

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

In the Matter of)

**Request for Review of Decision of the
Universal Service Administrator**)

St. Dominic School)

CC Docket No. 02-6

File No. SLD410150 (FY 2004)

To: Chief, Wireline Competition Bureau

SUPPLEMENT TO REQUEST FOR REVIEW

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Dated: October 27, 2009

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SUMMARY

St. Dominic School (“School”) supplements its timely-filed request for review of a decision by the Schools and Libraries Division of the Universal Service Administrative Company (collectively, “USAC”) seeking recovery of Schools and Libraries Support Mechanism (“E-Rate Program” or “Program”) funds awarded to the School for Funding Year (“FY”) 2004. USAC’s recovery is grounded primarily in the assertion that the School violated competitive bidding rules by abrogating control over the competitive bidding process to a service provider, Kwah, Inc. (“Kwah”).

USAC has provided no documentation or evidence to substantiate the fundamental basis for its action – the claim that Kwah played a role in determining the services for which E-Rate Program support was to be sought by the School (i.e., dictated the content of the FCC Form 470). The only documentation referred to by USAC is evidence it says that it has from prior years that Kwah may have done so on other applications. USAC cannot use bare references to what might have occurred in prior years as a basis for concluding that there was a violation by the School in connection with its FY 2004 application.

The School unequivocally maintains that it made the decisions, without influence or participation by Kwah, about the services to be acquired. The vendor-neutral descriptions contained on the relevant FCC Form 470 for FY 2004 did not provide any competitive advantage to Kwah or for that matter any other bidder in the process. Therefore, there was no violation of the competitive bidding rules and the basis for the request for return of funds now, more than 5 years after the Form 470 was posted, is incorrect. The fact that Kwah provided the School what was essentially clerical assistance does not warrant a contrary conclusion.

Moreover, the School acted in good faith and there is no assertion that there has been any fraud or misuse of Program funds. To require the return of funds now, so many years later, by a small private Catholic school would impose an undue, unfair and unsustainable hardship.

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To: Chief, Wireline Competition Bureau

SUPPLEMENT TO REQUEST FOR REVIEW

St. Dominic School (the “School” or “St. Dominic”), acting through counsel and pursuant to and in accordance with Sections 54.719-54.721 of the Federal Communication Commission’s (“FCC” or “Commission”) rules, hereby supplements its previously-filed Request For Review.¹ Therein, the School sought review of USAC’s ruling on appeal affirming its previous decision to recover certain Schools and Libraries Support Mechanism (“E-Rate Program” or “Program”) funding provided to the School for FY 2004.

USAC claims the recovery is justified because the School did not conduct a fair and open competitive bidding process and improperly surrendered control of that process to the ultimately successful service provider for Internet access, Kwah, Inc. (“Kwah”) because Kwah determined

¹ On May 27, 2009, the School filed a Request for Review with the Commission seeking review of the April 28, 2009 denial by Schools and Libraries Division of the Universal Service Administrative Company (collectively, “USAC”) of an appeal the School filed with USAC for Funding Year (“FY”) 2004 (the “Request”). FCC Administrative Record (“FCCAR”) at FCCAR0001-0002. The School respectfully requests that the Commission associate this Supplement To Request For Review (hereinafter “Supplement”) with that Request.

the contents of the relevant FCC Form 470.² The School respectfully submits that USAC's conclusion is factually in error and not legally supportable. Therefore, the School's Request must be granted and USAC's efforts to recover the FY 2004 Program funds terminated.

I. STATEMENT OF THE SCHOOL'S INTEREST IN THE REQUEST

The School has standing to file its appeal because Section 54.719(c) of the Commission's rules provides that "[a]ny person aggrieved by an action taken by a division of the Administrator ... may seek review from the Federal Communications Commission."³ In this case, the School is directly aggrieved by USAC's Denial Letter and its continued effort to recover previously-approved Program funds expended in accordance with that approval.

II. KEY BACKGROUND FACTS

A. The School

St. Dominic is a private, coed, Catholic elementary school located the Bronx, New York, one of a number of such schools in the Archdiocese of New York that participate in the E-Rate Program. The School serves over 400 students in grades PK-8.

B. FCC Form 470

On December 22, 2003, USAC posted the School's FCC Form 470, Application No. 377220000487934, indicating the School's intent to seek E-Rate Program support for telecommunications, Internet access, and internal connections services.⁴ The School did not post a separate RFP for any of the services.

Specifically, on its FCC Form 470, the School sought the following services:

² FCCAR0003-0004. (USAC Letter dated April 28, 2009, denying the School's appeal of USAC's decision to recover funds provided under FY 2004 Funding Request Number ("FRN") 1124696 (the "Denial Letter")).

³ 47 C.F.R. § 54.719(c).

⁴ FCCAR0005-0011 (FCC Form 470 Application Number 377220000487934).

| | |
|---------------------------------|-----------------|
| Telecommunications | |
| local phone service | 4 lines |
| long distance service | 4 lines |
| cellular phone service | 2 lines |
| Internet Access | |
| dedicated internet service | 80 computers |
| Internal Connections | |
| network support and maintenance | 100 connections |

The School conducted a competitive bidding process pursuant to the Commission’s rules and waited 28 days after posting the FCC Form 470 before choosing Verizon-New York, Inc., AT&T Corp., and Kwah respectively for the telecommunications and Internet access services requested.

C. FCC Form 471

On February 3, 2004, the School filed its certified FCC Form 471, Application No. 410150, with USAC certifying its selection of Verizon-New York, Inc. and AT&T Corp. as its telecommunications providers and Kwah as its Internet access service provider.⁵ Specifically, the FCC Form 471 included FRN 1124696 for Internet access.⁶ USAC subsequently approved the FY 2004 funding request (on December 3, 2004) and to date USAC has disbursed \$8,100 for FRN 1124696.

D. USAC’s Commitment Adjustment Letter

Almost five years after the posting of the original FCC Form 470, on October 1, 2008, USAC sent the School a Notification of Commitment Adjustment Letter (“COMAD”) for FRN

⁵ FCCAR0012-0014 (FCC Form 471 Application No. 410150).

⁶ The School did not go forward with a request for E-Rate Program support for internal connections.

1124696, adjusting USAC's funding commitment to \$0.00. Therein USAC provided the following Funding Commitment Adjustment Explanation:

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 Kwah, Inc. participated in the preparation of the Form 470 which established the competitive bidding process for FRN 1124696 by performing electronic data entry work on the Form 470 and 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.⁷

E. The School's Appeal And The USAC Denial Letter

Both the School and Kwah timely appealed the COMAD to USAC in late November of 2008, but on April 28, 2009, USAC issued its Denial Letter.⁸ USAC's explanation on appeal ("Denial Explanation") was as follows:

1. There is no dispute that Jiin Artis filled out and submitted the Form 470 #377220000487934. This in and of itself is a violation of the Commission's competitive bid rules and requirements. A representative of Kwah, Inc. filled out and submitted the FCC

⁷ FCCAR0015-0019 (Notification of Commitment Adjustment Letter for Form 471 Application Number 410150, Oct. 1, 2008) ("COMAD Letter").

⁸ FCCAR0003-0004.

From 470, which constitutes a violation of the prohibition against service providers filling out forms that require an applicant's certification, as well as a violation of the mandate that the FCC Form 470 be completed by the entity that will negotiate with prospective bidders. Kwah, Inc. assisted in completing the FCC Form 470 even though St. Dominic School was the entity that would negotiate with prospective bidders.

2. The appellant states that "USAC is without authority to treat internally developed procedural guidelines as binding regulations for which noncompliance justifies the recoupment years later of E-rate funding previously expended..." First, prior to Funding Year 2004, USAC has made it clear that a service provider filling out and submitting an FCC Form 470 on which the provider intended to bid was unallowable. Second, USAC is required to recover funds where program rule violations have been determined to have occurred, within the administrative five year period as stated by the Commission.

3. Regarding Jjin Artis' assertion that the school determined the services to be sought on the FCC Form 470, the appellant must understand that USAC routinely tests applicant and service provider statements and certifications in order to protect program integrity. Information in USAC files indicates that Artis did develop content for multiple FCC Forms 470, albeit these instances relate to a prior funding year. Artis' statement that she received the text from someone at St. Dominic School would be supportable if any kind of specific information regarding the purported direction from the school were provided. For example, the name of the person who gave Artis this direction, the date when Artis received this direction; in what form was this direction provided, e.g., fax or email? The statement would be further supportable if documentation from St. Dominic's School to Artis listing what they wished to include on their FCC Form 470 were provided. However, no such supporting information or documentation was provided by Artis, nor did St. Dominic School respond to USAC's request for an explanation.

For the reasons state above, the appeal is denied.

As noted in its timely filed Request, the School respectfully disagrees with USAC's analysis and conclusions. This Supplement outlines in greater detail the grounds for that disagreement.

III. STANDARD OF REVIEW

USAC's authority to administer the E-Rate Program is limited to implementing and applying the Commission's rules and the Commission's interpretations of those rules as found in Commission decisions and orders.⁹ USAC is not empowered to make policy, interpret any unclear provisions of the governing statute or the rules promulgated by the Commission,¹⁰ or create the equivalent of new guidelines.¹¹ USAC is responsible for "administering the universal support mechanisms in an efficient, effective, and competitively neutral manner."¹² The Commission's review of the Denial Letter is *de novo*, without being bound by any findings or conclusions of USAC.¹³

First, the School fully complied with the Commission's rules on seeking competitive bids by signing and certifying the FCC Form 470,¹⁴ carefully considering all bids submitted,¹⁵ and waiting the required four weeks before making commitments with the selected providers of services.¹⁶

Second, St. Dominic did not violate any of Commission's rules described above: Kwah neither signed nor certified the FCC Form 470; USAC does not so allege. In addition, contrary to USAC's assertion in the COMAD, Kwah did not dictate, select or influence the services the School sought on the FCC Form 470. USAC has offered no concrete evidence that she did so.

