

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

_____)	
In the Matter of)	
)	CC Docket No. 02-6
Request for Review of Decisions of the)	
Universal Service Administrator)	File No. SLD File No. 569961 (FY 2007)
)	
Johnston County School District)	FRN 1590932 (FY 2007)
North Carolina)	
_____)	

To: Chief, Wireline Competition Bureau

SUPPLEMENT TO REQUEST FOR REVIEW

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SUMMARY

This Supplement is made to a Request for Review (“Request”) filed on October 14, 2010 by the Johnston County School District (the “District” or “Johnston County”). The Request being supplemented herein involves the propriety of the District’s methodology for calculating the discount rate to which it was entitled for certain eligible services supported under the Schools and Libraries Support Mechanism (“E-Rate Program”) administered by the Schools and Libraries Division of the Universal Services Administrative Company (collectively, “USAC”). USAC contends that the amount of support for the Funding Request Number (“FRN”) listed in the caption must be adjusted because the District did not employ an acceptable methodology for calculating the discount rate. As a result, USAC claims that the amount of E-Rate Program support provided under that FRN must be adjusted and, where funds distributed exceeded the adjusted support levels, the difference must be returned. USAC also claims that the amount of E-Rate Program support provided must be adjusted because the District provided an inadequate description of the services requested on its FCC Form 471.

The District respectfully submits that the grounds on which USAC justifies requiring the District to return funds, which have been used for the purposes for which they were originally approved, cannot be sustained. The District followed then applicable rules in conducting surveys to substantiate the E-Rate Program support that it was authorized under the applicable FRN. The District even sought guidance from USAC on how it was proceeding in that regard. With respect to the description of the services on the FCC Form 470, the District respectfully submits that this is not a *Ysleta* situation. It was a defined category of services – Basic Maintenance of Internal Connections and, through the District Contact Person on the FCC Form 470 there was adequate opportunity for any service provider to obtain any additional information required.

Moreover, the circumstances would justify the Commission exercising its authority to waive any technical violations of the rules that might be found here. There is no evidence of waste, fraud or abuse and the requirement to return these funds would be a hardship on the District.

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SUPPLEMENT TO REQUEST FOR REVIEW

Johnston County School District (the “District” or “Johnston County”), acting through counsel and pursuant to and in accordance with Sections 54.719-54.721 of the Federal Communication Commission’s (“FCC” or “Commission”) rules, hereby supplements its previously-filed Request for Review (“Request”).¹ Therein, the District sought review of USAC’s denial of the District’s Appeal² for Funding Year (“FY”) 2007.

¹ On October 14, 2010 the District filed its Request with the Commission seeking review of the denial of the September 16, 2010 District appeal (“Appeal”) filed with the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (collectively, “USAC”) relating to the captioned SLD File No. and FRN. The Appeal contested USAC Notification of Commitment Adjustment Letter (“COMAD”) relating to the SLD File No. and FRN. A copy of the Request is attached as Exhibit 1. The Request was timely filed on October 14, 2010. Section 54.720(b) of the Commission’s rules requires the filing of an appeal with the FCC “within sixty (60) days of issuance” of a decision by USAC. The USAC denial letter, denying the Appeal for the above-referenced FRN, is dated September 16, 2010 (“Denial Letter”), and 60 days thereafter would be November 15, 2010. Since the Request was filed on October 14, 2010, which is 30 days from the date of the Denial Letter, it was timely filed.

² Exhibit 2; Denial Letter.

I. STATEMENT OF THE DISTRICT’S INTEREST IN THE REQUEST

The District has standing to file its Request because Section 54.719(c) of the Commission’s rules provides that, “[a]ny person aggrieved by an action taken by a division of the Administrator . . . may seek review from the Federal Communications Commission.”³ In this case, the District is directly aggrieved by USAC’s Denial Letter, which seeks to continue to recover certain previously-approved and disbursed E-Rate Program funds for FY 2007 in the total amount of \$352,080.00.

