for this reason.

USAC also denied because it found that Aldine did not provide the actual support verifying actual maintenance performed despite the fact that Aldine did provide this

information to USAC. This issue was neither identified or addressed during the audit. USAC's denial failed to cite to any specific rule violation on this issue. Therefore, USAC's COMAD Denial is not supported by law.

In order for USAC to COMAD a prior funding commitment, it must demonstrate that the applicant and/or service provider violated a Commission statute or rule. USAC created the FY2004 Eligible Services List ("ESL") to provide conditional eligibility guidance. The FCC, however, never adopted or codified the FY2004 ESL. Furthermore, if the Commission were to deem the location requirement a rule, then, because it is tantamount to a substantive rule change, the Commission is required to provide notice and comment of the FY2004 ESL as required under the Administrative Procedures Act.

Furthermore, USAC's COMAD Denial against Solid IT cannot stand because USAC conducted a beneficiary audit of Aldine, not a service provider audit of Solid IT. USAC did not provide Solid IT notice of the Aldine audit or any Aldine PIA review. USAC likewise did not request any information from Solid IT directly related to the beneficiary audit or PIA reviews. USAC should not be allowed to rely solely upon an applicant's statement in finding against a service provider. The Commission's *Fourth Report & Order* requires more evidence. Solid IT was entitled to due process and an opportunity to respond, neither of which USAC granted.

Finally, USAC's COMAD Denial against Aldine related to document retention requirements does not apply to Solid IT. The FCC audit rules require the applicant, not the service provider to retain this type of documentation. Nevertheless, Aldine provided substantial information during both appeals to satisfy this rule requirement.

Indeed, despite all of the new FCC Orders and USAC programmatic rule changes in the fall of 2003 and 2004, Aldine and Solid IT should be given an “A” for effort and E-rate compliance.

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) CC Docket No. 02-6

) SLD-421068-(FY2004)

**REQUEST FOR REVIEW**

Solid IT Networks, Inc. (“Solid IT”), through counsel and pursuant to Section 54.719(c) of the Commission’s rules,<sup>1</sup> submits this supplemental Request for Review seeking reversal of the Administrator’s Decision on Appeal (“USAC’s COMAD Denial”) issued by the Universal Service Administrative Company (“USAC”) to Aldine Independent School District (“Aldine” or the “District”) on July 17, 2008. USAC’s Decision denied Aldine’s October 20, 2007, appeal of USAC’s Commitment Adjustment (“COMAD”) Letter for basic maintenance of internal connections for Funding Year (“FY”) 2004.

The Federal Communications Commission’s (“Commission”) rules provide that parties may request a review of an Administrator’s decision within 60 days of the decision’s issuance.<sup>2</sup> However, on July 18, 2008, a day after USAC issued the denial of the COMAD appeal, USAC issued Demand Payment Letters to Aldine and to Solid IT seeking repayment

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<sup>1</sup> 47 C.F.R. § 54.719(c).

<sup>2</sup> 47 C.F.R. § 54.720(a).

of the full amount of the COMAD within 30 days of the letters' date. Failure to pay the debt within the 30-day window, according to the Demand Payment Letters, "could result in interest, late payment fees, administrative charges and implementation of the 'red light rule.'"<sup>3</sup> USAC's issuance of the Demand Payment Letters a day after its denial of the COMAD appeal was premature and contravenes Commission rules. In addition, the issuance of the Demand Payment Letters contradicts USAC's own process for seeking recovery of funds, as stated in the company's Semi-Annual Audit Recovery Report ("Report") of September 30, 2008 to the Commission.<sup>4</sup> The Report notes that "[i]f the applicant and/or service provider does not appeal the Notification Letter within 60 days, USAC issues the First Demand Payment Letter on the 61<sup>st</sup> day."<sup>5</sup> USAC did not follow this process when it issued the Demand Payment Letters on the 2<sup>nd</sup> day, one day after denying Aldine's COMAD appeal.

As a result of this confusion between the Commission's rules and USAC's practice, Solid IT filed a placeholder appeal on August 18, 2008, to preserve its rights while also acting to suspend collection actions, the accrual of interest, late payment charges or other penalties on the alleged payment pursuant to Commission rules.<sup>6</sup> The August 18<sup>th</sup> appeal noted Solid IT's intent to supplement the record with further evidence and arguments that are provided herein.<sup>7</sup> Aldine similarly filed a placeholder appeal on August 15, 2008, which is referenced

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<sup>3</sup> 47 C.F.R. § 1.1910. Section (b)(2) notes that action will be withheld if any entity is found to be delinquent in its debt. The "red light rule" would have the effect of withholding all funding related to Solid IT's Service Provider Identification Number ("SPIN").

<sup>4</sup> USAC Schools and Libraries Program Semi-Annual Audit Recovery Report, CC Docket No. 02-6, Sept. 30, 2008.

<sup>5</sup> *Id.* at 1.

<sup>6</sup> 47 C.F.R. § 1.1916 (citing 31 C.F.R. § 903).

<sup>7</sup> At that time, Solid IT requested that the Commission direct USAC to suspend the collection actions on the alleged payment, and order that no interest, late payment charges, administrative costs or other penalties accrue on the alleged debt until such time as the Commission issues its final decision on the merits of Solid IT's Request for Review.

herein. On October 2, 2008, Aldine separately filed a supplemental appeal with the Commission.

Solid IT challenges USAC's authority to issue a COMAD Letter to Solid IT based upon language in the FY2004 ESL requiring basic maintenance contracts to list location. Specifically, Solid IT maintains that the language appearing in the ESL does not constitute a statute or FCC rule and, therefore, is not subject to the COMAD procedures and authority as outlined by the Commission. Furthermore, the Commission did not provide a notice and comment period on this change and, as a result, the rules of the Administrative Procedure Act ("APA") were not followed. USAC also erred in applying the COMAD against Solid IT, because Solid IT was not the subject of the beneficiary audit and was deprived of due process. Finally, USAC improperly issued a COMAD against Solid IT, because the audit findings were made against Aldine and, to the extent legally required, it is the responsibility of the applicant to identify the location of its equipment and maintain an asset inventory list.