⁹ 47 C.F.R. § 54.702(c).

¹⁰ *Id.*

¹¹ *Changes to the Board of Directors of the Nat'l Exchange Carrier Ass'n, Inc.*, Third Report and Order, 13 FCC Rcd 25058, 25066-67, ¶¶15-16 (1998).

¹² 47 C.F.R. § 54.701(a).

¹³ 47 C.F.R. § 54.723.

¹⁴ 47 C.F.R. § 54.504(b)(2).

¹⁵ 47 C.F.R. § 54.504(b)(2)(vii).

¹⁶ 47 C.F.R. § 54.504(b)(4).

The School respectfully submits that because USAC's conclusion is inaccurate and without foundation in the facts or Commission rules or precedent, the COMAD must be rescinded.

IV. ARGUMENT

A. USAC Failed To Provide Any Documentation Or Evidence To Substantiate That Anyone Other Than The School Determined The Content Of The FY 2004 FCC Form 470

The foundation of USAC's erroneous Denial Letter is the conclusion that Kwah or its representative determined or influenced the content of the School's FY 2004 FCC Form 470. Yet USAC failed to provide any documents or other evidence to support that conclusion.

USAC's Denial Letter cites unidentified "information in USAC files," which it concedes "relate to a prior funding year," to support its conclusion. USAC cannot rely on what it contends might have happened in a prior FY to find a violation in a later FY. It is not even clear that any prior FY action, if it did occur, even related to the School.

Such a factual extrapolation from one FY to the next has not been and cannot be sanctioned by the Commission or its E-Rate Program rules as a basis for finding a violation that justifies the FY 2004 COMAD. So even if it were true, USAC cannot rely on prior FY conduct on the part of service provider to find a subsequent FY violation by the School.

Indeed, USAC itself recognizes the weakness of the foundation of its decision for FY 2004 by conceding that the unequivocal statements made by Kwah that she did not determine the services for which the School was to seek E-Rate Program support would be supportable but only if "specific information" (e.g, a fax, email, documentation from the School) were provided. USAC does not identify where in the Commission's rules such further documentary support is required or why, particularly in light of the unqualified nature of the statements of Kwah on this subject, these representations are apparently not credible in USAC's eyes.

As Kwah's President Jiin Artis ("Jiin") declared in support of the School's original appeal to USAC of the COMAD Letter: "Kwah did not attempt to influence [the School's] decision regarding the eligible services for which it should seek funding or any other aspect of the content set forth on [the School's] FCC Form 470."¹⁷

The School has confirmed, without qualification, that to be the case. Sr. Josefa Marie Curcio, the principal of the School, in the Declaration attached as Exhibit 1, states:

St Dominic School and only St. Dominic School personnel, including myself, decided what E-Rate eligible services the School required and for which the School would seek E-Rate Program support in each of the Funding Years. No service provider, consultant or other third party, including Elite Systems and/or Kwah, Inc., dictated, controlled, influenced or otherwise had a role in the substantive decisions about or selection of the services sought on the relevant FCC Form 470 applications for the Funding Years. The contents of those applications were determined solely by St. Dominic School and the School's personnel. St. Dominic School personnel certified the FCC Form 470s. The descriptions of the services sought chosen by the School did not provide a preference to any bidder. The service providers selected and reflected on the relevant FCC Form 471s, including Elite and/or Kwah, were chosen solely by St. Dominic School and School personnel, including myself, through a competitive bidding process conducted and controlled by St. Dominic School and its personnel and no other party.

These statements clearly and overwhelmingly counter any inference, even if it were permissible, derived from asserted conduct by Kwah in prior years. Jiin has once again reiterated that position in her further Declaration at Exhibit 2.

The lack of further supporting documentation is not a basis for discounting these statements. The COMAD Letter came almost 5 years after the posting of the FCC Form 470. The Commission itself has conceded that with the passage of time the ability of applicants to

¹⁷ FCCAR0035 (School November 29, 2008 Appeal To USAC, FCCAR0020020-41).

effectively respond to allegations of rule violations ostensibly occurring years before can be substantially affected.¹⁸ The lack of a fax or an email after this passage of time cannot be held against the School and be a determining factor in concluding that, contrary to these unqualified statements, Kwah had a role in determining the services that the School was to obtain¹⁹ Kwah did not.

B. The School's FCC Form 470 Provided Vendor-Neutral Information And The School Conducted A Fair And Open Bidding Process

Even if *arguendo* Kwah had, at the request of the School, played a role in establishing the contents of FCC Form 470, there would have been no interference with or compromise of the integrity of the competitive bidding process.

Among the competitive bid requirements, an applicant must name a contact person and wait 28 days²⁰ before selecting “the most cost-effective service or equipment offering, with price being the primary factor.”²¹

The School complied with all aspects of the Commission's competitive bidding process. On December 22, 2003, USAC posted the School's FCC Form 470 for FY 2004. Among the services it requested, the School sought Internet access described as “dedicated internet service”

¹⁸*Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technology*, Order, 21 FCC Rcd 5348, 5351, ¶8 n.20 (2006) (“*Academy of Careers Order*”).

¹⁹ Other than its attempt to rely on “prior year” conduct, USAC has offered no contrary information. If it had such information USAC would have to provide it to the School. The Commission has clearly concluded that without specific information to determine the basis for a denial, applicants cannot provide comprehensive responses to USAC's arguments. *Academy of Careers Order*, ¶6. Further the Commission has expressly instructed USAC that applicants must be afforded the “opportunity to demonstrate that they did not violate the Commission's competitive bidding rules.” *Id.*, ¶1. See generally *Request for Review of the Decision of the Universal Service Administrator by Picher-Cardin Independent School District 15*, Order, 17 FCC Rcd 17392, 17394, ¶5 (Telecom Access Pol. Div. 2002) (An appeal is impeded when the record developed by USAC does not reveal facts and reasoning on which the SLD's determination is based with clarity.).

²⁰ 47 C.F.R. § 54.504(b)(4).

²¹ 47 C.F.R. § 54.504(b)(2)(vii).

for “80 computers.” It also sought “network support and maintenance” for “100 connections.” This request was posted for a period of at least 28 days in accordance with Commission rules. After some 6 weeks, the School considered all bids received and selected Kwah as the low-cost provider for Internet access.²² The School certified its FCC Form 471 on February 3, 2004.

A simple, cursory review of the FCC Form 470 demonstrates that the services requested are vendor neutral and cannot benefit any one specific service provider over another. The School sought basic Internet access and internal connections services in FY 2004. The type of generic Internet access the School sought is offered by most vendors. For example, in seeking Internet access, the School’s FCC Form 470 states that it is seeking “dedicated internet service.” Similarly, when describing internal connections, the School listed “network support and maintenance.” These are vendor-neutral, ubiquitous terms describing service that any service provider in the market of providing such services could bid upon. Clearly, Kwah could not have an unfair advantage or inside information regarding the provision of services described in such a generic manner.

Although effectively conceding that vendor-neutral language was employed, USAC simply disagrees that the presence of such generic terms had any effect on the fairness and openness of the competitive bidding process. It offers no FCC rule or precedent that supports simply ignoring the significance of the concededly-generic terms.

If in fact a service provider gave an applicant highly restrictive specifications for its FCC Form 470 that only one service provider could fulfill, one could legitimately question whether a bona fide fair and open competitive bidding process took place. This was not the case here. The School's FCC Form 470 specifications were extremely general and provided great flexibility. A variety of competing vendors could meet these specifications. Due to the specifications’

²² Again, as noted above, the School did not go forward with E-Rate Support for internal connections.

generality, the School could not have staged an unfair and effectively closed bidding process. All bidders were on a “level playing field” and therefore there could have been no actual harm to the competitive bidding process.²³ There is no evidence that other any other bidders were not considered.²⁴ Absent any demonstration of any such competitive advantage, the competitive bidding process should not be deemed to have been tainted.²⁵

In sum, the School complied with all aspects of the FCC’s competitive bidding process by signing and certifying its FCC Form 470 and waiting at least the mandatory 28 days to consider bids and carefully considered any and all bids before choosing Kwah as its service provider. USAC has presented no genuine evidence that the competitive bidding process failed to be fair and open in compliance with the Commission’s rules.

C. The School Did Not Surrender Control Of The Competitive Bidding Process To Any Service Provider, Including Kwah, In Connection With The FY 2004 Application

The School did not abrogate its competitive bid responsibility. As already noted above, the School and only the school determined the content of the FCC Form 470. Again, USAC has offered no evidence that the School failed to remain in charge of determining the services to be acquired and what would be the contents of its FCC Form 470.

There has been no abrogation by the School of its responsibilities under the rules. Rather, the School expressly complied with the Commission’s competitive bidding rules by signing and

²³ See *Request for Review of Decisions of the Universal Service Administrator by Approach Learning and Assessment Centers, et al.*, Order, 23 FCC Rcd 15510, 15513-14, ¶8 (Telecom Access Pol. Div. 2008) (“*Approach Order*”). Contrast with *Request for Waiver or Review of a Decision of the Universal Service Administrator by Exigent Technologies*, Order, DA 09-2245 (Telecom. Access Pol. Div. 2008).

²⁴ See *Request for Review of a Decision of the Universal Service Administrator by Aberdeen School District*, Order, 22 FCC Rcd 8757, 8763, ¶9 (2007) (“*Aberdeen Order*”).

²⁵ *Id.*, ¶8; See *Requests for Review of Decisions of the Universal Service Administrator by Delano Joint High School District et al.*, Order, 23 FCC Rcd 15399,15403-04, ¶8 (Telecom. Access Pol. Div. 2008); *Request for Review of a Decision of the Universal Service Administrator by Hillsboro Independent School District*, Order, 23 FCC Rcd 15424, 15429, ¶10 (Telecom. Access Pol. Div. 2008).

certifying its FCC Form 470, reviewing bids received, and selecting its service providers, including Kwah, after the time allotted under Commission rules had elapsed.

