

EXHIBIT 5

November 29, 2008

Cynthia B. Schultz
cschultz@pattonboggs.com

VIA ELECTRONIC FILING

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

Re: Appeal of September 30, 2008, Notification of Commitment Adjustment Letter ("COMAD") to St. Elizabeth School (BEN No. 10171) for Funding Year ("FY") 2002 Funding Request Numbers ("FRN") 797702, 797703, and 797706

Dear Sir/Madam:

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

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

¹ The Appeal is required to be filed within sixty (60) days from the date of the COMAD, which is Nov. 29, 2008. The next business day is Dec. 1, 2008.

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

Service Provider	Elite Systems, Inc.
SPIN	143004742
FCC Form 470 Application Number	459880000379287
FCC Form 471 Application Number	302223
Billed Entity Number	10171
FRNs	797702, 797703, 797706

I. Background Information

St. Elizabeth is a private Catholic school in the Archdiocese of New York, which serves the Washington Heights community in New York, NY. St. Elizabeth participates in the Schools and Libraries Division's E-rate program.

On Nov. 13, 2001, USAC posted St. Elizabeth's FCC Form 470, Application No. 459880000379287, indicating its intent to seek telecommunications, Internet access, and internal connections services.³ St. Elizabeth did not post a separate RFP for any of the services. Specifically, on its FCC Form 470, St. Elizabeth sought the following services:

Telecommunications	
Local Voice Service	5 lines
Long Distance Service	5 lines
Wireless Telephone Service	2 lines
Internet Access	
Dedicated Internet Service	500 users
Internal Connections	
Local Area Network	90 computers
Network Maintenance	90 computers

St. Elizabeth conducted a competitive bid process pursuant to the FCC's competitive bid rules and waited 28 days after posting FCC Form 470 before choosing Verizon-New York, Inc., AT&T Corp., Cingular Wireless and Elite Systems, Inc. ("Elite"). On Jan. 16, 2002, St. Elizabeth filed its certified FCC Form 471, Application No. 302223, with USAC certifying its selection of Verizon-New York, Inc., AT&T Corp., and Cingular Wireless as telecommunications providers and Elite as its Internet access and internal connection service provider. Specifically, the FCC Form 471 included the following funding requests: FRN 797706 for Internet access, and FRNs

³ Exhibit 1 (FCC Form 470 Application Number 459880000379287, Nov. 13, 2001).

797703 and 797702 for internal connections. To date, USAC has disbursed \$15,120.00 for FRN 797706 (IA), \$34,641.00 for FRN 797702 (IC), and \$2,124.00 for FRN 797703 (IC).

Elite neither influenced nor participated in the competitive bidding process.⁴ Elite provided the requested services within the funding year and completed installation by June 30, 2003. On August 26, 2003, St. Elizabeth signed a service certification with USAC, certifying that services were installed and delivered for FRN 797706 (IA), FRN 797702 (IC), and FRN 797703 (IC) by June 30, 2003.⁵

On September 30, 2008, USAC sent St. Elizabeth a Notification of Commitment Adjustment Letter (“COMAD”) for the FRNs listed above, adjusting USAC’s funding commitment to \$0.00. USAC based all of the COMADs on the following Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the service provider Elite Systems, Inc. participated in the preparation of the Form 470 which established the competitive bidding process for FRN[s] 797702[,] [797703, and 797706] by drafting the content of the Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. Accordingly, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with “inside” information or allow it to unfairly compete in any way. By having the service provider engaged in the preparation and submission of its Form 470, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any funds disbursed in violation of the program’s

⁴ Exhibit 2 (Declaration of Jiin Artis).

⁵ Exhibit 3 (Service Certification of St. Elizabeth for FRNs 797702, 797706, and 797703 signed by St. Elizabeth Director of Technology Edward Fener).

competitive bidding rules. USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.⁶

St. Elizabeth respectfully disagrees with SLD's COMAD Letter for the reasons described below.

