



INDEPENDENT COMPUTER MAINTENANCE LLC

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August 21, 2009

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

**NOTICE OF APPEAL AND
REQUEST FOR REVIEW**

Re: IN THE MATTER OF REQUEST FOR REVIEW BY INDEPENDENT
COMPUTER MAINTENANCE, LLC OF THE UNIVERSAL SERVICE
ADMINISTRATIVE COMPANY, SCHOOL AND LIBRARIES DIVISION,
ADMINISTRATOR'S DECISION ON APPEAL – FUNDING YEAR 2002-2003
dated June 29, 2009; and DEMAND PAYMENT LETTER dated April 30, 2009;
and SECOND REQUEST dated June 1, 2009
CC DOCKET NO. 02-6 AND CC DOCKET NO. 96-45
FUNDING YEAR: 2002-2003: July 1, 2002 – June 30, 2003
SPIN: 143026575
FORM 471 APPLICATION NUMBER: 316756
FUNDING REQUEST NUMBERS: 835419 and 835450
APPLICANT NAME: Independence High School
APPLICANT CONTACT: LeRoy Stafford
BILLED ENTITY NAME: Independence High School
BILLED ENTITY NUMBER: 227606
BILLED ENTITY AND APPLICANT CONTACT PHONE NO. (973) 589-0959
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@ICM CORPORATION.COM

Enclosure A: Copy of Administrator's Decision on Appeal – Funding Year 2002-2003
dated June 29, 2009

Enclosure B: Copies of Demand Payment Letter dated April 30, 2009 and Demand
Payment Letter – SECOND REQUEST dated June 1, 2009.

Enclosure C: Copy of the ICM appeal (without attachments) to the USAC dated June
22, 2009.

Enclosure D: Copy of Independence High School's request for SPIN change dated
August 18, 2003.

Since 1985

0
143026575

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Enclosure E: Copy of SDL Client Operations' e-mail dated September 3, 2003 approving the SPIN Change.

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

Gentlemen:

Please accept this letter and its enclosures as Independent Computer Maintenance, LLC's ("ICM") appeal of (1) the Universal Service Administrative Company (USAC), School and Libraries Division ("SLD") Administrator's Decision on Appeal – Funding Year 2002-2003 dated June 29, 2009 (hereinafter referred to as the "Decision"); and (2) the Administrator's Demand Payment Letter dated May 15, 2008 and Demand Payment Letter – SECOND REQUEST dated June 1, 2009 (hereinafter referred to jointly as the "DPL"). The Decision denied ICM's appeal of June 22, 2009 to the USAC of the DPLs on the basis that "The issue you raise on appeal is not an appealable event under current program rules."¹ The DPLs which ICM appealed attempted to notify ICM "of the exact amount of recovery being directed towards you" and to give ICM "an opportunity to appeal USAC's determination that recovery should be directed towards you." A copy of the Decision dated June 29, 2009 is annexed hereto as Enclosure A. A copy of that Demand Payment Letter dated May 15, 2008 and the Demand Payment Letter – SECOND REQUEST dated June 1, 2009 are annexed hereto as Enclosure B. A copy of the ICM appeal (without attachments) to the USAC dated June 22, 2009 is annexed as Enclosure C.

Attached to the DPL were copies of revised Funding Commitment Adjustment Reports ("FCARs") detailing the Funding Request Numbers which the USAC is demanding payment for under the DPL. The FRNs in the revised FCARs attached to the DPL were FRN 835419 and 835450 (hereinafter "FRNs"). ICM in addition to appealing the Decision's dismissal of ICM's appeal and the determination in the DPLs that the USAC will proceed to recover alleged wrongful payments from ICM: also appeals these newly revised FCARs 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, Independence High School ("IHS") filed the Form 470 and related technology plan with respect to the above referenced Application Number on or about December 19, 2001 and subsequent thereto the FRNs were issued. ICM did not become

¹ The USAC fails to cite any rules or other authority on which it is basing its decision and also fails to identify which of the four issues raised by ICM in its June 22, 2009 appeal it finds a "not appealable event".

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involved with the FRNs until August 18, 2003, when pursuant to SPIN change request of the Applicant, IHS, ICM was proposed as the new service provider replacing Diversified Computer Solutions, Inc. A copy of IHS's request for a SPIN change is annexed hereto as Enclosure D. A copy of an e-mail from the School and Library Division Client Operations to ICM dated September 3, 2003 granting the aforesaid requested SPIN change is annexed hereto as Enclosure E.

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

On March 16, 2004, the USAC issued a Commitment Adjustment Letter concerning the FRNs seeking to "rescind in full" the FRNs, since the USAC alleged that 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 FCARs attached to the DPL, except that in the revised FCARs, the USAC further elaborated on that reason by stating "During the course of review it was determined that the service provider Independent Computer Maintenance, LLC participated in the preparation of the Form 470 which established the competitive bidding process for FRN 835450 (and 835419) by drafting the content of the Form 470". On May 12, 2004, ICM filed an appeal to the USAC of the March 16, 2004 Commitment Adjustment Letter². A copy of the ICM appeal (without attachments) is annexed hereto as Enclosure F. USAC has never issued a decision on ICM's March 16, 2004 appeal.

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. 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 316756 which contained the FRNs was not listed in the Appendix, however in the FCARs the USAC indicates that it believes the reviews ordered by the FCC in that Order apply to the Application number and the FRNs at issue in this appeal. (See FCAR paragraph 3, which provides: "Pursuant to FCC Fourth Report and Order and additional review per FCC 06-55, this has now been deemed an applicant and service provider violation, please see reason below." If this FCC Order applied to the Application Number and FRNs in issue here, 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 316756 or the FRNs issued pursuant thereto, within the FCC ordered 120 day period.

On April 30, 2009 and June 1, 2009 the USAC issued the DPLs and attachments thereto which are the subject matter of this appeal. On June 22, 2009 ICM appealed the DPLs to the

² A supplement to that appeal was filed by ICM on November 23, 2004.

USAC. On June 29, 2009 the USAC issued its Administrator's Decision on Appeal – Funding Year 2002-2003.

