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October 5, 2010

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

Re: CC Docket 02-6
CC Docket 96-45
Request for Review by Net56, Inc. of Decisions of the Universal Service Administrator regarding Harrison School District 36 Funding Year 2008

Dear Ms. Dortch:

Attached for filing are Exhibits A-F to accompany the above-referenced Request for Review. The Request for Review was submitted to the Commission electronically on October 4, 2010 (ECFS Filing Receipt -- Confirmation number: 2010104015156). Due to a computer problem, however, the exhibits were not submitted simultaneously. Please associate the attached Exhibits with the Request for Review, which is also attached.

Should there be any questions regarding this matter, please contact the undersigned.

Very truly yours,

DAVIS WRIGHT TREMAINE LLP

Cathleen Schultz

Cathleen A. Schultz
Paralegal

Enclosure

Before The
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
	)	
Request for Review by Net56, Inc. of Decisions of the Universal Service Administrator	)	CC Docket No. 02-6
	)	CC Docket No. 96-45
	)	
Schools and Libraries Universal Service Service Support Mechanism	)	Harrison School District 36 2008 Funding Year FRNs 1753187, 1753238, 1753268, 1753317

REQUEST FOR REVIEW BY NET56, INC. OF DECISIONS OF THE UNIVERSAL SERVICE ADMINISTRATOR

Net56, Inc. ("Net56") respectfully requests, pursuant to Sections 54.719 through 54.723 of the Commission's rules,[1] that the Commission review and reverse the Universal Service Administrative Company ("USAC") Decision on Appeal for funding year 2008 ("Administrator's Decision") and the associated USAC funding commitment decision for the above-referenced FRNs.[2] The Administrator's Decision was issued on August 4, 2010 in response to a Letter of Appeal filed by Net56 on April 23, 2010.[3] For the reasons set forth herein, the Commission should grant Net56's appeal of the Administrator's Decision and remand the underlying funding application to USAC for immediate approval.[4]

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[1] 47 C.F.R. §§ 54.719-54.723.
[2] *See* Administrator's Decision on Appeal for Funding Year 2008-2009, dated August 4, 2010, attached hereto as Exhibit A ("Administrator's Decision"); *see also* the Funding Commitment Decision Letter, dated February 24, 2010 ("FCDL") and the Further Explanation of Administrator's Funding Decision Letter, dated March 26, 2010 ("Further Explanation Letter"), jointly attached hereto as Exhibit B.
[3] *See* Letter of Appeal, dated April 23, 2010, attached hereto as Exhibit C ("Letter of Appeal to USAC").
[4] The FCC Form 471 Application Number on which the above-referenced FRNs were submitted to USAC is Funding Year 2008 Form 471 Application Number 634059, attached hereto as Exhibit D (the "District's Form 471"). Harrison School District 36 is the Billed Entity for the application, and its Billed Entity Number ("BEN") is 135349.

Background

Net56 is a small, privately-owned technology solutions provider. Net56 began participating in the E-rate program in 2003 in response to local school districts' interest in more personalized, responsive services that are tailored to their rapidly changing needs. Currently, Net56 provides e-rate and non e-rate services to eight school districts in northern Illinois, including the Harrison School District, the recipient of the services which are the subject of this appeal (the "District"). The District is comprised of a single school with 480 students in the pre-kindergarten through 8th grades. More than 30% of the students are eligible for the National School Lunch Program. As a result, the District is eligible to receive services under the E-rate program at the 60% discount level.

Net56 began providing e-rate services to the District in funding year 2007. USAC reviewed and approved a Form 471 funding request from the District for Net56 services for funding year 2007 that is substantially similar to the services at issue in this appeal.[5] Several months into the 2008 funding year, however, USAC advised Net56 and the District that it was conducting a special compliance review of the funding applications filed by school districts served by Net56 and that all funding for these districts would be placed on hold, including funding that had already been reviewed and approved by USAC. USAC did not supply Net56 or the District with any information on the reason for the compliance review.

On December 27, 2007, the District posted a Form 470 for the 2008 funding year on the USAC website, initiating a 28-day competitive bidding period and seeking bids for Internet access, web and email hosting, firewall, and wide area network services.[6] In response to the Form 470, Net56 proposed a written offer with specific proposed rates for each of these services

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[5] *See* 2007 Form 471 Application Number 552545.

[6] *See* FCC Form 470 Application Number 325210000655382, attached hereto as Exhibit E (the "District's Form 470").

to the District for e-rate services for the 2008 funding year. The District accepted Net56's bid and signed the quotation on February 3, 2008, thereby entering into a contract ("2008-09 E-Rate Contract"). On February 7, 2008, the District filed a Form 471 with USAC, requesting funding for the e-rate services to be provided by Net56 pursuant to this contract.[7]

On February 23, 2010 – more than two years after the Form 471 was submitted – USAC finally issued a FCDL. The FCDL denied funding for each of the FRNs and stated, "[t]his funding request is denied as a result of the program violations explained in the Further Explanation of Administrator's Funding Decision letter sent this date under separate cover."[8] In fact, the District and Net56 had to wait another month, until March 26, 2010, to receive the letter from USAC describing the reasons for the funding denial. Shortly thereafter, on April 23, 2010, Net56 filed the Letter of Appeal to USAC, appealing the February 23, 2010 funding decision. On August 4, 2010, USAC issued the Administrator's Decision, denying Net56's appeal and upholding its decision to deny all funding for the FRNs covered by the District's Form 471.[9]

I. The Administrator's Decision Erroneously Ignores the Right Contract.

USAC's stated basis for denying all funding for the FRNs is its determination that the District and Net56 "failed to provide a breakdown of the eligible versus ineligible services being received from Net56 and their respective dollar amounts..."[10] As Net56 explained in the Letter of Appeal to USAC, this conclusion was based upon review of the wrong contract.[11] In the course of USAC's special compliance review of Net56, the District provided USAC with a copy of a 60-month term Master Services Agreement, dated June 21, 2007, between Net56 and the

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[7] *See* Exhibit D.
[8] FCDL at 3-6.
[9] Administrator's Decision at 1.
[10] Further Explanation Letter at 6.
[11] Letter of Appeal to USAC at 2-3.

District ("MSA").[12] The MSA provided a foundation for a relationship between Net56 and the District upon which the District could later choose to contract for specific services. USAC instead incorrectly understood this agreement to be "the contract" for the provision of e-rate services for the 2008 funding year. Since the 2007 MSA document does not provide any breakdown of e-rate eligible and ineligible services and their respective costs, USAC denied the District's funding request on the basis that this breakdown was missing.

But that breakdown is plainly included in the parties' 2008-09 E-Rate Contract, which is the document that the parties agreed to and executed during the bid period. This contract clearly describes and states the separate monthly price of each eligible e-rate service, distinct from all ineligible services. As such, the 2008-09 E-Rate Contract satisfied the requirement that USAC erroneously found to have been violated, by allocating eligible and ineligible services and their respective costs.

USAC nonetheless decided that the MSA was the only contract because the District had in one instance referenced the MSA in responding to a USAC question regarding the applicable contract. Nothing in the Commission's rules directs USAC to deny funding on the basis of a minor error in responding to USAC inquiries when in reality the parties complied with program rules. Here, the 2008-09 E-Rate Contract obviously applies. If the District and Net56 had believed the 2007 MSA was a contract for e-rate services for funding year 2008-09, the District would have had no need to seek bids at the end of 2007 through a new Form 470, and Net56 would have had no need to provide a new quotation.[13] Moreover, even if the MSA included e-rate services for 2008, which it does not, it would have been superseded by the subsequent

[12] The Further Explanation Letter states that this MSA was signed on June 21, 2006, but it was signed on June 21, 2007.
[13] The term of the MSA is 60 months, into 2011.

agreement executed after the District posted its Form 470 for 2008.[14] Therefore, the 2008-09 E-Rate Contract signed on February 3, 2008 is the relevant contract between Net56 and this contract clearly allocates and states the price for each e-rate service covered by the District's Form 471.

In any event, USAC's conclusion proves too much. USAC states that the [2008-09 E-Rate Contract] "is not a separate contract but rather part of the [MSA]." But if the 2008-09 E-Rate Contract is part of the MSA that USAC believes is the contract, then that contract *includes* the allocation between eligible and ineligible services that USAC stated was missing. Whether the quotation is a separate contract, as Net56 and the District believed, or whether it was incorporated into the MSA prior to the Form 471 filing, as USAC apparently believes, either way it was contractually agreed to by Net56 and the District during the bid period, and either way it thereby set a clear allocation between eligible and ineligible services. Nothing in the Administrator's Decision alleges any flaw in the 2008-09 E-Rate Contract; instead, its decision is based on the supposition that that agreement simply does not apply, when in fact it does.

II. The District Paid for E-Rate Services

Unlike Net56's prior appeal, filed with the Commission on August 30, 2010, in this case USAC also asserts that funding should be denied because it thought that the District did not pay for eligible services. USAC made that finding because the District's payments for 2008 were delivered to a leasing company in the amount that was originally established by the lease agreement attached to the 2007 MSA. USAC apparently concluded that this payment must be solely attributed to the ineligible equipment described in the lease agreement between the

[14] The Administrator's Decision notes that Exhibit C, Section 2 of the MSA casually makes reference to E-Rate. However, no e-rate services were actually contracted for by the MSA as signed in 2007, and so these stray references do not render the MSA to be the e-rate contract, rather than the actual 2008-09 E-Rate Contract that was entered during the bid period.

District and the leasing company, and not to the eligible services provided under the parties subsequent E-Rate Contract.

It is true that the lease agreement originally described a payment of $7377.25 without reference to allocation of any part of that payment for Net56 services (eligible or ineligible). However, the District and the leasing company subsequently agreed in writing (to reflect their original intent) that the equipment was not worth this amount and that a portion of the lease payment would be provided by the leasing company to Net56 for services. The District and Net56 also agreed in writing to a service-by-service allocation of these funds to eligible and ineligible services. These documents are included in Attachments 3 and 4 to Net56's Letter of Appeal to USAC. USAC did not dispute that these payments were made by the District or that Net56 received them from the leasing company. However, USAC chose to ignore the parties' allocation of the lease payments because the allocation document between the District and the leasing company stated that "This clarification does not amend the terms of the Master Lease."[15] USAC therefore stuck with its position that the MSA is the only contract, that the MSA provided only for a lease payment that is only for equipment, and that the District therefore only paid for equipment and not eligible services.