II. Basis for Appeal

A. The Administrative Limitations Period for Initiating and Completing Review Has Lapsed

The Commission has established that USAC's audits and investigations are subject to a five-year administrative time limitation. In its *Fifth Report and Order*,⁷ the Commission stated:

“Accordingly, we announce our policy that we will initiate and complete any inquiries to determine whether or not statutory or rule violations exist within a five-year period after final delivery of service for a specific funding year.”⁸

The FCC's Order on the administrative limitations period is dispositive of this issue for the FRNs in this appeal. First, USAC's funding denials are improper because the five-year administrative limitations period has expired as a matter of law for all Internet access FRNs, because FCC regulation requires that all recurring services, *e.g.*, Internet access, be provided within the relevant funding year.⁹ Second, although the Commission has permitted the applicant and service provider to extend the time period for the delivery and installation of internal connections until September 30th of the relevant funding year or until September 30th of the following year if USAC issues a Funding Commitment Decision Letter after March 1st of the

⁶ Exhibit 4 (Notification of Commitment Adjustment Letter for Form 471 Application Number 302223, Sept. 30, 2008).

⁷ *In Re Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order, 19 FCC Rcd 15808, FCC 04-190 (rel. Aug. 13, 2004) (“Fifth Report and Order”).

⁸ *Id.* at ¶ 32.

⁹ 47 C.F.R. § 54.507(d).

relevant funding year, based upon the information available, internal connections were provided within the relevant funding year. The attached Service Certifications demonstrate that St. Elizabeth received final delivery of service for both internal connections and Internet access by June 30, 2003.¹⁰

Based upon the Commission's *Fifth Report and Order*, the last day for St. Elizabeth to have received a COMAD notice from USAC was June 29, 2008. USAC did not issue its COMAD regarding St. Elizabeth until September 30, 2008. Thus, USAC's rescission of funding is time-barred.

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

SLD failed to provide any specific language, documents or other evidence to support its conclusion that Elite participated in the competitive bidding process of St. Elizabeth for FY2002. SLD failed to produce any documents to support its finding, which denies St. Elizabeth its due process rights to file a meaningful and substantive appeal. The Commission has concluded that without specific information to determine the basis for a denial, applicants cannot provide comprehensive responses to USAC's arguments.¹¹ Similarly, St. Elizabeth cannot file an informed appeal without specific information from USAC.¹²

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

The Commission's competitive bid requirements for the E-Rate Program require applicants to seek competitive bids for eligible services through completing, certifying and submitting FCC Form 470 to USAC.¹³ Among the competitive bid requirements, an applicant

¹⁰ Exhibit 3.

¹¹ *Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technology*, Order, 21 FCC Rcd 5348, 5350 ¶ 6 (2006) ("Academy of Careers Order").

¹² St. Elizabeth filed a FOIA Request with the FCC on November 26, 2008.

¹³ 47 C.F.R. § 54.504(a).

must name a contact person and wait 28 days¹⁴ before selecting “the most cost-effective service or equipment offering, with price being the primary factor.”¹⁵

St. Elizabeth complied with all aspects of the Commission’s competitive bidding process. On November 13, 2001, USAC posted St. Elizabeth’s FCC Form 470 for FY2002. Among the services it requested, St. Elizabeth sought Internet Access described as “dedicated internet service” for “500 users.” St. Elizabeth also sought internal connections, described as “local area network” for “90 computers” and “network maintenance” for “90 computers.” This request was posted for a period of at least 28 days in accordance with Commission rules. After waiting 64 days, St. Elizabeth considered all bids received and selected Elite as the low-cost provider. St. Elizabeth filed its FCC Form 471 on January 16, 2002.

Moreover, even a simple, cursory review of the FCC Form 470s demonstrates that the services requested are vendor neutral and cannot benefit any one specific provider over another. St. Elizabeth sought basic Internet access and internal connections services in FY2002 on its FCC Form 470. The school sought the type of generic Internet access services that most vendors offer. For example, in seeking Internet access, the school’s FCC Form 470 states that it is seeking “dedicated Internet service.” Similarly, when describing internal connections, St. Elizabeth listed “network maintenance” and “local area network.” These are vendor-neutral, ubiquitous terms describing service that any service provider in the market of providing such services could bid upon. Clearly, Elite could not have an unfair advantage or inside information regarding the provision of services described in such a generic manner.

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

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

¹⁴ 47 C.F.R. § 54.504(b)(4).

¹⁵ 47 C.F.R. § 54.504(b)(2)(vii).