II. INTRODUCTION – BASIS FOR COMAD

The USAC Denial Letter affirms a COMAD relating to the captioned FRN. The following table sets forth background information on the COMAD and a copy thereof is attached as Exhibit 3:

Notice Date	Funding Year (FY)	Form 471 No.	Funding Request No. (FRN)	Service Provider	SPIN	Original Commitment	Revised Commitment	Disbursed	Requested Recovery
6/22/2010	2007	569961	1590932	NWN	143017706	\$352,080.00	-	\$352,080.00	\$352,080.00

The COMAD apparently was principally based on findings contained in the Independent Accountant’s Report SL-2008-336, dated June 30, 2009 (“Audit Report”), which stemmed from of an attestation audit conducted by the accounting firm of Thompson, Cobb, Bazillio, and Associates, PC (“Auditor”).⁴

Based on the Audit Report, the principal reasons that became the basis for the COMAD were:

- The Audit Report asserted that there was “a misapplication by the applicant of using the alternative mechanism ‘survey method’ for determining poverty levels.”

³ 47 C.F.R. § 54.719(c).

⁴ See Exhibit 4.

- The Audit Report also asserted that there was an inadequate description on FCC Form 470 for the requested service of basic maintenance of internal connections.

The Denial Letter affirmed these conclusions. The District respectfully continues to disagree with the justification for the COMAD and requests that it be rescinded in full. The rationale for this disagreement is presented below.

III. KEY BACKGROUND FACTS

A. The District

The District serves over 32,000 students in grades kindergarten through twelve. Johnston County's student population has doubled in the past 15 years. The District enjoys strong community support through funding for new schools, partnerships with business and faith based organizations, and substantial parental involvement. Student achievement ranks among the top 20% of all North Carolina school districts. The District has 256 Nationally Board Certified teachers, placing Johnston County within the top 50 school districts in the nation. Diversity in the District is evident by the over 40 languages spoken by students and their families. The District's mission is to "foster a flame for learning within each child that will last a lifetime." In order to meet this mission, Johnston County continually updates its educational services. The District's goal is to "empower[] all students to become successful in a global society."

B. The Underlying Audit Report Findings Relating To Surveys

The following excerpt from the Audit Report includes the Auditor's conclusions regarding the "survey method" followed by the District. It was these conclusions that apparently were the basis for the COMAD finding that the level of the discount calculation should be reduced and, on these grounds, the approved E-Rate Program support should be reduced:

Issue No. SL2008BE336_F02

Wrong Determination of Poverty Level Due to Unacceptable Method of Calculation

Assertion B.7. The School/District accurately determined its level of poverty, for use in determining its available discount rate, by using the percentage of its student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism in the public school district in which they are located.

Condition For FRN[] . . . 1590932 under FCC Form 471 . . . #569961 for Funding Year 2007, the JCSD calculated the wrong poverty levels on the applicable FCC Forms 471. By applying an unacceptable survey method to the NSLP (“National School Lunch Program”) forms received, JCSD significantly and inappropriately increased the number of eligible students in certain schools within the district on its FCC Form 471 applications. This increase in eligible students improperly increased the JCSD’s determined poverty level and resulted in an incorrect and higher USAC discount rate.

To demonstrate, the following chart details 16 schools on the FCC Form 471 #569961 for Funding Year 2007 comparing the number of eligible students (“NSLP Students”) reported on the FCC Form 471 to the number of students who actually were eligible based on NSLP application forms on file for those schools.

* * *

The [District] used an alternative discount mechanism to determine the poverty level; however, this alternative mechanism took the actual NSLP application forms received and treated them as surveys. This is not allowed. JCSD did not have a survey process in place; they considered NSLP applications received for certain schools (through normal NSLP application procedures) to be “surveys” because of the high percentage of students returning the NSLP applications that were enrolled in the schools. For these schools, over 50 percent of the NSLP applications were returned and the JCSD treated these schools on the FCC Form 471 under what was termed the “survey method”. The “survey method” results were used to project the percentage of students eligible for free or reduced price lunch by computing a percentage of approved applications to total applications received and applying that percentage to the total enrolled students. By applying the survey method incorrectly, the calculation used by JCSD skewed the results to achieve a higher poverty level as only families wishing to apply to the Free and Reduced Lunch program responded to the applications sent from the schools.

* * *

The USAC rules specifically state that NSLP applications cannot be used as surveys; however, there is some confusion as to when that rule came into effect. Regardless, the USAC program rules also specifically state that extrapolation from non-random samples, such as families of students who apply for financial aid, is an unacceptable alternative mechanism. Because the NSLP applications are generally only returned by families wishing to apply for financial aid and participate in the lunch program, the use of applications is, in effect, a non-random sample.

Criteria Per 47 C.F.R. 54.505(b)(1) which states: “For schools and school districts, the level of poverty shall be measured by the percentage of their student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism.”

