FUNDING COMMITMENT REPORT

Loop
NV-05

Service Provider Name: Independent Computer Maintenance, LLC
Service Provider Identification Number: 143026575

Funding Request Number: 803671
Form 471 Application Number: 309196
Form 470 Application Number: 842960000400898
Name of 471 Applicant: NEW VISIONS ACADEMY
Applicant Street Address: 739 SOUTH 20TH STREET
Applicant City: NEWARK
Applicant State: NJ
Applicant Zip: 07103
Entity Number: 223454
Name of Contact Person: KATHY GREEN
Preferred Mode of Contact: PHONE
Funding Year: 2002 (07/01/2002 - 06/30/2003)
Funding Status: Funded
Contract Number: 10703
Services Ordered: Internet Access
Site Identifier: 223454
Billing Account Number: N/A
Allowable Vendor Selection/Contract Date: 01/11/2002
Contract Award Date: 01/12/2002
Earliest Possible Effective Date of Discount: 07/01/2002
Contract Expiration Date: 06/30/2003
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: $6360.00
Portion of Annual Non-Recurring Charges that is Ineligible: $0.00
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: $6360.00
Total Program Year Pre-Discount Amount: $6360.00
Applicant's Approved Discount Percentage: 90
Funding Commitment Decision: $5724.00 - FRN approved as submitted
Technology Plan Approval Status: Approved
Wave Number: 002
Applicant Letter Date: 10/08/2002

App # 428103
6/30/03
Last Day of SUC

Enclosure D

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Academy of Careers and Technologies	)	File Nos. SLD-418938, *et al.*
San Antonio, TX, *et al.*	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

ORDER

Adopted: May 2, 2006 **Released: May 19, 2006**

By the Commission:

I. INTRODUCTION

1. In this Order, we grant 30 appeals of decisions by the Universal Service Administrative Company ("Administrator" or "USAC") denying 134 requests for funding from 96 participants in the schools and libraries universal service support mechanism on the grounds that they violated the Commission's competitive bidding rules.[1] As explained below, we find that USAC improperly denied the requests for funding without sufficiently examining whether the Commission's rules were violated due to improper third-party participation in the applicants' competitive bidding processes, and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order. In addition, we direct the Administrator to conduct further investigation and analysis prior to denying funding for suspected competitive bidding violations of the type addressed herein, and to provide applicants with an opportunity to demonstrate that they did not violate the Commission's competitive bidding rules. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from release of this Order.

II. BACKGROUND

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, apply for discounts for eligible telecommunications services, Internet access, and internal connections.[2] The applicant, after developing a technology plan, files the FCC Form 470 ("Form 470") with the Administrator to request discounted

[1] The list of appeals is attached in the Appendix. These Requests for Review were filed pursuant to sections 54.719-54.721 of the Commission's rules. 47 C.F.R. §§ 54.719-54.721.

[2] 47 C.F.R. § 54.505.

services.[3] The Form 470 is posted on USAC's website for at least 28 days, during which time interested service providers may submit bids to provide the requested services.[4] The applicant must consider all submitted bids prior to entering into a contract; price must be the primary factor in selecting a bid.[5] Under the Commission's competitive bidding rules, the service provider may not participate in the bidding process.[6] After entering into a contract for eligible services, the applicant files the FCC Form 471 ("Form 471").[7] USAC assigns a funding request number ("FRN") to each request for discounted services, and issues funding commitment decision letters ("FCDLs") approving or denying the requests for discounted services.

3. Among other things, USAC is responsible for administering the application process for the schools and libraries universal service support mechanism.[8] Pursuant to this authority, USAC developed a procedure to detect applications that may be in violation of the Commission's competitive bidding rules by searching for similar language used in Form 470s filed by other schools, libraries, and consortia that selected the same service provider through their competitive bidding processes.[9] This procedure, described by USAC as "pattern analysis," contemplates the possibility that a group of applicants, all with the same service provider, violated the competitive bidding rules.

4. The Commission has under consideration 30 appeals filed by parties that have requested funding for discounted services under the schools and libraries universal service support mechanism.[10] Petitioners appeal decisions denying requests for funding from the schools and libraries universal service support mechanism due to a failure to comply with the Commission's competitive bidding rules, as identified by USAC's "pattern analysis" procedure. These 30 applicants had in total selected eight service providers.[11] Many of these applicants are among the neediest schools and libraries in the country; we estimate that more than 75% of these applicants were eligible for a 90 percent discount on eligible services. We further estimate that these 30 appeals involve approximately $38 million in funding for 99 applicants for funding during Funding Years 2002-2004, and note that these funds have already been

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[3] If the technology plan has not been approved when the applicant files the Form 470, the applicant must certify that it understands that the technology plan must be approved prior to commencement of service. 47 C.F.R. § 54.504(b)(2)(vii).

[4] 47 C.F.R. § 54.504(b)(4).

[5] 47 C.F.R. § 54.511(a).

[6] *See Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4032-33, para. 10 (2000).

[7] This form is to request discounts on those services and it contains the discount calculation worksheet and the discount funding request. The Form 471 generally must be filed each time a school or library orders telecommunications services, Internet access, or internal connections. *See* 47 C.F.R. §§ 54.504, 54.511(c).

[8] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21, and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25064-65, para. 12 (1998).

[9] *See* email from Catriona Ayer, USAC, to Vickie Robinson, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, FCC (May 2, 2005).

[10] *See* Appendix.