ARGUMENTS

1. If there was any wrong doing or impropriety in the competitive bidding process with respect to the FRNs and Application 316756, 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, IHS, 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, IHS, at the time the Form 470 and technology plan were filed by IHS on or about December 19, 2001. ICM did not become involved with the FRNs until August 18, 2003, when pursuant to a SPIN change request of the Applicant, IHS, 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 18, 2003, well after the Application was filed (December 19, 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. 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 bidding 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 IHS 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.

Finally, with respect to the applicability of the *In re Federal-State* decision to other cases, the FCC stated that: “[t]his revised recovery approach shall apply on a going forward basis to all matters for which the USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency.” (Emphasis added) *Id.* at par.10.

Since the USAC in the DPL admits this matter is clearly within the forward application as delineated by the FCC in *In re Federal-State*, applying the mandates of this FCC directive to the case at hand, it is clear that ICM had absolutely nothing to do with the original application or competitive bidding process and, as such, it is merely a service provider that needs to uphold the provider’s obligations as delineated above by the FCC. It was IHS who was the Applicant and who obtained these grants and, therefore, was the entity that needed to comply with all the rules and regulations concerning the application and the competitive bid process and, as such, it is that school to whom the Schools and Library Division must look to to recover any funding, if any, that may have been granted in violation of any statute, regulation or rule. Based upon the *In re Federal-State* decision, there is no room for doubt that the FCC has directed that the USAC must proceed against culpable applicant, IHS (and any other culpable third parties, if any) and not the innocent service provider, ICM.

2. All Revised Funding Commitment Letters, Funding Commitment Adjustment Reports and Demand Payment Letters issued by USAC with respect to Form 471 Application Number 316756 and the FRNs subsequent to May 2, 2006 when the FCC in Proceeding FCC-06-05 adopted an Order under CC Docket No. 02-6 are invalid because the USAC failed to comply with the requirements of that Order.

As set forth in the Fact section above, the FCC on May 2, 2006 adopted in Proceeding FCC-06-05, (released May 19, 2006) an Order under CC Docket No. 02-6, 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). Although, Application 316756, which relates to the FRNs, was not listed in the Appendix, as delineated in the Fact section of this appeal, the USAC believes it to be applicable and basis its revised FCARs on an investigation pursuant thereto. That being the case, the FCARs are fatally flawed because more than 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 316754 within the FCC ordered 120 day period. At this late date the USAC is barred by the terms of the FCC order and estoppel from raising any alleged “improper” procurement issues concerning Application 316756 or the FRNs.

3. The DPLs are null and void because the USAC issued them without issuing a decision on ICM’s May 12, 2004 appeal concerning the original FCARs.

As detailed in the Fact Section of this appeal, ICM on May 12, 2004 filed an appeal to the USAC of the Commitment Adjustment Letter dated March 16, 2004 and the FCARs annexed to that Commitment Adjustment Letter. The SLD has never issued a decision on that appeal. Unless and until the USAC issues a decision on that appeal, the DPL and the demands set forth therein are at the least premature and at the worst totally invalid. On this basis alone the DPLs should be immediately rescinded and all actions taken with respect thereto should be reversed.

4. The DPL is unenforceable as a matter of law since the USAC’s procrastination and delays in prosecuting any alleged violations has taken it well past any applicable Statute of Limitations.

5. The Decision denying ICM’s June 22, 2009 appeal on the basis that the “appeal is not an appealable event under current program rules” must be set aside because it is unsupported by any law or applicable agency rule and is in direct contradiction to the SLD’s own instructions with respect to the appealability of the matters addressed in the DPL.

The Decision fails to cite any “current rule” that defines what is or what is not an “appealable event” and simply relies on its naked statement that the appeal is not addressing an “appealable event”.³

³ Such a attempted collection action by the USAC is an “appealable event” pursuant to 47 CFR 54.719.

Furthermore, in the DPL (the USAC's own document) which is being challenged by ICM's June 22, 2009 appeal, the Administrator states in part that the purpose of the DPL is to advise ICM "of the exact amount of recovery being directed towards you" and to give ICM "an opportunity to appeal USAC's determination that recovery should be directed towards you." Challenging the USAC's determination that it will proceed against ICM to recover allegedly improperly expended funds was the precisely the determination challenged by the ICM June 22, 2009 appeal to the USAC. How can the challenge of that determination by the USAC possibly not be an "appealable event"?

It is beyond any certainty that the Decision, unsupported by any agency rule and in direct contradiction to the SDL's own directions in the DPL with respect to any appeal is arbitrary and capricious and must be set aside and ICM's June 22, 2009 appeal to the USAC must be granted.

CONCLUSIONS AND DEMANDS FOR RELIEF

For the reasons set forth above, the FCC should grant this appeal and make a determination that:

1. In the event there was any improper actions with respect to Application 316756 and the associated FRNs, such actions were those of IHS and other third parties and it is those parties to which USAC should direct its recovery efforts and not against ICM which was and is an innocent service provider; and
2. All actions by the USAC to deny or reduce funding with respect to Application 316756 and the associated FRNs subsequent to May 2, 2006 when the FCC in Proceeding FCC-06-05 adopted an Order under CC Docket No. 02-6 are invalid because the USAC failed to comply with the requirements and provisions of that Order; and
3. The DPLs are unenforceable as a matter of law since they were issued while the prior appeal of ICM of the subject matter at issue was still pending and undecided; and
4. The DPL is unenforceable as a matter of law since the USAC's procrastination and delays in prosecuting any alleged violations has taken it well past any applicable Statute of Limitations.
5. The Decision should be set aside as being arbitrary and capricious and ICM's June 22, 2009 appeal to the USAC should be granted in whole.