This appeal will demonstrate that USAC erred in issuing a COMAD Denial and Demand Letter against Solid IT. First, the word "location" in the FY2004 ESL does not give rise to a statutory or FCC rule violation because the FY2004 ESL was never adopted or codified by the FCC or subjected to public notice and comment. In fact, the FY2004 ESL is a USAC-created document that simply provided guidance with respect to the conditional eligibility of various components. Second, even if such an FCC rule did exist, which it does not, Aldine's purchase order specified the locations through reference to its FCC Form 471 Application Number 421086. Solid IT likewise referenced Aldine's FCC Form 471 Application Number 421086 on invoices to Aldine and USAC for the basic maintenance it performed. Aldine also provided USAC with sufficient and exhaustive documentation related to the location of eligible equipment for its basic maintenance Funding Request

Number (“FRN”), which USAC accepted on appeal Third, USAC misapplied the Commission’s record retention rules. Finally, USAC misapplied the findings of the beneficiary audit of Aldine to Solid IT. For these reasons, which will be explained more fully herein, Solid IT respectfully requests that the Commission reverse USAC’s COMAD Denial.

## I. FACTUAL BACKGROUND

### A. Aldine’s RFP for Basic Maintenance of Internal Connections

On November 14, 2003, Aldine issued a Request for Proposal (“RFP”) for basic maintenance of eligible equipment for FY2004 of the E-rate Program.<sup>8</sup> Specifically, the RFP called for bidders to provide basic maintenance services “*for all locations throughout the District.*”<sup>9</sup> (emphasis added). Aldine’s RFP further stipulated that the RFP and all supplemental information issued in response to questions raised pursuant to the RFP would be a binding part of the final contract that Aldine entered into with the winning bidder.<sup>10</sup> As a result, all terms of the RFP, including the scope of services and the terms of payment, would be incorporated into Aldine’s final contract with the winning bidder.

With respect to scope of services, the RFP required bidders to provide the item description, unit price and extended price per product at each level of maintenance and to specify types of maintenance that will be completed at each level.<sup>11</sup> The RFP also called for terms of payment based on invoices submitted to the District that were documented to

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<sup>8</sup> Administrative Record (AR) 0001-0006 (Aldine Independent School District Request for Proposal, Nov. 14, 2003 (“Aldine RFP”).

<sup>9</sup> AR0002 (Aldine RFP, Section 2, p. 3). On its FY2004 E-rate Portal, Aldine also posted its E-rate Equipment List for Maintenance under Supporting Documents that is referenced in Aldine’s Attachment A Scope of Services for Network Gear Maintenance IC-05 Document. See AR0007-0011 (Aldine Year 7 Portal, Equipment List for Maintenance, dated Dec. 19, 2003, *available at* [http://xtranet01.aldine.k12.tx.us/QuickPlace/e-rate\\_yr7/Main.nsf/h\\_AECC79745F725CA786256DDF0004EBA3/F9D2911936F5EAE286256E01006122AA/?OpenDocument](http://xtranet01.aldine.k12.tx.us/QuickPlace/e-rate_yr7/Main.nsf/h_AECC79745F725CA786256DDF0004EBA3/F9D2911936F5EAE286256E01006122AA/?OpenDocument) (“Equipment List”).

<sup>10</sup> AR0005 (Aldine RFP, Section 9, p. 19).

<sup>11</sup> AR0006 (Aldine RFP, Attachment A, p. 22).

reflect the amount due for that portion of the services performed as well as materials and equipment furnished for the period covered by each invoice.<sup>12</sup>

On January 9, 2004, Solid IT responded to Aldine's RFP to provide basic maintenance services for internal connections.<sup>13</sup> As part of its response, Solid IT attached a cost proposal for network maintenance that included a breakdown by part number, detailed item descriptions, cost per item for each level of maintenance and extended costs based on quantity of items sought for all locations in the entire District as requested by the RFP.<sup>14</sup> Finally, the cost schedule presented a total quote for maintenance that covered the "entire District."<sup>15</sup>

The District conducted a competitive bid process in accordance with the applicable federal and state procurement requirements. After careful review, Aldine chose Solid IT as the winning bidder of basic maintenance services for internal connections.<sup>16</sup>

#### **B. The Contract for Basic Maintenance of Internal Connections**

On February 3, 2004, Aldine entered into a contract for basic maintenance services of internal connections to cover all locations in the District with Solid IT.<sup>17</sup> The contract included an executed copy of all basic maintenance services to be provided by quantity, make, model number, detailed item description, unit price and extended price.<sup>18</sup>

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<sup>12</sup> AR0003-0004 (Aldine RFP, Section 6.5.2, p. 13, 14).

<sup>13</sup> AR0012-0023 (Solid IT's Response to Aldine RFP (in pertinent part)).

<sup>14</sup> AR0021-0023 (Solid IT Response to Aldine RFP, pp. 46-48).

<sup>15</sup> AR0020.

<sup>16</sup> AR0024 (RFP Acceptance Letter from Aldine to Solid IT, Feb. 3, 2004).

<sup>17</sup> AR0025-0029 (Contract for Services and/or Products E-rate Funding Year 2004 between Solid IT and Aldine, Feb. 3, 2004 ("Solid IT-Aldine Contract for Services")).

<sup>18</sup> AR0026-0029.

On February 4, 2004, Aldine filed an FCC Form 471 Application No. 421086, the actual request for funding, in which Aldine listed all the schools/locations in the District where Solid IT was to provide basic maintenance of internal connections.<sup>19</sup> In Blocks 15 and 21 the FCC Form 471 Application, Aldine identified the contract number IC-05 and the Item 21 Attachment Number as IC-05 as well.<sup>20</sup> Clearly the threshold intent of identifying location was satisfied.

### C. USAC Approves Aldine Funding Request

USAC conducted a thorough application review and approved Aldine's Form 471 Application 421086. On January 11, 2005, the Schools and Libraries Division ("SLD") issued a Funding Commitment Decision Letter approving Aldine's Funding Request Number ("FRN") 1160625 for its discounted share in the amount of \$2,299,352.94 in funding for basic maintenance services for internal connections.<sup>21</sup>

On February 1, 2005, Aldine issued a Purchase Order that expressly references FRN 1160625, Form 471 Application No. 421086.<sup>22</sup> The Purchase Order covered basic maintenance of E-rate eligible internal connections for all locations listed on the Form 471 Application.

On February 4, 2005, in accordance with USAC's invoicing requirements, Solid IT invoiced Aldine for the District's non-discounted portion for basic maintenance of internal connections relating to FRN 1160625.<sup>23</sup> The invoice referenced Form 471 Application No. 421086 and Aldine RFP IC-05.

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<sup>19</sup> AR0030-0037 (FCC Form 471 Application No. 421086, Feb. 4, 2004).

<sup>20</sup> AR0037.

<sup>21</sup> AR0038 (Funding Commitment Report from USAC to Aldine and Solid IT, Jan. 11, 2005).