[11] The selected service providers were: Spectrum Communications, Diversified Computer Solutions, SEND Technologies, Communications Data and Security, VIP Technologies, Ed Tec Solutions, American Internet Group, and RGC and Associates.

collected and held in reserve. Therefore, our actions taken in this Order should have minimal impact on the Universal Service Fund ("USF").[12]

5. After identifying applications that incorporate similar language through its "pattern analysis" procedure, USAC typically informs applicants that "similarities in Forms 470 among applicants associated with this vendor indicate that the vendor was improperly involved in the competitive bidding and vendor selection process," and rejects the applicants' FRNs.[13] Although the precise language may vary slightly, the record before us indicates that no other detail concerning a violation of Commission rules is provided to applicants.[14] That is, USAC denied the applicants' requests for funding solely based on this pattern analysis procedure; the record does not indicate that USAC made any formal findings or gathered additional facts prior to denying the requests for funding, or that USAC identified any school-specific violations of our competitive bidding rules.

III. DISCUSSION

6. After reviewing the record, we grant the instant Requests for Review and remand them to USAC for further consideration. We conclude that USAC denied the requests for funding without sufficiently determining that the service providers improperly participated in the applicants' bidding processes. In short, USAC presumed that these schools violated the competitive bidding rules based on a review of another applicant's information, and without performing any applicant-specific evaluations. The "pattern analysis" procedure may be helpful to identify applications for further review to determine if the applicant violated our competitive bidding rules; however, the mere presence of similar language in Form 470s by different program participants ultimately selecting the same service provider is not sufficient evidence of a rule violation. Indeed, there are many legitimate reasons why applicants could have used similar language in their applications; for example, they may have used the same consultant, attended the same seminar or training program, or modeled their responses from the same website.[15] None of these legitimate reasons would support a finding that the school or library violated the competitive bidding rules. It appears from the record, however, that USAC never attempted to ascertain the reason for similar applications prior to denying funding based on its "pattern analysis" procedure or obtain additional information to determine whether the applicant violated the competitive bidding rules. In one group of denied Funding Year 2004 applications, for example, one of the "similarities" was the school identifier assigned by the state.[16] According to this petitioner, SEND Technologies, "USAC remained unaware that the similarities were easily explained and were not indicative of rule violations or

[12] *See, e.g.,* Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2005, dated August 2, 2005. With further investigation, as discussed in this Order, USAC can determine which of these applications should be granted and which involve violations of our competitive bidding rules. In addition, USAC will ascertain whether the relief sought by the applicant was in fact granted in a subsequent year, but the applicant neglected to withdraw the appeal.

[13] This explanation is in the FCDLs for each of the applicants listed in the Appendix. In some of the files, the language varies, *e.g.*, "similarities in Forms 470 and selective review responses among applicants associated with this vendor indicate that the vendor was improperly involved in the competitive bidding process."

[14] *See, e.g.*, Consolidated Request for Review of the Decisions of the Universal Service Administrator, Morehouse Parish School District and Jackson Parish School District, at 4-5 (filed Jan. 10, 2005) ("Morehouse and Jackson Appeal").

[15] *See, e.g.*, Rosemead Elementary Unified School District Request for Review at 2-4 (filed Nov. 21, 2004).

[16] *See* Letter from Jennifer L. Richter, Patton Boggs LLP, Counsel to Nexus Systems, Inc. and Send Technologies, LLC to Marlene H. Dortch, Secretary, FCC, filed in CC Docket No. 02-6 (July 8, 2005) at 2 ("July 8, 2005 Letter").

impermissible service provider involvement."[17] *In addition, the record reflects that USAC failed to* identify the specific language in the Form 470s that it deemed "similar."[18] We agree with the Petitioners that without specific information to determine the basis for the denial, applicants cannot provide comprehensive responses to USAC's arguments.

7. For these reasons, we find that when USAC suspects that a service provider has improperly participated in an applicant's bidding process due to the results of its "pattern analysis" procedure, it is incumbent on USAC to conduct further investigation and analysis prior to denying funding.[19] Specifically, USAC should review these applications fully, and should not issue summary denials of requests for funding solely because applications contain similar language. If an entity is able to demonstrate that it fully complied with all program rules and did not, for example, violate the Commission's competitive bidding rules, then USAC should not deny funding on the basis of the "pattern analysis" procedure. We therefore grant the Requests for Review listed in the Appendix attached to this Order and remand the underlying applications associated with these appeals to USAC for further action consistent with this Order.[20] To ensure these issues are resolved expeditiously, we direct USAC to complete its review of the applications (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from release of this Order.

8. We recognize that some beneficiaries may have violated the competitive bidding rules and that shared facts may help uncover violations of our rules or waste, fraud, and abuse committed by other beneficiaries. Indeed, we recognize the utility of USAC's pattern analysis of helping to identify malfeasance. A pattern analysis alone, however, does not determine that an applicant has violated program rules or engaged in waste, fraud, or abuse. Based on the existing program rules, USAC should not stop its review of an application and conclude that the applicant violated program rules (and then deny the funding request) solely because the application shares some language with that of another applicant who selected the same service provider. Instead, USAC should continue its evaluation to determine whether funding is warranted and whether the applicants violated program rules, including those concerns initially identified through the "pattern analysis" process. As part of its review, USAC may request that applicants submit documentation establishing the source of the language that is similar to that found in other applications. Upon completing its review, if USAC finds that the application complies with all

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[17] July 8, 2005 Letter at 2.