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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, Suite 305, 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: Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Enclosure

A



Administrator's Decision on Appeal - Funding Year 2002-2003

June 29, 2009

Anthony Natoli
Independent Computer Maintenance LLC
1037 Route 46 East, Suite C-102
Clifton, NJ 07013

Re: Applicant Name: Independence High School
 Billed Entity Number: 227606
 Form 471 Application Number: 316756
 Funding Request Number(s): 835419, 835450
 Your Correspondence Dated: June 22, 2009

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2002 Demand Payment Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number(s): 835419, 835450

Decision on Appeal: **Dismissed**

Explanation:

- The issue you raise on appeal is not an appealable event under current program rules. Therefore the issue you raise on appeal is moot and requires no action by USAC at this time. Your appeal is therefore dismissed.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options

for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Enclosure B



Demand Payment Letter

(Funding Year 2002: July 1, 2002 - June 30, 2003)

April 30, 2009

Anthony Natoli
Independent Computer Maintenance, LLC
1037 Route 46 East
Clifton, NJ 07013

Re: SPIN: 143026575
Service Provider Name: Independent Computer Maintenance, LLC
Form 471 Application Number: 316756
Funding Year: 2002
FCC Registration Number:
Applicant Name: INDEPENDENCE HIGH SCHOOL
Billed Entity Number: 227606
Applicant Contact Person: LeROY STAFFORD
Payment Due By: 05/30/2009

You were previously sent a Commitment Adjustment Letter (CAL) informing you of the need to recover funds for the Funding Request Number(s) (FRNs) listed on the Funding Commitment Adjustment Report (Report) attached to the CAL. A revised copy of that Report is attached to this letter.

In the Order on Reconsideration and Fourth Report and Order (FCC 04-181, rel. July 30, 2004) (Fourth Report and Order), the FCC "conclude[d] that recovery actions should be directed to the party or parties that committed the rule or statutory violation in question." The FCC also directed the Universal Service Administrative Company (USAC) to determine to whom recovery should be directed in individual cases. In making such a determination USAC must "consider which party was in a better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation."

Pursuant to the Fourth Report and Order, the revised recovery approach applies to all FRNs for which USAC had not yet issued a first Demand Payment Letter as of September 17, 2004 (the effective date of the Order). The purpose of this letter is to:

- Notify you of the exact amount of recovery being directed towards you.
- Give you an opportunity to appeal USAC's determination that recovery should be directed towards you. Please note that the deadline for appealing the decision to adjust the commitment is determined by the date of the CAL and not this letter.
- Demand payment of the funds and give you instructions for repaying the funds.

The balance of this debt is due within 30 days from the date of this letter. Failure to pay the debt within 30 days from the date of this letter could result in interest, late payment fees, administrative charges, and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

If the Universal Service Administrative Company (USAC) has determined that both the applicant and the service provider are responsible for a Program rule violation, then, pursuant to the Fourth Report and Order, the USAC will seek recovery of the improperly disbursed amount from BOTH parties and will continue to seek recovery until either or both parties have fully paid the debt. If the USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this is indicated in the Disbursed Funds Recovery Explanation in the Report following this letter.

If USAC is attempting to collect all or part of the debt from both the applicant and the service provider, then you should work with the applicant to determine who will be repaying the debt to avoid duplicate payment. Please note, however, that the debt is the responsibility of both the applicant and service provider. Therefore, you are responsible for ensuring that the debt is paid in a timely manner.

Please remit payment for the full "Funds to be Recovered from Service Provider" amount shown in the attached Report. To ensure that your payment is properly credited, please include a copy of the Report with your check. Make your check payable to the Universal Service Administrative Company (USAC).

If sending payment by U. S. Postal Service or major courier service (e.g. Airborne, Federal Express, and UPS) please send check payments to:

Universal Service Administrative Company
1259 Paysphere Circle
Chicago, IL 60674
Phone: 877-994-7272

If you are located in the Chicago area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company
Lockbox 1259
540 West Madison 4th Floor
Chicago, IL 60661
Phone: 877-994-7272

Local messenger service should deliver to the Lockbox Receiving Window at the above address.

Payment is due within 30 days from the date of this letter.

Complete Program information is posted to the SLD section of the USAC website at www.usac.org/sl/. You may also contact the SLD Client Service Bureau by email using the "Submit a Question" link on the SLD website, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

Universal Service Administrative Company
Schools and Libraries Division

cc: LeROY STAFFORD
INDEPENDENCE HIGH SCHOOL

The balance of this debt is due within 30 days from the date of this letter. Failure to pay the debt within 30 days from the date of this letter could result in interest, late payment fees, administrative charges, and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

If the Universal Service Administrative Company (USAC) has determined that both the applicant and the service provider are responsible for a Program rule violation, then, pursuant to the Fourth Report and Order, the USAC will seek recovery of the improperly disbursed amount from BOTH parties and will continue to seek recovery until either or both parties have fully paid the debt. If the USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this is indicated in the Disbursed Funds Recovery Explanation in the Report following this letter.

If USAC is attempting to collect all or part of the debt from both the applicant and the service provider, then you should work with the applicant to determine who will be repaying the debt to avoid duplicate payment. Please note, however, that the debt is the responsibility of both the applicant and service provider. Therefore, you are responsible for ensuring that the debt is paid in a timely manner.

Please remit payment for the full "Funds to be Recovered from Service Provider" amount shown in the attached Report. To ensure that your payment is properly credited, please include a copy of the Report with your check. Make your check payable to the Universal Service Administrative Company (USAC).

If sending payment by U. S. Postal Service or major courier service (e.g. Airborne, Federal Express, and UPS) please send check payments to:

Universal Service Administrative Company
1259 Paysphere Circle
Chicago, IL 60674
Phone: 877-994-7272

If you are located in the Chicago area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company
Lockbox 1259
540 West Madison 4th Floor
Chicago, IL 60661
Phone: 877-994-7272

Local messenger service should deliver to the Lockbox Receiving Window at the above address.

Payment is due within 30 days from the date of this letter.

Complete Program information is posted to the SLD section of the USAC website at www.usac.org/sld/. You may also contact the SLD Client Service Bureau by email using the "Submit a Question" link on the SLD website, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

Universal Service Administrative Company
Schools and Libraries Division

cc: *LeROY STAFFORD*
INDEPENDENCE HIGH SCHOOL

Funding Commitment Adjustment Report
Form 471 Application Number: 316756

Funding Request Number: 835419
Contract Number: 10770
Services Ordered: INTERNAL CONNECTIONS
Billing Account Number:
Original Funding Commitment: \$34,344.00
Commitment Adjustment Amount: \$34,344.00
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$34,344.00
Funds to be Recovered from Service Provider: \$34,344.00

Funding Commitment Adjustment Explanation:

On 3/16/2004 a letter was sent to the applicant, Independence High School, and the service provider, Independent Computer Maintenance, LLC, advising them of a commitment adjustment and a recovery of funds for this Funding Request Number. Please see the following paragraph for the violation and original decision:

"After a thorough review, it has been determined that this funding request must be rescinded in full. SLD found similarities in Forms 470 and technology plans among applicants associated with this vendor. This indicates that the vendor was improperly involved in the competitive bidding process. As a result the commitment amount is rescinded in full."