Additionally, the FCC sanctions other mechanisms to determine a school’s level of need, as long as those mechanisms are based on – or do not exceed – the same measure of poverty used by NSLP [FCC 97-157 ¶ 510], and the approach used by JCSD contravenes this FCC regulation.

Cause The E-Rate consultant for JCSD misunderstood the instructions for determining poverty level and confused the NSLP application with the survey that is allowed as an alternative mechanism. Therefore, the belief was that if greater than 50 percent of the students returned their NSLP applications, the percentage eligibility could be calculated as would a survey, based on the number of responses rather than the total enrollment. Because the percentage of students eligible for free and reduced lunch was miscalculated for these schools, the resulting discount percentages used to calculate the shared discount rate were incorrect.

C. The Relevant Audit Report Finding Relating to the Inadequate Description on FCC Form 470 for Requested Services of Basic Maintenance of Internal Connections

The COMAD conclusion that there was an inadequate description on FCC Form 470 for the requested services of basic maintenance of internal connections apparently was based on the following Audit Report Finding excerpted below:

Issue No. SL2008BE336_01

Inadequate Description on FCC Form 470 for Requested Services of Basic Maintenance of Internal Connections

Assertion B.2 The School/District submitted a completed FCC Form 470, including the required certifications, signed by the person authorized to order telecommunications and other supported services.

Condition For Funding Request Number (FRN) 1590932 under FCC Form 471 No. 1569961 for Funding Year 2007, Johnston County School District (JCSD) did not provide an adequate description to allow vendors to bid in Block 2 of the FCC Form 470 of the requested services for Internal Connections Basic Maintenance. The entire description provided on the FCC Form 470 was “all eligible equipment.”

No Request for Proposal (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 on the FCC Form 470 for interested service providers to allow them to bid.

Although JCSD received and accepted a bid from the eventual service provider for this FRN, JCSD did not respond to an additional FCC Form 470 responder. The additional responder 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 indicates that the service provider did not have enough information to submit a bid to JCSD for consideration; see further discussion of this response in Issue No. SL2008BE336_06.

Criteria C.F.R. Title 47, Volume 3 § 54.504(b)(1)(ii) and (iii): Requests for Services which states:

(b) Posting of FCC Form 470. (1) An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this

subpart, shall submit a completed FCC Form 470 to the Administrator. FCC Form 470 shall include, at a minimum, the following information, to the extent applicable with respect to the services requested:

- (ii) The internal connections, if any, that the school or library has in place or has budgeted to install in the current, next, or future academic years, or any specific plans for an organized voluntary effort to connect the classrooms.
- (iii) The computer software necessary to communicate with other computers over an internal network and over the public telecommunications network currently available or budgeted for purchase for the current, next, or future academic years.”

Cause JCSD officials misunderstood the requirements to complete the FCC Form 470 for Funding Year 2007 and believed that the description provided was adequate.

D. SLD Survey Guidance and Procedures Used by the District to Conduct the E-Rate Income Survey

The guidance posted to the SLD website at the time of the FY 2007 applications that “The primary measure for determining E-Rate discounts is the percentage of students eligible for free and reduced lunches under the National School Lunch Program, calculated by individual school.”⁵ The prevalent process used to determine this percentage is to count the number of students who apply for free and reduced lunch by completing a National School Lunch Program (“NSLP”) application and to divide that number by the enrollment of the school. NSLP applications are distributed at the start of the school year to each student’s family along with instructions how to complete the application.

This process does a creditable job of capturing the number of student’s families who wish to *participate* in the NSLP program, but DOES NOT measure the number of student’s families who are *eligible* for the free and reduced lunch program. There are a number of reasons why a parent might not wish to participate in the free and reduced lunch program even if they were eligible: perceived shame of participating in what they think is a government welfare program, confusion over how to complete the application, and their wish that their children not be served a school provided lunch.

⁵ See Exhibit 5.

The applicable SLD guidance in effect on the SLD website, until it changed on or about June 21, 2007, allowed schools to collect the actual count of students eligible by either using the number of students who apply (and are deemed eligible) for free and reduced lunch by completing the NSLP application or by using an “alternative means such as a survey.” Conducting an income survey has the potential to determine the actual number of families eligible for, instead of participating in, the free and reduced meals program. Further, the guidance defined the requirements of a survey:

Survey Guidelines

If a school chooses to do a survey, the following guidelines apply:

- a. The survey must be sent to all families whose children attend the school.
- b. The survey must attain a return rate of at least 50%.
- c. The survey must, at a minimum, contain the following information:
 - o Address of family
 - o Grade level of each child
 - o Size of the family
 - o Income level of the parents
- d. The survey must assure confidentiality. (The names of the families are not required.).