D. St. Elizabeth Did Not Surrender Control to Any Service Provider, Including Elite, During the Competitive Bidding Process for FY2002

St. Elizabeth did not abrogate its competitive bid responsibility. Elite did not influence or participate in St. Elizabeth's competitive bid process.¹⁶ St. Elizabeth signed and certified its FCC Form 470, reviewed bids received, and chose its service providers based upon the FCC competitive bid rules.

In fact, the Commission in its *MasterMind Order* expressly recognized that the service provider may be involved in providing technical and vendor-neutral assistance during the competitive bidding process.¹⁷ Specifically, in *MasterMind*, where the applicant did not name a MasterMind employee as the contact person and a MasterMind employee did not sign the FCC Form 470,¹⁸ the Commission held that no competitive bidding violation occurred – despite service provider involvement. The facts demonstrate in this appeal that the service provider neither signed nor acted as the contact person on St. Elizabeth's FCC Form 470. As a result, no Commission competitive bid violation occurred.

III. Conclusion

SLD has failed to establish that any statutory or rule violation occurred in the instant appeal. Moreover, the Commission's administrative limitations period is dispositive of this issue and for this reason alone, USAC should overturn its prior decision, grant this appeal, and cancel the COMAD related to the FY2002 FCC Form 471 Application set forth above.

¹⁶ Exhibit 2.

¹⁷ *Request for Review of Decisions of the Universal Service Administrator by Mastermind Internet Services*, 16 FCC Rcd 4028 (2000) ("*MasterMind Order*"); see also Universal Service Administrative Company, <http://www.usac.org> (USAC describes on its Web site what role a service provider may take without violating the competitive bidding rules.); SLD Training Presentations for applicants and service providers on Enforcement and Program Compliance for the FY 2002-2004, <http://www.usac.org/sl/about/training-presentations/> (This presentation is now listed on the Training Presentations archive page of USAC's Web site. It provides guidance for service providers at the time the FCC Form 470 was filed). Service providers can communicate with an applicant so long as such communication is neutral and does not taint the competitive bidding process. A service provider can provide basic information regarding the E-rate Program to an applicant and can assist with an applicant's RFP so long as the assistance is neutral.

¹⁸ *MasterMind Order*, 16 FCC Rcd at 4034-35 ¶ 14.

PATTON BOGGS LLP
ATTORNEYS AT LAW

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IV. Contact Person

The contact person for this appeal is Cynthia B. Schultz , Patton Boggs LLP, 2550 M Street, N.W., Suite 550, Washington, D.C. 20037, Tel. No. 202-457-6343 (Cynthia), Fax No. 202-457-6315 and e-mail address, cschultz@pattonboggs.com.

Sincerely,

_____/s/_____
Cynthia B. Schultz
Counsel for the Archdiocese of
New York and St. Elizabeth

EXHIBIT 1

FCC Form

Approval by OMB
3060-0806

470

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

Estimated Average Burden Hours Per Response: 4.0 hours

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

Please read instructions before beginning this application.

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

Block 1: Applicant Address and Identifications

Form 470 Application Number: 459880000379287
Applicant's Form Identifier: 200247010171
Application Status: CERTIFIED
Posting Date: 11/13/2001
Allowable Contract Date: 12/11/2001
Certification Received Date: 11/27/2001

1. Name of Applicant: ST ELIZABETH SCHOOL		
2. Funding Year: 07/01/2002 - 06/30/2003		3. Your Entity Number 10171
4a. Applicant's Street Address, P.O.Box, or Route Number 612 W 187TH ST		
City NEW YORK	State NY	Zip Code 10033-1315
b. Telephone number (212) 568- 7291		C. Fax number (212) 928- 2515
d. E-mail Address		
5. Type Of Applicant		
<input checked="" type="checkbox"/> Individual School (individual public or non-public school)		
<input type="checkbox"/> School District (LEA;public or non-public[e.g., diocesan] local district representing multiple schools)		
<input type="checkbox"/> Library (including library system, library branch, or library consortium applying as a library)		
<input type="checkbox"/> Consortium (intermediate service agencies, states, state networks, special consortia)		
6a. Contact Person's Name: Ed Fener		
<i>First, fill in every item of the Contact Person's information below that is different from Item 4, above. Then check the box next to the preferred mode of contact. (At least one box MUST be checked.)</i>		
6b. Street Address, P.O.Box, or Route Number		
<input checked="" type="checkbox"/> 612 W 187TH ST		
City NEW YORK	State NY	Zip Code 10033-1315