<sup>22</sup> AR0039 (Purchase Order of Aldine, No. PCDP000001136, Feb. 1, 2005).

<sup>23</sup> AR0040 (Invoice of Solid IT to Aldine, Feb. 4, 2005).

On March 26, 2005, Solid IT invoiced USAC for the discounted portion of the internal connections basic maintenance.<sup>24</sup> The invoice referenced FRN 1160625, Form 471 Application No. 421086 and Aldine RFP IC-05. Solid IT provided basic maintenance services in accordance with the Aldine contract. USAC processed Solid IT's invoice and properly disbursed payment.

#### **D. USAC COMAD and Beneficiary Audit**

More than two-and-a-half years later, on September 19, 2007, USAC issued Notification of Commitment Adjustment Letters ("COMAD") to Aldine and Solid IT.<sup>25</sup> The COMADs adjusted the funding commitment for FRN 1160625 to \$0.

In its findings, USAC noted that the requested basic maintenance of internal connections was deemed ineligible "because your maintenance agreement/contract did not specify the location of eligible products and services for which the basic maintenance was to be provided."<sup>26</sup>

Shortly thereafter, Aldine received a September 28, 2007, letter from SLD notifying the District that it was recently subjected to a Beneficiary Audit to evaluate the school's compliance with the E-rate Program for FY2004.<sup>27</sup> Despite the fact that USAC copied four other providers on this audit, it did not copy Solid IT.<sup>28</sup> Solid IT was neither subsequently notified nor contacted by USAC regarding this audit.

USAC's Beneficiary Audit Letter and Management Response specifically found that Aldine did not maintain adequate records to support information contained in its contract

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<sup>24</sup> AR0041 (Invoice of Solid IT to USAC, Mar. 26, 2005).

<sup>25</sup> AR0042-0047 (Notification of Commitment Adjustment Letter for Form 471 Application Number 421086 to Solid IT, Sept. 19, 2007 ("Solid IT COMAD")).

<sup>26</sup> AR0046.

<sup>27</sup> AR0048-0061 (Letter from SLD to Aldine, Beneficiary Audit, Sept. 28, 2007 ("Beneficiary Audit")).

<sup>28</sup> AR0053.

with Solid IT.<sup>29</sup> USAC never notified or contacted Solid IT on any issue related to this audit. USAC based its conclusions on a KPMG Independent Accountant's Report, dated November 7, 2006.<sup>30</sup> Specifically, KPMG found that Aldine, not Solid IT, did not identify the location of eligible products in its contract and failed to maintain adequate records.<sup>31</sup> KPMG made no finding against Solid IT. USAC's Management Response concurred with KPMG's audit findings and concluded that Aldine was responsible for the contract location requirement and asset and inventory records document retention requirement.<sup>32</sup>

With respect to the contract location requirement, KPMG cites to FCC Rule 54.506(b) in making its recommendation that USAC recover funding for basic maintenance for internal connections for Aldine.<sup>33</sup> That rule does not include a location requirement. KPMG did not reference a rule supporting the location requirement.

With respect to the document retention violation, KPMG cited to FCC Rule 54.516(a)(1) that states: "schools and libraries shall retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least five years."<sup>34</sup> "Further per that same rule, any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well."<sup>35</sup> KPMG's recommendations was that "[t]he Beneficiary [Aldine] should ensure that all future maintenance contracts include the required level of detail to comply with the Eligible Services List and [Aldine] should re-evaluate its

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<sup>29</sup> AR0048 and AR0061.

<sup>30</sup> AR0054-0060.

<sup>31</sup> AR0054.

<sup>32</sup> AR0061

<sup>33</sup> AR0058.

<sup>34</sup> AR0059.

<sup>35</sup> *Id.*

existing controls over listing and tracking of the Schools and Libraries Program assets covered by the maintenance agreement for effective contract management and monitoring.”<sup>36</sup> Again, KPMG did not mention Solid IT and made no finding against Solid IT.

**E. Aldine’s COMAD Appeal and Provision of Supplemental Documentation**

On October 30, 2007, Aldine appealed the COMAD Letter to USAC<sup>37</sup> On November 2, 2007, Aldine responded to USAC’s Beneficiary Audit Letter by providing a detailed asset inventory of equipment that was serviced under its basic maintenance contract with Solid IT.<sup>38</sup> In addition, Aldine responded to questions raised by the audit, including one surrounding its recordkeeping requirements. Aldine stated that the District complied with FCC recordkeeping requirements to maintain records for at least five years after the last day of service delivered.<sup>39</sup>

On February 8, 2008, Aldine supplemented its appeal and audit responses to SLD by providing more detailed inventory of records.<sup>40</sup> The 50-page inventory provided a line-item account of the schools, product number and serial number description of the internal connections on which the basic maintenance was performed. On February 13, 2008, Aldine received a letter from USAC with a spreadsheet indicating where SLD could not identify some of the items submitted in the February 8, 2008, inventory by location for the District.<sup>41</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> AR0062-0063 (Notification to Appeal Commitment Adjustment Letter of Aldine, Oct. 30, 2007 (“Aldine COMAD Appeal”).

<sup>38</sup> AR0064-0066 (Letter from Aldine to SLD, Nov. 2, 2007).

<sup>39</sup> AR0064.

<sup>40</sup> AR0067 (Letter from Aldine to SLD, Feb. 8, 2008 (“Aldine Feb. 8, 2008, Letter”).

<sup>41</sup> AR0068-0070 (Letter from USAC SLD to Rose Chavez of Aldine, Feb. 13, 2008).

On February 26, 2008, Aldine further supplemented its response to SLD with a comprehensive network inventory detailing schools and locations.<sup>42</sup> Attached to the letter was a 61-page spreadsheet noting the correct model numbers and an inventory with serial numbers as well as 69 vendor invoices and 34 purchase orders that detailed the location and equipment covered by the basic maintenance contract for the previous year.

**F. USAC Issues Administrator's Decision Denying Aldine's COMAD Appeal; Issues Demand Payment Letters to Aldine and Solid IT**

USAC made a clear finding in its COMAD Denial that Aldine had provided enough information related to the location requirement; yet, inexplicably USAC issued its COMAD Denial on July 17, 2008, denying Aldine's COMAD appeal.<sup>43</sup> While USAC's COMAD Denial acknowledged that documents Aldine submitted on February 29, 2008, "indicate the specific location of equipment within the Aldine Independent School District,"<sup>44</sup> USAC also concluded that a May 28, 2008, e-mail from Aldine indicated that the service provider did not track location and that Aldine was "not able to provide support verifying the actual maintenance that was performed."<sup>45</sup> Consequently, USAC denied the appeal "since the issue of the contract not listing the location of the contracted equipment or the document retention required by the program rules has not been satisfied."<sup>46</sup> This denial reason contradicts USAC's own findings and is unclear, because it uses an "either" "or" denial reason.