[18] *See, e.g.,* July 8, 2005 Letter at 2; Morehouse and Jackson Appeal at 4-5; Letter from Lila Wills Bronson, Ed.D, Director of Technology, Rosemead Elementary School District to Marlene H. Dortch, Secretary, FCC (June 20, 2003) at 4-5.

[19] During the application review process, USAC may request additional information from applicants. *See Request for Review of the Decision of the Universal Service Administrator by Nefesh Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.,* File No. SLD-27881, CC Dockets No. 95-45 and 97-21, Order, DA 99-2284, para. 3 (Com. Car. Bur., rel. Oct. 22, 1999) ("*Nefesh Academy Order*"). To ensure that the application review process for the schools and libraries program is not unduly delayed, USAC requires applicants to supply information within a reasonable time period or risk denial of the funding request. *Nefesh Academy Order* at para. 3.

[20] We note, however, that many of the pending appeals addressed in this Order date from Funding Year 2002, and that, due to the passage of time, such evidence may no longer be available. For example, the employees who prepared the Form 470 may have left the school system since the application was filed. USAC should look at the totality of the circumstances, including an explanation as to why evidence may no longer be available. On a going-forward basis, we expect that applicants will have better documentation to support their applications. *See Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15823-24, para. 47 (requiring applicants and service providers to retain all records related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular funding year).

applicable program rules and that USF funding is warranted, it should authorize funding. We recognize that, after USAC completes its application review procedures for the appeals identified in this Order, it may conclude that funding is not warranted and deny the request.

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), this Order IS ADOPTED.

10. IT IS FURTHER ORDERED that any and all pending appeals before this Commission identified in the Appendix of this Order ARE REMANDED to the Administrator for further consideration in accordance with the terms of this Order.

11. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, USAC SHALL COMPLETE its review of each remanded application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

A. Requests for Review Filed By Applicants for E-Rate Funding

Applicant	Service Provider	Application Number	Funding Year
Academy of Careers and Technologies San Antonio, TX	RGC and Associates, Inc.	418938	2004
El Paso School of Excellence El Paso, Texas	RGC and Associates, Inc.	408268	2004
Lake Grove at Maple Valley, Inc., Lake Grove Schools Wendall, MA	Ed Tec Solutions, LLC	380920	2003
Lake Grove Durham School, Lake Grove Schools Durham, CT	Ed Tec Solutions, LLC	380528	2003
Lake Grove Schools Lake Grove, NY	Ed Tec Solutions, LLC	381301	2003
Mountain Lake Children's Residence, Inc., Lake Grove Schools Lake Placid, NY	Ed Tec Solutions, LLC	380723	2003
Positive Solutions Consortium San Antonio, TX	RGC and Associates, Inc.	409745	2004
Rosemead Elementary School District Rosemead, CA	Spectrum Communications Cabling Services, Inc.	303357	2002
Webster Parish School District	SEND Technologies, LLC	363968	2003
Yeshiva Masoras Avos Lakewood, NJ	Communications Data and Security, Inc.	294999	2002
Yeshiva Masoras Avos Lakewood, NJ	Communications Data and Security, Inc.	347572	2003
Yeshivath Viznitz D'Khal Torath Chaim Monsey, NY	Communications Data and Security, Inc.	287318	2002

B. Requests for Review Filed by Service Providers on Behalf of Individual Applicants

Service Provider	Applicant	Application Number	Funding Year
American Internet Group, LLC	Plymouth Educational Center Charter Schools Detroit, MI	428762	2004
Independent Computer Maintenance, LLC	Al-Ghazaly Elementary School Jersey City, NJ	310917	2002
Independent Computer Maintenance, LLC	Dar Al-Hikmah Elementary School	310459	2002

	Prospect park, NJ		
Independent Computer Maintenance, LLC	Horizon School Livingston, NJ	316671	2002
Independent Computer Maintenance, LLC[21]	Kearny Christian Academy Kearny, NJ	307730	2002
Independent Computer Maintenance, LLC	New Visions Academy Newark, NJ (Diversified Computer Solutions was former service provider)	309196	2002
Spectrum Communications Cabling Services, Inc.	Corona-Norco Unified School District Norco, CA	362456	2003
Spectrum Communications Cabling Services, Inc.	Rosemead Elementary Unified School District Rosemead, CA	366569	2003

C. Consolidated Requests for Review Filed by Service Providers on Behalf of Individual Applicants

1. Applications Consolidated in a Request for Review filed by Communications Data and Security, Inc., filed June 14, 2004:

Applicant	Application Number	Funding Year
Bais Chinuch Hayoshen Monsey, NY	294981	2002
Bais Tova	287825	2002
Bais Yaakov High School of Lakewood, Inc.	287451	2002
Beth Rivka School Brooklyn, NY	287822	2002
Bnos Chayil	288799	2002
Congregation Bnai Yoel Monroe, NY	300877, 293323, 322057	2002
Congregation Machzikei Hadas of Belz	293889	2002
Congregation Noam E. Lizensk	287796	2002
Congregation Noiam Mgodim	296699, 322734	2002
Generation Christian Academy	297919	2002
Kavanas Halev	294702, 287455	2002
Lakewood Cheder School	287220	2002
Machne Karlin Stolin	313957	2002
Midrach L'Man Achai	324976, 300353, 294833	2002

[21] Kearny Christian Academy also filed its own Request for Review for the same FCC Form 471 application number on August 30, 2004.