USAC's position should be reversed because it does not comport with reality. *USAC has not disputed that the leasing company did in fact transfer a portion of these funds that it received from the District to Net56.* USAC also did not dispute that that the amount of the District's funds transferred to Net56 were more than enough to pay the District's non-discounted share of eligible services. If the payments were made solely for equipment owned by the leasing

[15] Although Net56 cannot speak for the District or the leasing company, the parties presumably meant that they did not view this clarification as an amendment because it did not change the overall payment that would be made by the District. It would be absurd to read this document, as USAC does, and yet conclude that the leasing company and district nonetheless continued to believe that the lease payment was solely for equipment.

company, then it would not have delivered the funds to Net56. Instead, the leasing company did pay Net56 on behalf of the District both for eligible and ineligible services, in accordance with the exact allocations specified by Net56 and the District in Attachment 4 of the Letter of Appeal and in their 2008-09 E-Rate Contract. It is incorrect and exceedingly unfair for USAC to ignore these payments, which were actually made, on the sole basis that USAC reads the lease agreement to mean something other than what the parties expressly clarified it to mean. USAC's basis is especially inappropriate given that the lease agreement is not the applicable contract for e-rate services.

Net56 now recognizes that the District's payment for e-rate services through the leasing company was confusing to USAC, and it has therefore moved away from that model. But the fact is that the District did make payments that cover its non-discounted share, and these payments were received and retained by Net56 as the e-rate services provider, and not by the leasing company for equipment that it owned. The Administrator's Decision was therefore incorrect in concluding that the District had not paid for eligible services.

III. USAC's All-or-Nothing Implementation of the Cost-Effectiveness Rule is Inequitable.

If the Commission agrees with the position set forth above, then it should direct USAC to provide full funding for the Internet Access services provided under FRN 1753187. However, in the case of WAN, firewall, email and web hosting services covered under FRNs 1753238, 1753268 and 1753317, USAC indicated a belief that these services were not cost-effective and denied funding for those FRNs.[16] In the Letter of Appeal to USAC, Net56 asked USAC to reconsider that decision to the limited extent necessary to modify the FCDL to grant funding in the amount that USAC did conclude would have been cost-effective. The Commission

[16] Further Explanation Letter at 1-5.

previously instructed USAC that even when an applicant violates the cost-effectiveness rule, it is still entitled to funding in the amount associated with the least expensive cost-effective service.[17] In the *Macomb Order*, the school district received identical services from multiple service providers, including the lowest-cost bidder and two providers who offered the service at a higher price. USAC determined that the Macomb district violated the Commission's cost-effectiveness rule by not selecting the lowest-cost bidder to provide all of the services and denied the entire funding request on the basis that more than 30 percent of the request was ineligible. In its decision on appeal, the Commission found that USAC should not have denied all funding even though it agreed with USAC's determination that the school district violated program rules by not selecting the most cost-effective service offering.[18] The Commission recognized that it would be unnecessarily unfair to deprive an applicant or service provider of all funding for an eligible service based upon an all-or-nothing approach.

In the Administrator's Decision, USAC denied the appeal regarding cost-effectiveness because Net56 was the only bidder and its bid was found to not be cost-effective. "USAC cannot honor your request to approve funding up to the amount that is found to be cost effective because doing so would constitute a change in price and after the close of the bidding process as such price changes and renegotiation of the contract would constitute a violation of the FCC competitive bidding rules."[19] This is nonsense. Net56 is simply asking to be able to receive at least a fraction of the contract price for a service that no one denies has already been provided in full. This is not a "renegotiation" that Net56 has requested *from the District*; it is a request for a

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[17] *See* Letter of Appeal to USAC at 4, citing *Request for Review by Macomb Intermediate School District Technology Consortium,* File no. SLD-44190, Order, FCC 07-64 (rel. May 8, 2007) (the "Macomb Order").
[18] Macomb Order at paras. 6-9.
[19] Administrator's Decision at 3-4.

shred of equity *from USAC*. As such, it is not a renegotiation with the District any more so than it would have been in the *Macomb* case.

Net56 understands from USAC staff that its all-or-nothing approach reflects its belief that the Commission does not want to put USAC into the position of having to determine a cost-effective rate to award. However, USAC necessarily must determine at least an estimate of cost-effectiveness in order to apply the Ysleta test to find that a service is not cost-effective. The Administrator's Decision in fact specifically quotes rates it believes that it would have found to be cost-effective. No greater effort would have been required to provide funding in these amounts. It may well not always be a fair amount, but it would always be fairer than denying funding altogether.

For these reasons, the Commission should remand the cost-effectiveness decision to USAC and direct it to grant funding for FRNs 1753238, 1753268 and 1753317 in the amounts that USAC determined would have been cost-effective.

IV. Is Would be Inequitable to Deny All Funding

Even if the Commission finds that the District and/or Net56 failed to comply with some technical element of program rules, the Commission should give substantial consideration to the inequities that have been imposed on Net56 in this case as a result of USAC's extremely slow decision-making process. The delay in issuance of the FCDL unreasonably prejudiced Net56 and the District. Net56 initially contacted USAC in February 2006 to try to determine if its proposed contract structure was acceptable, and it walked away from those discussions believing that it had been given a go-ahead. USAC then later confirmed Net56's impression by providing funding for the District and other districts using the same approach with Net56 for subsequent funding years. USAC apparently decided sometime in 2008 that it had concerns with Net56's

approach, but until the FCDLs in 2010 it would never clearly articulate to Net56 what those concerns were. Once USAC notified Net56 that it was conducting a special review of the applications of the school districts served by Net56, both Net56 and its counsel repeatedly called and wrote to USAC, begging to be told the details of any concerns so that Net56 could address them before contracts were submitted for the following school years, to no avail. In writing and in person, Net56 made clear that it was available at any time to work with USAC to provide any information or clarification that USAC needed to complete its review and issue a decision.[20] During this time, Net56 and the District could have incorporated guidance from USAC into their approach to funding year 2009-10, and later funding year 2010-11, so that there would have been no problems with those applications. But USAC kept the District and Net56 in the dark until it was too late.

As the Commission has noted, "the timing of the Commission's and USAC's processes may be critical to schools and libraries. Lengthy intervals for processing or reviewing applications could have a disruptive effect on the budget or procurement schedule for schools or libraries."[21] In *Request for Review of Totowa Borough Public Schools*, the Wireline Competition Bureau found that USAC "erred by unreasonably delaying its notification to Totowa of the problems with its Form 470" for eight months.[22] More recently, the Bureau addressed a scenario

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[20] *See, e.g.*, letter from Paul Hudson to Mel Blackwell, dated October 16, 2009, attached hereto as Exhibit F.

[21] *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Docket No. 05-195, 20 FCC Rcd 11308, 11321, ¶ 29 (2005). In the same NPRM/FNPRM, the Commission reiterated that such delays and the resultant impact on mandated budget or procurement schedules "can have a significant negative impact on schools' and libraries' ability to achieve connectivity goals." *See id.* at 11325, ¶ 38.

[22] *Request for Review by Totowa Borough Public Schools, Schools and Libraries Universal Service Support Mechanism*, Order, File No. SLD-265823, CC Docket No. 02-6, DA 04-3898, ¶ 4 and n.14 (Wireline Comp. Bur. 2004) (citing previous instances of unreasonable or excessive delay). *See also Request for Waiver by Lettie W. Jensen Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, File No. SLD-267950, CC Docket Nos. 96-45 and 97-21, DA 01-2401, ¶¶ 5-7 (Com. Car. Bur. 2001) (holding that a two-month delay in notification regarding an omitted signature was unreasonable); *Request for Waiver by Council Bluffs Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, File No.

in which an applicant's numerous communications with USAC were ignored, ruling in favor of the applicant and pointing to the applicant's "several attempts to follow-up with USAC, and USAC's delay in responding."[23] A common theme in these cases is that dispensation should be provided to applicants when unreasonable delays by USAC inflicted prejudicial harm.

There is no dispute that Net56 in fact provided valuable, eligible services to the District. There is no dispute that during the competitive bidding period, Net56 quoted specific rates to the District for each eligible service, and that the District signed that proposed contract. There is also no dispute as to the amounts billed and paid for each eligible service – indeed, USAC's Further Explanation Letter even references the rate for each separate service in discussing their cost-effectiveness. (Thus, USAC on the one hand cites the exact rates from the 2008-09 E-Rate Contract while on the other hand perplexingly claiming that these rates have not been identified by being separately allocated.) There is no dispute that the Internet Access services were provided at cost-effective rates. There is no dispute that the District properly sought competitive bids, or thatNet56 was the best offer available to the District. USAC's only basis for denying all funding is that the District and Net56 supposedly failed to clearly allocate prices between eligible and ineligible services – even though they timely executed contract terms that did exactly that.

Under all of these circumstances, USAC's denial of every cent of requested funding elevates form over substance and unfairly penalizes the District and Net56 for USAC's extremely slow process. The Commission should therefore grant Net56's appeal of the Administrator's Decision and the underlying funding decision and remand the District's 2008 funding application to USAC for approval.

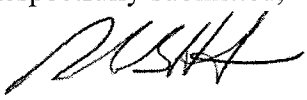
SLD-E007282, CC Docket Nos. 96-45 and 97-21, DA 00-1909, ¶ 4 (Com. Car. Bur. 2000) (determining that a failure to post applicant's Form 470 for approximately six weeks was excessive).

[23] *Request for Review by Bradford Regional Medical Center; Rural Health Care Universal Service Support Mechanism*, Order, File No. RHCP 14491, WC Docket No. 02-60, 25 FCC Rcd 7221, 7223, ¶ 4 (Wireline Comp. Bur. 2010).

Conclusion

For the foregoing reasons, the Commission should grant Net56's appeal of the Administrator's Decision and the underlying funding decision and remand the District's 2008 funding application to USAC for approval.

Respectfully submitted,



Paul B. Hudson
Davis Wright Tremaine LLP
1919 Pennsylvania Ave., NW, Suite 800
Washington, DC 20006-3401
(202) 973-4275

Counsel for Net56, Inc.