Pursuant to FCC Fourth Report and Order and additional review per FCC 06-55, this has now been deemed an applicant and service provider violation, please see reason below:

"After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review it was determined that the service provider, Independent Computer Maintenance, LLC, participated in the preparation of the Form 470 which established the competitive bidding process for FRN 835419 by drafting the content of the Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. Accordingly, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. By having the service provider engaged in the preparation and submission of its Form 470, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any funds disbursed in violation of the program's competitive bidding rules. 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."

PLEASE SEND A COPY OF THIS PAGE WITH YOUR
CHECK TO ENSURE TIMELY PROCESSING

Funding Request Number: 835450
Contract Number: 10772
Services Ordered: INTERNAL CONNECTIONS
Billing Account Number:
Original Funding Commitment: \$160,090.74
Commitment Adjustment Amount: \$160,090.74
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$160,090.74
Funds to be Recovered from Service Provider: \$160,090.74

Funding Commitment Adjustment Explanation:

On 3/16/2004 a letter was sent to the applicant, Independence High School, and the service provider, Independent Computer Maintenance, LLC, advising them of a commitment adjustment and a recovery of funds for this Funding Request Number. Please see the following paragraph for the violation and original decision:

"After a thorough review, it has been determined that this funding request must be rescinded in full. SLD found similarities in Forms 470 and technology plans among applicants associated with this vendor. This indicates that the vendor was improperly involved in the competitive bidding process. As a result the commitment amount is rescinded in full."

Pursuant to FCC Fourth Report and Order and additional review per FCC 06-55, this has now been deemed an applicant and service provider violation, please see reason below:

"After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review it was determined that the service provider Independent Computer Maintenance, LLC participated in the preparation of the Form 470 which established the competitive bidding process for FRN 835450 by drafting the content of the Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. Accordingly, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. By having the service provider engaged in the preparation and submission of its Form 470, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any funds disbursed in violation of the program's competitive bidding rules. 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."

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**Demand Payment Letter
SECOND REQUEST**

(Funding Year 2002: July 1, 2002 - June 30, 2003)

June 1, 2009

**Anthony Natoli
Independent Computer Maintenance, LLC
1037 Route 46 East
Clifton, NJ 07013**

**- PAST DUE NOTICE -
THIS NOTICE PROVIDES IMPORTANT INFORMATION ABOUT YOUR
ACCOUNT AND YOUR RIGHTS AND OBLIGATIONS UNDER LAW**

Re: SPIN:	143026575
Form 471 Application Number:	316756
Funding Year:	2002
FCC Registration Number:	
Applicant Name:	INDEPENDENCE HIGH SCHOOL
Billed Entity Number:	227606
Applicant Contact Person:	LeROY STAFFORD
Payment Due By:	6/1/2009

You were recently sent a Demand Payment Letter informing you of the need to recover funds for the Funding Request Number(s) (FRNs) listed on the Funding Commitment Adjustment Report (Report) attached to this letter. Our records indicate that you have not responded to the Demand Payment Letter.

As of 06/01/2009, the debt is past due and delinquent.

THE FOLLOWING PROVISIONS CONTAIN IMPORTANT INFORMATION AND A DESCRIPTION OF LEGAL RIGHTS, OBLIGATIONS, AND OPPORTUNITIES

1. Debtor is cautioned that failure to make the demanded payment or make other satisfactory arrangements will result in further sanctions, including, but not limited to, the initiation of proceedings to recover the outstanding debt, together with any applicable administrative charges, penalties, and interest pursuant to the provisions of the Debt Collection Act of 1982 (Public Law 97-360) and the Debt Collection Improvement Act of 1996 (Public Law 104-134), as amended (the DCIA), as set forth below.

2. If we do not receive full payment of the outstanding debt within 30 days of the date of this letter (Demand Date), pursuant to the DCIA, you may incur additional charges and costs, and the debt may be transferred to the Federal Communications Commission (Commission or FCC) and/or the United States Department of Treasury (Treasury) for debt collection. The FCC has determined that the funds are owed to the United States pursuant to the provisions of 31 U.S.C. § 3701 and 47 U.S.C. § 254. Because the unpaid amount is a debt owed to the United States, we are required by the DCIA to impose interest and to inform you what may happen

if you do not pay the full outstanding debt. Under the DCIA, the United States will charge interest from the date of this notice, you will be required to pay the administrative costs of processing and handling a delinquent debt as set by the Treasury (currently 18% of the debt), and you will be charged an additional penalty of 6% a year for any part of the debt that is more than 90 days past due. Interest on the outstanding debt (DCIA Interest) will be assessed at the published investment rate for the Treasury tax and loan accounts (Treasury Current Value of Funds Rate). If, however, you pay the full amount of the outstanding debt within 30 days of the Demand Date, the DCIA Interest will be waived. These requirements are set out at 31 U.S.C. § 3717.

3. When we transfer the debt (to the Commission or later to the Treasury), you may be subject to other administrative proceedings. Your failure to pay the debt may be reported to credit bureaus (see 31 U.S.C. § 3711(e)), the debt will be considered for administrative offset (see 31 U.S.C. § 3716), the debt may be further transferred to collection agencies (see 31 U.S.C. §§ 3711 & 3718), and also the debt may be referred to the United States Department of Justice or agency counsel for litigation. In that situation, you may be subject to additional administrative costs that result from the litigation. Moreover, pursuant to 31 U.S.C. §3720 (B), a person owing an outstanding non-tax debt that is in delinquent status shall not be eligible for Federal financial assistance. You should be aware that the discharge of any portion of the debt may be reported to the Internal Revenue Service as potential taxable income.

Opportunity of Inspection and Review

4. You have an opportunity to inspect and copy the invoices and the records pertinent to the debt. The Notification of Commitment Adjustment Letter constituted notice of your opportunity to appeal the validity of the debt.