Shaar Ephraim	287472	2002
Talmud Torah Bais Yechiel	287833	2002
Talmud Torah of Lakewood	287134, 287198	2002
Talmud Torah Tzoin Yosef Pupa, Inc.	287216	2002
Tiferes Academy	304794	2002
Toras Imecha	292962	2002
United Talmudical Academy Monroe, NY	295523, 295698, 295714, 307138, 293464, 291564	2002
Viznitzer Chaider Tiferes Yisroel	293267, 293268, 294911	2002
Westchester Special Education School	298475	2002
Yeshiva Avir Yakov	294954, 295067, 305386	2002
Yeshiva Beth David School	300860, 300896	2002
Yeshiva Bnos Ahavas Israel	287293, 287295, 321381	2002
Yeshiva Imrei Chaim Viznitz of Borobark	293311	2002
Yeshiva Imrei Yosef School	301267, 293315	2002
Yeshiva Jesode Hatorah	293419, 295822	2002
Yeshiva Kehilath Yakov School	316264	2002
Yeshiva Masoras Avos	294999	2002
Yeshiva Sharei Hayosher School Brooklyn, NY	307166, 307180	2002
Yeshiva Toras Chaim	317828	2002
Yeshiva Tzemach Tzadik Viznitz	295300	2002
Yeshiva Zichron Mayir	287235, 287238	2002
Yeshivath Viznitz D'Khal Torath Chaim	307499, 287319	2002

2. Applications Consolidated in a Request for Review filed by Ed Tec Solutions, LLC, filed May 19, 2005:

Applicant	Application Number	Funding Year
California Academy for Liberal Studies Los Angeles, CA	345392	2003
Crystal Springs School A Program of IDDI Assonet, MA	345507	2003
Green Chimneys School Brewster, NY	378380	2003
Leary School – Prince Georges County Oxon Hill, VA	345527	2003

Leary School of Virginia Alexandria, VA	345533	2003

3. Applications Consolidated in a Request for Review filed by Ed Tec Solutions, LLC, filed May 18, 2005:

Applicant	Application Number	Funding Year
Family Charter School Philadelphia, PA	345475	2003
Green Chimneys School Brewster, NY	345498	2003
Westchester Special Ed School Yonkers, NY	345491	2003

4. Applications Consolidated in a Request for Review filed by Ed Tec Solutions, LLC, filed May 19, 2005:

Applicant	Application Number	Funding Year
Audrey Lorde School New York, NY	345394	2003
Graydon Manor School Leesburg, VA	345402	2003

5. Applications Consolidated in a Request for Review filed by SEND Technologies, LLC, filed August 23, 2004:

Applicant	Application Number	Funding Year
Richland Parish School District Rayville, LA	291953	2002
Morehouse Parish School District Bastrop, LA	301743	2002

6. Applications Consolidated in a Request for Review filed by SEND Technologies, LLC, filed January 10, 2005 :

Applicant	Application Number	Funding Year
Jackson Parish School District Jonesboro, LA	376220	2003
Morehouse Parish School District Bastrop, LA	360815	2003

7. Applications Consolidated in a Request for Review filed by SEND Technologies, LLC, filed January 18, 2006 :

Applicant	Application Number	Funding Year
Jackson Parish School District Jonesboro, LA	423981	2004
Morehouse Parish School District Bastrop, LA	409404	2004
Franklin Academy Winnsboro, LA	412894	2004

8. Applications Consolidated in Request for Review filed by Spectrum Communications Cabling Services, Inc., filed June 19, 2003:

Applicant	Application Number	Funding Year
El Monte Unified School District El Monte, CA	311437	2002
Hemet Unified School District Hemet, CA	295589	2002
Inglewood Unified School District Inglewood, CA	313520	2002
Lucerne Valley Unified School District Lucerne Valley, CA	314228	2002
Romoland Elementary School District Homeland, CA	305956	2002
Rosemead Elementary Unified School District Rosemead, CA	303357	2002

9. Applications Consolidated in Request for Review filed by VIP Technologies, LLC., filed March 8, 2005:

Applicant	Application Number	Funding Year
Alachua Learning Center Alachua, FL	418579	2004
Audrey Lorde School New York, NY	418559	2004
Bethesda Childrens' Home Meadville, PA	411830	2004
Chimes School Baltimore, MD	421161	2004
Crystal Springs School, a program of IDDI Assonet, MA	411722	2004

Everglades Preparatory Academy Pahokee, FL	418626	2004
Family Charter School Philadelphia, PA	411674	2004
Gateway-Lynde School Buffalo, NY	418701	2004
Glades Academy of Agricultural and Ecological Studies Pahokee, FL	418682	2004
Green Chimneys School Brewster, NY	411712	2004
Highville Mustard Seed Charter School Hamden, CT	420329	2004
James M. Singleton Charter Middle School New Orleans, LA	412567	2004
Lakeview Charter Academy San Fernando, CA	429410	2004
Lift for Life Academy St. Louis, MO	418553	2004
Macsa Academic Calmecac San Jose, CA	427482	2004
North County Charter School Opalocka, FL	431395	2004
School of Excellence in Education Charter School San Antonio, TX	418635	2004
Survivors Charter School West Palm Beach, FL	418464	2004
The Chiles Academy Port Orange, FL	412585	2004
Torah High School of Long Beach Long Beach, NY	425176	2004
Woods School Langhorne, PA	412885	2004
Yeshiva Tiferes Torah School Lakewood, NJ	430667	2004
Youth Opportunities Upheld, Inc. Worcester, MA	418598	2004