October 4, 2010

CERTIFICATE OF SERVICE

I, Debra Sloan, hereby certify that a true and correct copy of the foregoing *Request For Review By Net56, Inc. of Decisions of The Universal Service Administrator* was mailed postage prepaid this 4th day of October to the following:

Universal Service Administrative Company
Schools and Libraries Division
100 South Jefferson Road
P.O. Box 902
Whippany, New Jersey 07981

/s/ *Debra Sloan*
Debra Sloan

Exhibit A

Administrator's Decision on Appeal – Funding Year 2008-2009

August 04, 2010

Paul B. Hudson
Davis Wright Tremaine
1919 Pennsylvanie Ave. NW, Suite 200
Washington, DC 20006

Re:	Applicant Name:	HARRISON SCHOOL DISTRICT 36
	Billed Entity Number:	135349
	Form 471 Application Number:	634059
	Funding Request Number(s):	1753187, 1753238, 1753268, 1753317
	Your Correspondence Dated:	April 23, 2010

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 2008 Funding Commitment Decision 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): 1753187, 1753238, 1753268, 1753317
Decision on Appeal: **Denied**
Explanation:

- USAC is in receipt of your appeal letter regarding funding requested on FCC Form 471 #634059 between Net56, Inc. and Harrison School District 36 (HSD).

  In your appeal letter you indicate that it is your position that:
  1) "USAC based its decision upon the wrong contract..."
  2) "USAC incorrectly concluded that the District had not paid for e-rate services..."
  3) "the District did pay in accordance with agreements between the District, and the leasing company, and Net56 that clearly allocate the cost between eligible e-rate services and ineligible services."

In support of your position you provided three documents listed as Attachments 2, 3 and 4.

You state that Attachment 2, entitled "Harrison School District 36 Internet Access Quote," is the contract which should be used in USACs review. This document is signed and dated 2/3/2008.

USAC disagrees that we based our decision on the wrong contract for the following reasons:
1) In USAC's information request dated 4/14/2009 the applicant was asked: "For each of the funding requests (FRNs) on the above applications, where Net56 is the selected service provider, please provide a copy of the signed and dated contract for that FRN." In response, on 4/29/2009, Superintendent Gildea stated "The contract for services provided by Net56 for Harrison School District 36 is attached in a .pdf file for your review." That contract is the contract which was evaluated by USAC. The contract provided by the applicant is entitled "Net56 Master Service Agreement" and it was signed and dated 6/21/2007.
2) In that same information request, the applicant was also asked to provide all contracts between the school district and Net56, whether E-Rate related or not. The contract that was evaluated and not the document which you provided as Attachment 2 to your appeal, was the only contract provided.
3) In your appeal letter you stated "USAC incorrectly understood the 60-month term June 21, 2006 agreement to be the contract between Net56 and the District for the provision of e-rate services. However, as USAC correctly noted, that agreement does not provide for the provision of e-rate eligible services. Thus, while this agreement does say that it was at the time the sole agreement 'relating to the subject matter hereof,' that subject matter was not the provision of e-rate services." USAC believes that you misinterpreted the information included in the Further Explanation Letter related to this topic. USAC acknowledges that this 6/21/2007 contract does cover the requested e-rate services, along with a large number of additional services which are ineligible for e-rate funding. Exhibit B of that contract deals with WAN and Internet Access services and Exhibit C of that contract includes Web Hosting, WAN, Internet Access and Firewalls. Further, if this 6/21/2007 contract was not for e-rate services, then why does it have terms and conditions in Exhibit C, Section 2 addressing the following:
   - "E-RATE ELIGIBLE or E-RATE INELIGIBLE"
   - "E-RATE FUNDING"

USAC's issue is not what the contract covers but rather the fact that the covered e-rate services are not being paid for, as discussed in the next section.

USAC disagrees with your statement that USAC incorrectly concluded that the District had not paid for E-Rate services for the following reasons:

1) The contract specifies a payment of $7,377.25 per month. According to the contract, that entire amount is to be paid to American Capital Financial Services Inc., pursuant to Master Lease Agreement number 207138141.
2) Schedule A of Master Lease Agreement number 207138141 provides a listing of equipment and software which is being leased and this Schedule A indicates that the monthly rental charge for the lease of this equipment is $7,377.25. This

Schedule A shows that the full payment that is specified in the contract is being applied to the rental/lease of equipment. Further, much of the equipment listed in Schedule A is ineligible end user equipment.
3) The Master Lease Agreement lists 17 terms and conditions. All of those 17 address and specifically mention equipment and none of the 17 address or mention services in general or the specific services provided by Net56. Instead, the Schedule A of this lease agreement specifically states that the entire payment amount is for rental of equipment, as described in the Schedule A.
4) Attachment 3 to your appeal was provided in your February 19, 2010 information package. However, in reviewing this document, we are unable to resolve the discrepancy between the information provided earlier and this information because Attachment 3 states that "this clarification does not amend the terms of the master agreement" and the master agreement only specifies payment for the lease of equipment and not services.
5) The Master Lease Agreement specifically states that each schedule which references the Master Lease Agreement constitutes a separate lease. The applicant, in their response to USAC's information request, provided only one schedule, Schedule A. This Schedule A lists in detail all of the equipment covered by the lease and makes no mention of services. If the Master Lease Agreement also covered services, as you suggest in Attachment 3 to your appeal letter, then the applicant would have provided a Schedule B which would have listed and described these services.

Finally, you cite the Macomb Order (FCC 07-64) and ask for funding to be instated at a level that is cost-effective based on the precedent set in the Order. However, since the facts in this application are substantively different from that in the Order, it cannot be used as precedent.

1) The Macomb Order relates to an applicant spreading their procurement over multiple suppliers, each with bids at different price points, the lowest of which was a cost effective bid, the others were found to be not cost effective. The Commission allowed the applicant to procure the same amount of service from a single provider at their original price, and did not result in renegotiated pricing for the other providers that were deemed not cost-effective by USAC.
2) In this Harrison School District 36 case, the procurement resulted in a single winning bidder, Net56, and the funding requests were all deemed not cost-effective. Applicants cannot renegotiate their contracts in order to overcome a cost-effectiveness denial. Additionally, the pricing indicated in our analysis served only to demonstrate that the costs exceeded the FCC's thresholds.
3) USAC cannot honor your request to approve funding up to the amount that is found to be cost effective because doing so would constitute a change in price and after the close of the bidding process such price changes and renegotiation of the contract would constitute a violation of the FCC competitive bidding rules. Therefore, your original bid prices are what must be utilized in the cost effectiveness reviews and the cost effectiveness determinations related to those bid prices stand.

In summary, the violations of cost effectiveness and school not paying their share have not been resolved. Therefore the denials of the funding requests cited in your appeal stand.

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

cc: Jill Gildea

Paul B. Hudson
Davis Wright Tremaine
1919 Pennsylvanie Ave. NW, Suite 200
Washington, DC 20006

Billed Entity Number: 135349
Form 471 Application Number: 634059
Form 486 Application Number:

Exhibit B

USAC
Universal Service Administrative Company

Schools and Libraries Division

March 26, 2010

RECEIVED MAR 29

Dr. Jill Gildea
Harrison School District 36
6809 McCollom Lake Road
Wonder Lake, IL 60097-9546

Further Explanation of Administrator's Funding Decision
FCC Form 471 Application Number: 634059
Funding Request Numbers: 1753187, 1753238, 1753268 and 1753317
Funding Year 2008 (07/01/2008 – 06/30/2009)
Billed Entity Number: 135349

Under separate cover, you are being sent a Funding Commitment Decision Letter concerning the FCC Form 471 Application Number cited above. This Funding Commitment Decision Letter denies the Funding Request Number(s) indicated above.

Please be advised that the Funding Commitment Decision Letter (FCDL) is the official action on this application by the Universal Service Administrative Company (USAC). Please refer to that letter for instructions regarding how to appeal the Administrator's decision, if you wish to do so. The purpose of this letter is to provide you with additional information concerning the reason for modification and denial of these funding requests.

Review of FRN #1753187

FRN #1753187 requests funding in the amount of $17,088 for broadband circuits to be used for Internet access. This service is an eligible service. This FRN was not subjected to a cost effectiveness review.

Review of FRN #1753187

FRN #1753187 requests funding in the amount of $9,540 for Internet access WAN service. This WAN service request includes on-premise equipment. According to the Item 21 attachments and additional documentation you provided on October 30, 2008, which included a more detailed description of the services being procured from Net56 and a network diagram, the on-premise equipment consisted of one Cisco 2800 series layer 3 Router and one IBM eSeries Server, which was to function as a DNS/DHCP server.

Based on a review of the network diagram and related documentation related to this on-premise equipment, in accordance with the requirements of the Tennessee Order (FCC

99-216), the WAN server, identified as a DNS/DHCP server, is not eligible as part of a Priority 1 Internet access service.

The Tennessee Order questions address the exclusive use of the server, and whether the DHCP service would function if the server was removed. For reference, please see http://www.usac.org/sl/applicants/step06/on-premise-priority1-equipment.aspx.

- The diagram configuration, and the function of the server, fails the following requirements of the Tennessee Order:
    - *The Local Area Network of the school or library is functional without dependence on the equipment.* This is because the DHCP/DNS service would not be able to function if the server was removed.
    - *There is no contractual, technical, or other limitation that would prevent the service provider from using its network equipment, in part, for other customers.* This is because the server is located at an applicant site; as such, it would not be possible for the vendor to utilize the same server to provide DNS/DHCP service to another customer.

While the WAN server could potentially be eligible as Priority 2 internal connections, your establishing FCC Form 470, #325210000655382, did not post for Internal Connections. Therefore, the server is not fundable as Internal Connections. Furthermore, the discount rate that you requested on this FRN falls below the Priority 2 funding threshold for FY 2008. In other words, if the establishing FCC Form 470 for the FRN was posted for Internal Connections, it would be denied regardless, because there are insufficient funds available to provide support at that discount rate.

In response to USAC's request for cost allocation information, your service provider, Net56, in their response dated February 22, 2009, indicated that the cost associated with the server was $205 per month each or a total of $2,460 annually. Your funding request was reduced by that amount.

