

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>	2007
<b>Form 471 App. Number:</b>	569961
<b>Funding Request Numbers:</b>	1590932

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 2007 and seeking recovery of previously disbursed 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 or rescind the funds<sup>3</sup> was justified based on audit findings that (a) the District failed to adequately describe the Basic Maintenance for Internal Connections being sought under the relevant FCC Form 470 and (b) the District failed to properly determine its discount eligibility based on 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. See Exhibit 1.

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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 2007 – 2008, Johnston County School District (September 16, 2010), attached as Exhibit 1.

<sup>3</sup> Notification of Commitment Adjustment Letter, June 22, 2010 (“COMAD”).

Ms. Marlene H. Dortch  
October 14, 2010  
Page 2

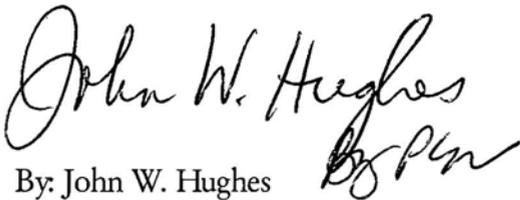
Johnston County is aggrieved by USAC's September 16, 2010 decision and submits that for various reasons outlined in its original August 5, 2010 appeal to USAC and others that the decision is unjustified and in error. The District's generic description of the services under Basic Maintenance for Internal Connections did not violate applicable precedent on service descriptions. Further, 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 USAC, on September 17, 2010, 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), even though the period for filing an FCC appeal will not expire until mid-November.<sup>4</sup> 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



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



Administrator's Decision on Appeal – Funding Year 2007-2008

September 16, 2010

John W. 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: 569961  
Funding Request Number(s): 1590932  
Your Correspondence Dated: August 05, 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 2007 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): 1590932  
Decision on Appeal: **Denied**  
Explanation:

- According to our records, USAC has determined that the Johnston County School District is in violation of FCC rules regarding competitive bidding. The record shows that during the course of an audit it was found that the District did not provide an adequate description to allow vendors to bid within Block 2 of the FCC Form 470 for the requested Basic Maintenance of Internal Connections. As was conveyed withinin SL2008BE336\_01 in Condition, the entire description provided on the FCC Form 470 was "all eligible equipment". On the appeal (specifically on page 15) you state that "Johnston County respectfully disagrees that the description entered in Block 2 of the FCC Form 470 of "all eligible equipment" is inadequate to allow perspective service providers to bid".

USAC's review of your Form 471 application also determined that your discount eligibility should have been 74%. While you state in your appeal letter of August 5, 2010 on page 7 that "Johnston County for the 2004-2005, 2005-2006 and 2006-2007 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 again on page 10 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. During an 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. Since you did not demonstrate in your appeal that the initial USAC 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

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

Billed Entity Number: 126867  
Form 471 Application Number: 569961  
Form 486 Application Number:

# **EXHIBIT 2**



Demand Payment Letter

( Funding Year 2007: July 1, 2007 - June 30, 2008 )

September 17, 2010

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

Re: Form 471 Application Number: 569961  
Funding Year: 2007  
Applicant's Form Identifier: Johnston P2 2007  
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: 569961

Funding Request Number: 1590932  
Services Ordered: INTERNAL CONNECTIONS MNT  
SPIN: 143017706  
Service Provider Name: NWN Corporation-Raleigh  
Contract Number: NA  
Billing Account Number: 919-934-6031  
Site Identifier: 126867  
Original Funding Commitment: \$352,080.00  
Commitment Adjustment Amount: \$352,080.00  
Adjusted Funding Commitment: \$0.00  
Funds Disbursed to Date: \$352,080.00  
Funds to be Recovered from Applicant: \$352,080.00

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY 2007 FCC Form 470 you certified that all bids received would be carefully considered and that the bid selected would be for the most cost-effective service or equipment offering. During an audit it was determined that you failed to consider all bids submitted. You did not provide an adequate description in Block 2 of the FCC Form 470 of the requested services for Basic Maintenance of Internal Connections to allow vendors to bid. The entire description provided on the FCC Form 470 was "all eligible equipment". No RFP was issued and Box 11b was checked on the FCC Form 470 indicating no intent to release an RFP. Therefore, there was no additional description available for interested service providers to allow them to bid. Although you received and accepted a bid from the eventual service provider for this FRN, there was no evidence that you responded to an additional responder who replied on January 15, 2007, within the 28 day period after the posting of the FCC Form 470 on December 26, 2006, stating: "please provide me with a detailed list of equipment that you are looking to have Basic Maintenance on below" and "Please let me know as soon as possible, we would like to bid on both of these [internal maintenance and internal connections]." This request indicated that the Form 470 did not have enough information to allow the interested service providers to formulate a bid. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to issue a request for proposal, as well as failed to otherwise provide detailed and specific information of the services sought, you prevented the potential bidders from formulating their bids and/or failed to consider all bids received and choose the most cost-effective solution you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

It was also determined that the funding commitment for this request must be reduced by \$62,592.00. 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 discovered that the applicant is only eligible to receive a 74 percent discount. This determination was based on documentation provided showing the applicant used an unacceptable survey method to the NSLP ("National School Lunch Program") forms received; the applicant increased the

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number of eligible students in certain schools within the district on its FCC Form 471 applications. This increase in eligible students improperly increased the determined poverty level and resulted in an incorrect and higher USAC discount rate. Accordingly, the commitment has been reduced by \$62,592.00 (pre-discount commitment amount\*(discount percentage approved on the Form 471 less the discount rate the applicant is actually eligible to receive)) and if recovery is required, USAC will seek recovery from the applicant. Note that full recovery is sought for the above violation.

Additionally, it has been determined that this funding commitment must be rescinded in full. On your FY 2007 FCC Form 470 you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During the audit it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements. The Board of Education's purchasing policies require that all system-level contracts made on behalf of the board of education involving expenditures exceeding ninety thousand dollars (\$90,000.00) must receive prior approval from the board. There was no evidence of proper authorization, i.e. the Board of education approval. The pre-discount amount for this FRN is \$391,200.00. This exceeds the \$90,000.00 approval threshold. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to comply with local and state procurement laws you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Lastly, it has been determined that this funding commitment must be rescinded in full. During the audit it was determined that the price of eligible products and services was not the primary factor in the vendor selection process. This determination was based on the fact that the applicant had inadequate documentation concerning how it selected the most cost-effective service offering with price being the primary factor considered. Additionally there was no indication that a response was made to an interested service providers inquiry to provide services; the contracted amount was increased from the offer without documented explanation and the documentation support for services received disclosed that services received were materially & substantially less than what was paid for. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds.