

New Hope Foundation  
One Valentine Lane  
Chapel Hill, NC 27516

October 14, 2010

**VIA ELECTRONIC FILING**

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

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

<b>Applicant Name:</b>	Johnston County School District
<b>Billed Entity Number:</b>	126867
<b>Funding Year</b>	2005
<b>Form 471 App. Number:</b>	484709
<b>Funding Request Numbers:</b>	1345592

Dear Ms. Dortch:

Johnston County School District of Johnston County, North Carolina ("Johnston County" or "District"), acting through counsel and pursuant to Sections 54.719-54.721 of the Commission's rules<sup>1</sup>, hereby timely files this Request for Review or Waiver ("Appeal"). The Appeal requests Commission review of the adverse decision of the Administrator of the Universal Service Administrative Company ("USAC") denying the funding request enumerated above for Funding Year 2005 and seeking recovery of or rescinding previously-approved E-Rate Program support funds.<sup>2</sup>

More specifically, on September 16, 2010, USAC's Schools and Libraries Division ("SLD") issued a decision denying an appeal filed by Johnston County with USAC. In its decision on appeal USAC held that its previously-issued determination to recover the funds<sup>3</sup> was justified based on audit findings that the District (a) failed to timely utilize certain equipment funded with E-Rate Program support and (b) failed to properly determine its discount eligibility based on the percentage of the

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<sup>1</sup> 47 C.F.R. §§ 54.719-54.721.

<sup>2</sup> Administrator's Decision on Appeal - Funding Year 2005 -- 2006, Johnston County School District (September 16, 2010), attached as Exhibit 1.

<sup>3</sup> Notification of Commitment Adjustment Letter, June 8, 2010 ("COMAD").

Ms. Marlene H. Dortch

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student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. See Exhibit 1.

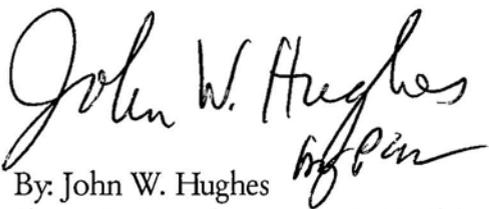
Johnston County is aggrieved by USAC's September 16, 2010 decision and submits that for various reasons outlined in its original July 31, 2010 appeal to USAC and others that the decision is unjustified and in error. Specifically, any delays in the installation of E-Rate-Program-supported-equipment resulted from unavoidable, practical reasons and did not constitute substantive, as opposed to procedural, transgressions. The equipment was made functional and is in use for the purpose for which it was obtained and the circumstances justify a waiver of any technical deadline violation. Also, the decision regarding the District's determination of the applicable discount rate is unwarranted and unjustified under the rules, policies and requirements governing the use of surveys in place at the time that the calculations were made.

Johnston County is filing this Appeal well prior to the 60-day appeal period prescribed by the Commission's rules because on September 17, 2010, the day after denying the District's appeal, USAC issued a Demand Payment Letter requiring payment of the amount sought to be recovered, with such payment due in 30 days (e.g., by October 17, 2010),<sup>4</sup> even though the period for filing an FCC appeal will not expire until mid-November. In the past USAC staff has informed the undersigned counsel that the only way to forestall the further implementation of USAC's collection process, even though the FCC appeal period had not yet expired, was to file an appeal with the Commission.

Johnston County will supplement this Appeal with a full discussion of the facts, the District's position and supporting arguments.

Respectfully submitted,

JOHNSTON COUNTY SCHOOL DISTRICT

A handwritten signature in black ink that reads "John W. Hughes". The signature is written in a cursive style. Below the main signature, there is a smaller, less legible signature that appears to be "J. Hughes".

By: John W. Hughes  
*Contracted Consultant & Contact for Johnston County School District*

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<sup>4</sup> Demand Payment Letter, September 17, 2010. See Exhibit 2 attached hereto.

# **EXHIBIT 1**



Universal Service Administrative Company  
Schools & Libraries Division

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**Administrator's Decision on Appeal – Funding Year 2005-2006**

September 16, 2010

John Hughes  
New Hope Foundation  
One Valentine Lane  
Chapel Hill, NC 27516

Re: Applicant Name: JOHNSTON COUNTY SCHOOL DIST  
Billed Entity Number: 126867  
Form 471 Application Number: 484709  
Funding Request Number(s): 1345592  
Your Correspondence Dated: July 31, 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 2005 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1345592  
Decision on Appeal: **Denied**  
Explanation:

- According to our records, it was determined that during the course of an audit USAC had funded two 48-Port Cisco switches that were in racks but not being utilized, as well as three 48-Port Cisco switches found in boxes not being utilized. On appeal you have stated that the location of these switches was in fact the South Smithfield Elementary School and not the USAC indicated West Smithfield Elementary School. This is noted but the fact remains that the equipment was not being utilized. FCC rules require that all applicants have secured the necessary resources to make effective use of the equipment and that the equipment is utilized for an educational purpose (as was mentioned in the Commitment Adjustment Letter dated June 8, 2010). On appeal you also state that the South Smithfield Elementary School "was in the middle of a renovation, so we did not

have all the hardware functioning when the audit was performed." You also note that the equipment is now being utilized.