After modification and removal of the costs associated with the ineligible server, this FRN was subjected to a cost effectiveness review by USAC. This review was conducted based on the Item 21 attachments, related follow up questions and your responses to those follow up questions. This cost effectiveness review compared the funding requested for the solution from Net56 with the funding required for a comparable premises-based solution, as well as other on-premises solutions.

The result of that review was that the funding request was not justified as cost effective as required by FCC rules. Specifically, the Internet access WAN services exceed two times the cost of a comparable solution from commercial vendors for the eligible services. The FCC has stated that in some situations in which "the price of services is so exorbitant that it cannot, on its face be cost effective" and cited as an example selling a service "at prices

two to three times greater than the prices available from commercial vendors would not be cost effective, absent extenuating services" Ysleta Order, FCC 03-313, paragraph 54.[1] The funding required for the Net56 solution over the five year life of the contract is $35,400. However, the cost of a comparable solution that is based on purchasing the networking equipment and annual maintenance would be approximately $7,200. This amount accounts for the purchase of one Cisco 2811 router at a market price of $1800 each, plus 50 percent of that cost for installation and configuration, plus 50 percent of that cost annually for maintenance.

FRN #1753268 Review

FRN #1753268 requests funding in the amount of $30,000 for a firewall service. This firewall service includes on-premise software running on the router included in the WAN service FRN #1753187. FRN #1753268 also includes firewall equipment located at the Net56 data center. The Net56 data center is an ineligible location; accordingly, equipment located there is ineligible for funding. Also, since the funding request includes the firewall capability of the software running on the router, which is located at the point of entry of the district's building, it has been determined that the equipment located at the Net56 data center is redundant and therefore ineligible for that reason as well.

In response to USAC's request for cost allocation information, your service provider, Net56, in their response dated February 22, 2009, indicated that the cost associated with the firewall equipment located at the Net56 data center was $1,350 per month or $16,200 annually. The funding request was reduced by that amount.

After modification and removal of the costs associated with the firewall equipment located at the Net56 data center, this FRN was subjected to a cost effectiveness review by USAC. This review was conducted based on the Item 21 attachments, related follow up questions and your responses to those follow up questions. This cost effectiveness review compared the funding requested for the solution from Net56 with the funding required for a comparable premises-based solution, as well as other on-premises solutions.

The result of that review was that the funding request was not justified as cost effective as required by FCC rules. The FCC has stated that in some situations in which "the price of services is so exorbitant that it cannot, on its face be cost effective" and cited as an example selling a service "at prices two to three times greater than the prices available from commercial vendors would not be cost effective, absent extenuating services" Ysleta Order, FCC 03-313, paragraph 54.[2] Specifically, the Internet access firewall exceeds two times the cost of a comparable solution from commercial vendors. The funding required for the Net56 solution over the five year life of the contract is $69,000.

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[1] *See* 47 C.F.R. secs. 54.511(a), 54.504(b)(2)(vii), 54.504(c)(1)(xi). *See also* Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, et al.,CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 26407, FCC 03-313 paras. 47-55 (Dec. 8, 2003) (*Ysleta Order*).
[2] *See id*

However, the cost of a comparable solution that is based on purchasing firewall equipment for the district's building and annual maintenance would be approximately $20,000. This amount accounts for the purchase of one Cisco PIX Firewall device at market price of $5,000, plus 50 percent of that cost for installation and configuration, plus 50 percent of that cost annually for maintenance.

FRN #1753317 Review

FRN #1753317 requests funding in the amount of $60,000 for web hosting and email services. In the response to USAC's information request regarding the specific services included in this funding request, you indicated that these services include web retention and web journaling as well as email retention and email journaling. Web retention and e-mail retention is archiving of information. Web journaling and e-mail journaling is an application. These products/services are ineligible under program rules.
For details, please refer to the Eligible Services List:
http://www.universalservice.org/sl/tools/eligible-services-list.aspx.

In response to USAC's request for cost allocation information, your service provider, Net56, in their response dated February 22, 2009, indicated that the cost associated with the email retention and journaling and web retention and journaling was $1,000 per month or $12,000 annually. The funding request was reduced by that amount.

After modification and removal of the costs associated with the email retention and journaling and the web retention and journaling, this FRN was subjected to a cost effectiveness review by USAC. This review was conducted based on the Item 21 attachments and follow up questions and your responses to the follow up questions. This cost effectiveness review compared the funding requested for the solution from Net56 with the funding required for a comparable premises-based solution, as well as other on-premises solutions.

The result of that review was that the funding request was not justified as cost effective as required by FCC rules. The FCC has stated that in some situations in which "the price of services is so exorbitant that it cannot, on its face be cost effective" and cited as an example selling a service "at prices two to three times greater than the prices available from commercial vendors would not be cost effective, absent extenuating services" Ysleta Order, FCC 03-313, paragraph 54.[3] Specifically, the Internet access web hosting and e-mail services exceed two times the cost of a comparable solution from commercial vendors. The funding required for the Net56 solution over the five year life of the contract is $240,000. However, the cost of a comparable solution that is based on purchasing the server equipment and annual maintenance would be approximately $57,000. This amount accounts for the purchase of four servers at a market price of

[3] *See id*

$14,250, including installation and maintenance for five years. It should be noted that in most cases, two servers are adequate to perform these functions. Costs associated with the purchase and annual maintenance of two servers would be approximately $28,500.

Contract Review: Service Eligibility Issues

In response to the April 14, 2009 request by USAC for all contracts between the Harrison School District 36 and the service provider, Net56, the applicant provided one contract. The contract is signed by Linda Amettis, President of the school board and dated June 21, 2006. It is for a term of 60 months.

Upon review, your contract specifies several additional ineligible services that are included in the funding requests beyond what was disclosed in your responses to information requests. Such services include, but are not limited to, the following: maintenance, operation and repair of school owned equipment located in the Net56 data center (co-located equipment), providing anti-virus services on co-located equipment, providing environmentally controlled atmosphere and generated backup power for co-located equipment, Tier 1 and Tier 2 help desk support to the desktop for school employees, on-site floating field engineer, application hosting services, unlimited professional development on Microsoft Office and SharePoint software.

Because the FRNs, with the exception of FRN #1753187 had already been determined to be not cost effective based on the information that was previously provided, USAC did not attempt to re-perform cost allocations and the cost effectiveness reviews based upon this additional information, and the previous determinations as detailed above stand.

However, it is important to note that during the course of this review, both you and your service provider failed to provide a breakdown of the eligible versus ineligible services being received from Net56 and their respective dollar amounts that is consistent with the services and costs noted in your contract, which, additionally, tie in clearly to your Schools and Libraries Program funding requests. As explained in greater detail below, the documentation provided by you indicates that the monthly payments are exclusively for the rental/lease of equipment that is not fundable.

Contract Review: Payments

The Master Service Agreement portion of the aforementioned contract, in section 3, states that this is the sole agreement between the school and the service provider "relating to the subject matter hereof." Accordingly, there is no other agreement/contract related to the services requested in FCC Form 471 application #634059.

This contract specifies a monthly payment of $7,377.25 to be paid pursuant to the terms and conditions of Master Lease Agreement No. 2007138141, which is a financing agreement between the school and American Capital Financial Services Inc. There is no other payment specified in the contract other than the payment to American Capital Financial Services Inc.

Finance Agreement Review

The financing agreement, also signed by Linda Amettis, states that the school is to make 60 lease payments in the amount of $7,377.25 each. The financing agreement indicates that the payments are for the rental/lease of the equipment shown in Schedule A of the master lease agreement. That equipment is the same equipment listed in Exhibit A of the Net56 contract. Exhibit A indicates that the implementation location for much of this equipment is the Net56 location at 1266 W. Northwest Hwy, Palatine, Illinois, which is an ineligible location, making the equipment deployed there ineligible. The remainder of the equipment listed in Exhibit A of the contract, identified for deployment at the school site, is acknowledged in the exhibit to be ineligible for funding. This school site equipment consists of end user equipment, laptops and desktops and ineligible software. Per the financing agreement, the entire amount of the specified payments is associated with the rental/lease of this ineligible equipment.

As specified in the financing agreement between the school and the financing company, this payment is solely for the rental/lease of hardware and/or software. The hardware and/or software specified as covered by the finance agreement is ineligible either because it is being deployed within the Net56 data center, an ineligible entity, or because it is end user equipment.

Although eligible services may have been provided by Net56, there is no documentation regarding any payment for eligible or ineligible Internet access services. Therefore, there is no documentation to support that you paid your Schools and Libraries Program share for any eligible Internet access services, because the lease agreement, which represents the full payment for services, is solely for the rental/lease of ineligible equipment.

Net56 Additional Information

USAC management met with several applicants as well as Net56 regarding these concerns. On October 7, 2009, Net56 provided a two page letter in response to USAC's questions. The request was to respond as to why Net56 maintained that the server would be eligible as a Priority 1 Service; to answer how they arrived at their pricing structure; and to provide the grid referred to by some applicants that would purportedly allocate costs related to eligible and ineligible services.

The Net56 response was reviewed. First, the documentation provided did not affect the determination regarding the server. Second, the question regarding pricing structure was not answered directly, but rather, a "Total Cost of Ownership" document was provided, which compared costs of the Net56 solution with ineligible staff costs. It is important to note that while a particular solution may lower the overall Total Cost of Ownership to an individual school district, the Schools and Libraries program can only fund eligible products and services that are used in accordance with FCC Rules, which may not always result in the lowest total cost of ownership to the applicant. Third, the grid provided, while it did pertain to the funding requests, did not serve to answer the many questions

relating to disparities between the Item 21 documentation, the contract and the finance agreement.

Conclusion

The funding requests were reviewed for service eligibility. Ineligible services were cost allocated and the associated costs were removed from the funding requests. Cost effectiveness reviews were then performed. All three of the FRNs that were subjected to cost effectiveness reviews failed those cost effectiveness review.

During the course of the review of these FRNs, the contract and finance agreement were provided to USAC. The services noted in the contract differ from your responses during the cost effectiveness review; however, the determination that all three FRNs fail cost effectiveness review stands, since the additional information in the contract would only lead to further cost allocations, which would still provide a cost effectiveness failure.