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<sup>42</sup> AR0071 (Letter from Aldine to SLD Program Compliance, Feb. 26, 2008).

<sup>43</sup> AR0072-74 (Administrator's Decision on Appeal, Funding Year 2004-2005, to Aldine ISD, Jul. 17, 2008 ("COMAD Denial")).

<sup>44</sup> AR0072.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

To further complicate the issue, USAC issued its Demand Payment Letters on July 18, 2008, to Solid IT and to Aldine obligating them to repay all E-rate funds in the amount of \$2,229,352.94 relating to Form 471 Application No. 421086.<sup>47</sup> The Demand Payment Letter Funding Disbursement Report does not base the denial reason on a document retention issue, but, rather cites merely to the programmatic contract location requirement.<sup>48</sup> Furthermore, the Demand Letter simply states that “USAC has determined that both the applicant and service provider is responsible for the rule violation.”<sup>49</sup> USAC, however, failed to provide any rational basis for its finding against Solid IT.

To avert any collection action, penalties and the red light rule, on August 15, 2008, Aldine filed a placeholder appeal<sup>50</sup> to USAC’s COMAD Denial with the Commission and on August 18, 2008, Solid IT also filed a placeholder appeal with the Commission.<sup>51</sup>

## II. ISSUES FOR APPEAL

### A. Aldine Provided Ample Documentation to Identify the Location of Covered Equipment

USAC correctly found that Aldine had met the location requirement in its appeal; yet, USAC’s COMAD Denial rests on one simple finding, namely that Aldine failed to identify the location for internal basic maintenance services in its contract with Solid IT or “the document retention required by program rules has not been satisfied.”<sup>52</sup> As the facts above demonstrated, Aldine identified the location in its RFP, which became the substantive part of its contract for basic maintenance of internal connections services. Aldine also

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<sup>47</sup> AR0075-0078 (USAC Demand Payment Letter to Solid IT, July 18, 2008).

<sup>48</sup> AR0078

<sup>49</sup> AR0078.

<sup>50</sup> Request for Review of Aldine Independent School District, Aug. 15, 2008.

<sup>51</sup> AR0079-80 (Request for Review of Solid IT Networks, Inc., Aug. 18, 2008).

<sup>52</sup> AR0072.

provided more than adequate asset inventory lists to USAC to meet its document retention requirement. Therefore, USAC's COMAD Denial is without merit.

Aldine and Solid IT fully complied with the spirit and letter of the law and Commission rules. As the record demonstrates, Aldine provided a thorough and exhaustive accounting of eligible equipment that received basic maintenance services in the following documents: Aldine's RFP for basic maintenance services; its contract with Solid IT; Aldine's Form 471 Application, Solid IT's invoices to Aldine and to USAC; and in numerous subsequent responses to SLD's Program Integrity Assurance ("PIA") detailing Aldine's asset inventory.

As the facts demonstrate, Aldine issued an RFP for basic maintenance services "for all locations throughout the District."<sup>53</sup> The RFP sought from bidders the quantity, make, model, item description, unit price at each maintenance level and specific types of maintenance that would be completed at each level.<sup>54</sup> Aldine also maintained the equipment list for maintenance services on a Web portal so that prospective bidders could access the details of the eligible equipment before submitting a bid.<sup>55</sup>

Aldine and Solid IT provided further detail about eligible equipment and services. Solid IT's January 9, 2004, response to Aldine's RFP contained in-depth information about the products covered by the basic maintenance services.<sup>56</sup> Specifically, the Solid IT proposal included a breakdown by part number, detailed item descriptions, cost per item for each maintenance level and extended costs based on quantity of items sought for all locations in the entire District. All of Solid IT's responses and supplemental product information were

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<sup>53</sup> AR0002 (Aldine RFP Section 2, p.3.)

<sup>54</sup> AR0006.

<sup>55</sup> See AR0007-0011.

<sup>56</sup> AR0021-0023.

incorporated as a binding part of the final contract, pursuant to Aldine's RFP.<sup>57</sup> This information alone more than satisfied the USAC programmatic location requirement of the FY2004 ESL.

Still other documents supported the location of eligible equipment. In Block 4 of Form 471 Worksheet A, Aldine identified 63 schools and facilities, and thus the locations where covered equipment was to receive basic maintenance services.<sup>58</sup> Moreover, the location requirement in the ESL is not defined to mean anything more than the identification of the schools listed in the FCC Form 471. USAC should not confuse the programmatic contract location requirement with the asset inventory requirement. Aldine's FCC Form 471 Application provided the necessary information for SLD to identify the location of the eligible equipment within the District.

Nevertheless, in addition to identifying the location in its RFP, Aldine certainly provided the necessary documentation through detailed asset inventories that it subsequently provided to SLD. During a PIA review, SLD contacted Aldine numerous times requesting more detailed asset inventory documentation of the location of covered equipment. On November 2, 2007, Aldine responded to a September 28, 2007, Beneficiary Audit Letter by providing a detailed asset tracking system verifying equipment information, including make, model, serial number, location and description.

On February 8, 2008, Aldine sent another detailed asset inventory to SLD that listed the schools, product number and serial number of equipment identified for basic maintenance services under the contract with Solid IT.<sup>59</sup> Further, on February 26, 2008, Aldine responded to a February 13, 2008, conversation with SLD by providing a correlation

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<sup>57</sup> AR0005 (RFP, Section 9, p. 19).

<sup>58</sup> AR0030-0037.

<sup>59</sup> AR0067 (Aldine Feb. 8, 2008, Letter).

of model numbers with a current inventory of equipment. On May 20, 2008, USAC sent a letter to Aldine requesting Aldine to provide additional supporting documentation that maintenance services were performed on the eligible equipment identified in the Inventory by Location Excel spreadsheets.<sup>60</sup> As an attachment to Aldine's May 28, 2008 e-mail, Aldine provided USAC with a copy of a maintenance log verifying the maintenance that was performed and other supporting documentation that related to the maintenance of specific equipment. USAC never contacted Solid IT seeking information with respect to maintenance services performed. Because Aldine's asset and inventory records did not identify the location of the maintenance services, on July 17, 2008, USAC issued the Administrator's Decision denying Aldine's appeal.