10. Applications Consolidated in a Request for Review filed by VIP Technologies, LLC., filed February 15, 2005:

Applicant	Application Number	Funding Year
Florida International Academy Miami, FL	411456	2004
Golden Rule Charter School Dallas, TX	412493	2004
Redemptive Life Academy West Palm Beach, FL	415411	2004
New Frontier Charter School San Antonio, TX	418517	2004
Tri-L Christian Academy Orlando, FL	424917	2004
Parkway Academy Miramar, FL	431407	2004
Northeast Academy 1 Opalocka, FL	431840	2004
Downtown Miami Charter School Miami, FL	432551	2004

Enclosure E

INDEPENDENT COMPUTER MAINTENANCE LLC
SALES • COMMUNICATIONS • CONSULTING • VOICE & DATA SOLUTIONS
www.icmcorporation.com

By Facsimile (202) 418-0187 and First Class Mail

August 7, 2007

Letter of Appeal
Federal Communications Commission
Office of the Secretary
445 – 12th Street, S.W.
Washington, DC 20554

REQUEST FOR REVIEW

Re: APPEAL OF (1) REVISED COMMITMENT ADJUSTMENT LETTER AND (2) SUBSEQUESNT DENIAL OF THE APPEAL OF THAT REVISED COMMITMENT ADJUSTMENT LETTER BY THE ADMINISTRATOR OF THE SCHOOLS AND LIBRARIES DIVISION
CC DOCKET NO. 02-6
FUNDING YEAR: 2002-/2003
SPIN: 143026575
FORM 471 APPLICATION NUMBER: 309196
FUNDING REQUEST Numbers: 803634, 803671, 803707, 803755, 803806
APPLICANT NAME: New Horizons Academy
APPLICANT CONTACT: Aminah Latimore-Muhammah
BILLED ENTITY NAME: New Horizons Academy
BILLED ENTITY NUMBER: 223454
BILLED ENTITY AND APPLICANT CONTACT PHONE NO.: (973) 785-2300
SERVICE PROVIDER: Independent Computer Maintenance, LLC
SERVICE PROVIDER IDENTIFICATION NO.: 143026575
SERVICE PROVIDER CONTACT PERSON: Anthony Natoli
SERVICE PROVIDER CONTACT PHONE NO.: (973) 916-1800
SERVICE PROVIDER FAX NO.: (973) 916-1986
SERVICE PROVIDER E-MAIL: TONYN@ICMCORPORATION.COM

Enclosure A: Copy of Administrator's Decision on Appeal – Funding Year 2002-2003 for the New Horizons Academy FRNs 803634, 803671, 803707, 803755, and 803806 dated June 28, 2007.
Enclosure B: Copy of Revised Funding Commitment Decision Letter from Universal Service Administration Company dated February 21, 2007.
Enclosure C: Copy of ICM's Letter of Appeal to the USAC dated on April 9, 2007 (without Enclosures).
Enclosure D: Copy of ICM's Letter of Appeal to the FCC dated December 8, 2004 (without enclosures).
Enclosure E: Copy of FCC Proceeding Number FCC06-55, May 19, 2006 and Order under CC Docket No. 02-6 adopted May 2, 2006 and released May 19, 2006.

Gentlemen:

NOTICE OF APPEAL

Please accept this letter and its enclosures as Independent Computer Maintenance, LLC's ("ICM") appeal of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") Administrator's Decision on Appeal – Funding Year 2002-2003, dated June 28, 2007. Said decision denied in full ICM's appeal dated April 9, 2007 of USAC's Revised Commitment Adjustment Letter, which Revised Commitment Adjustment Letter rescinded in full, among others, Funding Request Numbers ("FRN") 803634, 803671, 803707, 803755, and 803806 for the New Visions Academy. A copy of USAC's Administrator's Decision on Appeal – Funding Year 2002-2003, dated June 28, 2007, is annexed hereto as Enclosure A. A copy of the Revised Funding Commitment Decision Letter from USAC dated February 21, 2007 is annexed hereto as Enclosure B. A copy of ICM's Appeal to the USAC dated April 9, 2007, without enclosures, is annexed hereto as Enclosure C.

FACTS

By Commitment Adjustment Letter dated March 16, 2004, the USAC "rescinded in full" FRNs 803634, 803671, 803707, 803755, and 803806 because there was an indication that "the vendor was improperly involved in the competitive bidding process". ICM appealed that decision to the USAC Administrator, who denied ICM's appeal and on December 8, 2004, ICM appealed that denial to the Federal Communications Commission ("FCC"). A copy of ICM's appeal (without Enclosures) is annexed hereto as Exhibit D.

On May 2, 2006 the FCC adopted in Proceeding Number FCC-06-55, which it released on May 19, 2006, an Order under CC Docket No. 02-6, granting the appeal of ICM (with respect to a number of ICM Applications including Application 309196 relating to FRNs 803634, 803671, 803707, 803755, and 803806.) and 29 other entities. This Order found that the "USAC denied the requests for funding without sufficiently determining that the service providers improperly participated in the applicant's bidding process." (Page 3 ¶6 of the Order). It further ordered the USAC to "Complete its review of each remanded application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from the release of this Order." (Page 4 ¶7 of the Order). Application 309196 with contained FRN 803634, 803671, 803707, 803755, and 803806 was listed in the Appendix. (See page 7). A copy of the FCC's Order is annexed hereto as Enclosure E. The USAC, in violation of the FCC Order, failed to "issue an award or a denial based on a complete review and analysis" with respect to Application 309196, within 120 days from the issuance of the FCC Order.