In regard to service eligibility of the products and services specified in your contract, no documentation was provided to USAC that clearly allocates eligible and ineligible products and services and their respective costs. As a result, it is not possible to ascertain how your Schools and Libraries Program funding requests relate to the eligible and ineligible products and services noted on the contract.

Additionally, the finance agreement, which includes the only payment related to your contract and all four funding requests, including FRN #1753187 specifies that the payments are for the lease/rental of hardware at the Net56 data center, an ineligible location and the lease/rental of ineligible end user equipment located at the school site. While Net56 may be providing eligible Internet access services as a part of the contract, there is no documentation to support that any services, eligible or ineligible, are included in the payments to the finance company. Accordingly, there is no documentation regarding the payment of your Schools and Libraries Program share of Internet access services for any of the four funding requests.

Finally, USAC management made additional attempts to obtain information from Net56 in regard to these concerns; however, the documentation provided did not affect the outcome of the decision.

Sincerely,

The Schools and Libraries Program

cc:

Net56
Bruce Koch
1266 W. Northwest Hwy
Suite 740
Palatine, IL 60067

USAC
Universal Service Administrative Company

Schools and Libraries Division

FUNDING COMMITMENT DECISION LETTER
(Funding Year 2008: 07/01/2008 - 06/30/2009)

February 24, 2010

Mary Piazza
Net56, Inc
1266 West Northwest Hwy
Suite 740
Palatine, IL 60067

Re: Service Provider Name: Net56, Inc
Service Provider Identification Number: 143025679

Thank you for participating in the Schools and Libraries Program (Program) for Funding Year 2008. This letter is your notification of our decision(s) regarding application funding requests that listed your company's Service Provider Identification Number (SPIN).

NEXT STEPS

- File Form 498, Service Provider Information Form, if appropriate
- File Form 473, Service Provider Annual Certification Form (SPAC), for the above Funding Year
- Work with your customer to provide appropriate invoicing to USAC
- Service Provider Invoice (Form 474) or Billed Entity Applicant Reimbursement (Form 472)

Please refer to the Funding Commitment Report(s) (Report) following this letter for specific funding request decisions and explanations. Each Report contains detailed information extracted from the applicant's Form 471. A guide that provides a definition for each line of the Report is available in the Reference Area of our website.

Once you have reviewed this letter, we urge you to contact your customers to establish any necessary arrangements regarding start of services, billing of discounts, and any other administrative details for implementation of discount services. As a reminder, only eligible services delivered in accordance with Federal Communications Commission (FCC) rules are eligible for these discounts.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with the SLD or directly with the FCC.

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC 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 (if available) email address for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Include the following to identify the decision letter and the decision you are appealing:
   - Appellant name,
   - Applicant or service provider name, if different from appellant,
   - Applicant Billed Entity Number (BEN) and Service Provider Identification Number (SPIN),
   - Form 471 Application Number as assigned by USAC,
   - "Funding Commitment Decision Letter for Funding Year 2008," AND
   - The exact text or the decision that you are appealing.

FUNDING COMMITMENT REPORT
Service Provider Name: Net56, Inc
SPIN: 143025679
Funding Year: 2008

Name of Billed Entity: HARRISON SCHOOL DISTRICT 36
Billed Entity Address: 6809 MCCULLOM LAKE RD
Billed Entity City: WONDER LAKE
Billed Entity State: IL
Billed Entity Zip Code: 60097-9546
Billed Entity Number: 135349
Contact Person's Name: Jill Gildea
Preferred Mode of Contact: EMAIL
Contact Information: jgildea@hsd36.org
Form 471 Application Number: 634059
Funding Request Number: 1753187
Funding Status: Not Funded
Category of Service: Internet Access
Site Identifier: 17 18360 02120
Form 470 Application Number: 325210000655382
Contract Number: NET56_IA
Billing Account Number: N/A
Service Start Date: 07/01/2008
Contract Expiration Date: 06/30/2009
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: $17,088.00
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: $.00
Pre-Discount Amount: $17,088.00
Applicant's Discount Percentage Approved by SLD: 50%
Funding Commitment Decision: $.00 - Selective - Program Violation
Funding Commitment Decision Explanation: This funding request is denied as a result of the program violations explained in the Further Explanation of Administrator's Funding Decision letter sent this date under separate cover.

FCDL Date: 02/24/2010
Wave Number: 080
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2010

FUNDING COMMITMENT REPORT
Service Provider Name: Net56, Inc
SPIN: 143025679
Funding Year: 2008

Name of Billed Entity: HARRISON SCHOOL DISTRICT 36
Billed Entity Address: 6809 MCCULLOM LAKE RD
Billed Entity City: WONDER LAKE
Billed Entity State: IL
Billed Entity Zip Code: 60097-9546
Billed Entity Number: 135349
Contact Person's Name: Jill Gildea
Preferred Mode of Contact: EMAIL
Contact Information: jgildea@hsd36.org
Form 471 Application Number: 634059
Funding Request Number: 1753238
Funding Status: Not Funded
Category of Service: Internet Access
Site Identifier: 17 18360 02120
Form 470 Application Number: 325210000655382
Contract Number: NET56_IA
Billing Account Number: N/A
Service Start Date: 07/01/2008
Contract Expiration Date: 06/30/2009
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: $9,540.00
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: $.00
Pre-Discount Amount: $9,540.00
Applicant's Discount Percentage Approved by SLD: 50%
Funding Commitment Decision: $.00 - Selective - Program Violation
Funding Commitment Decision Explanation: This funding request is denied as a result of the program violations explained in the Further Explanation of Administrator's Funding Decision letter sent this date under separate cover.

FCDL Date: 02/24/2010
Wave Number: 080
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2010

FUNDING COMMITMENT REPORT
Service Provider Name: Net56, Inc
SPIN: 143025679
Funding Year: 2008

Name of Billed Entity: HARRISON SCHOOL DISTRICT 36
Billed Entity Address: 6809 MCCULLOM LAKE RD
Billed Entity City: WONDER LAKE
Billed Entity State: IL
Billed Entity Zip Code: 60097-9546
Billed Entity Number: 135349
Contact Person's Name: Jill Gildea
Preferred Mode of Contact: EMAIL
Contact Information: jgildea@hsd36.org
Form 471 Application Number: 634059
Funding Request Number: 1753268
Funding Status: Not Funded
Category of Service: Internet Access
Site Identifier: 17 18360 02120
Form 470 Application Number: 325210000655382
Contract Number: NET56_IA
Billing Account Number: N/A
Service Start Date: 07/01/2008
Contract Expiration Date: 06/30/2009
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: $30,000.00
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: $.00
Pre-Discount Amount: $30,000.00
Applicant's Discount Percentage Approved by SLD: 50%
Funding Commitment Decision: $.00 - Selective - Program Violation
Funding Commitment Decision Explanation: This funding request is denied as a result of the program violations explained in the Further Explanation of Administrator's Funding Decision letter sent this date under separate cover.

FCDL Date: 02/24/2010
Wave Number: 080
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2010

FUNDING COMMITMENT REPORT
Service Provider Name: Net56, Inc
SPIN: 143025679
Funding Year: 2008

Name of Billed Entity: HARRISON SCHOOL DISTRICT 36
Billed Entity Address: 6809 MCCULLOM LAKE RD
Billed Entity City: WONDER LAKE
Billed Entity State: IL
Billed Entity Zip Code: 60097-9546
Billed Entity Number: 135349
Contact Person's Name: Jill Gildea
Preferred Mode of Contact: EMAIL
Contact Information: jgildea@hsd36.org
Form 471 Application Number: 634059
Funding Request Number: 1753317
Funding Status: Not Funded
Category of Service: Internet Access
Site Identifier: 17 18360 02120
Form 470 Application Number: 325210000655382
Contract Number: NET56_IA
Billing Account Number: N/A
Service Start Date: 07/01/2008
Contract Expiration Date: 06/30/2009
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: $60,000.00
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: $.00
Pre-Discount Amount: $60,000.00
Applicant's Discount Percentage Approved by SLD: 50%
Funding Commitment Decision: $.00 - Selective - Program Violation
Funding Commitment Decision Explanation: This funding request is denied as a result of the program violations explained in the Further Explanation of Administrator's Funding Decision letter sent this date under separate cover.

FCDL Date: 02/24/2010
Wave Number: 080
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2010

Exhibit C

Davis Wright Tremaine LLP

1919 Pennsylvania Avenue NW
Suite 200
Washington, DC 20006-3402

Paul B. Hudson
202.973.4275 tel
202.973.4499 fax

paulhudson@dwt.com

April 23, 2010

Letter of Appeal
Schools and Libraries Division – Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

VIA EMAIL: appeals@sl.universalservice.org

To Whom It May Concern:

The purpose of this letter is to appeal the decision set forth in the USAC Funding Commitment Decision Letter for Funding Year 2008, dated February 24, 2010, for Harrison School District 36 (the "District"). Additional information concerning this decision was provided in a Further Explanation of Administrator's Funding Decision Letter from USAC dated March 26, 2010 (the "Further Explanation Letter").[1]

Identifying Information:

Appellant Name:	Net56, Inc.
Applicant Name:	Harrison School District 36
Applicant BEN:	135349
Service Provider SPIN:	143025679
Form 471 Application No.:	634059
FRNs:	1753187, 1753238, 1753268, and 1753317
USAC Action:	FCDL dated February 24, 2010 and Further Explanation Letter dated March 26, 2010

Appeal Contact:

Paul B. Hudson
Davis Wright Tremaine
1919 Pennsylvania Ave. NW, Suite 200

[1] Copies of the FCDL and Further Explanation Letter are attached hereto as **Attachment 1**.