Opportunity to Request Repayment Agreement

5. You have an opportunity to request a written repayment agreement (which includes a Promissory Note) to pay the full amount of the debt. In that case, however, you must first provide evidence that demonstrates financial inability to pay the debt in one payment. Your claim of financial inability to pay in one payment is subject to verification (see 31 C.F.R. § 901.8). If your request is approved for further processing, you will be required to execute a written agreement suitable to the Commission. You should be aware that repayment agreements regularly impose a number of obligations on the debtor, including additional administrative charges, audit obligations, and surety bond requirements. For more information on the obligations associated with repayment agreements, see "USAC Repayment Request Procedure"

<http://www.usac.org/fund-administration/contributors/paying-your-invoice/payment-extension-plans.aspx>.

If you desire to exercise any of the above described rights, you must do so in writing which must be delivered to and received at the address below within 30 (thirty) days of the Demand Date. Any required evidence must be submitted at the same time that you submit your request. Failure to provide the written request (and, as appropriate, the required evidence) within the stated time is a waiver of these opportunities.

You may notify us in writing by mail or facsimile transmission at the following address and telephone number:

Schools and Libraries Division - Program Compliance II,
Dept. 125 - Correspondence Unit,
100 South Jefferson Road,
Whippany, NJ 07981
Phone Number: 973-581-5395
Fax Number: 973-599-6582

If USAC has determined that both the applicant and the service provider are responsible for a program rule violation, then, pursuant to the Order on Reconsideration and Fourth Report and Order (FCC 04-181) (Fourth Report and Order), USAC will seek recovery of the improperly disbursed amount from BOTH parties and will continue to seek recovery until either or both parties have fully paid the debt. If USAC has determined that both the applicant and the service provider are responsible for a program rule violation, this will be indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report.

If USAC is attempting to collect all or part of the debt from both the applicant and the service provider, then you should work with the applicant to determine who will be repaying the debt to avoid duplicate payment. Please note, however, that the debt is the responsibility of both the applicant and service provider. Therefore, you are responsible for ensuring that the debt is paid in a timely manner.

Please remit payment for the full Funds to be Recovered from Service Provider amount shown in the Report. To ensure that your payment is properly credited, please include a copy of the Report with your check. Make your check payable to the Universal Service Administrative Company (USAC).

If sending payment by U. S. Postal Service or major courier service (e.g. Airborne, Federal Express, and UPS) please send check payments to:

Universal Service Administrative Company
1259 Paysphere Circle
Chicago, IL 60674
Phone: 1-877-994-7272

If you are located in the Chicago area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company
Lockbox 1259
540 West Madison 4th Floor
Chicago, IL 60661
Phone: 1-877-994-7272

Local messenger service should deliver to the Lockbox Receiving Window at the above address.

PAYMENT MUST BE RETURNED IMMEDIATELY.

Complete program information is posted to the SLD section of the USAC web site at www.usac.org/sl/. You may also contact the SLD Technical Client Service Bureau by e-mail using the "Submit a Question" link on the SLD web site, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

Universal Service Administrative Company
Schools and Libraries Division

cc: LeROY STAFFORD
INDEPENDENCE HIGH SCHOOL

Funding Commitment Adjustment Report
for Form 471 Application Number: 316756

Funding Request Number:	835419
Contract Number:	10770
Services Ordered:	INTERNAL CONNECTIONS
Billing Account Number:	
Original Funding Commitment:	\$34,344.00
Commitment Adjustment Amount:	\$34,344.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$34,344.00
Funds to be Recovered from Service Provider: ¹	\$34,344.00

Funding Commitment Adjustment Explanation:

On 3/16/2004 a letter was sent to the applicant, Independence High School, and the service provider, Independent Computer Maintenance, LLC, advising them of a commitment adjustment and a recovery of funds for this Funding Request Number. Please see the following paragraph for the violation and original decision:

"After a thorough review, it has been determined that this funding request must be rescinded in full. SLD found similarities in Forms 470 and technology plans among applicants associated with this vendor. This indicates that the vendor was improperly involved in the competitive bidding process. As a result the commitment amount is rescinded in full."

Pursuant to FCC Fourth Report and Order and additional review per FCC 06-55, this has now been deemed an applicant and service provider violation, please see reason below:

"After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review it was determined that the service provider, Independent Computer Maintenance, LLC, participated in the preparation of the Form 470 which established the competitive bidding process for FRN 835419 by drafting the content of the Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. Accordingly, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. By having the service provider engaged in the preparation and submission of its Form 470, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any funds disbursed in violation of the program's competitive bidding rules. 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."

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¹ Please note that if the Funds to be Recovered from the Service Provider is less than what was reported on the Notification of Commitment Adjustment Letter or the 1st Demand Payment Letter, it's because you have partially repaid the debt or because the applicant has partially repaid the debt.

Funding Request Number: 835450
Contract Number: 10772
Services Ordered: INTERNAL CONNECTIONS
Billing Account Number:
Original Funding Commitment: \$160,090.74
Commitment Adjustment Amount: \$160,090.74
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$160,090.74
Funds to be Recovered from Service Provider:¹ \$160,090.74

Funding Commitment Adjustment Explanation:

On 3/16/2004 a letter was sent to the applicant, Independence High School, and the service provider, Independent Computer Maintenance, LLC, advising them of a commitment adjustment and a recovery of funds for this Funding Request Number. Please see the following paragraph for the violation and original decision:

"After a thorough review, it has been determined that this funding request must be rescinded in full. SLD found similarities in Forms 470 and technology plans among applicants associated with this vendor. This indicates that the vendor was improperly involved in the competitive bidding process. As a result the commitment amount is rescinded in full."

Pursuant to FCC Fourth Report and Order and additional review per FCC 06-55, this has now been deemed an applicant and service provider violation, please see reason below:

"After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review it was determined that the service provider Independent Computer Maintenance, LLC participated in the preparation of the Form 470 which established the competitive bidding process for FRN 835450 by drafting the content of the Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. Accordingly, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. By having the service provider engaged in the preparation and submission of its Form 470, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any funds disbursed in violation of the program's competitive bidding rules. 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."

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¹ Please note that if the Funds to be Recovered from the Service Provider is less than what was reported on the Notification of Commitment Adjustment Letter or the 1st Demand Payment Letter, it's because you have partially repaid the debt or because the applicant has partially repaid the debt.