The KPMG audit and USAC's Management Response never addressed any rule or requirement that Aldine or Solid IT were required to provide support for maintenance services by location. Equally, there is no FCC rule or USAC programmatic rule that requires location to be listed in maintenance service logs. The issue is, to the extent that basic maintenance is required, whether it was performed on eligible equipment at an eligible location. The answer is unequivocally yes. Solid IT, through its subcontractor Enterasys, provided maintenance, to the extent requested by Aldine, for all eligible equipment located throughout the entire Aldine School District as set forth in Aldine's contract.<sup>61</sup>

From this substantial record of information, SLD reasonably could have discerned the location information it alleges was omitted in the basic maintenance contract from Aldine's Form 471 Application and the other equipment inventory and location information

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<sup>60</sup> AR0071a (letter from USAC to Aldine, May 20, 2008).

<sup>61</sup> AR0025-0029; *see also* Declaration of Newt Newman.

it provided. Thus, contrary to the Beneficiary Audit and the Administrator's Decision, Aldine provided the documentation requested by the SLD.

As to the additional information provided by Aldine subsequent to the denial, the Commission has concluded that new information submitted on appeal should be considered as part of the record.<sup>62</sup> According to USAC appeal guidelines, new information may not be admitted on appeal to contradict earlier information, but it can be admitted to clarify an ambiguity in earlier information.<sup>63</sup> Aldine's submissions to both the USAC and the Commission in its appeal of USAC's COMAD Denial satisfy SLD's request for documentation that identified the products and services being delivered.<sup>64</sup> To the extent that Aldine's responses were not sufficient to demonstrate eligibility, SLD failed to specify what additional information was required.<sup>65</sup> As a result, USAC's COMAD Denial should be reversed.

#### **B. Lack of Location Information is Ministerial in Nature**

Aldine stated in its original Request for Review that the District failed to include location information in the maintenance contract and retain inventory documentation showing the locations of the eligible equipment during Funding Year 2004.<sup>66</sup> Although Solid IT maintains that sufficient location information was provided, to the extent that the

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<sup>62</sup> See *Request for Review by Shawano-Gresham School District and Schools and Libraries Universal Service Support Mechanism*, Order, 19 FCC Rcd 2180 (2004) (concluding that SLD should have considered new information submitted on appeal).

<sup>63</sup> *Id.* (citing *Request for Review by Pope Branch Elementary School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, 16 FCC Rcd 20205, 20207 (Com. Car. Bur. 2001)).

<sup>64</sup> See Aldine Supplement to Request for Review Before the Commission at 5 and n.21 (Oct. 2, 2008).

<sup>65</sup> See *Request for Review by Fayette County School District and Schools and Libraries Universal Support Mechanism*, Order, 20 FCC Rcd 12880 (2005) (remanding a Request for Review to SLD where SLD improperly denied Fayette County School District's funding request even though the District provided documentation requested by SLD identifying actual products and services being delivered).

<sup>66</sup> See Aldine FCC Request for Review filed on Aug. 15, 2008, CC Docket 02-6, at 4.

Commission concludes that an omission occurred, this was no more than a clerical or ministerial mistake that should not be the basis for denial of Aldine's appeal.

In its *Aberdeen Decision*, the Commission addressed "ministerial or clerical errors on forms that were timely submitted."<sup>67</sup> Ten of the appellants in that case "did not indicate that they were posting for a multi-year contract or a contract for a voluntary renewal provision when they originally posted the FCC Form 470."<sup>68</sup> The Commission concluded that it was appropriate to waive the rules because there was no evidence in the record that the appellants had not fully complied with competitive bidding requirements. The Commission concluded that the "policy underlying" the competitive bidding rules "was not compromised due to the Petitioners errors."<sup>69</sup> Therefore, the Commission waived the requirements of Section 54.504(b) of the Commission's rules.

While it is a fact that there is no FCC rule requiring that location appear in the contract or asset and inventory records and no FCC Order that enunciates such a requirement, Solid IT respectfully submits that the same logic applies in this case. To the extent that the Commission finds there was a failure to include location information in the basic maintenance contract, it should allow Aldine to cure the clerical or ministerial error consistent with the Commission's *Aberdeen* and *Bishop Perry* decisions by accepting all previous information provided to USAC and Aldine's submission of an additional asset inventory list attached to its appeal to the Commission.<sup>70</sup>

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<sup>67</sup> *In the Matter of Application for Review of the Decision of the Universal Service Administrator by the Aberdeen School District*, 22 FCC Rcd 8757 ¶ 1 (2007) ("*Aberdeen Decision*").

<sup>68</sup> *Id.* ¶ 8.

<sup>69</sup> *Aberdeen Decision* ¶ 9. This conclusion was consistent with the policies and objectives outlined in the Commission's *Bishop Perry* decision. *In the Matter of Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School et al.*, 21 FCC Rcd 5316 (2006) ("*Bishop Perry Decision*"). See also *In the Matter of Requests for Waiver of the Decision of the Universal Service Administrator by Adams County School District 14 et al.*, 22 FCC Rcd 6019 (2007) (allowing correction of ministerial mistakes related to contract ending period).

<sup>70</sup> Aldine Supplement to Request for Review, CC Docket No. 02-6, Oct. 2, 2008, Exhibit RC.

C. **Solid IT and Aldine Reasonably Relied Upon USAC's Funding Commitment Letter**

Solid IT reasonably relied upon USAC's January 11, 2005, issuance of a funding commitment to Aldine and acted in good faith to provide basic maintenance services for FY2004 after USAC issued the FCDL. The Commission clearly articulated this understanding in the *Third Report and Order*, when it stated that “[c]urrently, the only way an applicant can determine whether a particular service or product is eligible under current rules is to seek funding for that service or product, and then seek review of the Administrator’s decision to deny discounts.”<sup>71</sup> Thus, where USAC grants approval, applicants and service providers are entitled to rely upon that approval as confirmation that USAC deemed eligible the services and equipment funded.

USAC conducted a thorough review of Aldine’s Form 471 Application for basic maintenance of internal connections. The Form 471 Application identifies the Contract and Item 21 as IC-05. Contract IC-05 clearly sought basic maintenance services for **all locations throughout the district**.<sup>72</sup> As USAC notes on its web site, the Form 471 is used to “assure that schools and libraries receive appropriate Universal Service Fund support [and] comply with eligibility requirements . . .”<sup>73</sup> Moreover, in its review of Aldine’s FCC Form 471 Application, USAC would have noted that Aldine listed each school in the District where Solid IT was to provide basic maintenance of internal connections pursuant to its contract with Aldine. Indeed, Aldine could only factor its shared discount for support by averaging the discounts of all eligible locations where covered equipment was to be serviced. Those locations were clearly identified on Aldine’s FCC Form 471 Application.