By Revised Funding Commitment Decision Letter dated February 21, 2007 referencing the above referenced Form 471 Application Number and SPIN, the USAC advised ICM of its

decision to reduce the Funding Commitments to $0 for a number of Funding Request Numbers ("FRNs") including FRNs 803634, 803671, 803707, 803755, and 803806 for the New Visions Academy. The Revised Funding Commitment Decision Explanation given for the denial with respect to FRNs 803634, 803671, 803707, 803755, and 803806 for the New Visions Academy was "Documents among applicants using this service provider indicates inappropriate service provider involvement in the competitive bidding process."

By Letter dated April 9, 2007, ICM appealed that Revised Funding Commitment Decision to the SLD and by letter dated June 28, 2007 USAC issued its Administrator's Decision of Appeal – Funding Year 2002-2003.

The Administrator's Decision of Appeal – Funding Year 2002-2003 dated July 5, 2007 cites the following reasons for its rejection of ICM's appeal:

"Upon through review of the appeal letter and the relevant documentation, USAC has determined that New Visions Academy failed to respond to the Program Integrity Assurance (PIA) inquiries in a timely manner. PIA made initial contact with Kathy Green, the applicant's authorized contact on June 9, 2006 and on several occasions throughout the month of June via phone and fax and asked for information regarding the vendor. The applicant was instructed that the request was time sensitive and that a response was expected within seven calendar days. USAC's records show several attempts to contact over the summer with no response. No information was given to USAC from the school regarding a change in contact. USAC contacted again on September 15, 2006, requesting the same information. As this information was not forthcoming, USAC was unable to determine if your funding request was in compliance with Program Rules. Therefore, the funding request was denied. On appeal, you have failed to provide any evidence that USAC erred in its initial determination or that the New Visions Academy responded to USAC's requests for additional documentation in a timely manner. Consequently, your appeal is denied."

"SLD reviews Form 471 applications and makes funding commitment decisions in compliance with FCC rules. See 47 C.F.R. § 54.500 et seq. To conduct these reviews, SLD has put in place administrative measures **to ensure the prompt resolution of applications**, *See Request for Review by Marshall County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd. 4520, DA 03-764, ¶ 6 (rel. Mar. 13, 2003). (*Marshall County*) One such measure is that applicants are required to respond to SLD's requests for the **additional information necessary to complete their application** within 7 days of being contacted. Id.; SLD section of the USAC web site, Reference Area, "Deadline for Information Requests," www.sl.universalservice.org/reference/deadline.asp This procedure is necessary to prevent undue delays during the application review process. *See Marshall County* ¶6. If applicants do not respond within this time period, SLD reviews the application based on the information before it. (Emphasis added).

"During the review for your Form 471, SLD sought additional information from you and notified you that this information needed to be provided within 7 days. You did not provide this information within 7 days or within any extended timeframe we agreed upon, or the information that you provided was insufficient to complete your Form 471 application. Consequently, SLD denies your appeal."

ARGUMENT

The Administrators Decision on Appeal is defective on its face and evidences the total lack of good faith and fair dealing the USAC has shown in dealing with ICM.

In trying to establish the criteria for an applicant to respond to SLD requests for further information, SLD relies on the procedures it utilizes to complete incomplete applications. It expressly states in the second paragraph of its findings that the response criteria is needed "**to ensure the prompt resolution of applications**" to obtain the "**additional information necessary to complete their application**". At the time of application the only party that a failure to respond would effect is the applicant, however at this point in time when the SLD is attempting to issue a Revised Commitment Adjustment, utilizing such a procedure is not only inapplicable but also totally ignores the innocent service provider which is now the party most at risk. To apply such criteria is a clear error of law and the Administrators Decision based upon same should be reversed.

Additionally although the third paragraph of the Administrator's Decision alleges that ICM was contacted in the Form 471 reviews, I categorically deny that anyone form the USAC every contacted me for any information or documents concerning FRNs 803634, 803671, 803707, 803755, and 803806, any time subsequent to the time ICM provided the goods and services for the New Visions Academy in 200??. At all times, I have been the president of ICM and the designated contact point for USAC. I have also made a good faith inquiry of my fellow employees and no one has been able to recall any such contact. ICM is prepared to provide affidavits to that effect.

Furthermore, as set forth in the Fact section above, the FCC on May 2, 2006 adopted in Proceeding FCC-06-05, which it released on May 19, 2006, an Order under CC Docket No. 02-6, granting the appeal of ICM (with respect to a number of ICM Applications including Application 309196 relating to FRNs 803634, 803671, 803707, 803755, and 803806); finding that the "USAC denied the requests for funding without sufficiently determining that the service providers improperly participated in the applicant's bidding process." (Page 3 ¶6 of the Order). It further ordered the USAC to "Complete its review of each remanded application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from the release of this Order." (Page 4 ¶7 of the Order). Application 309196 with contained FRNs 803634, 803671, 803707, 803755, and 803806 was listed in the Appendix. (See page 7).

The USAC, in violation of the FCC Order, has failed to "issue an award or a denial based on a complete review and analysis" with respect to Application 309196, within 120 days from the issuance of the FCC Order. At this late date, the USAC is barred by the terms of the FCC Order and estopple from raising this alleged "improper" procurement issue concerning the FRNs 803634, 803671, 803707, 803755, and 803806.

CONCLUSION

For the reasons set forth above, ICM hereby requests that the decision to reduce the Funding Commitments to $0 for FRNs 803634, 803671, 803707, 803755, and 803806 be reversed and a new Revised Funding Commitment Decision Letter be issued reinstating the full funding commitments.