Enclosure C



INDEPENDENT COMPUTER MAINTENANCE LLC

SALES • COMMUNICATIONS • CONSULTING • VOICE & DATA SOLUTIONS

www.icmcorporation.com

By Facsimile (973) 599-6542 and First Class and Overnight Mail

June 22, 2009

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 April 30, 2009 and
SECOND REQUEST dated June 1, 2009
DOCKET NO. 02-6 AND CC DOCKET NO. 96-45
FUNDING YEAR: 2002: July 1, 2002 – June 30, 2003
SPIN: 143026575
FORM 471 APPLICATION NUMBER: 316756
FUNDING REQUEST NUMBERS: 835419 and 835450
APPLICANT NAME: Independence High School
APPLICANT CONTACT: LeRoy Stafford
BILLED ENTITY NAME: Independence High School
BILLED ENTITY NUMBER: 227606
BILLED ENTITY AND APPLICANT CONTACT PHONE NO. (973) 589-0959
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: Copies of Demand Payment Letter dated April 30, 2009 and Demand Payment Letter – SECOND REQUEST dated June 1, 2009.

Enclosure B: Copy of Independence High School's request for SPIN change dated August 18, 2003.

Enclosure C: Copy of SDL Client Operations' e-mail dated September 3, 2003 approving the SPIN Change.

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

Since 1985

Letter of Appeal
The Universal Service Administrative Company
Schools and Libraries Division
June 22, 2009
Page 2 of 7

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 and Demand Payment Letter – SECOND REQUEST dated June 1, 2009 (hereinafter referred to jointly as the "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 and the Demand Payment Letter – SECOND REQUEST dated June 1, 2009 are annexed hereto as Enclosure A.

Attached to the DPL were revised copies of revised Funding Commitment Adjustment Reports ("FCARs") detailing the Funding Request Numbers which the USAC is demanding payment for under the DPL. The FRNs in the revised FCARs attached to the DPL were FRN 835419 and 835450 (hereinafter "FRNs"). ICM also appeals these newly revised FCARs 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, Independence High School ("IHS") filed the Form 470 and related technology plan with respect to the above referenced Application Number on or about December 19, 2001 and subsequent thereto the FRNs were issued. ICM did not become involved with the FRNs until August 18, 2003, when pursuant to SPIN change request of the Applicant, IHS, ICM was proposed as the new service provider replacing Diversified Computer Solutions, Inc. A copy of IHS's request for a SPIN change is annexed hereto as Enclosure B. A copy of an e-mail from the School and Library Division Client Operations to ICM dated September 3, 2003 granting the aforesaid requested SPIN change is annexed hereto as Enclosure C.

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

On March 16, 2004, the USAC issued a Commitment Adjustment Letter concerning the FRNs seeking to "rescind in full" the FRNs, 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 FCARs attached to the DPL, except that in the revised FCARs, the USAC further elaborated on that reason by stating "During the course of review it was determined that the service provider Independent Computer Maintenance, LLC participated in the preparation of the Form 470 which established the competitive bidding process for FRN

835450 (835419) by drafting the content of the Form 470". On May 12, 2004, ICM filed an appeal to the SDL of the March 16, 2004 Commitment Adjustment Letter¹. A copy of the ICM appeal (without attachments) is annexed hereto as Enclosure D. SDL has never issued a decision on ICM's March 16, 2004 appeal.

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. 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 316756 which contained the FRNs was not listed in the Appendix, however in the FCARs the USAC indicates that it believes the reviews ordered by the FCC in that Order apply to the Application number and the FRNs at issue in this appeal. (See FCAR paragraph 3, which provides: "Pursuant to FCC Fourth Report and Order and additional review per FCC 06-55, this has now been deemed an applicant and service provider violation, please see reason below:" If this FCC Order applied to the application number and FRNs in issue here, 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 316756 or the FRNs issued pursuant thereto, within the FCC ordered 120 day period.

On April 30, 2009 and June 1, 2009 the USAC issued the DPLs and attachments thereto which are the subject matter of this appeal.

ARGUMENTS

1. If there was any wrong doing or impropriety in the competitive bidding process with respect to the FRNs and Application 316756, 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, IHS, 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, IHS, at the time the Form 470 and technology plan were filed by IHS on or about December 19, 2001. ICM did not become involved with the FRNs until August 18, 2003, when pursuant to a SPIN change request of the Applicant, IHS, 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 18, 2003, well after the Application was filed (December 19, 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

¹ A supplement to that appeal was filed by ICM on November 23, 2004.

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The Universal Service Administrative Company
Schools and Libraries Division
June 22, 2009
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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. 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 bidding 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 IHS 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.

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Finally, with respect to the applicability of the *In re Federal-State* decision to other cases, the FCC stated that: “[t]his revised recovery approach shall apply on a going forward basis to all matters for which the USAC has not yet issued a demand letter as of the effective date of this order, and to all recovery actions currently under appeal to either USAC or this agency.” (Emphasis added) *Id.* at par.10.

Since the USAC in the DPL admits this matter is clearly within the forward application as delineated by the FCC in *In re Federal-State*, applying the mandates of this FCC directive to the case at hand, it is clear that ICM had absolutely nothing to do with the original application or competitive bidding process and, as such, it is merely a service provider that needs to uphold the provider’s obligations as delineated above by the FCC. It was IHS who was the Applicant and who obtained these grants and, therefore, was the entity that needed to comply with all the rules and regulations concerning the application and the competitive bid process and, as such, it is that school to whom the Schools and Library Division must look to to recover any funding, if any, that may have been granted in violation of any statute, regulation or rule. Based upon the *In re Federal-State* decision, there is no room for doubt that the FCC has directed that the USAC must proceed against culpable applicant, IHS (and any other culpable third parties, if any) and not the innocent service provider, ICM.

2. All Revised Funding Commitment Letters, Funding Commitment Adjustment Reports and Demand Payment Letters issued by USAC with respect to Form 471 Application Number 316756 and the FRNs subsequent to May 2, 2006 when the FCC in Proceeding FCC-06-05 adopted an Order under CC Docket No. 02-6 are invalid because the USAC failed to comply with the requirements of that Order.