In *MasterMind*, the Commission expressly recognized that a service provider may be involved in providing technical and vendor-neutral assistance during the competitive bidding process.²⁶ Specifically, in *MasterMind*, where the applicant did not name a MasterMind employee as the contact person and a MasterMind employee did not sign the FCC Form 470,²⁷ the Commission held that no competitive bidding violation occurred – despite service provider involvement. Only where an applicant named a MasterMind employee as the contact person on their Forms 470 and permitted the service provider to prepare and distribute RFPs to potential bidders did the Commission determine that the applicant had surrendered control of the bidding process to an employee of MasterMind.

The facts in this case are inapposite to the facts in *MasterMind*. In the instant case, Kwah neither signed nor served as the contact person on the School’s FCC Form 470. Sister Josefa Marie Curcio, the School’s principal, served as the contact person and certified the School’s FCC Form 470. The School -- not Kwah -- selected the vendor-neutral services it sought without involvement from Kwah. The School chose vendor-neutral services without involvement or input from Kwah and that did not favor Kwah’s selection. As a result, no Commission competitive bid violation occurred.

²⁶ *Request for Review of Decisions of the Universal Service Administrator by Mastermind Internet Services*, 16 FCC Rcd 4028 (2000) (“*MasterMind Order*”); see also *Requests for Review of the Decisions of the Universal Service Administrator by Approach Learning and Assessment Center et al.*, Order, 22 FCC Rcd 5296 (2007). SLD’s own guidance for service providers at the time the FCC Form 470 was filed permit service providers to communicate with an applicant so long as such communication is neutral and does not taint the competitive bidding process. A service provider can provide basic information regarding the E-rate Program to an applicant and can assist with an applicant’s RFP so long as the assistance is neutral. SLD Training Presentations for applicants and service providers on Enforcement and Program Compliance for the FY 2002-2004, <http://www.usac.org/sl/about/training-presentations/>

²⁷ *MasterMind Order*, ¶14.

To the extent that Kwah has admitted that it provided what were essentially clerical or data upload services, those modest efforts did not taint the competitive bidding process. No matter how many times USAC seeks to equate such ministerial assistance with dictating or determining the content of the form, the equation cannot be made.

USAC claims that “filling out and submitting” the FCC Form 470 (i.e., data entry of content determined by the School and sending it electronically to USAC) destroys the fairness and openness of the competitive bidding process. But USAC has pointed to no rule or regulation of the Commission that prescribed such clerical assistance to an applicant. Rather, the Commission has indicated that analogous assistance in transmission of an FCC Form 470 to USAC, where the content is determined by the applicant, does not, absent more, interfere with the competitive bidding process.²⁸

Furthermore, any ministerial assistance provided by Kwah must be considered in context. There is absolutely no evidence here of any activity by the School intended to defraud or abuse the E-Rate Program.²⁹ Nor is there any evidence of any waste, fraud or abuse or misuse of funds.³⁰ Moreover, the imposition of a requirement to reimburse the requested funds under these circumstances so many years after they were originally approved and expended would impose an

²⁸ See also *Requests for Review of the Decisions of the Universal Service Administrator by Caldwell Parish School et al.*, Order, 23 FCC Rcd 2784, 2788-89, ¶12 (2008) (“Caldwell Order”) (service provider provision of Fed Ex service for FCC Form 470 was not assistance which interfered with competitive bidding process).

²⁹ See *Request for Review of the Decision of the Universal Service Administrator by New Haven Free Public Library*, Order, 23 FCC Rcd 15446, 15449, ¶7 (Telecom. Access Pol. Div. 2008); *Request for Review of the Decision of the Universal Service Administrator by the District of Columbia Public Schools*, Order, 23 FCC Rcd 15585, 15588, ¶5 (Telecom. Access Pol. Div. 2008); *Request for Review of the Decision of the Universal Service Administrator by Tekoa Academy of Accelerated Studies*, Order, 23 FCC Rcd 15456, 15458-59, ¶6 (Telecom Access Pol. Div. 2008).

³⁰ See *Requests for Review of Decisions of the Universal Service Administrator by Broaddus Independent School District et al.*, Order, 23 FCC Rcd 15547, 15551-52, ¶12 (Telecom. Access Pol. Div. 2008).

undue hardship on the School.³¹ The School acted in good faith.³² Doing so would not further the purpose of preserving and advancing access to universal service support for schools and libraries.³³ Under such circumstances, it would be inequitable to uphold the USAC Denial Letter.³⁴ The Commission should not do so.

V. CONCLUSION AND REQUEST FOR RELIEF

For the reasons set forth above, the School respectfully requests that the Commission grant this Request and direct USAC to overturn its prior decision and cancel the COMAD relating to the FY2004 funding request for FRN 1124696 for Internet access.

There is just no evidence, as opposed to surmise by USAC, of the School's failure to comply with the core program requirements, and the School complied with the Commission's rules. In the spirit of *MasterMind*, taking into consideration all of the circumstances outlined

³¹ See *Request for Review of a Decision by the Universal Service Administrator by Radford City Schools*, Order, 23 FCC Rcd 15451, 15453, ¶4 (Telecom. Access Pol. Div. 2008); *Request for Review of a Decision of the Universal Service Administrator by Grand Rapids Public Schools*, Order, 23 FCC Rcd 15413, 15416, ¶6 (Telecom. Access Pol. Div. 2008).

³² See *Request for Waiver of the Decision by the Universal Service Administrator by Great Rivers Education Cooperative, Forrest City, Arkansas*, Order, 21 FCC Rcd 14115, 14119, ¶9 (Wireline Compet. Bur. 2006).

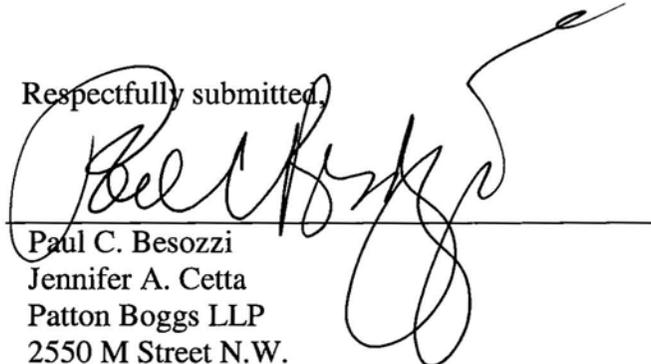
³³ See *Request for Review of a Decision by the Universal Service Administrator by Adams County School District 14*, Order, 22 FCC Rcd 6019, 6022, ¶8 (2007).

³⁴ See *Approach Order*, ¶4.

above, the School respectfully submits that the Commission must find that there has been no violation of the competitive bidding process and grant its Request to rescind the COMAD.

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CERTIFICATE OF SERVICE

I, Jennifer A. Cetta, certify on this 27th day of October, 2009, a copy of the foregoing “Supplement To Request For Review” has been served via electronic mail or first class mail, postage pre-paid, to the following:

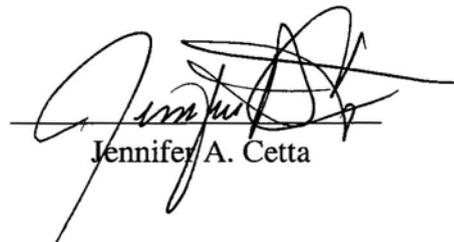
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Exhibit 1

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1684 White Plains Road
Bronx, New York 10462**

1. I, Sr. Josefa Marie Curcio, C.S.J.B., am the principal of St. Dominic School in the Bronx in New York City. I have occupied that position since September of 1995. In my position I have overall responsibility for the St. Dominic School participation as an applicant in the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC"). That responsibility included the School's applications for E-Rate Program support for Funding Years 2002 – and 2004 ("Funding Years"). As such I am familiar with St. Dominic School participation in the E-Rate Program application process for such support for the Funding Years.

2. I have reviewed the Notification of Commitment Adjustment Letters, issued in October, 2008, whereby USAC has rescinded the support previously approved under Funding Commitment Decision Letters for certain Funding Request Numbers for each of the Funding Years ("COMADs"), as well as the St. Dominic appeals filed with USAC concerning those COMADs and USAC's recent April 28, 2009 denial of the Funding Year 2004 appeal.

3. St. Dominic School and only St. Dominic School personnel, including myself, decided what E-Rate eligible services the School required and for which the School would seek E-Rate Program support in each of the Funding Years. No service provider, consultant or other third party, including Elite Systems and/or Kwah, Inc., dictated, controlled, influenced or otherwise had a role in the substantive decisions about or selection of the services sought on the relevant FCC Form 470 applications for the Funding Years. The contents of those applications were determined solely by St. Dominic School and the School's personnel. St. Dominic School personnel certified the FCC Form 470s. The descriptions of the services sought chosen by the School did not provide a preference to any bidder. The service providers selected and reflected on the relevant FCC Form 471s, including Elite and/or Kwah, were chosen solely by St. Dominic School and

School personnel, including myself, through a competitive bidding process conducted and controlled by St. Dominic School and its personnel and no other party.

I declare under penalty of perjury this 7th day of August, 2009 that the foregoing representations and statements are true and correct.



St. Josefa Marie Curcio C.S.J.B.

Exhibit 2

DECLARATION OF JIIN ARTIS

1. I, Jiin Artis, formerly Jiin Kang, am the President of Kwah, Inc. ("Kwah"). Kwah was selected as an E-Rate Program service provider by St. Dominic School ("St. Dominic") in the Bronx, New York, to provide E-Rate-Program-supported Internet access to St. Dominic for Funding Year ("FY") 2004.

2. I have reviewed the Notification of Commitment Adjustment Letter, issued on October 1, 2008, whereby USAC rescinded the support previously approved under Funding Commitment Decision Letter for Funding Request Number 1124696 for FY2004 ("COMAD"). Kwah and St. Dominic both filed appeals of the COMAD and I also have reviewed USAC's April 28, 2009, denial of those appeals.