Washington, DC 20006
202-973-4275
paulhudson@dwt.com

Appeal

In the Further Explanation Letter, USAC concluded that Net56, Inc. and the District had not allocated e-rate and non e-rate services and their respective costs. Specifically, the Further Explanation Letter states:

[Net 56 and the District] failed to provide a breakdown of the eligible versus ineligible services being received from Net56 and their respective dollar amounts ...(Further Explanation Letter, page 6)

Although eligible services may have been provided by Net56, there is no documentation regarding any payment for eligible or ineligible Internet access services. Therefore, there is no documentation to support that you paid your Schools and Libraries Program share for any eligible Internet access services, because the lease agreement, which represents the full payment for services, is solely for the rental/lease of ineligible equipment. (Further Explanation Letter, page 7)

In regard to service eligibility of the products and services specified in your contract, no documentation was provided to USAC that clearly allocates eligible and ineligible products and services and their respective costs. As a result, it is not possible to ascertain how your Schools and Libraries funding requests relate to the eligible and ineligible products and services noted on the contract. (Further Explanation Letter, page 8)

These conclusions are incorrect. First, USAC based its decision upon the wrong contract, and apparently was unaware of the correct contract. Second, USAC incorrectly concluded that the District had not paid for the e-rate services, when in fact the District did pay in accordance with agreements between the District, the leasing company, and Net56 that clearly allocate the cost between eligible e-rate services and ineligible services. Net56 demonstrates these facts below and through three attached documents.

USAC Reviewed the Wrong Contract. USAC incorrectly understood the 60-month term June 21, 2006 agreement to be the contract between Net56 and the District for the provision of e-rate services. However, as USAC correctly noted, that agreement does not provide for the provision of e-rate eligible services. Thus, while this agreement does say that it was at the time the sole agreement "relating to the subject matter hereof," that subject matter was not the provision of e-rate services. Instead, the District separately and subsequently contracted for the e-rate services applied for in this application after the District posted its Form 470 on December 27, 2007. In response to its Form 470, Net56 proposed a written quotation to the District for e-rate services for the 2008 funding year. The District accepted Net56's bid and signed the quotation on

February 3, 2008, thereby entering into a new contract. It is this document, which is attached hereto as Attachment 2 to this appeal letter, that is the relevant contract in this proceeding. This contract clearly describes the e-rate services and states a monthly price of $9,719 for eligible services.[2]

If the District and Net56 had believed the June 21, 2006 agreement was a contract for e-rate services for Funding Year 2008, the District would have had no need to seek bids at the end of 2007 through a Form 470, and Net56 would have had no need to provide a new quotation. The term of the June 2006 agreement is 60 months, into 2011. Moreover, even if that agreement included e-rate services for 2008, which it does not, it would have been superseded by the subsequent agreement executed after the District posted its Form 470 for 2008. Therefore, (1) the e-rate agreement provided in Attachment 2 is the relevant contract between Net56 and the District and (2) this contract clearly allocates and states the price for each e-rate service covered by the Application.

The District Paid Amounts Expressly Designated for Eligible Services. The Explanation Letter states that "Although eligible services may have been provided by Net56, there is no documentation regarding any payment for eligible" services. This mistaken conclusion is based upon USAC's understanding that the District only made payments to the leasing company for ineligible equipment and not for the e-rate services. On the contrary, Net56 previously provided to USAC a copy of an agreement signed by the District and American Capital Financial Services, Inc. that clarifies the original lease to allocate $6306.90 of the District's monthly payment toward services provided by Net56, and not for equipment. Net56 also provided a copy of a written agreement between itself and the District expressly clarifying how this portion of the lease payment would be applied to the District's monthly bill for all services, with a specific detailed and separate allocation between the e-rate and non e-rate services, for funding year 2008-09. This agreement shows that $4859.50 of the District's monthly payment was allocated to e-rate services, with specific amounts allocated to each FRN. This $4869.50 is the District's full 50% share of the $9,719 monthly fee set forth in the parties' e-rate contract.

Although these documents were provided to USAC prior to issuance of the FCDL on February 24, 2010, the FCDL may have already been processed by USAC when the documents were received. In any case, they are not addressed in the FCDL or the Further Explanation Letter. We are resubmitting these documents as **Attachments 3 and 4** to this letter and request that USAC consider them under this appeal.

In sum, the District did pay its non-discounted share for each of the e-rate services that are covered by this Application, in the amounts as required by the e-rate contract provided as Attachment 2, pursuant to the express written agreement with the leasing company set forth in

[2] Net56 does not appeal USAC's determination that some of the services the parties had understood to be eligible are ineligible. However, the allocation requirement is still satisfied because each service is priced separately.

Attachment 3, and in accordance with the written agreement with Net56 set forth in Attachment 4 that allocates this payment between eligible and ineligible services.

Cost-Effectiveness. The FCDL indicated a belief that the services covered under three of the funding requests were not cost-effective. While Net56 does not agree with that conclusion, it only appeals that decision to the limited extent necessary to modify the FCDL to grant funding in the amount that USAC did conclude would have been cost-effective for each FRN, as set forth below. The FCC has held that even when an applicant violates the cost-effectiveness rule, it is still "entitled to E-rate funding … at a rate associated with the least expensive" cost-effective service.[3]

Conclusion

USAC should therefore approve at least the following amounts for funding:

FRN #1753187

$17,088.00

FRN # 1753238[4]

USAC believes that a comparable solution could be obtained for a price of approximately $7,200 over five years, or $1,440 per year. USAC should therefore approve at least $1,440 in funding for this FRN. ($9,540 request reduced by $2,460 for WAN server, and by $5,640 for cost-effectiveness.)

FRN #1753268

USAC believes that a comparable solution could be obtained for a price of approximately $20,000 over five years, or $4,000 per year. USAC should therefore approve at least $4,000 in funding for this FRN. ($30,000 request reduced by $16,200 for firewall equipment, and by $9,800 for cost-effectiveness.)

FRN # 1753317

USAC believes that a comparable solution could be obtained for a price of approximately $57,000 over five years, or $11,400 per year. USAC should therefore approve at least $11,400 in funding for this FRN. ($60,000 request reduced by $12,000 for retention and journaling, and by $36,600 for cost-effectiveness.)

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[3] *Requests for Review by Macomb Intermediate School District Technology Consortium*, File No. SLD-441910, Order, FCC 07-64, ¶ 9 (rel. May 8, 2007).

[4] The Funding Commitment Decision Letter incorrectly identifies this FRN as #1753187.

We would be happy to meet with you at any time to discuss or answer any questions you may have. If you believe USAC needs more information from Net56 or the District, please let us know.

Sincerely,

Paul B. Hudson
Counsel for Net56, Inc.

cc: Dr. Jill Gildea
Harrison School District 36
6809 McCollom Lake Road
Wonder Lake, IL 60097-9546

Mel Blackwell (via email)

Exhibit D

FCC Form 471

Do not write in this area.

Approval by OMB 3060-0806

Schools and Libraries Universal Service
Description of Services Ordered and Certification Form 471

Estimated Average Burden Hours per Response: 4 hours

This form asks schools and libraries to list the eligible telecommunications-related services they have ordered and estimate the annual charges for them so that the Fund Administrator can set aside sufficient support to reimburse providers for services.

Please read instructions before beginning this application. (You can also file online at www.sl.universalservice.org.)
The instructions include information on the deadlines for filing this application.

Applicant's Form Identifier (Create your own code to identify THIS form 471): InternetAC_08_09

Form 471 Application# (To be assigned by administrator): 634059

Block 1: Billed Entity Information (The "Billed Entity" is the entity paying the bills for the service listed on this form.)

1 a	Name of Billed Entity	HARRISON SCHOOL DISTRICT 36	
2 a	Funding Year: July 1,	2008 Through June 30: 2009	Billed Entity Number:135349
4 a	Street Address, P.O. Box, or Routing Number	6809 MCCULLOM LAKE RD	
	City	WONDER LAKE	
	State	IL	Zip Code 60097 9546

5 a Type of Application
- ☐ Individual School (individual public or non-public school)
- ☑ School District (LEA; public or non-public [e.g. diocesan] local district representing multiple schools)
- ☐ Library (including library system, library outlet/branch or library consortium as defined under LSTA)
- ☐ Consortium ☐ Check here if any members of this consortium are ineligible or non-governmental entities)

6	Contact Person's Name	Jill Gildea	

First, if the Contact Person's Street Address is the same as in Item 4, check this box. If not, please complete the entries for the Street Address below.

b	Street Address, P.O. Box, or Routing Number	6809 MCCULLOM LAKE RD	
	City	WONDER LAKE	
	State	IL	Zip Code 60097 9546

Entity Number: 135349 Applicant's Form Identifier: InternetAC_08_09
Contact Person: Jill Gildea Phone Number: 815-653-2311

This information will facilitate the processing of your applications. Please complete all rows that apply to services for which you are requesting discounts. Complete this information on the FIRST Form 471 you file, to encompass this and all other Forms 471 you will file for this funding year. You need not complete this information on subsequent Forms 471. Provide your best estimates for the services ordered across ALL of your Forms 471.

Schools/school districts complete Item 7. Libraries complete Item 8. Consortia complete Item 7 and/or Item 8.

Block 2: Impact of Services Ordered on Schools

	IF THIS APPLICATION INCLUDES SCHOOLS...	BEFORE ORDER	AFTER ORDER
7a	Number of students to be served		491
b	Telephone service: Number of classrooms with phone service	33	33

d	Direct broadband services: Number of buildings served at the following speeds: Less than 10 mbps	1	1
e	Direct connections to the Internet: Number of drops	1	1
f	Number of classrooms with Internet access	33	33
g	Number of computers or other devices with Internet access	85	85

Block 3: Impact of Services Ordered on Libraries

NOT APPLICABLE AS THIS APPLICATION IS FOR DISTRICT

Worksheet A No: 1017625 **Student Count:** 491
Weighted Product (Sum. Column 8): 245.5 **Shared Discount:** N/A

1. School Name: HARRISON ELEMENTARY SCHOOL
2. Entity Number: 68629 **NCES:** 17 18360 02120
3. Rural/Urban: Urban
4. Student Count: 491 **5. NSLP Students:** 113 **6. NSLP Students/Students:** 23.014%
7. Discount: 50% **8. Weighted Product:** 245.5
9. Pre-K/Adult Ed/Juv: N **10. Alt Disc Mech:** N

Block 5: Discount Funding Request(s)