As set forth in the Fact section above, the FCC on May 2, 2006 adopted in Proceeding FCC-06-05, (released May 19, 2006) an Order under CC Docket No. 02-6, 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). Although, Application 316756, which relates to the FRNs, was not listed in the Appendix, as delineated in the Fact section of this appeal, the USAC believes it to be applicable and basis its revised FCARs on an investigation pursuant thereto. That being the case, the FCARs are fatally flawed because more than 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 316754 within the FCC ordered 120 day period. At this late date the USAC is barred by the terms of the FCC order and estoppel from raising any alleged “improper” procurement issues concerning Application 316756 or the FRNs.

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3. The DPLs are null and void because the USAC issued them without issuing a decision on ICM's May 12, 2004 appeal concerning the original FCARs.

As detailed in the Fact Section of this appeal, ICM on May 12, 2004 filed an appeal to the SLD of USAC's Commitment Adjustment Letter dated March 16, 2004 and the FCARs annexed to that Commitment Adjustment Letter. The SLD has never issued a decision on that appeal. Unless and until the USAC issues a decision on that appeal, the DPL and the demands set forth therein are at the least premature and at the worst totally invalid. On this basis alone the DPLs should be immediately rescinded and all actions taken with respect thereto should be reversed.

4. The DPL is unenforceable as a matter of law since the USAC's procrastination and delays in prosecuting any alleged violations has taken it well past any applicable Statute of Limitations.

CONCLUSIONS

For the reasons set forth above, the SLD should grant this appeal and make a determination that:

1. In the event there was any improper actions with respect to Application 316756 and the associated FRNs, such actions were those of IHS and other third parties and it is those parties to which USAC should direct its recovery efforts and not against ICM which was and is an innocent service provider; and
2. All actions by the USAC to deny or reduce funding with respect to Application 316756 and the associated FRNs subsequent to May 2, 2006 when the FCC in Proceeding FCC-06-05 adopted an Order under CC Docket No. 02-6 are invalid because the USAC failed to comply with the requirements and provisions of that Order; and
3. The DPLs are unenforceable as a matter of law since they were issued while the prior appeal of ICM of the subject matter at issue was still pending and undecided; and
4. The DPL is unenforceable as a matter of law since the USAC's procrastination and delays in prosecuting any alleged violations has taken it well past any applicable Statute of Limitations.

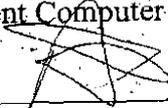
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Schools and Libraries Division
June 22, 2009
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If you have any further questions concerning this matter, please contact the undersigned or our Counsel, Gary Marcus of the law firm, Gary Marcus, Attorney 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

Enclosure D



Independence: A Family of Services, Inc.

"Providing a pathway where there was none."

August 18, 2003

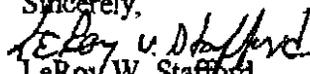
We are requesting an operational SPIN change for the following:

Billed entity number: 227606
 Applicant name: INDEPENDENCE HIGH SCHOOL
 Funding request numbers: 835419835450
 Form 471 application number: 316756
 Applicant contact: LeRoy W. Stafford
 Applicant Phone: (973) 589-0959
 Applicant E-mail address: N/A
 Original SPIN: 143024755
 Original service provider: Diversified Computer Solutions, Inc.
 Original service provider contact: Benty Gill
 Original service provider phone: (973) 598-0424
 Original service provider E-mail address: bgill@dcssupport.com
 New SPIN: 143026575
 New service provider: Independent Computer Maintenance LLC
 New service provider contact: Anthony Natoli
 New service provider phone: (973) 916-1800
 New service provider E-mail address: tonyn@icmcorporation.com
 Proposed effective date of the SPIN change: July 1, 2002

I certify that (1) all SPIN changes requested in this letter are allowed under all applicable state and local procurement rules, (2) the SPIN changes are allowable under the terms of the contract, if any, between the applicant and its original service provider, and (3) the applicant has notified its original service provider of its intent to change service providers.

Thank you for your attention to this matter.

Sincerely,


 LeRoy W. Stafford
 Chief Financial Officer

Administrative Office:
 179 Van Buren St.
 Newark, NJ 07105
 phone: 973-589-0959, fax: 973-589-1519
 email: ifs71@aol.com

Timothy L. Carden, Chairperson
 Guy McCombs, Vice Chairperson
 Dudley Benoit, Treasurer
 Mildred Crump, Secretary
 Margaret L. Woods, President/CEO
 Sandra Bograd, Member
 Steven Brisgel, Member

Enclosure

E

INDEPENDENCE HIGH SCHOOL
15 SMALLEY TERRACE
IRVINGTON, NJ 07111

Attention: LeROY STAFFORD Phone: (973) 589-0959

Re: Universal Service Administrator's Confirmation of SPIN Change/Correction

The request to change / correct the Service Provider has been granted.

Form 471 Application Number: 316756

The new Service Provider will receive a Funding Commitment Decision Letter (FCDL).
PLEASE NOTE: While this FC DL will contain more detailed information on the FRNs listed below, it will show the ORIGINAL COMMITMENT amount, rather than the amount that remains undisbursed for this FRN.

THIS E-MAIL IS FOR ADVISORY PURPOSES ONLY. REPLIES WILL NOT BE RECEIVED. IF YOU HAVE QUESTIONS REGARDING THE SUBJECT OF THIS ADVISORY E-MAIL, PLEASE CALL OUR CLIENT SERVICE BUREAU AT 1-888-203-8100.