3. As I have indicated to USAC previously in connection with this matter, St. Dominic personnel, including the principal, Sr. Josefa, determined what E-Rate Program eligible services the School required for FY2004. Neither I nor any Kwah employee dictated, controlled, influenced, prescribed or assisted in developing or determining what services would be sought on the St. Dominic FCC Form 470 for FY2004. I did not determine the content of St. Dominic's FCC Form 470; St. Dominic and Sr. Josefa alone determined the content for the FCC Form 470. In providing clerical, data-uploading assistance for the School after the content of the FCC Form 470 was so determined, I did not alter, revise or modify that content on the FCC Form 470 in any way.

4. I did not certify the FCC Form 470 for St. Dominic. Nor did I serve as the contact person on the FCC Form 470. To my knowledge, Sr. Josefa independently reviewed the content before certifying the FCC Form 470 and transmitting the certification to USAC. Kwah was not involved in the conduct of the competitive bidding process by St. Dominic.

I declare under penalty of perjury this 19th day of October, 2009 that the foregoing representations and statements are true and correct.

A handwritten signature in black ink, appearing to be 'Jiin Artis', written over a horizontal line.

Jiin Artis

May 27, 2009

Paul C. Besozzi
Direct: 202-457-5292
pbesozzi@pattonboggs.com

VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: Appeal of USAC Decision On Appeal Of Notification Of Commitment Adjustment
CC Docket No. 02-6**

| | |
|--------------------------------|--------------------|
| Applicant Name: | St. Dominic School |
| Billed Entity Number: | 10615 |
| Funding Year | 2004 |
| Form 471 App. Number: | 410150 |
| Funding Request Number: | 1124696 |

Dear Ms. Dortch:

St. Dominic School ("St. Dominic"), acting through counsel and pursuant to Sections 54.719-54.721 of the Commission's rules¹, hereby timely files this Request for Review ("Appeal"), which requests Commission review of the adverse decision of the Administrator of the Universal Service Administrative Company ("USAC") denying the funding request enumerated above for Funding Year 2004 and seeking recovery of previously disbursed E-rate support funds. *See* Exhibit 1 attached hereto.

More specifically, on April 28, 2009, USAC's Schools and Libraries Division ("SLD") issued a decision denying an appeal filed by St. Dominic with USAC. In its decision USAC held that St. Dominic was responsible for an E-rate program rule violation relating to the Commission's competitive bidding rules. The USAC appeal denial reiterated a previous USAC decision requiring the applicant to return previously disbursed funds made available pursuant to the referenced Funding Request Number.

¹ 47 C.F.R. §§ 54.719-54.721

St. Dominic is aggrieved by USAC's April 28, 2009 decision and submits that for various reasons outlined in its appeal to USAC and others that it will submit to the Commission, the latest USAC decision is unwarranted and unjustified under the rules, policies and requirements governing the E-rate Program applicable to the referenced Application and Funding Request Number.

St. Dominic is filing this Appeal well prior to the 60-day appeal period prescribed by the Commission's rules because on the very same day that USAC released Exhibit 1 it also issued a Demand Payment Letter requiring St. Dominic to pay the amount sought to be recovered, with such payment due in 30 days (i.e., by May 28, 2009). On May 18, 2009 USAC Staff informed the undersigned counsel that the only way to forestall the further implementation of USAC's collection process was to file this appeal, even though there remained significant time before the end of the 60-day appeal deadline.

St. Dominic will supplement this Appeal with a full discussion of the facts, St. Dominic's position and supporting arguments.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Besozzi", with a horizontal line extending to the right from the end of the signature.

Paul C. Besozzi
Counsel to the Archdiocese of New York and St. Dominic School

cc: James P. McCabe, Esq.



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2004-2005

April 28, 2009

Cynthia Schultz
Patton Boggs LLP
2550 M Street, NW
Suite 550
Washington, DC 20037

Re: Applicant Name: ST DOMINIC SCHOOL
Billed Entity Number: 10615
Form 471 Application Number: 410150
Funding Request Number(s): 1124696
Your Correspondence Dated: November 29, 2008

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 USAC's Funding Year 2004 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1124696
Decision on Appeal: **Denied**
Explanation:

- Upon thorough review of the appeal letters and the relevant documentation, USAC has determined the following, based on the information provided on appeal:

1. There is no dispute that Jjin Artis filled out and submitted the Form 470 # 377220000487934. This in and of itself is a violation of the Commission's competitive bid rules and requirements. A representative of Kwah, Inc. filled out and submitted the FCC Form 470, which constitutes a violation of the prohibition against service-providers filling out forms that require an applicant's certification, as well as a violation of the mandate that the FCC Form 470 be completed by the entity that will negotiate with prospective bidders. Kwah, Inc. assisted in

100 South Jefferson Road, P.O. Box 902, Whippany, New Jersey 07981
Visit us online at: www.usac.org/sl/

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completing the FCC Form 470 even though St. Dominic School was the entity that would negotiate with prospective bidders.

2. The appellant states that "USAC is without authority to treat internally developed procedural guidelines as binding regulations for which noncompliance justifies the recoupment years later of E-rate funding previously expended..." First, prior to Funding Year 2004, USAC has made it clear that a service provider filling out and submitting an FCC Form 470 on which the provider intended to bid was unallowable. Second, USAC is required to recover funds where program rule violations have been determined to have occurred, within the administrative five year period as stated by the Commission.

3. Regarding Jjin Artis' assertion that the school determined the services to be sought on the FCC Form 470, the appellant must understand that USAC routinely tests applicant and service provider statements and certifications in order to protect program integrity. Information in USAC files indicates that Artis did develop content for multiple FCC Forms 470, albeit these instances relate to a prior funding year. Artis' statement that she received the text from someone at St. Dominic School would be supportable if any kind of specific information regarding the purported direction from the school were provided. For example, the name of the person who gave Artis this direction; the date when Artis received this direction; in what form was this direction provided, e.g. fax or email? The statement would be further supportable if documentation from St. Dominic's School to Artis listing what they wished to include on their FCC Form 470 were provided. However, no such supporting information or documentation was provided by Artis, nor did St. Dominic School respond to USAC's request for an explanation.

For the reasons state above, the appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, 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 section of the USAC website 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

100 South Jefferson Road, P.O. Box 902, Whippany, New Jersey 07981

Visit us online at: www.usac.org/sl/

FCCAR0004

FCC Form

Approval by OMB
3060-0806

470

**Schools and Libraries Universal Service
Description of Services Requested
and Certification Form**

Estimated Average Burden Hours Per Response: 4.0 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before beginning this application.

(To be completed by entity that will negotiate with providers.)

Block 1: Applicant Address and Identifications

| |
|---|
| Form 470 Application Number: 377220000487934 |
| Applicant's Form Identifier: 0447010615 |
| Application Status: CERTIFIED |
| Posting Date: 12/22/2003 |
| Allowable Contract Date: 01/19/2004 |
| Certification Received Date: 02/03/2004 |

| | | |
|--|--------------------|---|
| 1. Name of Applicant: ST DOMINIC SCHOOL | | |
| 2. Funding Year: 07/01/2004 - 06/30/2005 | | 3. Your Entity Number 10615 |
| 4a. Applicant's Street Address, P.O.Box, or Route Number 1684 WHITE PLAINS RD | | |
| City BRONX | State NY | Zip Code 10462-3828 |
| b. Telephone number (718) 829- 4837 | | c. Fax number (718) 822- 3726 |
| d. E-mail Address | | |
| 5. Type Of Applicant | | |
| <input checked="" type="checkbox"/> Individual School (individual public or non-public school) | | |
| <input type="checkbox"/> School District (LEA;public or non-public[e.g., diocesan] local district representing multiple schools) | | |
| <input type="checkbox"/> Library (including library system, library branch, or library consortium applying as a library) | | |
| <input type="checkbox"/> Consortium (intermediate service agencies, states, state networks, special consortia) | | |
| 6a. Contact Person's Name: Sr. Josefa Marie | | |
| <i>First, fill in every item of the Contact Person's information below that is different from Item 4, above. Then check the box next to the preferred mode of contact. (At least one box MUST be checked.)</i> | | |
| 6b. Street Address, P.O.Box, or Route Number | | |
| <input checked="" type="checkbox"/> 1684 WHITE PLAINS RD | | |
| City BRONX | State NY | Zip Code 10462-3828 |

FCCAR0005

| | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | 6c. Telephone Number (718) 829- 4837 |
| <input checked="" type="checkbox"/> | 6d. Fax Number (718) 822- 3726 |
| <input type="checkbox"/> | 6e. E-mail Address |

Block 2: Summary Description of Needs or Services Requested

7 This Form 470 describes (check all that apply):

a. Tariffed services - telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year.

b. Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year.

c. Services for which a new written contract is sought for the funding year in Item 2.

d. A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.

NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract do NOT require filing of a Form 470.

What kinds of service are you seeking: Telecommunications Services, Internet Access, or Internal Connections? Refer to the Eligible Services List at www.sl.universalservice.org for examples. Check the relevant category or categories (8, 9, and/or 10 below), and answer the questions in each category you select.

8 Telecommunications Services
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a. **YES**, I have an RFP. It is available on the Web at or via (check one):
 the Contact Person in Item 6 or the contact listed in Item 11.

b. **NO**, I do not have an RFP for these services.

If you answered NO, you must list below the Telecommunications Services you seek. Specify each service or function (e.g., local voice service) and quantity and/or capacity(e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications Services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Add additional lines if needed.

| Service or Function: | Quantity and/or Capacity: |
|------------------------|---------------------------|
| local phone service | 4 lines |
| long distance service | 4 lines |
| cellular phone service | 2 lines |

9 Internet Access
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a. **YES**, I have an RFP. It is available on the Web at or via (check one):
 the Contact Person in Item 6 or the contact listed in Item 11.

b. **NO**, I do not have an RFP for these services.

If you answered NO, you must list below the Internet Access Services you seek. Specify each service or

FCCAR0006

function (e.g., monthly Internet service) and quantity and/or capacity(e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internet Access services. Add additional lines if needed.

| Service or Function: | Quantity and/or Capacity: |
|----------------------------|---------------------------|
| dedicated internet service | 80 computers |

10 **Internal Connections**

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a **YES**, I have an RFP. It is available on the Web at or via (check one):
 the Contact Person in Item 6 or the contact listed in Item 11.

b **NO**, I do not have an RFP for these services.

If you answered **NO**, you must list below the Internal Connections Services you seek. Specify each **service or function** (e.g., local area network) and quantity and/or capacity(e.g., connecting 10 rooms and 300 computers at 56kbps or better). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internal Connections services. Add additional lines if needed.

| Service or Function: | Quantity and/or Capacity: |
|---------------------------------|---------------------------|
| network support and maintenance | 100 connections |

11 (Optional) Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the signer of this form.

Name: _____ Title: _____

Telephone number
 () - _____

Fax number
 () - _____

E-mail Address

12. Check here if there are any restrictions imposed by state or local laws or regulations on how or when providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or provide Web address where they are posted and a contact name and telephone number for service providers without Internet access.

13. If you intend to enter into a multi-year contract based on this posting or a contract featuring an option for voluntary extensions you may provide that information below. If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, summarize below (including the likely timeframes).

Block 3: Technology Assessment

14. **Basic telephone service only:** If your application is for basic local and long distance telephone service (wireline or wireless) only, check this box and skip to Item 16.

15. Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your

application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

a. Desktop software: Software required has been purchased; and/or is being sought.

b. Electrical systems: adequate electrical capacity is in place or has already been arranged; and/or upgrading for additional electrical capacity is being sought.

c. Computers: a sufficient quantity of computers has been purchased; and/or is being sought.

d. Computer hardware maintenance: adequate arrangements have been made; and/or are being sought.

e. Staff development: all staff have had an appropriate level of training /additional training has already been scheduled; and/or training is being sought.

f. Additional details: Use this space to provide additional details to help providers to identify the services you desire.

Block 4: Recipients of Service

16. Eligible Entities That Will Receive Services:

Check the ONE choice (a,b or c) that best describes this application and the eligible entities that will receive the services described in this application. You will then list in Item 17 the entity/entities that will pay the bills for these services.

a. Individual school or single-site library.

b. Statewide application for (enter 2-letter state code) representing (check all that apply):

- All public schools/districts in the state:
- All non-public schools in the state:
- All libraries in the state:

If your statewide application includes INELIGIBLE entities, check here. **If checked, complete Item 18.**

c. School district, library system, or consortium application to serve multiple eligible entities:

| | |
|---|--|
| Number of eligible sites | |
| <i>For these eligible sites, please provide the following</i> | |
| Area Codes (list each unique area code) | Prefixes associated with each area code (first 3 digits of phone number) separate with commas, leave no spaces |

If your application includes INELIGIBLE entities, check here. **If checked, complete Item 18.**

17. Billed Entities

List the entity/entities that will be paying the bills directly to the provider for the services requested in this application. These are known as Billed Entities. At least one line of this item must be completed. Attach additional

sheets if necessary.

| Entity | Entity Number |
|-------------------|---------------|
| ST DOMINIC SCHOOL | 10615 |

18. Ineligible Participating Entities

Does your application also seek bids on services to entities that are not eligible for the Universal Service Program? If so, list those entities here (attach pages if needed):

| Ineligible Participating Entity | Area Code | Prefix |
|---------------------------------|-----------|--------|
|---------------------------------|-----------|--------|

Block 5: Certification and Signature

19. The applicant includes:(Check one or both)

- a. schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. Secs. 7801(18) and (38), that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or
- b. libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to elementary and secondary schools, colleges and universities).

20. All of the individual schools, libraries, and library consortia receiving services under this application are covered by:

- a. individual technology plans for using the services requested in the application, and/or
- b. higher-level technology plans for using the services requested in the application, or
- c. no technology plan needed; application requests basic local and/or long distance telephone service only.

21. Status of technology plans (if representing multiple entities with mixed technology plan status, check both a and b):

- a. technology plan(s) has/have been approved by a state or other authorized body.
- b. technology plan(s) will be approved by a state or other authorized body.
- c. no technology plan needed; application requests basic local and long distance telephone service only. .

22. I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.

23. I recognize that support under this support mechanism is conditional upon the school(s) or library(ies) I represent securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.

24. I certify that I am authorized to submit this request on behalf of the above-named entities, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

25. Signature of authorized person:

26. Date (mm/dd/yyyy): 02/02/2004

27. Printed name of authorized person: JOSEFA MARIE

FCCAR0009

28. Title or position of authorized person: **PRINCIPAL**
- 29a. Address of authorized person: **1684 WHITE PLAINS RD**
City: **BRONX** State: **NY** Zip: **10462-3828**
- 29b. Telephone number of authorized person: **(718) 829 - 4837**
- 29c. Fax number of authorized person: **(718) 8223726**
- 29d. E-mail address number of authorized person:

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

Service provider involvement with preparation or certification of a Form 470 can taint the competitive bidding process and result in the denial of funding requests. For more information, refer to the "Service Provider Role in Assisting Customers" at www.sl.universalservice.org/vendor/manual/chapter5.doc or call the Client Service Bureau at 1-888-203-8100.

NOTICE: Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries ordering services that are eligible for and seeking universal service discounts to file this Description of Services Requested and Certification Form (FCC Form 470) with the Universal Service Administrator. 47 C.F.R. § 54.504. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended. 47 U.S.C. § 254. The data in the report will be used to ensure that schools and libraries comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504. All schools and libraries planning to order services eligible for universal service discounts must file this form themselves or as part of a consortium.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or a potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding. In addition, information provided in or submitted with this form or in response to subsequent inquiries may also be subject to disclosure consistent with the Communications Act of 1934, FCC regulations, the Freedom of Information Act, 5 U.S.C. § 552, or other applicable law.

If you owe a past due debt to the federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide the information to these agencies through the matching of computer records when authorized.

If you do not provide the information we request on the form, the FCC may delay processing of your application or may return your application without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, et seq.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, DC 20554.

Please submit this form to:

**SLD-Form 470
P.O. Box 7026
Lawrence, Kansas 66044-7026
1-888-203-8100**

For express delivery services or U.S. Postal Service, Return Receipt Requested, mail this form to:
SLD-Form 470

FCCAR0010

**c/o Ms. Smith
3833 Greenway Drive
Lawrence, Kansas 66046
1-888-203-8100**

FCC Form 470
May 2003

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FCCAR0011

**Schools and Libraries Universal Service Program
Services Ordered and Certification Form 471
Application Display**

Block 1: Billed Entity Information

Applicant's Form Identifier:

200447110615A

471 Application Number: 410150**Funding Year:** 07/01/2004 -
06/30/2005**Billed Entity Number:**
10615**Cert. Postmark Date:** 02/03/2004**Form Status:** CERTIFIED - In
Window**RAL Date:** 03/03/2004**Out of Window Letter Date:** Not applicable**Name:** ST DOMINIC SCHOOL**Address:** 1684 WHITE PLAINS RD**City:** BRONX **State:** NY **Zip:** 10462 3828**Contact Name:** Sr. Josefa Marie**Address:** 1684 WHITE PLAINS RD**City:** BRONX **State:** NY **Zip:** 10462 3828**Type of Application:** SCHOOL**Ineligible Orgs:** N

Block 3: Impact of Services Ordered in THIS Application

Number of students to be served: 521**Number of library patrons to be served:**

| SERVICE DESCRIPTION | BEFORE ORDER | AFTER ORDER |
|---|--------------|-------------|
| f. Direct connections to the Internet: How many before and after your order? | 1 | 1 |
| g. Direct connections to the Internet: Highest speed before and after your order? | 1.5 Mbps | 1.5 Mbps |
| h. Internet access(for schools): How many rooms have Internet access before and after your order? | 20 | 20 |
| j. Internet Access: How many computers (or other devices) with Internet access before and after your order? | 70 | 70 |

Block 4: Worksheets

FCCAR0012

Worksheet A No: 564927

Student Count: 521

Weighted Product (Sum. Column 8): 468.9

Shared Discount: N/A

1. School Name: ST DOMINIC SCHOOL

2. Entity Number: 10615 3. Rural/Urban: Urban

4. Student Count: 521 5. NSLP Students: 484 6. NSLP Students/Students: 92.898%

7. Discount: 90%

8. Weighted Product: 468.9

Block 5: Discount Funding Request(s)

| | |
|---|--|
| FRN: 1124690 FCDL Date: 12/03/2004 | |
| 11. Category of Service: Telecommunications Service | 12. 470 Application Number: 377220000487934 |
| 13. SPIN: 143001359 | 14. Service Provider Name: Verizon - New York Inc. |
| 15. Contract Number: T | 16. Billing Account Number: 7188294837 |
| 17. Allowable Contract Date: 01/19/2004 | 18. Contract Award Date: |
| 19a. Service Start Date: 07/01/2004 | 19b. Service End Date: 06/30/2005 |
| 20. Contract Expiration Date: | |
| 21. Attachment #: 1 | 22. Block 4 Entity Number: 10615 |
| 23a. Monthly Charges: \$303.71 | 23b. Ineligible monthly amt.: \$0.00 |
| 23c. Eligible monthly amt.: \$303.71 | 23d. Number of months of service: 12 |
| 23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$3,644.52 | |
| 23f. Annual non-recurring (one-time) charges: 0 | 23g. Ineligible non-recurring amt.: 0 |
| 23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$0.00 | |
| 23i. Total program year pre-discount amount (23e + 23h): \$3,644.52 | |
| 23j. % discount (from Block 4): 90 | |
| 23k. Funding Commitment Request (23i x 23j): \$3,280.07 | |

| | |
|---|---|
| FRN: 1124693 FCDL Date: 12/03/2004 | |
| 11. Category of Service: Telecommunications Service | 12. 470 Application Number: 377220000487934 |
| 13. SPIN: 143001192 | 14. Service Provider Name: AT&T Corp. |
| 15. Contract Number: T | 16. Billing Account Number: 7188294837 |
| 17. Allowable Contract Date: 01/19/2004 | 18. Contract Award Date: |
| 19a. Service Start Date: 07/01/2004 | 19b. Service End Date: 06/30/2005 |
| 20. Contract Expiration Date: | |
| 21. Attachment #: 2 | 22. Block 4 Entity Number: 10615 |
| 23a. Monthly Charges: \$40.00 | 23b. Ineligible monthly amt.: \$0.00 |
| 23c. Eligible monthly amt.: \$40.00 | 23d. Number of months of service: 12 |
| 23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$480.00 | |
| 23f. Annual non-recurring (one-time) charges: 0 | 23g. Ineligible non-recurring amt.: 0 |

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| |
|--|
| 23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$0.00 |
| 23i. Total program year pre-discount amount (23e + 23h): \$480.00 |
| 23j. % discount (from Block 4): 90 |
| 23k. Funding Commitment Request (23i x 23j): \$432.00 |

| | |
|--|--|
| FRN: 1124696 FCDL Date: 12/03/2004 | |
| 11. Category of Service: Internet Access | 12. 470 Application Number: 377220000487934 |
| 13. SPIN: 143025798 | 14. Service Provider Name: Kwah, Inc. |
| 15. Contract Number: ADStDom | 16. Billing Account Number: ADStDom |
| 17. Allowable Contract Date: 01/19/2004 | 18. Contract Award Date: 01/22/2004 |
| 19a. Service Start Date: 07/01/2004 | 19b. Service End Date: |
| 20. Contract Expiration Date: 06/30/2005 | |
| 21. Attachment #: 3 | 22. Block 4 Entity Number: 10615 |
| 23a. Monthly Charges: \$750.00 | 23b. Ineligible monthly amt.: \$.00 |
| 23c. Eligible monthly amt.: \$750.00 | 23d. Number of months of service: 12 |
| 23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): \$9,000.00 | |
| 23f. Annual non-recurring (one-time) charges: 0 | 23g. Ineligible non-recurring amt.: 0 |
| 23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): \$0.00 | |
| 23i. Total program year pre-discount amount (23e + 23h): \$9,000.00 | |
| 23j. % discount (from Block 4): 90 | |
| 23k. Funding Commitment Request (23i x 23j): \$8,100.00 | |

Block 6: Certifications and Signature

24a. Schools: Y
 24b. Libraries or Library Consortia: N

26a. Individual Technology Plan: Y
 26b. Higher-Level Technology Plan(s): N
 26c. No Technology Plan Needed:

27a. Approved Technology Plan(s): Y
 27b. State Approved Technology Plan: N
 27c. No Technology Plan Needed:



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FCCAR0014

Notification of Commitment Adjustment Letter

Funding Year 2004: 7/01/2004 - 6/30/2005

October 1, 2008

**Sr. Josefa Marie
ST DOMINIC SCHOOL
1684 WHITE PLAINS RD
BRONX, NY 10462 3828**

**Re: Form 471 Application Number: 410150
Funding Year: 2004
Applicant's Form Identifier: 200447110615A
Billed Entity Number: 10615
FCC Registration Number: 0012008207
SPIN Name: Kwah, Inc.
Service Provider Contact Person: Jiin Artis**

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the adjustments to your funding commitment required by program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of the Demand Payment Letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at <http://www.universalservice.org/fund-administration/tools/latest-news.aspx#083104> for more information regarding the consequences of not paying the debt in a timely manner.

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Numbers you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, Billed Entity Number, and FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter specific and brief, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal electronically, please send your appeal to appeals@sl.universalservice.org using your organization's e-mail. If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Dept. 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Appeals Area of the SLD section of the USAC web site or by contacting the Client Service Bureau at 1-888-203-8100. We strongly recommend that you use the electronic appeals options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (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 of 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 section of the USAC web site, or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. Immediately preceding the Report, you will find a guide that defines each line of the Report.

The SLD is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these Funding Request Numbers, a separate letter will be sent to the service provider detailing the necessary service provider action.

Please note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Please note the Funding Commitment Adjustment Explanation in the attached Report. It explains why the funding commitment is being reduced. Please ensure that any invoices that you or your service provider submit to USAC are consistent with program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Jjin Artis
Kwah, Inc.

A GUIDE TO THE FUNDING COMMITMENT ADJUSTMENT REPORT

A report for each E-rate funding request from your application for which a commitment adjustment is required is attached to this letter. We are providing the following definitions for the items in that report.

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

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

SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

SERVICE PROVIDER NAME: The legal name of the service provider.

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

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

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

ORIGINAL FUNDING COMMITMENT: This represents the original amount of funding that SLD had reserved to reimburse you for the approved discounts for this service for this funding year.

COMMITMENT ADJUSTMENT AMOUNT: This represents the amount of funding that SLD has rescinded because of program rule violations.

ADJUSTED FUNDING COMMITMENT: This represents the adjusted total amount of funding that SLD has reserved to reimburse for the approved discounts for this service for this funding year. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.

FUNDS DISBURSED TO DATE: This represents the total funds that have been paid to the identified service provider for this FRN as of the date of this letter.

FUNDS TO BE RECOVERED FROM APPLICANT: This represents the amount of improperly disbursed funds to date as a result of rule violation(s) for which the applicant has been determined to be responsible. These improperly disbursed funds will have to be recovered from the applicant.

FUNDING COMMITMENT ADJUSTMENT EXPLANATION: This entry provides an explanation of the reason the adjustment was made.

**Funding Commitment Adjustment Report for
Form 471 Application Number: 410150**

| | |
|---------------------------------------|-----------------|
| Funding Request Number: | 1124696 |
| Services Ordered: | INTERNET ACCESS |
| SPIN: | 143025798 |
| Service Provider Name: | Kwah, Inc. |
| Contract Number: | ADStDom |
| Billing Account Number: | ADStDom |
| Site Identifier: | 10615 |
| Original Funding Commitment: | \$8,100.00 |
| Commitment Adjustment Amount: | \$8,100.00 |
| Adjusted Funding Commitment: | \$0.00 |
| Funds Disbursed to Date: | \$8,100.00 |
| Funds to be Recovered from Applicant: | \$8,100.00 |

Funding Commitment Adjustment Explanation:

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 Kwah, Inc. participated in the preparation of the Form 470 which established the competitive bidding process for FRN 1124696 by performing electronic data entry work on the Form 470 and 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**

November 29, 2008

Cynthia B. Schultz
cschultz@pattonboggs.com

VIA ELECTRONIC FILING

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

**Re: Appeal of October 1, 2008, Notification of Commitment Adjustment Letter
("COMAD") to St. Dominic School (BEN No. 10615) for Funding Year ("FY")
2004 Funding Request Number ("FRN") 1124696**

Dear Sir/Madam:

In response to the referenced COMAD, St. Dominic School ("St. Dominic"), acting through counsel, respectfully disagrees with the decisions of the Schools and Libraries Division ("SLD") and hereby submits this Letter of Appeal ("Appeal") to the Universal Service Administrative Company ("USAC").¹

St. Dominic respectfully reserves the right to supplement this Appeal with additional relevant information.² The relevant information regarding this appeal is as follows:

¹ The Appeal is required to be filed within sixty (60) days from the date of the COMAD, which is Nov. 30, 2008. The next business day is Dec. 1, 2008.

² On November 28, 2008, Kwah, Inc. filed appeals of multiple Funding Commitment Adjustment Letters seeking review of the Schools and Libraries Division of the Universal Service Administrative Company's Funding Commitment Adjustment Decisions. To the extent that Kwah, Inc., appealed Funding Commitment Adjustment Decisions of the same Funding Years and Funding Request Numbers as this School, the School requests that such appeals be considered with this instant appeal.

| | |
|---------------------------------|-----------------|
| Service Provider | Kwah, Inc. |
| SPIN | 143025798 |
| FCC Form 470 Application Number | 377220000487934 |
| FCC Form 471 Application Number | 410150 |
| Billed Entity Number | 10615 |
| FRNs | 1124696 |

I. Background Information

St. Dominic is a private Catholic school in the Archdiocese of New York. St. Dominic participates in the Schools and Libraries Division's E-rate program.

On Dec. 22, 2003, USAC posted St. Dominic's FCC Form 470, Application No. 377220000487934, indicating its intent to seek telecommunications, Internet access, and internal connections services.³ St. Dominic did not post a separate RFP for any of the services. Specifically, on its FCC Form 470, St. Dominic sought the following services:

| | |
|---------------------------------|-----------------|
| Telecommunications | |
| Local Phone Service | 4 lines |
| Long Distance Service | 4 lines |
| Cellular Phone Service | 2 lines |
| Internet Access | |
| Dedicated Internet Service | 80 users |
| Internal Connections | |
| Network Support and Maintenance | 100 connections |

St. Dominic conducted a competitive bid process pursuant to the FCC's competitive bid rules and waited 28 days after posting FCC Form 470 before choosing Verizon-New York, Inc., AT&T Corp. and Kwah, Inc. ("Kwah"). On Feb. 3, 2004, St. Dominic filed its certified FCC Form 471, Application No. 410150, with USAC certifying its selection of Verizon-New York, Inc. and AT&T Corp. as telecommunications providers and Kwah as its Internet access and internal connection service provider. Specifically, the FCC Form 471 included the following funding request: FRN 1124696 for Internet access. To date, USAC has disbursed \$8,100.00 for

³ Exhibit 1 (FCC Form 470 Application Number 377220000487934, Dec. 22, 2003).