<input checked="" type="checkbox"/>	6c. Telephone Number (212) 568- 7291
<input checked="" type="checkbox"/>	6d. Fax Number (212) 928- 2515
<input type="checkbox"/>	6e. E-mail Address

Block 2: Summary Description of Needs or Services Requested

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

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

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

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

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

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

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

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

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

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

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

Service or Function:	Quantity and/or Capacity:
local voice service	5 lines
long distance service	5 lines
wireless telephone service	2 lines

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

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

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

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

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

Service or Function:	Quantity and/or Capacity:
dedicated internet service	500 users

10 Internal Connections

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

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

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

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

Service or Function:	Quantity and/or Capacity:
local area network	90 computers
network maintenance	90 computers

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

Name: _____ Title: _____

Telephone number
 () - _____

Fax number
 () - _____

E-mail Address _____

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

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

Block 3: Technology Assessment

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

15. Although the following services and facilities are ineligible for support, they are usually necessary to make

effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

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

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

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

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

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

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

Block 4: Recipients of Service

16. Eligible Entities That Will Receive Services:

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

a. Individual school or single-site library.

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

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

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

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

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

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

17. Billed Entities

List the entity/entities that will be paying the bills directly to the provider for the services requested in this

application. These are known as Billed Entities. At least one line of this item must be completed. Attach additional sheets if necessary.

Entity	Entity Number
ST ELIZABETH SCHOOL	10171

18. Ineligible Participating Entities

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

Ineligible Participating Entity	Area Code	Prefix
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Block 5: Certification and Signature

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

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

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

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

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

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

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

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

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

25. Signature of authorized person:

26. Date (mm/dd/yyyy): 11/26/2001

27. Printed name of authorized person: Sr. Noreen Nolan

28. Title or position of authorized person: **Principal**

29a. Address of authorized person:

City: State: Zip:

29b. Telephone number of authorized person: **(212) 568 - 7291**

29c. Fax number of authorized person: **()**

29d. E-mail address number of authorized person:

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

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

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

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

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

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

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

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

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

Please submit this form to:

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

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

SLD-Form 470
c/o Ms. Smith
3833 Greenway Drive
Lawrence, Kansas 66046
1-888-203-8100

FCC Form 470
May 2003

[New Search](#)

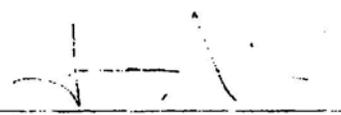
[Return To Search Results](#)

EXHIBIT 2

DECLARATION OF JIIN ARTIS

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

1. Elite was selected as an E-Rate service provider by the Schools referenced in the attached Appeal and entered into appropriate contracts with the Schools for the provision of such services. All such contracts expired on June 30, 2003.
2. Elite provided the requested services to the schools and it was Elite's normal and ordinary course of business to complete installation of Internet access and internal connections within the relevant funding year, which for FY2002 ended on June 30, 2003.
3. Elite provided the appropriate invoices to USAC and was paid by USAC the discounted portion of the cost of such services.
4. Elite did not attempt to influence any Schools' decision regarding the eligible services for which it should seek funding or any other aspect of the content set forth on any Schools' FCC Form 470. Elite also did not attempt to influence any School to select Elite as its E-Rate service provider.



Jiin Artis
President
Elite Systems, Inc.

November 28, 2008

EXHIBIT 3

Service Certification

Service Provider Name	Elite Systems Inc.
Service Provider SPIN	143004742
Service Provider Invoice #	20021030 our invoice 386639
Undiscounted Invoice Amount	\$38,490.00, \$16,800.00, \$2,360.00
Discounted Invoice Amount	\$34,641.00, \$15,120.00, \$2,124.00

Applicant Name	St. Elizabeth School
Representative / Contact Name	EDWARD FENER *
Representative / Contact Title	DIRECTOR OF TECHNOLOGY *
Representative / Contact Phone	212-568-7291 *
Billed Entity Number (BEN)	10171
471#	302223
FRN#	797702, 797706, 797703 *
*Date Services Delivered and Installed *For Internet Access, Service period needed	7/1/2002 - 6/30/2003 *

This is to certify that I am authorized to represent the above named applicant. This is also to certify the services described on the attached vendor invoice were delivered and installed.