FRN: 1753187 **FCDL Date:** 02/24/2010	
10. Original FRN:	
11. Category of Service: Internet Access	**12. 470 Application Number:** 325210000655382
13. SPIN: 143025679	**14. Service Provider Name:** Net56, Inc
15a. Non-Contracted tariffed/Month to Month Service:	**15b. Contract Number:** NET56_IA
15c. Covered under State Master Contract:	**15d. FRN from Previous Year:**
16a. Billing Account Number:	**16b. Multiple Billing Account Numbers?:**
17. Allowable Contract Date: 01/24/2008	**18. Contract Award Date:** 02/03/2008
19a. Service Start Date: 07/01/2008	**19b. Service End Date:**
20. Contract Expiration Date: 06/30/2009	
21. Attachment #: NET56_IA	**22. Block 4 Entity Number:** 68629
23a. Monthly Charges: $1,424.00	**23b. Ineligible monthly amt.:** $.00
23c. Eligible monthly amt.: $1,424.00	**23d. Number of months of service:** 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): $17,088.00	
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): $17,088.00	
23j. % discount (from Block 4): 50	
23k. Funding Commitment Request (23i x 23j): $8,544.00	

FRN: 1753238 **FCDL Date:** 02/24/2010	
10. Original FRN:	
11. Category of Service: Internet Access	**12. 470 Application Number:** 325210000655382
13. SPIN: 143025679	**14. Service Provider Name:** Net56, Inc
15a. Non-Contracted tariffed/Month to Month Service:	**15b. Contract Number:** NET56_IA
15c. Covered under State Master Contract:	**15d. FRN from Previous Year:**
16a. Billing Account Number:	**16b. Multiple Billing Account Numbers?:**
17. Allowable Contract Date: 01/24/2008	**18. Contract Award Date:** 02/03/2008

19a. Service Start Date: 07/01/2008	19b. Service End Date:
20. Contract Expiration Date: 06/30/2009	
21. Attachment #: NET56_WAN	22. Block 4 Entity Number: 68629
23a. Monthly Charges: $795.00	23b. Ineligible monthly amt.: $.00
23c. Eligible monthly amt.: $795.00	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): $9,540.00	
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): $9,540.00	
23j. % discount (from Block 4): 50	
23k. Funding Commitment Request (23i x 23j): $4,770.00	

FRN: 1753268 FCDL Date: 02/24/2010	
10. Original FRN:	
11. Category of Service: Internet Access	12. 470 Application Number: 325210000655382
13. SPIN: 143025679	14. Service Provider Name: Net56, Inc
15a. Non-Contracted tariffed/Month to Month Service:	15b. Contract Number: NET56_IA
15c. Covered under State Master Contract:	15d. FRN from Previous Year:
16a. Billing Account Number:	16b. Multiple Billing Account Numbers?:
17. Allowable Contract Date: 01/24/2008	18. Contract Award Date: 02/03/2008
19a. Service Start Date: 07/01/2008	19b. Service End Date:
20. Contract Expiration Date: 06/30/2009	
21. Attachment #: NET56_Firewall	22. Block 4 Entity Number: 68629
23a. Monthly Charges: $2,500.00	23b. Ineligible monthly amt.: $.00
23c. Eligible monthly amt.: $2,500.00	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): $30,000.00	
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): $30,000.00	
23j. % discount (from Block 4): 50	
23k. Funding Commitment Request (23i x 23j): $15,000.00	

FRN: 1753317 FCDL Date: 02/24/2010	
10. Original FRN:	
11. Category of Service: Internet Access	12. 470 Application Number: 325210000655382
13. SPIN: 143025679	14. Service Provider Name: Net56, Inc
15a. Non-Contracted tariffed/Month to Month Service:	15b. Contract Number: NET56_IA
15c. Covered under State Master Contract:	15d. FRN from Previous Year:
16a. Billing Account Number:	16b. Multiple Billing Account Numbers?:
17. Allowable Contract Date: 01/24/2008	18. Contract Award Date: 02/03/2008
19a. Service Start Date: 07/01/2008	19b. Service End Date:
20. Contract Expiration Date: 06/30/2009	
21. Attachment #: NET56_Email&WEB Hosting	22. Block 4 Entity Number: 68629
23a. Monthly Charges: $5,000.00	23b. Ineligible monthly amt.: $.00
23c. Eligible monthly amt.: $5,000.00	23d. Number of months of service: 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): $60,000.00	
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): $60,000.00	
23j. % discount (from Block 4): 50	
23k. Funding Commitment Request (23i x 23j): $30,000.00	

Block 6: Certifications and Signature

Application ID:634059

Do not write in this area.

Entity Number	135349	Applicant's Form Identifier	InternetAC_08_09
Contact Person	Jill Gildea	Phone Number	815-653-2311

Block 6: Certifications and Signature

24. ☑ I certify that the entities listed in Block 4 of this application are eligible for support because they are: (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 schools including, but not limited to elementary, secondary schools, colleges, or universities

25. ☑ I certify that the entity I represent or the entities listed on this application have secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that the entities I represent or the entities listed in this application have secured access to all of the resources to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. I certify that the Billed Entity will pay the non-discount portion of the cost of the goods and services to the service provider(s).

a.	Total funding year pre-discount amount on this Form 471 (Add the entities from Item 23I on all Block 5 Discount Funding Requests.)	$116,628.00
b.	Total funding commitment request amount on this Form 471 (Add the entities from Items 23K on all Block 5 Discount Funding Requests.)	$58,314.00
c.	Total applicant non-discount share (Subtract Item 25b from Item 25a.)	$58,314.00
d.	Total budgeted amount allocated to resources not eligible for E-rate support	$50,000.00
e.	Total amount necessary for the applicant to pay the non-discount share of the services requested on this application AND to secure access to the resources necessary to make effective use of the discounts. (Add Items 25c and 25d.)	$108,314.00
f.	☐ Check this box if you are receiving any of the funds in Item 25e directly from a service provider listed on any Forms 471 filed by this Billed Entity for this funding year, or if a service provider listed on any of the Forms 471 filed by this Billed Entity for this funding year assisted you in locating funds in Items 25e.	

26. ☑ I certify that all of the schools and libraries or library consortia listed in Block 4 of this application are covered by technology plans that are written, that cover all 12 months of the funding year, and that have been or will be approved by a state or other authorized body, and an SLD-certified technology plan approver, prior to the commencement of service. The plans are written at the following level(s):
   - a. ☐ an individual technology plan for using the services requested in this application; and/or
   - b. ☑ higher-level technology plan(s) for using the services requested in this application; or
   - c. ☐ no technology plan needed; applying for basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only.

27. ☑ I certify that I posted my Form 470 and (if applicable) made my RFP available for at least 28 days before considering all bids received and selecting a service provider. I certify that all bids submitted were carefully considered and the most cost-effective service offering was selected, with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology plan goals.

28. ☑ I certify that the entity responsible for selecting the service provider(s) has reviewed all applicable FCC, state, and local procurement/competitive bidding requirements and that the entity or entities listed on this application have complied with them.

29. ☑ 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, except as permitted by the Commission's rules at 47 C.F.R. Sec. 54.500(k). Additionally, I certify that the Billed Entity has not received anything of value or a promise of anything of value, other than services and equipment requested under this form, from the service provider(s) or any representative or agent thereof or any consultant in connection with this request for services.

30. ☑ I certify that I and the entity(ies) I represent have complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. There are signed contracts covering all of the services listed on this Form 471 except for those services provided under non-contracted tariffed or month-to-month arrangements. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.

31. ☑ I acknowledge that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.

32. ☑ I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts, and that if audited, I will make such records available to the Administrator. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.

33. ☑ I certify that I am authorized to order telecommunications and other supported services for the eligible entity (ies) listed on this application. I certify that I am authorized to submit this request on behalf of the eligible entity (ies) listed on this application, that I have examined this request, that all of the information on this form is true and correct to the best of my knowledge, that the entities that are receiving discounts pursuant to this application have complied with the terms, conditions and purposes of this program, that no kickbacks were paid to anyone and that 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 the Title 18 of the United States Code, 18 U.S.C. Sec. 1001 and civil violations of the False Claims Act.

34. ☑ I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or any of the entities listed on this application, or any person associated in any way with my entity and/or entities listed on this application, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.

35. ☑ I certify that if any of the Funding Requests on this Form 471 are for discounts for products or services that contain both eligible and ineligible components, that I have allocated the cost of the contract to eligible and ineligible companies as required by the Commission's rules at 47 C.F.R. Sec. 54.504(g)(1),(2).

36. ☑ I certify that this funding request does not constitute a request for internal connections services, except basic maintenance services, in violation of the Commission requirement that eligible entities are not eligible for such support more than twice every five funding years beginning with Funding Year 2005 as required by the Commission's rules at 47 C.F.R. Sec. 54.506(c).

37. ☑ I certify that the non-discounted portion of the costs for eligible services will not be paid by the service provider. The pre-discount costs of eligible services features on this Form 471 are net of any rebates or discounts offered by the service provider. I acknowledge that, for the purpose of this rule, the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of some or all of the cost of the supported services.

38. Signature of authorized person	39. Signature Date **2/7/2008 12:35:42 PM**
_____	_____

The Americans with Disabilities Act, the Individuals with Disabilities Education Act and the Rehabilitation Act may impose obligations on entities to make the services purchased with these discounts accessible to and usable by people with disabilities.

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 Services Ordered and Certification Form (FCC Form 471) 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. 47U.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 47C.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 any applicable 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, consistent with the Communications Act of 1934, FCC regulations and orders, the Freedom of Information Act, 5 U.S.C. § 552, or other applicable law, information provided in or submitted with this form or in response to subsequent inquiries may be disclosed to the public.

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 471
P.O. Box 7026
Lawrence, Kansas 66044-7026

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

SLD Forms
ATTN: SLD Form 471
3833 Greenway Drive
Lawrence, Kansas 66046
(888) 203-8100

Print

<< Previous

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Exhibit E

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: 325210000655382

Applicant's Form Identifier: 470 YR08_09

Application Status: CERTIFIED

Posting Date: 12/27/2007

Allowable Contract Date: 01/24/2008

Certification Received Date: 01/04/2008

1. Name of Applicant:
HARRISON SCHOOL DISTRICT 36

2. Funding Year:	3. Your Entity Number
07/01/2008 - 06/30/2009	135349

4a. Applicant's Street Address, P.O.Box, or Route Number
6809 MCCULLOM LAKE RD

City	State	Zip Code
WONDER LAKE	IL	60097-9546

b. Telephone number	c. Fax number
(815) 653- 2311	(815) 653- 1712

5. Type Of Applicant

- ○ Individual School (individual public or non-public school)
- ○ School District (LEA;public or non-public[e.g., diocesan] local district representing multiple schools)
- ○ Library (including library system, library outlet/branch or library consortium as defined under LSTA)
- ○ Consortium (intermediate service agencies, states, state networks, special consortia of schools and/or libraries)

6a. Contact Person's Name: Dr. Jill Geldea

*First, if the Contact Person's Street Address is the same as in **Item 4** above, check this box. If not, please complete the entries for the Street Address below.*

6b. Street Address, P.O.Box, or Route Number
○ 6809 MCCULLOM LAKE RD

City	State	Zip Code
WONDER LAKE	IL	60097-9546

Check the box next to your preferred mode of contact and provide your contact information. One box MUST be checked and an entry provided.