USAC's review of your Form 471 application also determined that your discount eligibility should have been 74%. While you state on appeal that "Johnston County for the 2004-2005 and 2005-2006 school years distributed to each student at the beginning of the school year in August a form that could both be used to participate in a family income survey and/or to apply for the NSLP program" and that "As stated earlier, each school in the district sent to each student a combined E-Rate income survey/NSLP free & reduced lunch application along with a letter that made it perfectly clear that a student's family could apply for the NSLP free & reduced lunch program and not participate in the E-Rate income survey by so indicating, they could participate in the E-Rate income survey and not apply for NSLP free & reduced lunch by so indicating, or do both or neither." these statements do not overturn the condition of Finding No. SL2007BE110\_F02 or the TCBA (Auditor) Evaluation of Response. In addition, as stated in the Commitment Adjustment Letter of June 8, 2010, FCC rules indicate that the level of poverty shall be measured by the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. Since you did not demonstrate in your appeal that the initial audit findings were incorrect, USAC denies your appeal.

FCC Rules provide that the discount available to an applicant is determined by indicators of poverty and high cost. 47 C.F.R. sec. 54.505(b). The level of poverty is measured by the percentage of students enrolled in a school or school district that are eligible for a free or reduced price lunch under the National School Lunch Program, or a federally-approved alternative mechanism. Alternatively, the level of poverty is measured according to participation in Medicaid, Food Stamps, Supplementary Security Income (SSI), Federal Public Housing Assistance or Section 8, or Low Income Home Energy Assistance Program (LIHEAP). See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9045, FCC 97-157 para. 510 n.1334 (rel. May 8, 1997). The high cost determination is made pursuant to FCC Rules that classify a school or library as rural or urban. 47 C.F.R. sec. 54.505(b)(3). An applicant's discount rate is determined by reference to a matrix based upon the level of poverty and whether the entity is classified as rural or urban. 47 C.F.R. sec. 54.505(c)

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: Terry Thompson

# **EXHIBIT 2**



**Demand Payment Letter**  
( Funding Year 2005: July 1, 2005 - June 30, 2006 )

September 17, 2010

John Hughes  
JOHNSTON COUNTY SCHOOL DIST  
New Hope Foundation  
Chapel Hill, NC 27516

Re: Form 471 Application Number: 484709  
Funding Year: 2005  
Applicant's Form Identifier: Priority 2 2005  
Billed Entity Number: 126867  
FCC Registration Number: 0011940947  
SPIN: 143017706  
Service Provider Name: NWN Corporation-Raleigh  
Service Provider Contact Person: Angela Becker  
Payment Due By: 10/17/2010

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

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

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

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

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

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

Bank of America  
c/o Universal Service Administrative Company (105056)  
1075 Loop Road  
Atlanta, GA 30337  
Phone 404-209-6377

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

Universal Service Administrative Company  
P.O. Box 105056  
Atlanta, GA 30348-5056  
Phone 404-209-6377

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

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

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

Universal Service Administrative Company  
Schools and Libraries Division

cc: *Angela Becker*  
*NWN Corporation-Raleigh*

Funding Commitment Adjustment Report  
Form 471 Application Number: 484709

Funding Request Number: 1345592  
Services Ordered: INTERNAL CONNECTIONS  
SPIN: 143017706  
Service Provider Name: NWN Corporation-Raleigh  
Contract Number: N/A  
Billing Account Number: 919-934-6031  
Site Identifier: 126867  
Original Funding Commitment: \$320,805.45  
Commitment Adjustment Amount: \$320,805.45  
Adjusted Funding Commitment: \$0.00  
Funds Disbursed to Date: \$271,724.44  
Funds to be Recovered from Applicant: \$271,724.44

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During an audit it was determined that USAC erroneously committed funds for FRN 1345592. Specifically, during the review it was determined that the entire FRN 1345592 was for on-premise services/equipment which is subject to priority two funding. On the original Form 471 the applicant was approved at a 90 percent discount. FCC rules indicate that the level of poverty shall be measured by the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. During the audit it was determined that the applicant is only eligible to receive a 74 percent discount. This determination was based on a misapplication by the applicant in using the alternative mechanism "survey method" for determining poverty levels. Due to the discount error and subsequent discount reduction from 90% to 74% USAC should have treated FRN 1345592 as subject to priority two funding and should have denied it due to FY 2005 funding cap limit. Pursuant to the FCC rules, requests for internal connections are given second priority and, when demand for discounts for internal connections exceeds available support, funding should be awarded first to applicants eligible for 90 % discount level and then at each descending single discount percentage level until funds are depleted. Since it was determined that your FY 2005 request for funding was for internal connections and approved originally for 90% but due to the discount error calculation should have been 74%, and taking into account a fact that there were not sufficient funds for FY 2005 to provide internal connections to applicants at your discount rate, your funding commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Also, during the course of an audit it was determined that the equipment for which you requested discounts in your funding request has not been utilized in accordance with program rules. FCC rules require that applicants have secured all the necessary resources to make effective use of the equipment and that the equipment is utilized for an educational purpose. Two 48 Port Cisco switches in West Smithfield Elementary School were in racks and not being used. Additionally three 48 Port Cisco switches in West Smithfield Elementary School were still in boxes and not being used. Since a review has revealed that equipment has not be utilized according to program rules, USAC must seek recovery of all funds improperly disbursed that are associated with the equipment not being utilized. Accordingly, USAC is seeking recovery of \$29,344.00 (specific amount of the equipment not utilized) which was improperly disbursed.

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