OR The charges represented by the above represented invoice are deposits or up-front charges for services, which have not been delivered, and have been agreed to based on the contract between the above referenced Applicant and Service Provider

Signed: <i>Edward Fener</i>	Signed:
Date: <i>8-26-2003</i>	Date:
Copy of <u>detailed</u> vendor invoice must be attached	Copy of <u>supporting contract</u> must be attached if indicated below
	Supporting Contract Required YES ___ NO ___

EXHIBIT 4



Notification of Commitment Adjustment Letter

Funding Year 2002: 7/01/2002 - 6/30/2003

September 30, 2008

**Ed Fener
ST ELIZABETH SCHOOL
612 W 187TH ST
NEW YORK, NY 10033 1315**

**Re: Form 471 Application Number: 302223
Funding Year: 2002
Applicant's Form Identifier: 200247110171
Billed Entity Number: 10171
FCC Registration Number: 0012029682
SPIN Name: Elite Systems, Inc.
Service Provider Contact Person: Jün Kang**

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

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

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

TO APPEAL THIS DECISION:

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

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

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

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC web site, or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

FUNDING COMMITMENT ADJUSTMENT REPORT

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

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

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

Schools and Libraries Division
Universal Services Administrative Company

cc: Jjin Kang
Elite Systems, Inc.

A GUIDE TO THE FUNDING COMMITMENT ADJUSTMENT REPORT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Funding Commitment Adjustment Report for
Form 471 Application Number: 302223**

Funding Request Number:	797702
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143004742
Service Provider Name:	Elite Systems, Inc.
Contract Number:	ADStEliz
Billing Account Number:	ADStEliz
Site Identifier:	10171
Original Funding Commitment:	\$34,641.00
Commitment Adjustment Amount:	\$34,641.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$34,641.00
Funds to be Recovered from Applicant:	\$34,641.00

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the service provider Elite Systems, Inc. participated in the preparation of the Form 470 which established the competitive bidding process for FRN 797702 by drafting the content of the Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. Accordingly, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. By having the service provider engaged in the preparation and submission of its Form 470, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any funds disbursed in violation of the program's competitive bidding rules. USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.

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

Funding Request Number: 797703
Services Ordered: INTERNAL CONNECTIONS
SPIN: 143004742
Service Provider Name: Elite Systems, Inc.
Contract Number: ADStEliz
Billing Account Number: ADStEliz
Site Identifier: 10171
Original Funding Commitment: \$2,124.00
Commitment Adjustment Amount: \$2,124.00
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$2,124.00
Funds to be Recovered from Applicant: \$2,124.00

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the service provider Elite Systems, Inc. participated in the preparation of the Form 470 which established the competitive bidding process for FRN 797703 by drafting the content of the Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. Accordingly, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. By having the service provider engaged in the preparation and submission of its Form 470, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any funds disbursed in violation of the program's competitive bidding rules. USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.

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

Funding Request Number:	797706
Services Ordered:	INTERNET ACCESS
SPIN:	143004742
Service Provider Name:	Elite Systems, Inc.
Contract Number:	ADStEliz
Billing Account Number:	ADStEliz
Site Identifier:	10171
Original Funding Commitment:	\$15,120.00
Commitment Adjustment Amount:	\$15,120.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$15,120.00
Funds to be Recovered from Applicant:	\$15,120.00

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the service provider Elite Systems, Inc. participated in the preparation of the Form 470 which established the competitive bidding process for FRN 797706 by drafting the content of the Form 470. FCC rules require applicants to submit a Form 470 to initiate the competitive bidding process, and to conduct a fair and open process. Accordingly, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. By having the service provider engaged in the preparation and submission of its Form 470, the applicant surrendered control of the competitive bidding process to the service provider who participated in the competitive bidding process as a bidder. Accordingly, the commitment has been rescinded in full and USAC will seek recovery of any funds disbursed in violation of the program's competitive bidding rules. USAC has determined that both the applicant and the service provider are responsible for this rule violation; if any funds were disbursed, USAC will seek recovery of the improperly disbursed funds from both the applicant and the service provider.

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CHECK TO ENSURE TIMELY PROCESSING**