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<sup>71</sup> *In re Schools and Libraries Universal Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912 ¶ 40 (2003) (“*Third Report and Order*”).

<sup>72</sup> AR0002 (Aldine RFP, p. 3) (emphasis added).

<sup>73</sup> USAC, Submitting a 471 Application, <http://www.usac.org/sl/applicants/step07/>.

Following that evaluation, USAC issued a Funding Commitment Decision Letter on which Solid IT relied to provide basic maintenance for eligible equipment to all locations identified on the FCC Form 471 for Aldine.<sup>74</sup> Solid IT provided those services and properly invoiced Aldine for its non-discounted share and USAC for Aldine's discounted share. Because Aldine and Solid IT reasonably relied on the SLD's review and subsequent FCDL, USAC's COMAD Denial should be reversed.

**D. The FY2004 Eligible Services List Was Not Subject to Proper Notice and Comment**

For the Commission to find an FCC rule violation there must have been an FCC rule.<sup>75</sup> The FY2004 ESL contract location requirement is not an FCC rule, because it does not constitute an agency (FCC) statement. To the extent that the Commission deems the ESL an FCC rule, then the Administrative Procedures Act requires that the Commission propose any substantive rule change in the Federal Register and subject the proposal to public comment.<sup>76</sup> This did not occur for the FY2004 ESL, as a substantive change in the FY2004 ESL created a new location requirement without notice and comment. Indeed, the Commission has recognized the need for "greater transparency [in the] development of the eligible services list."<sup>77</sup> In its *Third Report and Order*, the Commission cited the lack of clarity, definition and direction surrounding the ESL and formalized the process for updating the ESL by subjecting it to notice and comment procedures. The *Third Report and Order* was

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<sup>74</sup> See AR0038.

<sup>75</sup> The Administrative Procedures Act defines a rule as "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." 5 U.S.C. § 551(4).

<sup>76</sup> *Id.* § 553(b)-(c).

<sup>77</sup> *Third Report and Order* ¶ 40.

released after the FY2004 ESL took effect. Thus, the Commission did not apply notice and comment procedures to USAC's ESL until FY 2005.<sup>78</sup>

USAC maintains a list of services eligible for E-rate funding on its website. This Eligible Services List speaks to the eligibility of products and services, not to contract requirements. In FY2004, USAC drafted and published the ESL. It identified basic maintenance for internal connections as eligible. The only areas where the FCC addresses basic maintenance contracts requirements is in the requirement that the FCC Form 470 include, at a minimum, "existing or budgeted maintenance contracts to maintain computers."<sup>79</sup> In addition, in December 2003, the Commission in its *Third Report and Order* discussed technical support, *i.e.*, basic maintenance, contracts; it did not address a location requirement.<sup>80</sup>

The ESL effective for FY2004 was released on October 10, 2003,<sup>81</sup> and described basic maintenance in the following manner:

Basic Maintenance services are eligible for funding if they are a component of a maintenance agreement/contract for eligible service or products, [...] [which] must specifically identify the eligible products or services covered, including product name, model number, and location.<sup>82</sup>

The first page of the ESL notes that some eligibility information in the List changed from prior years. The List further states that "[a] notation to this effect is provided in the descriptive information for relevant entries."<sup>83</sup> However, no such "notations" appeared in

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<sup>78</sup> *Third Report and Order*, ¶ 40.

<sup>79</sup> 47 C.F.R. § 54.504(b)(v).

<sup>80</sup> *Third Report and Order*, ¶ 23.

<sup>81</sup> USAC, Eligible Services List – Archived Versions, <http://www.universalservice.org/sl/tools/search-tools/eligible-services-list-archived-versions.aspx> (last visited Oct. 7, 2008).

<sup>82</sup> USAC, FY2004 Eligible Services List 20 (Oct. 3, 2003), [http://www.universalservice.org/\\_res/documents/sl/pdf/ESL\\_archive/EligibleServicesList\\_101003.pdf](http://www.universalservice.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList_101003.pdf) (last visited Oct. 7, 2008).

<sup>83</sup> *Id.* at 1.

the descriptive information for relevant entries, making it difficult, if not impossible to distinguish the changes referenced on the first page but not described anywhere in the document.

USAC should not be permitted to rely upon its own programmatic guidance as a rule violation. The FY2004 ESL was simply a document that provided guidance on eligibility requirements and conditional eligibility requirements. To the extent that the Commission deems information in the ESL to be a rule violation, then federal statute and regulations require the Commission to provide a public notice and comment period.<sup>84</sup> The Eligible Services List (“ESL”) in effect for FY2004 differed substantially from the prior ESL, yet the Commission did not provide public notice or a comment period for USAC’s ESL until the following year.

The change in content of the basic maintenance contract as required by the FY2004 ESL substantively altered the way USAC required Aldine and Solid IT to contract for basic maintenance services in order to be eligible to receive support for those services.<sup>85</sup> The Commission has acknowledged, when USAC requests new information – as it did in the FY2004 ESL – applicants might misunderstand what response USAC expects; but if that occurs, the newly requested information can easily be discerned from other sources.<sup>86</sup> In its *Naperville* Decision, the Commission concluded that a substantial redesign in the FCC Form 471 for Year 3 resulted in an applicant’s omission to Item 22, but that the applicant provided

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<sup>84</sup> See *Attorney General’s Manual on the Administrative Procedures Act*, Section III (noting the purpose of Section 4 of the APA on rulemaking is to “guarantee to the public an opportunity to participate in the rulemaking process.” There was no public participation in the FY2004 ESL even though service providers and applicants were bound by the substantive change).

<sup>85</sup> This is not the first time an appeal has been filed with the Commission because of new information USAC required of the applicant where there was an extensive change in information requested. See *Request for Review by Naperville Community Unit, School District 203*, Order, 16 FCC Rcd 5032 (2001) (“*Naperville Order*”) (granting a Request for Review where an applicant omitted information in Item 22 of FCC Form 471 Application because it was extensively redesigned and the new Form 471 requested information in a substantially different manner).

<sup>86</sup> *Naperville Order*, ¶¶ 12, 13.

sufficiently complete answers to the remainder of its Form 471 to permit “ready discernment” of the response the applicant should have provided in Item 22. The Commission concluded that the SLD improperly returned the Form 471 to the applicant instead of processing it. The Commission based its finding on the fact that confusion resulted from SLD’s redesign of the Form 471, the remainder of the form was substantially completed by the applicant and SLD could have easily discerned the omitted information in Item 22 from other information the applicant provided.

The facts in *Naperville* are similar to Aldine’s circumstances. Like the applicant in *Naperville*, Aldine submitted information that was substantially complete with the identification of the school locations in Aldine’s FCC Form 471. In addition, the location of eligible equipment could easily be discerned from the voluminous and numerous responses Aldine provided to USAC. In sum, neither Aldine nor Solid IT violated a Commission rule, because the FY2004 ESL, simply, is not a rule. In addition, the Commission’s own precedent demands a different result in this case because Aldine and Solid IT submitted to USAC the information USAC sought.

**E. USAC’s Issuance of a COMAD Against Aldine and Solid IT Was Improper as a Matter of Law**

The Commission in its *Commitment Adjustment Orders* has determined that USAC may adjust commitments only when a disbursement would violate a federal statute or regulation.<sup>87</sup> Since the FY2004 ESL was neither a statute nor a rule promulgated by the Commission, USAC exceeded its authority in issuing the COMAD. Indeed, if the FY2004 ESL were to be considered a rule, it also exceeds the requirements set forth in Section

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<sup>87</sup> *In re Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291 ¶11 (1999); see also *In re Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Schools and Libraries Universal Service Support Mechanism*, 15 FCC Rcd 7197 (1999).

54.504 of the Commission's rules. Thus, USAC acted beyond the scope of its authority in creating an ESL provision that is more stringent than the Commission's rules.<sup>88</sup>

As the Commission stated in its *Fifth Report and Order*, “[i]f [...] [a] procedural violation is inadvertently overlooked during the application phase and funds are disbursed, the Commission will not require that they be recovered, except to the extent that such rules are essential to the financial integrity of the program [...] or that circumstances suggest the possibility of waste, fraud, or abuse[.]”<sup>89</sup> The Commission further found that “recovery may not be appropriate for violation of procedural rules codified to enhance operation of the e-rate program.”<sup>90</sup> As noted above, there was no rule to violate. Moreover, USAC disbursed funds to Solid IT and under the Commission's unambiguous standard set forth in the *Fifth Report and Order*, the Commission should not require that the disbursed funds be recovered.

FCC rules do not require that maintenance contracts specify the location of eligible products or services for which maintenance is to be provided.<sup>91</sup> In contrast with an FCC rule, the FY2004 ESL served, at most, as guidance that USAC provided to help enhance operation of the program. The lack of location information in a maintenance contract would be no more than a ministerial error.<sup>92</sup>

USAC argues that the “*program rules* state that Basic Maintenance services are eligible for funding if they are a component of a maintenance agreement/contract for an eligible

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<sup>88</sup> 47 C.F.R. ¶ 702(c).

<sup>89</sup> *In re Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order and Order, 19 FCC Rcd 15808, ¶ 19 (2004) (“*Fifth Report and Order*”).

<sup>90</sup> *Id.*

<sup>91</sup> See 47 C.F.R. § 54.504(b)(v) (requiring only that a Form 470 “shall include, at a minimum,” the “existing or budgeted maintenance contracts to maintain computers”).

<sup>92</sup> *In re Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al.*, Order, 21 FCC Rcd 5316 ¶ 2 (2006).

service or product, which must specifically identify the eligible products or service covered, including product name, model number and location.”<sup>93</sup>

Assuming *arguendo* that the FY2004 ESL’s location requirement was a procedural rule, it was one intended to enhance operation of the E-rate program and thus does not merit recovery. In addition, the Commission has concluded that recovery of disbursed funds that were later found to be a procedural violation *after the application phase* does not require recovery as described above.

It is clear that including the location of eligible equipment in the maintenance agreement is not “essential to the financial integrity of the program” because Aldine’s inventory records provide sufficient documentation that Solid IT performed maintenance on eligible products and services at District schools. Aldine requested the services for eligible equipment at eligible locations and Solid IT met its contractual requirements. In addition, clearly there is no evidence that Aldine or Solid IT acted with intent to commit “waste, fraud and abuse” as is required for recovery under the *Fifth Report and Order*. Therefore, USAC improperly issued a COMAD pursuant to the Commission’s guidance in the *Fifth Report and Order*.

**F. Location Information Is Not Part of FCC Record-Keeping Requirements**

In its *Fifth Report and Order* in which the Commission set forth record-keeping requirements, the Commission held that “*beneficiaries* must retain asset and inventory records of equipment purchased and components of internal connections services sufficient to verify the location of such equipment.”<sup>94</sup> Notably, the requirement applied only to applicants and

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<sup>93</sup> See AR0046.

<sup>94</sup> *Fifth Report and Order*, ¶ 48 (emphasis added).

not service providers. Even so, the Commission's requirement was to retain inventories with *sufficient* documentation to “*verify the location of such equipment.*”

The *Fifth Report and Order* was released almost a year after the FY2004 ESL and well after the close of the FY2004 471 Window and contract date between Aldine and Solid IT. The *Fifth Report and Order* required applicants to keep asset and inventory records sufficient to verify the actual location of such equipment.<sup>95</sup> The asset inventory lists that Aldine submitted to USAC provided the school name, product and serial number for the services provided under the maintenance contract with Solid IT. Aldine provided information sufficient to verify the location of such equipment and, therefore, satisfied the Commission's recordkeeping requirement.

The FY2004 ESL does not properly articulate the Commission's intent in the *Fifth Report and Order*. First, the ESL places a location requirement in the maintenance contract or agreement even though the Commission did not direct USAC to impose such a requirement. Second, the Commission's requirement applied to asset and inventory records, not a maintenance agreement or contract. Third, the Commission did not restrict the type of information to specifically identify the “location.” Rather, the Commission sought inventory records that provided information “sufficient to verify the location of such equipment.” Finally, if the Commission had sought to require that a maintenance agreement/contract contain specific location information, it easily could have mandated it in the recordkeeping requirements.

Instead, the Commission broadly states that “both beneficiaries and services providers must retain executed contracts, signed and dated by both parties.”<sup>96</sup> The fact that

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<sup>95</sup> See also 47 CFR ¶ 54.516(a).

<sup>96</sup> *Fifth Report and Order*, ¶ 48.

the Commission chose not to address location information as a necessary component of a contract retention requirement indicates that the Commission did not seek to regulate the terms of a private contract in the manner USAC suggests. Moreover, the Commission's record retention requirements affirm that Aldine's inventory records complied with those requirements since they indicate the school location, product and serial number.