FRN 1124696 (IA). Kwah neither influenced nor participated in the competitive bidding process.⁴

On October 1, 2008, USAC sent St. Dominic a Notification of Commitment Adjustment Letter (“COMAD”) for the FRNs listed above, adjusting USAC’s funding commitment to \$0.00. USAC based the COMAD on the following Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the service provider Kwah, Inc. participated in the preparation of the Form 470 which established the competitive bidding process for FRN 1124696 by performing electronic data entry work on the Form 470 and 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.⁵

St. Dominic respectfully disagrees with SLD’s COMAD Letter for the reasons described below.

⁴ Exhibit 2 (Declaration of Jiin Artis).

⁵ Exhibit 3 (Notification of Commitment Adjustment Letter for Form 471 Application Number 410150, Oct. 1, 2008).

II. Basis for Appeal

A. USAC Failed to Provide Documents or Evidence to Substantiate its Commitment Adjustment

SLD failed to provide any specific language, documents or other evidence to support its conclusion that Kwah participated in the competitive bidding process of St. Dominic for FY2004. SLD failed to produce any documents to support its finding, which denies St. Dominic its due process rights to file a meaningful and substantive appeal. The Commission has concluded that without specific information to determine the basis for a denial, applicants cannot provide comprehensive responses to USAC's arguments.⁶ Similarly, St. Dominic cannot file an informed appeal without specific information from USAC.⁷

B. St. Dominic's FCC Form 470 Provided Vendor-Neutral Information and the School Conducted a Fair and Open Bidding Process

The Commission's competitive bid requirements for the E-Rate Program require applicants to seek competitive bids for eligible services through completing, certifying and submitting FCC Form 470 to USAC.⁸ Among the competitive bid requirements, an applicant must name a contact person and wait 28 days⁹ before selecting "the most cost-effective service or equipment offering, with price being the primary factor."¹⁰

St. Dominic complied with all aspects of the Commission's competitive bidding process. On December 22, 2003, USAC posted St. Dominic's FCC Form 470 for FY2004. Among the services it requested, St. Dominic sought Internet Access described as "dedicated internet service" for "80 computers." St. Dominic also sought internal connections, described as "network support and maintenance" for "100 computers. This request was posted for a period of at least 28 days in accordance with Commission rules. After waiting over a month, St.

⁶ *Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technology*, Order, 21 FCC Rcd 5348, 5350 ¶ 6 (2006) ("*Academy of Careers Order*").

⁷ St. Dominic filed a FOIA Request with the FCC on November 26, 2008.

⁸ 47 C.F.R. § 54.504(a).

⁹ 47 C.F.R. § 54.504(b)(4).

¹⁰ 47 C.F.R. § 54.504(b)(2)(vii).

Dominic considered all bids received and selected Kwah as the low-cost provider. St. Dominic filed its FCC Form 471 on February 3, 2004.

Moreover, even a simple, cursory review of the FCC Form 470 demonstrates that the services requested are vendor neutral and cannot benefit any one specific provider over another. St. Dominic sought basic Internet access and internal connections services in FY2004 on its FCC Form 470. The school sought the type of generic Internet access services that most vendors offer. For example, in seeking Internet access, the school's FCC Form 470 states that it is seeking "dedicated Internet service." Similarly, when describing internal connections, St. Dominic listed "network support and maintenance." These are vendor-neutral, ubiquitous terms describing service that any service provider in the market of providing such services could bid upon. Clearly, Kwah could not have an unfair advantage or inside information regarding the provision of services described in such a generic manner.

If a service provider gave an applicant highly restrictive specifications for its FCC Form 470 that only one service provider could fulfill, one could legitimately ask whether a bona fide competitive bidding process took place. This was not the case here. St. Dominic's FCC Form 470 specifications were extremely general and provided wide flexibility. A variety of competing vendors could meet these specifications. Due to the specifications' generality, St. Dominic could not have surrendered control of the competitive bidding process.

In sum, St. Dominic complied with all aspects of the FCC's competitive bidding process by signing and certifying its FCC Form 470 and waiting 28 days to consider bids and carefully considered any and all bids before choosing Kwah as its service provider.

C. St. Dominic Did Not Surrender Control to Any Service Provider, Including Kwah, Inc., During the Competitive Bidding Process for FY2004

St. Dominic did not abrogate its competitive bid responsibility. Kwah did not influence or participate in St. Dominic's competitive bid process.¹¹ St. Dominic signed and certified its FCC Form 470, reviewed bids received, and chose its service providers based upon the FCC competitive bid rules.

In fact, the Commission in its *MasterMind Order* expressly recognized that the service provider may be involved in providing technical and vendor-neutral assistance during the

¹¹ Exhibit 2.

EXHIBIT 1

FCC Form

Approval by OMB
3060-0806

470

**Schools and Libraries Universal Service
Description of Services Requested
and Certification Form**

Estimated Average Burden Hours Per Response: 4.0 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before beginning this application.

(To be completed by entity that will negotiate with providers.)

Block 1: Applicant Address and Identifications

| |
|---|
| Form 470 Application Number: 377220000487934 |
| Applicant's Form Identifier: 0447010615 |
| Application Status: CERTIFIED |
| Posting Date: 12/22/2003 |
| Allowable Contract Date: 01/19/2004 |
| Certification Received Date: 02/03/2004 |

| | | |
|--|--------------------|---|
| 1. Name of Applicant: ST DOMINIC SCHOOL | | |
| 2. Funding Year: 07/01/2004 - 06/30/2005 | | 3. Your Entity Number 10615 |
| 4a. Applicant's Street Address, P.O.Box, or Route Number 1684 WHITE PLAINS RD | | |
| City BRONX | State NY | Zip Code 10462-3828 |
| b. Telephone number (718) 829- 4837 | | C. Fax number (718) 822- 3726 |
| d. E-mail Address | | |
| 5. Type Of Applicant | | |
| <input checked="" type="checkbox"/> Individual School (individual public or non-public school) | | |
| <input type="checkbox"/> School District (LEA;public or non-public[e.g., diocesan] local district representing multiple schools) | | |
| <input type="checkbox"/> Library (including library system, library branch, or library consortium applying as a library) | | |
| <input type="checkbox"/> Consortium (intermediate service agencies, states, state networks, special consortia) | | |
| 6a. Contact Person's Name: Sr. Josefa Marie | | |
| <i>First, fill in every item of the Contact Person's information below that is different from Item 4, above. Then check the box next to the preferred mode of contact. (At least one box MUST be checked.)</i> | | |
| 6b. Street Address, P.O.Box, or Route Number | | |
| <input checked="" type="checkbox"/> 1684 WHITE PLAINS RD | | |
| City BRONX | State NY | Zip Code 10462-3828 |

| | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | 6c. Telephone Number (718) 829- 4837 |
| <input checked="" type="checkbox"/> | 6d. Fax Number (718) 822- 3726 |
| <input type="checkbox"/> | 6e. E-mail Address |

Block 2: Summary Description of Needs or Services Requested

7 This Form 470 describes (check all that apply):

a. Tariffed services - telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year.

b. Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year.

c. Services for which a new written contract is sought for the funding year in Item 2.

d. A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.

NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract do NOT require filing of a Form 470.

What kinds of service are you seeking: Telecommunications Services, Internet Access, or Internal Connections? Refer to the Eligible Services List at www.sl.universalservice.org for examples. Check the relevant category or categories (8, 9, and/or 10 below), and answer the questions in each category you select.

8 Telecommunications Services
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a **YES**, I have an RFP. It is available on the Web at or via (check one):
 the Contact Person in Item 6 or the contact listed in Item 11.

b **NO** , I do not have an RFP for these services.

If you answered NO, you must list below the Telecommunications Services you seek. Specify each **service or function** (e.g., local voice service) and quantity and/or capacity(e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications Services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Add additional lines if needed.

| Service or Function: | Quantity and/or Capacity: |
|------------------------|---------------------------|
| local phone service | 4 lines |
| long distance service | 4 lines |
| cellular phone service | 2 lines |

9 Internet Access
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a **YES**, I have an RFP. It is available on the Web at or via (check one):
 the Contact Person in Item 6 or the contact listed in Item 11.

b **NO** , I do not have an RFP for these services.

If you answered NO, you must list below the Internet Access Services you seek. Specify each **service or**

function (e.g., monthly Internet service) and quantity and/or capacity(e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internet Access services. Add additional lines if needed.

| Service or Function: | Quantity and/or Capacity: |
|----------------------------|---------------------------|
| dedicated internet service | 80 computers |

10 **Internal Connections**

Do you have a Request for Proposal (RFP) that specifies the services you are seeking ?

a **YES**, I have an RFP. It is available on the Web at or via (check one):
 the Contact Person in Item 6 or the contact listed in Item 11.

b **NO**, I do not have an RFP for these services.

If you answered NO, you must list below the Internal Connections Services you seek. Specify each **service or function** (e.g., local area network) and quantity and/or capacity(e.g., connecting 10 rooms and 300 computers at 56kbps or better). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internal Connections services. Add additional lines if needed.

| Service or Function: | Quantity and/or Capacity: |
|---------------------------------|---------------------------|
| network support and maintenance | 100 connections |

11 (Optional) Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the signer of this form.

Name: _____ Title: _____

Telephone number
 () - _____

Fax number
 () - _____

E-mail Address _____

12. Check here if there are any restrictions imposed by state or local laws or regulations on how or when providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or provide Web address where they are posted and a contact name and telephone number for service providers without Internet access.

13. If you intend to enter into a multi-year contract based on this posting or a contract featuring an option for voluntary extensions you may provide that information below. If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, summarize below (including the likely timeframes).

Block 3: Technology Assessment

14. **Basic telephone service only:** If your application is for basic local and long distance telephone service (wireline or wireless) only, check this box and skip to Item 16.

15. Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your

application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

a. Desktop software: Software required has been purchased; and/or is being sought.

b. Electrical systems: adequate electrical capacity is in place or has already been arranged; and/or upgrading for additional electrical capacity is being sought.

c. Computers: a sufficient quantity of computers has been purchased; and/or is being sought.

d. Computer hardware maintenance: adequate arrangements have been made; and/or are being sought.

e. Staff development: all staff have had an appropriate level of training /additional training has already been scheduled; and/or training is being sought.

f. Additional details: Use this space to provide additional details to help providers to identify the services you desire.

Block 4: Recipients of Service

16. Eligible Entities That Will Receive Services:

Check the ONE choice (a,b or c) that best describes this application and the eligible entities that will receive the services described in this application. You will then list in Item 17 the entity/entities that will pay the bills for these services.

a. Individual school or single-site library.

b. Statewide application for (enter 2-letter state code) representing (check all that apply):

- All public schools/districts in the state:
- All non-public schools in the state:
- All libraries in the state:

If your statewide application includes INELIGIBLE entities, check here. **If checked, complete Item 18.**

c. School district, library system, or consortium application to serve multiple eligible entities:

| | |
|---|--|
| Number of eligible sites | |
| <i>For these eligible sites, please provide the following</i> | |
| Area Codes (list each unique area code) | Prefixes associated with each area code (first 3 digits of phone number) separate with commas, leave no spaces |

If your application includes INELIGIBLE entities, check here. **If checked, complete Item 18.**

17. Billed Entities

List the entity/entities that will be paying the bills directly to the provider for the services requested in this application. These are known as Billed Entities. At least one line of this item must be completed. Attach additional

sheets if necessary.

| Entity | Entity Number |
|-------------------|---------------|
| ST DOMINIC SCHOOL | 10615 |

18. Ineligible Participating Entities

Does your application also seek bids on services to entities that are not eligible for the Universal Service Program? If so, list those entities here (attach pages if needed):

| Ineligible Participating Entity | Area Code | Prefix |
|---------------------------------|-----------|--------|
|---------------------------------|-----------|--------|

Block 5: Certification and Signature

19. The applicant includes:(Check one or both)

- a. schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. Secs. 7801(18) and (38), that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or
- b. libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to elementary and secondary schools, colleges and universities).

20. All of the individual schools, libraries, and library consortia receiving services under this application are covered by:

- a. individual technology plans for using the services requested in the application, and/or
- b. higher-level technology plans for using the services requested in the application, or
- c. no technology plan needed; application requests basic local and/or long distance telephone service only.

21. Status of technology plans (if representing multiple entities with mixed technology plan status, check both a and b):

- a. technology plan(s) has/have been approved by a state or other authorized body.
- b. technology plan(s) will be approved by a state or other authorized body.
- c. no technology plan needed; application requests basic local and long distance telephone service only. .

22. I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.

23. I recognize that support under this support mechanism is conditional upon the school(s) or library(ies) I represent securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.

24. I certify that I am authorized to submit this request on behalf of the above-named entities, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

25. Signature of authorized person:

26. Date (mm/dd/yyyy): 02/02/2004

27. Printed name of authorized person: JOSEFA MARIE

FCCAR0031

- 28. Title or position of authorized person: **PRINCIPAL**
- 29a. Address of authorized person: **1684 WHITE PLAINS RD**
City: **BRONX** State: **NY** Zip: **10462-3828**
- 29b. Telephone number of authorized person: **(718) 829 - 4837**
- 29c. Fax number of authorized person: **(718) 8223726**
- 29d. E-mail address number of authorized person:

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

Service provider involvement with preparation or certification of a Form 470 can taint the competitive bidding process and result in the denial of funding requests. For more information, refer to the "Service Provider Role in Assisting Customers" at www.sl.universalservice.org/vendor/manual/chapter5.doc or call the Client Service Bureau at 1-888-203-8100.

NOTICE: Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries ordering services that are eligible for and seeking universal service discounts to file this Description of Services Requested and Certification Form (FCC Form 470) with the Universal Service Administrator. 47 C.F.R. § 54.504. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended. 47 U.S.C. § 254. The data in the report will be used to ensure that schools and libraries comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504. All schools and libraries planning to order services eligible for universal service discounts must file this form themselves or as part of a consortium.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or a potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding. In addition, information provided in or submitted with this form or in response to subsequent inquiries may also be subject to disclosure consistent with the Communications Act of 1934, FCC regulations, the Freedom of Information Act, 5 U.S.C. § 552, or other applicable law.

If you owe a past due debt to the federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide the information to these agencies through the matching of computer records when authorized.

If you do not provide the information we request on the form, the FCC may delay processing of your application or may return your application without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, et seq.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, DC 20554.

Please submit this form to:

**SLD-Form 470
P.O. Box 7026
Lawrence, Kansas 66044-7026
1-888-203-8100**

For express delivery services or U.S. Postal Service, Return Receipt Requested, mail this form to:
SLD-Form 470

FCCAR0032

**c/o Ms. Smith
3833 Greenway Drive
Lawrence, Kansas 66046
1-888-203-8100**

FCC Form 470
May 2003

[New Search](#)

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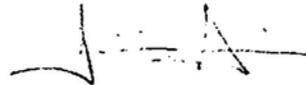
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EXHIBIT 2

DECLARATION OF JIIN ARTIS

I, Jiin Artis (formally Jiin Kang), President, Kwah, Inc. ("Kwah"), hereby declare, under the penalty of perjury, that I have reviewed the attached Appeal and that all factual statements set forth in the Appeal are true and correct, to the best of my knowledge, information, and belief. Specifically:

1. Kwah was selected as an E-Rate service provider by the Schools referenced in the attached Appeal and entered into appropriate contracts with the Schools for the provision of such services.
2. Kwah provided the requested services to the schools.
3. Kwah provided the appropriate invoices to USAC and was paid by USAC the discounted portion of the cost of such services.
4. Kwah did not attempt to influence any Schools' decision regarding the eligible services for which it should seek funding or any other aspect of the content set forth on any Schools' FCC Form 470. Kwah also did not attempt to influence any School to select Kwah as its E-Rate service provider.



**Jiin Artis
President
Kwah, Inc.**

November 28, 2008

EXHIBIT 3

Notification of Commitment Adjustment Letter
Funding Year 2004: 7/01/2004 - 6/30/2005

October 1, 2008

Sr. Josefa Marie
ST DOMINIC SCHOOL
1684 WHITE PLAINS RD
BRONX, NY 10462 3828

Re: Form 471 Application Number: 410150
Funding Year: 2004
Applicant's Form Identifier: 200447110615A
Billed Entity Number: 10615
FCC Registration Number: 0012008207
SPIN Name: Kwah, Inc.
Service Provider Contact Person: Jiin Artis

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the adjustments to your funding commitment required by program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of the Demand Payment Letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at <http://www.universalservice.org/fund-administration/tools/latest-news.aspx#083104> for more information regarding the consequences of not paying the debt in a timely manner.

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Numbers you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, Billed Entity Number, and FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter specific and brief, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.
If you are submitting your appeal electronically, please send your appeal to appeals@sl.universalservice.org using your organization's e-mail. If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Dept. 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Appeals Area of the SLD section of the USAC web site or by contacting the Client Service Bureau at 1-888-203-8100. We strongly recommend that you use the electronic appeals options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (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 of 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 section of the USAC web site, or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. Immediately preceding the Report, you will find a guide that defines each line of the Report.

The SLD is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these Funding Request Numbers, a separate letter will be sent to the service provider detailing the necessary service provider action.

Please note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Please note the Funding Commitment Adjustment Explanation in the attached Report. It explains why the funding commitment is being reduced. Please ensure that any invoices that you or your service provider submit to USAC are consistent with program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Jiin Artis
Kwah, Inc.

A GUIDE TO THE FUNDING COMMITMENT ADJUSTMENT REPORT

A report for each E-rate funding request from your application for which a commitment adjustment is required is attached to this letter. We are providing the following definitions for the items in that report.

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

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

SPIN (Service Provider Identification Number): A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support mechanisms. A SPIN is also used to verify delivery of services and to arrange for payment.

SERVICE PROVIDER NAME: The legal name of the service provider.

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

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

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

ORIGINAL FUNDING COMMITMENT: This represents the original amount of funding that SLD had reserved to reimburse you for the approved discounts for this service for this funding year.

COMMITMENT ADJUSTMENT AMOUNT: This represents the amount of funding that SLD has rescinded because of program rule violations.

ADJUSTED FUNDING COMMITMENT: This represents the adjusted total amount of funding that SLD has reserved to reimburse for the approved discounts for this service for this funding year. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.

FUNDS DISBURSED TO DATE: This represents the total funds that have been paid to the identified service provider for this FRN as of the date of this letter.

FUNDS TO BE RECOVERED FROM APPLICANT: This represents the amount of improperly disbursed funds to date as a result of rule violation(s) for which the applicant has been determined to be responsible. These improperly disbursed funds will have to be recovered from the applicant.

FUNDING COMMITMENT ADJUSTMENT EXPLANATION: This entry provides an explanation of the reason the adjustment was made.

**Funding Commitment Adjustment Report for
Form 471 Application Number: 410150**

| | |
|---------------------------------------|-----------------|
| Funding Request Number: | 1124696 |
| Services Ordered: | INTERNET ACCESS |
| SPIN: | 143025798 |
| Service Provider Name: | Kwah, Inc. |
| Contract Number: | ADStDom |
| Billing Account Number: | ADStDom |
| Site Identifier: | 10615 |
| Original Funding Commitment: | \$8,100.00 |
| Commitment Adjustment Amount: | \$8,100.00 |
| Adjusted Funding Commitment: | \$0.00 |
| Funds Disbursed to Date: | \$8,100.00 |
| Funds to be Recovered from Applicant: | \$8,100.00 |

Funding Commitment Adjustment Explanation:

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 Kwah, Inc. participated in the preparation of the Form 470 which established the competitive bidding process for FRN 1124696 by performing electronic data entry work on the Form 470 and 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**