Funding Request No. (FRN):	835419
Original Service Provider:	Diversified Computer Solutions, Inc
Original SPIN:	143024755
New Service Provider:	Independent Computer Maintenance, LLC
New SPIN:	143026575
Original Commitment Amount:	\$34,344.00
Disbursement Amount:	\$0.00
CAP Remaining:	\$34,344.00
Date of Change:	08/25/2003
A Form 486 has been filed for this FRN:	Yes
This FRN includes Non-Recurring Services:	Yes

09/03/2003 13:35 9733723401
Sep-08-2003 02:25pm From-

INDEPENDENCE

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Funding Request No. (FRN):	835450	
Original Service Provider:	Diversified Computer Solutions, Inc	
Original SPIN:	143024755	
New Service Provider:	Independent Computer Maintenance, LLC	
New SPIN:	143026575	
Original Commitment Amount:	\$160,090.74	
Disbursement Amount:	\$0.00	
CAP Remaining:	\$160,090.74	
Date of Change:	08/25/2003	
A Form 486 has been filed for this FRN:		Yes
This FRN includes Non-Recurring Services:		Yes

Enclosure

F



INDEPENDENT COMPUTER MAINTENANCE LLC
Sales • Communications • Consulting

1037 Route 46 East
Suite C-102
Clifton, NJ 07013
(973) 916-1800

ICM@ICMCORPORATION.COM
www.icmcorporation.com

May 12, 2004

Letter of Appeal
The Universal Service Administrative Company
Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany NJ 07981

Re: **APPEAL OF COMMITMENT ADJUSTMENT**
FUNDING YEAR: 2002 Through 2003
FORM 471 APPLICATION NUMBER: 316756
APPLICANT NAME: Independence High School
APPLICANT CONTACT: LeRoy Stafford
BILLED ENTITY NAME: Independence High School
BILLED ENTITY NUMBER: 227606
BILLED ENTITY AND APPLICANT CONTACT
PHONE NO. (973) 589-0959
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 Commitment Adjustment Letter from
Universal Service Administrative Company
dated March 16, 2004.**

**Enclosure B: Copy of SPIN Change Request of Independence
High School dated August 18, 2003**

**Enclosure C: Copy of SLD Client Operations' e-mail dated
September 2, 2003 approving the SPIN change.
Technology Plan.**

Gentlemen:

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The Universal Service Administrative Company
Schools and Libraries Division
May 12, 2004
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NOTICE OF APPEAL

Please accept this letter and its enclosures as Independent Computer Maintenance, LLC's ("ICM") appeal of your Commitment Adjustment Letter dated March 16, 2004 rescinding in full the Funding Request Numbers ("FRNs") set forth below. A copy of that Commitment Adjustment Letter and its attachments are annexed hereto as Enclosure A.

FACTS

The March 16, 2004 Commitment Adjustment Letter concerning the above-referenced Form Application Number advised ICM that "the commitment amount" for the following FRNs are "rescinded in full" and request the recovery of the funds to the extent indicated below:

<u>Funding Request Number</u>	<u>Requested Recovery</u>
835419	\$ 34,344.00
835450	\$160,090.74

The identical reason given for the rescission of all of the above-mentioned FRNs was as follows:

"After a thorough review, it has been determined that this funding request must be rescinded in full. SLD found similarities in Forms 470 and technology plans among the applicants associated with this vendor. This indicates that the vendor was improperly involved in the competitive bidding process. As a result the commitment amount is rescinded in full."

ARGUMENT

These determinations by the Universal Services Administrative Company ("USAC") were founded upon assumptions which had no basis in fact and were made in the absence of sufficient information. In particular these determinations were wrong for the following two reasons:

1. ICM had no contact with the applicant, Independence High School, at the time the Form 470 was filed by Independence High School on or about December 19, 2001. ICM did not become involved with the above-mentioned FRNs until August 18, 2003, when, pursuant to a SPIN change request of Independence High School, ICM was proposed as the new service provider replacing Diversified Computer Solutions, Inc. A copy of Independence High School's request for a SPIN change is annexed hereto as Enclosure B along with a copy of an e-mail from

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SLD Client Operations to ICM dated September 3, 2003 granting the aforesaid requested SPIN change which is annexed hereto as Enclosure C.

2. Notwithstanding the fact that ICM had no input into either the Form 470 or technology plan preparation, ICM has obtained from the USAC website or has requested and received from Independence High School, a copy of the Form 470 that is at issue on this appeal. Independence High School has advised ICM that it has never filed a technology plan. In addition, ICM has requested and received other Forms 470 and technical plans associated with other Form 471 Application Numbers being questioned by other Commitment Adjustment Letters. ICM has compared the Form 470 at issue in this appeal with other Form 470 which are the subject matter of other Commitment Adjustment Letters received by ICM. A review of these Forms 470 indicates that the Form 470 is a standard form with a few spaces to be completed by the applicant. The form itself is obviously identical to all other Forms 470 and a detailed analysis of the applicant completed sections of the Form 470 at issue in this appeal verses the Forms 470 at issue in the other Commitment Adjustment Letters indicates that the Forms, while being similar, are certainly not identical in all respects. Furthermore, in all likelihood comparing these Forms 470 to any other Forms 470 would yield similar results.

With respect to the technology plans, as stated previously, ICM was advised by Independence High School that it never filed a technology plan, therefore it is difficult to understand how Independence's technology plan could be similar in any other Technology Plan and how that could be a basis to rescind the FRNs.

CONCLUSION

It was inappropriate and wrong for USAC to arrive at determinations that ICM was improperly involved in the competitive bid process. These determinations were based upon assumptions that have no basis in fact. While the Forms 470 among some of the applicants associated with ICM may have been similar, there are obvious other reasons for the similarity. Additionally, since Independence High School never submitted a Technology Plan, a finding that it was similar is absurd and totally meaningless. However, and most important, it needs to be stressed that ICM has nothing to do with the preparation of either the 470 or the technology plan associated with the above-referenced Form 471 Application Number and the aforesaid FRNs and was not involved with the Form 470, the technology plan or the FRNs referenced in the Commitment Adjustment Letter until the SPIN change which was effective August 25, 2003, more than 20 months after Independence filed the Form 470 and the technology plan for the 2002 through 2003 Funding Year.

For the reasons set forth above, ICM hereby requests that the finding as contained in Universal Service Administrative Company's letter of March 16, 2004 be reversed and that all commitment amounts be reinstated in full.

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Finally, it should be noted that most of the efforts ICM has expended under the aforesaid FRNs were labor hours, internet and telephone charges, cabling and other non-recoverable items, therefore, the rescision of the FRNs would be a disastrous and an unusually severe hardship on this small business.

If you have any further questions concerning this matter, please contact the undersigned at the address and telephone number indicated above, or our attorney, Gary Marcus, of the law firm of Goldberg & Connolly, 66 North Village Avenue, Rockville Centre, NY 11570, telephone No. 516-764-2800, fax No. 516-764-2827, e-mail gmarcus@goldbergconnolly.com.

Very truly yours,

INDEPENDENT COMPUTER MAINTENANCE, LLC

By: _____
Anthony Natoli, President