Finally, Aldine and Solid IT entered into the maintenance contract on February 3, 2004, well before the Commission issued its *Fifth Report and Order* in August 2004 setting forth the recordkeeping requirements.<sup>97</sup> Thus, to the extent that the recordkeeping requirements would have effect here, they cannot apply retroactively to a preexisting contract.

#### **G. The Applicant, Not the Service Provider, Is Responsible for Asset Location Information**

Assuming, *arguendo* that the asset and inventory record documentation requirements do apply in the instant case, it is the applicant, not the service provider, that is responsible for providing location information<sup>98</sup>— Aldine met and exceeded this threshold requirement.

The Commission has found that applicants bear the burden of ensuring that items requested are eligible for support under program rules.<sup>99</sup> The Commission also has determined that recovery actions should be directed to the party or parties that committed the rule or statutory violation in question.<sup>100</sup> In doing so, the Commission recognized in its

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<sup>97</sup> The *Fifth Report and Order* was released on Aug. 13, 2004.

<sup>98</sup> *Fifth Report and Order*, ¶ 48 47 CRF sec. 54.516(a). Asset and inventory records of equipment were first required in the Commission's *Fifth Report & Order*, which was released well after Aldine entered into a contract with Solid IT.

<sup>99</sup> See *Schools and Libraries Universal Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9216, ¶ 41 (2003).

<sup>100</sup> *In re Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism*, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252 (2004) ("*Fourth Report and Order*").

*Fourth Report and Order* that “in many instances, this will likely be the school or library, rather than the service provider.”<sup>101</sup> As set forth above, Solid IT was neither the subject of an audit or requested by KPMG, PIA, or USAC to produce any records. USAC failed to provide any support for its decision to COMAD Solid IT. The Commission should not allow USAC to simply rely upon conjecture and statements of applicants as sufficient support to issue a COMAD against a service provider. Due process, fundamental fairness, and the law require more. Therefore, Solid IT respectfully requests the Commission to reverse USAC’s COMAD and Demand Letter against Solid IT.

#### **H. USAC Improperly Attributed KPMG’s Audit Findings to Solid IT**

Finally, Aldine – not Solid IT – was the subject of the beneficiary audit conducted by KPMG. USAC based its COMAD Denial upon KPMG’s finding in the beneficiary audit. The KPMG audit findings were against Aldine as the beneficiary and not Solid IT. Therefore, it was improper and a violation of the government general auditing guidelines to find against Solid IT.

USAC’s blanket determination that Solid IT also was responsible for the COMAD violates Solid IT’s right to due process. Solid IT was neither targeted by the beneficiary audit nor contacted during the auditing process by KPMG auditors, USAC staff, or PIA reviewers. Government Accounting Standards dictate that the audit assess an organization’s *internal* controls.<sup>102</sup> As well, Government Auditing Standards, which apply to the beneficiary audit, list “evaluating whether the *audited* entity is following sound procurement practices”

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<sup>101</sup> *Fourth Report and Order*, ¶ 10.

<sup>102</sup> AR0081 (Government Auditing Standards, Section 1.28).

among the objectives of an audit.<sup>103</sup> Thus, the Beneficiary audit was limited to practices that Aldine followed and internal controls that Aldine dictated. The Beneficiary audit did not involve Solid IT.

Accordingly, USAC cannot hold Solid IT liable for an audit that did not target Solid IT and in which it was not asked to respond. As a result, the issuance of a Demand Payment Letter to Solid IT was improper because it deprives Solid IT of its due process rights.

### III. RELIEF REQUESTED

For the reasons stated above, Solid IT respectfully requests as an aggrieved and interested party that the Commission grant this Request for Review and reverse USAC's COMAD Denial and Demand Letter.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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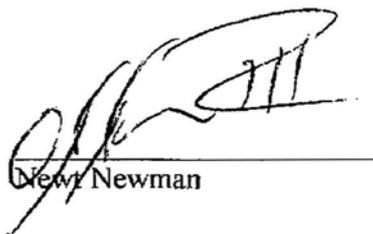
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<sup>103</sup> AR0082 (Government Auditing Standards, Section 1.29(h)).

**DECLARATION OF NEWT NEWMAN**  
**SOLID IT NETWORKS, INC.**

1. My name is Newt Newman. I am the President and founder of Solid IT Networks, Inc. ("Solid IT"). Solid IT is an Argyle, Texas, company that delivers and supports secure technology solutions for clients that include the educational community in the greater Houston area and the South Central United States.
2. Solid IT is committed to complying with the Federal Communications Commission and Universal Service Administrative Company ("USAC") requirements in order to participate in the E-rate Program. Solid IT has been involved in the E-rate Program since its inception.
3. I prepared Solid IT's response to Aldine Independent School District's ("Aldine") Request for Proposal ("RFP") for basic maintenance services of internal connections for Funding Year 2004. Aldine's RFP specifically called for basic maintenance to be provided at "all locations in the District." I understood the RFP to mean that Aldine intended for every school and building with eligible internal connections equipment to be serviced for basic maintenance.
4. As part of its response to the RFP, Solid IT attached a cost proposal for network maintenance in compliance with Aldine's requirements, state procurement law, and federal rules.
5. The cost proposal contained a breakdown by part number, detailed item descriptions, cost per item for each level of maintenance and extended costs based on quantity of items sought for all locations in the District as requested by the RFP. The cost schedule presented a total quote for maintenance that covered all locations in the District because the District requested a quote for "all locations."
6. Solid IT was awarded the Aldine Contract IC-O5 for basic maintenance and provided those services on eligible equipment pursuant to its contract to all eligible locations within Aldine School District for Funding Year 2004.
7. At no time during the audit review or otherwise did USAC, PIA reviewers, USAC auditors or KPMG auditors audit seek documents or clarification on the basic maintenance services of internal connections provided pursuant to Solid IT's contract with Aldine.
8. I have reviewed the Supplemental Request for Review and declare, under penalty of perjury, that the facts stated therein are true and correct to the best of my knowledge and belief.

Executed on this 8<sup>th</sup> day of October, 2008.



\_\_\_\_\_  
Newt Newman

## CERTIFICATE OF SERVICE

I, Jennifer Cetta, certify on this 9<sup>th</sup> day of October, 2008, a copy of the foregoing has been served via electronic mail or first class mail, postage pre-paid, to the following:

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          /s/            
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