Additionally, since the USAC has failed to comply with the FCC Order under FCC Docket No. 02-6 within the time frame provided therein for all the other FRNs under which ICM provided services, ICM hereby requests that the FCC issue an order directing the USAC to reinstate the full funding commitments for all of those FRNs.

ICM is a small business and the non payment by the USAC of ICM's bone fide invoices for goods and services rendered more than three years ago is creating a great hardship for both the company and its employees. ICM would like to resolve these matters as soon as possible and toward that end hereby requests as an alternative solution that the FCC intercede in these matters and appoint a mediator or other party to help in the resolution of these matters. This series of questionable, unsupported and unjustified determinations by the USAC, in violation of the FCC Order, and subsequent appeals by ICM is not making any headway in resolving these matters. Any assistance by your office would be greatly appreciated.

If you have any further questions concerning this matter, please contact the undersigned or our Counsel, Gary Marcus of the law firm, Gary Marcus, Attorney at Law, P.C. 600 Old Country Road, Garden City, NY 11530, (516) 301-7776.

Thank you for giving this your immediate attention.

Very truly yours,

Independent Computer Maintenance, LLC

By _____
Anthony Natoli, President

cc: New Visions Academy

Enclosure F

INDEPENDENT COMPUTER MAINTENANCE LLC
SALES • COMMUNICATIONS • CONSULTING • VOICE & DATA SOLUTIONS
www.icmcorporation.com

By Facsimile (973) 599-6542 and UPS Delivery

July 2, 2008

Letter of Appeal
The Universal Service Administrative Company
Schools and Libraries Division
P.O. Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, New Jersey 07981

REQUEST FOR REVIEW

Re: APPEAL OF DEMAND PAYMENT LETTER dated May 15, 2008
FUNDING YEAR: 2002: 0/01/2002 – 6/30/2003
SPIN: 143026575
FORM 471 APPLICATION NUMBER: 309196
APPLICANT NAME: New Visions Academy
APPLICANT CONTACT: Kathy Green
BILLED ENTITY NAME: New Visions Academy
BILLED ENTITY NUMBER: 223454
BILLED ENTITY AND APPLICANT CONTACT PHONE NO.: (973) 399-2829
SERVICE PROVIDER: Independent Computer Maintenance, LLC
SERVICE PROVIDER IDENTIFICATION NO.: 143026575
SERVICE PROVIDER CONTACT PERSON: Anthony Natoli
SERVICE PROVIDER CONTACT PHONE NO.: (973) 916-1800
SERVICE PROVIDER FAX NO.: (973) 916-1986
SERVICE PROVIDER E-MAIL: TONYN@ICMCORPORATION.COM

Enclosure A: Copy of Demand Payment Letter dated May 15, 2008.

Enclosure B: Copy of New Visions Academy's request for SPIN changes.

Enclosure C: Copies of e-mails from the School and Library Division Client Operations to ICM dated August 26, 2003 granting the requested SPIN changes and Funding Commitment Reports showing approval of the other SPIN changes.

Enclosure D: Copy of the ICM appeal (without attachments) dated May 12, 2004.

Enclosure E: Copy of the ICM appeal (without attachments) dated December 8, 2004.

Enclosure F: Copy of FCC Proceeding Number FCC-06-55, and Order under CC Docket No. 02-6 adopted May 2, 2006 and released May 19, 2006.

Enclosure G: Copy of FCC Decision entitled "In Re Federal-State Joint Board of Universal Service, et al." adopted on July 23, 2004.

Gentlemen:

NOTICE OF APPEAL

Please accept this letter and its enclosures as Independent Computer Maintenance, LLC's ("ICM") appeal of the Demand Payment Letter dated May 15, 2008 ("DPL") notifying ICM "of the exact amount of recovery being directed towards you" and giving ICM "an opportunity to appeal USAC's determination that recovery should be directed towards you.". A copy of that Demand Payment Letter dated May 15, 2008 is annexed hereto as Enclosure A.

Attached to the DPL were revised copies of Commitment Adjustment Reports ("CAR") detailing the Funding Request Numbers ("FRNs) which the USAC was demanding payment for under the DPL. The FRNs in the revised CAR attached to the DPL were FRN 803634, 803671 and 803707 (hereinafter "NVFRNs"). ICM also appeals these newly revised CARs reducing the Adjusted Funding Commitments to $0 and the determination made therein that USAC "has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider."

FACTS

Upon information and belief, New Visions Academy filed the Form 470 and related technology plan with respect to the above referenced Application Number on or about December 14, 2001 and subsequent thereto the NVFRNs were issued. ICM did not become involved with the NVFRNs until August 11, 2003 and September 29, 2003, when pursuant to SPIN change requests of the Applicant, New Visions Academy, ICM was proposed as the new service provider replacing Diversified Computer Solutions, Inc. A copy or New Visions Academy's request for SPIN changes are annexed hereto as Enclosure B along with copies of e-mails from the School and Library Division Client Operations to ICM dated August 26, 2003 granting the aforesaid requested SPIN changes and Funding Commitment Reports showing approval of the other SPIN changes, all of which are annexed hereto as Enclosure C.

Subsequent to the granting of the SPIN changes by USAC, ICM rendered the equipment, services and other efforts needed to successfully fulfill all the requirements of the NVFRNs.

On March 16, 2004, the USAC issued a Commitment Adjustment Letter concerning the NVFRNs seeking to "rescind in full" the NVFRNs, since there was an indication that "the vendor (ICM) was improperly involved in the competitive bidding process". This is substantially the same reason as set forth in the CAR attached to the DPL. On May 12, 2004, ICM filed an appeal of that Commitment Adjustment Letter. A copy of the ICM appeal (without attachments) is annexed hereto as Enclosure D.