6c. Telephone Number	(815) 653- 2311
6d. Fax Number	(815) 653- 1712
6e. E-mail Address	jgildea@harrisonschooldistrict.org

Block 2: Summary Description of Needs or Services Requested

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

a. ☐ Tariffed or month-to-month services to be provided without a written contract. A new Form 470 must be filed for non-contracted tariffed or month-to-month services for each funding year.

b. ☐ Services for which a new written contract is sought for the funding year in Item 2.
Check if you are seeking ☐ a multi-year contract and/or ☐ a contract featuring voluntary extensions

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

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

What kinds of service are you seeking: Telecommunications Services, Internet Access, Internal Connections Other than Basic Maintenance, or Basic Maintenance of Internal Connections? Refer to the Eligible Services List at www.sl.universalservice.org for examples. Check the relevant category or categories (8, 9, 10 and/or 11 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 ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a ☐ **YES**, I have released or intend to release an RFP for these services. It is available or will become available on the Web at at or via (check one):
☐ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

b ☐ **NO** , I have not released and do not intend to release an RFP for these services.

Whether you check YES or 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. Attach additional lines if needed.

c ☐ **Check this box if you prefer discounts on your bill.**	☐ **Check this box if you prefer reimbursement after paying your bill in full.**	☐ **Check this box if you do not have a preference.**

Service or Function:	Quantity and/or Capacity:
local and long distance voice services	3 lines/ 15 extensions
cellular phones	3 lines
E911/Alarm Lines	2 lines

9 ☐ **Internet Access**
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a ○ **YES**, I have released or intend to release an RFP for these services. It is available or will become available on the Web at or via (check one):
☐ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

b ○ **NO** , I have not released and do not intend to release an RFP for these services.

Whether you check YES or 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 Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c ○ **Check this box if you prefer discounts on your bill.**	○ **Check this box if you prefer reimbursement after paying your bill in full.**	○ **Check this box if you do not have a preference.**

Service or Function:	Quantity and/or Capacity:
Internet access	2 - T-1(1 building/50 computers at 1.5Mb or greater)
Email/Web hosting Services	54 Users/1Gb
Wide Area Network	1 building/33 classrooms/50 computers
Firewall Service	1 building/33 classrooms/50 computers

10 ☐ **Internal Connections Other than Basic Maintenance**
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a ○ **YES**, I have released or intend to release an RFP for these services. It is available or will become available on the Web at or via (check one):
☐ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

b ○ **NO** , I have not released and do not intend to release an RFP for these services.

Whether you check YES or NO, you must list below the Internal Connections Services you seek. Specify each **service or function** (e.g., a router, hub and cabling) and quantity and/or capacity (e.g., connecting 1 classroom of 30 students). 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. Attach additional lines if needed.

c ○ **Check this box if you prefer discounts on your bill.**	○ **Check this box if you prefer reimbursement after paying your bill in full.**	○ **Check this box if you do not have a preference.**

11 ☐ **Basic Maintenance of Internal Connections**
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a ○ **YES**, I have released or intend to release an RFP for these services. It is available or will become available on the Web at or via (check one):
☐ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

b ○ **NO** , I have not released and do not intend to release an RFP for these services.

Whether you check YES or NO, you must list below the Basic Maintenance Services you seek. Specify each **service or function** (e.g.,basic maintenance of routers) and quantity and/or capacity (e.g., for 10 routers). 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. Attach additional lines if needed.

c ☐ Check this box if you prefer discounts on your bill.	☐ Check this box if you prefer reimbursement after paying your bill in full.	☐ Check this box if you do not have a preference.

Service or Function:	Quantity and/or Capacity:
LAN/WAN maintenance	1 building/33 rooms/50 computers

12 (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 Authorized Person who signs this form.

Name:	Title:

Telephone number
() -

Fax number
() -

E-mail Address

13a. ☐ Check this box if there are any restrictions imposed by state or local laws or regulations on how or when service providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or a Web address where they are posted and provide a contact name and telephone number.

☐ Check this box if no state and local procurement/competitive bidding requirements apply to the procurement of services sought on this Form 470.

13b. If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, you may summarize below(including the likely timeframes). If you are requesting services for a funding year for which a Form 470 cannot yet be filed online, include that information here.

Block 3: Technology Resources

14. ☐ **Basic telephone service only:** If your application is for basic telephone service and voice mail only, check this box and skip to Item **16**. Basic telephone service is defined as wireline or wireless single line voice service (local, cellular/PCS, and/or long distance) and mandatory fees associated with such service (e.g., federal and state taxes and universal service fees).

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 (Item **16a, 16b or 16c**) 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	1
For these eligible sites, please provide the following	
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**
815	653

17. Billed Entities
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. If a Billed Entity cited on your Form 471 is not listed below, funding may be denied for the funding requests associated with this Form 470.

Entity	Entity Number
HARRISON SCHOOL DISTRICT 36	135349

18. Ineligible Participating Entities
List the names of any entity/entities here for whom services are requested that are not eligible for the Universal Service Program.

Ineligible Participating Entity	Area Code	Prefix

Block 5: Certification and Signature

19. ☑ **I certify that 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.7081(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. ☑ I certify that all of the individual schools, libraries, and library consortia receiving services under this application are covered by technology plans that are written, that cover all 12 months of the funding year, and that have been or will be approved by a state or other authorized body, an SLD-certified technology plan approver, prior to the commencement of service. The plans were written at the following level(s):

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, cellular, PCS, and/or long distance telephone service and/or voice mail only

21. ☑ I certify that I will post my Form 470 and (if applicable) make my RFP available for at least 28 days before considering all bids received and selecting a service provider. I certify that all bids submitted will be carefully considered and the bid selected will be for the most cost-effective service or equipment offering, with price being the primary factor, and will be the most cost-effective means of meeting educational needs and technology plan goals. I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the status and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.

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, except as permitted by the Commission's rules at 47 C.F.R. Sec. 54.500(k). Additionally, I certify that the entity or entities listed on this application have not received anything of value or a promise of anything of value, other than the services and equipment sought by means of this form, from the service provider, or any representative or agent thereof or any consultant in connection with this request for services.

23. ☑ I acknowledge that support under this support mechanism is conditional upon the school(s) and/or library(ies) I represent securing access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support.

24. ☑ I certify that I am authorized to order telecommunications and other supported services for the eligible entity (ies). I certify that I am authorized to submit this request on behalf of the eligible entity(ies) listed on this application, 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. ☑ I certify that I have reviewed all applicable state and local procurement/competitive bidding requirements and that I have complied with them. I acknowledge that persons willfully making false statements on this form can be punished by fine or forfeiture, under the Commissions 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.

26. ☑ I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program.

27. Signature of authorized person: ☑

28. Date (mm/dd/yyyy): **01/03/2008**

29. Printed name of authorized person: **JILL GILDEA**

30. Title or position of authorized person: **SUPERINTENDENT**

31a. Address of authorized person: **6809 MCCULLOM LAKE RD**
City: **WONDER LAKE** State: **IL** Zip: **60097-9546**

31b. Telephone number of authorized person: **(815) 853 - 2311**

31c. Fax number of authorized person: **(815) 6531712**

31d. E-mail address number of authorized person: **JGILDEA@HARRISONSCHOOLDISTRICT.ORG**

31e. Name of authorized person's employer: **HARRISON SCHOOL DISTRICT 36**

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 SLD web site at www.sl.universalservice.org 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 any applicable 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 Forms
ATTN: SLD Form 470
3833 Greenway Drive
Lawrence, Kansas 66046
1-888-203-8100

FCC Form 470
November 2004

Exhibit F

Davis Wright Tremaine LLP

1919 Pennsylvania Avenue NW
Suite 200
Washington, DC 20006-3402

Paul B. Hudson
202.973.4275 tel
202.973.4499 fax

paulhudson@dwt.com

October 16, 2009

VIA HAND-DELIVERY AND EMAIL

Mr. Mel Blackwell
Vice President of the Schools and Libraries Division
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, D.C. 20036

Dear Mr. Blackwell,

Our client Net56, Inc. asked us to write to you to express its appreciation that you took the time to personally meet with them while you were in Chicago. Net56's CEO Bruce Koch also has made clear to me that he is personally committed to taking any action that would provide USAC with the assurances it needs to be confident that Net56 is and will be not only a compliant participant but also a model partner in helping USAC further the objectives of the Schools and Libraries program.

As long-time counsel to many Universal Service Fund recipients, my firm is well aware of the many necessary steps that are involved with compliance reviews and appreciate your efforts and the efforts of others at USAC to process this review in a timely manner. Because of our experience, we believe that we could help expedite resolution of any remaining issues by offering to assist USAC in communicating with or obtaining information from Net56.

Specifically, if we knew the specific areas of concern, the particular documentation needed by USAC, and/or any changes to Net56's services or arrangements that would be preferred by USAC, we could work with Net56 around the clock as needed to provide immediate and detailed responses to you. Net56 is willing to consider changes to its practices even if such results are not necessarily compelled by existing rules but would nonetheless speed the completion of its review and the release of its funding.

Our office is located two blocks from USAC and we would be happy to meet at any time to discuss or to pick up or deliver materials. You may als reach me at 202-973-4275 or paulhudson@dwt.com.

We appreciate your prompt consideration of this matter and look forward to working with Net56 to address any issues that are of concern to USAC now or in the future.

Very Truly Yours,

Paul Hudson
Counsel to Net56, Inc.

cc: Bruce Koch