On October 12, 2004, USAC issued its Administrator's Decision on Appeal denying in full ICM's appeal. On December 8, 2004 ICM filed an appeal of the Administrator's Decision with the FCC. A copy of the ICM appeal (without attachments) is annexed hereto as Enclosure E.

On May 2, 2006, the FCC adopted in Proceeding Number FCC-06-55, (released May 19, 2006) an Order under CC Docket No. 02-6, granting the appeal of ICM (with respect to a number of applications including Application 309196 relating to the above NVFRNs) and 29 other entities. This Order found that the "USAC denied the requests for funding without sufficiently determining that the service providers improperly participated in the applicant's bidding process." (Page 3 ¶6 of the Order). It further ordered the USAC to "Complete its review of each remanded application (and issue an award or a denial based on a complete review and analysis) listed in the Appendix no later than 120 days from the release of this Order." (Page 4 ¶7 of the Order). Application 309196 which contained the NVFRNs was listed in the Appendix. (See page 7). A copy of the FCC's Order is annexed hereto as Enclosure F. More that 120 days have expired since the FCC issued its Order. The USAC has neither obtained an extension of the deadline in the Order, nor has it issued an award or denial of Application 309196 or the NVFRNs issued pursuant thereto.

On February 21, 2007, USAC issued a Revised Funding Commitment Decision Letter reducing the NVFRNs to $0 again based upon substantially the same grounds as previously alleged and citing that the "Applicant (not the provider) has not provided sufficient documentation to determine eligibility of this item." (Emphasis added). By letter dated April 9, 2007, ICM appealed this Revised Funding Commitment Letter and by an Administrator's Decision on Appeal dated June 28, 2007 USAC denied ICM's appeal.

ARGUMENTS

1. If there was any wrong doing or impropriety in the competitive bidding process with respect to the NVFRNs and Application 309196, ICM had no involvement in that process or application and therefore pursuant to the decision of the FCC and the rule of law, any recover, if justified, must be the responsibility of the Applicant, New Visions Academy, and any other third persons involved in the Application or competitive bid process, but clearly not the responsibility of ICM, who was just an innocent service provider.

As set forth in the facts above, ICM had no contact with the Applicant, New Visions Academy, at the time the Form 470 and technology plan were filed by New Visions Academy on or about December 14, 2001. ICM did not become involved with the NVFRNs until August 11, 2003 and September 29, 2003, when pursuant to SPIN change requests of the Applicant, New Visions Academy, ICM was proposed as the new service provider replacing Diversified Computer Solutions, Inc. It is irrefutable that since ICM had no association with the Applicant until after August, 2003, well after the Application was filed (December, 2001) and any questionable acts relating thereto, if any, were committed; it could not have been "improperly involved in the competitive bidding process". To insinuate or allege that ICM had any

connection with any such misconduct is totally baseless. On these irrefutable facts alone no recovery should be directed toward ICM because it was and is an innocent party.

The FCC in *In re Federal-State Joint Board on Universal Service*, 19 FCC Rcd 15252 (adopted July 23, 2004) issued a ruling directly on point concerning which party the USAC was to seek recovery from. A copy of that decision is annexed hereto as Enclosure G. In this decision the FCC, in response to petitions by various providers, directed the USAC to re-direct its efforts to recover any funds that had been allegedly distributed unlawfully from the providers to the party or parties who have committed the statutory or rule violation in question.

The FCC stated with respect to the "party or parties who have committed the statutory or rule violation" that: "We do so recognizing that in many instances, this will likely be the school or library, rather than the service provider." (Emphasis added). *In re Federal-State*, 19FCC Rcd at par. 10.

In reaching this conclusion, the FCC noted that: "The school or library is the entity that undertakes the various necessary steps in the application process, and receives the direct benefit of any services rendered. The school or library submits to USAC a completed FCC Form 470, setting forth its technological needs and the services for which it seeks discounts. The school or library is required to comply with the Commission's competitive biding requirements as set forth in Sections 54.504 and 54.511(a) of our rules and related orders. The school or the library is the entity that submits FCC Form 471, notifying the Administrator of the services that have been ordered, the service providers with whom it has entered into agreements, and an estimate of the funds needed to cover the discounts to be provided on eligible services." *Id.* At par. 11.

The Commission in that Order also stated that although the service providers also have to follow the rules and regulations, those are with regard to "the supported service, and as such, must provide the services approved for funding within the relevant funding year. The service provider is required under our rules to provide beneficiaries a choice of payment method; and, when the beneficiary has made full payment for the services, to remit discount amounts to the beneficiary within twenty days of receipt of the reimbursement check. But in many situations, the service provider simply is not in a position to ensure that all applicable statutory and regulatory requirements have been met. Indeed, in many instances, a service provider may well be totally unaware of any violation. In such cases, we are convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider." (Emphasis added). *Id.* at par. 11.

The USAC in the DPL recognizes that this FCC Order applies to this matter and confirms that in determining to whom recovery should be directed the USAC should "consider which party was in a better position to prevent the statutory or rule violation, and which party committed the act of omission that forms the basis for the statutory or rule violation." Utilizing this test, there is no doubt that the USAC should proceed against New Visions Academy and any other culpable third parties and not ICM, who was and is an innocent service provider that had nothing to do with any actual or perceived statutory or rule violation.