Accordingly, the District for the 2005-2006 school years distributed to each student at the beginning of the school year in August a form that could be used to both participate in a family income survey AND/OR to apply for the NSLP. The form met all of the requirements of a survey as detailed in the guideline above.

Two letters accompanied the survey/application, both directed to parents: one explaining the E-Rate Program, the fact that eligibility was based on each school’s families incomes, asking each parent to complete the survey form regardless of whether or not they wanted to participate in the free and reduced meals program, and informing parents that wanted to participate in the free and reduced meals program, but not wanting to participate in the income survey, to so

indicate.⁶ The second letter was the standard letter that explained the free and reduced meals program and asked parents wanting to participate in it to complete the application which was attached.

The dual survey/application accomplished the following:

- Met the requirements of the SLD published guideline for a survey
- Met the requirements of the USDA for a NSLP application
- Allowed a student to participate OR not in the E-Rate survey
- Allowed a student to apply OR not for the free & reduced lunch program
- Captured the number of students who actually qualify for free & reduced lunch
- Saved money and time by combining two important documents that parents needed to complete at the start of school

The survey/application form along with the “E-Rate survey” and “Free & Reduced Meals application” letters were distributed to every student in each school at the start of the school year. Those who wanted to participate in both the survey and the application were given that opportunity and those that only wanted to participate in one and not the other were also given that opportunity.

For those schools where the surveys were distributed in August, 2005, which had over 50% of its enrolled students complete and return a survey, the surveys were scored to determine if they were eligible or ineligible for free and reduced meals according to the USDA Eligibility Income Guidelines in effect at that time. The number of students’ families who were eligible and ineligible was used to determine the discount for each school for FY 2007 according to the guidance posted on the SLD website at that time.

⁶ See Exhibit 6.

E. Review of the District's Survey Procedures by the SLD

The District was asked during the Program Integrity Assurance (“PIA”) review of a FY 2005 application (FCC Form 471 No. 453668) on July 8, 2005, to provide specific information in support of the discount calculation and survey method used by West Smithfield Elementary School. This information request included:

1. The date that the survey was conducted
2. The number of students enrolled in the school at the time of the survey
3. The number of families that were sent the survey (the number of surveys sent out)
4. The number of surveys returned
5. The number of students determined to be eligible for NSLP based on the returned surveys
6. Copies of all returned surveys with the child's personal information blackened out to ensure confidentiality, but retaining the information that helped you determine if the family was eligible for Free & Reduced Lunch.
7. Indications on each survey form or on a separate sheet of the Free & Reduced Lunch Eligibility determination for **EACH** survey. If provided on a separate sheet, provide a means to cross-reference the survey to which each determination relates. For example, a code of “001” on the survey and “001” on the separate sheet with the eligibility determination of that survey indicated.
8. A signed certification that states: “I certify that only those students who meet the Income Eligibility Guidelines of the National School Lunch Program have been included in Column 5 of Item 9a, of Block 4 of the Form 471.

The District answered each of these questions and sent the PIA reviewer copies of all the 387 returned surveys on July 22, 2005.⁷

The District was also asked during the PIA review of the same applications on October 12, 2005, to provide specific information in support of its discount calculation and use of the survey method for thirteen other schools, including sample copies of the surveys. The District complied with that request of October 12, 2005.⁸ It should be noted that in the October 12, 2005 the PIA request the surveys were referred to as “surveys/applications.”

⁷ See Exhibit 7.

⁸ See Exhibit 8.

The SLD Client Service Bureau on November 2, 2006, was asked in case # 21-490224 by another client of New Hope Foundation, the District's consultant ("Consultant"), "Can a school system use its National School Lunch Program application/survey as the data source in determining alternative discount eligibility as to the alternative discount survey mechanism, as long as the National School Lunch Program application/survey meets the SLD alternative discount survey mechanism guidelines?" and the answer by the SLD was "Yes you can do this, as for a rationale, that we can not provide, any assumption as to why a school would determine their discount using the method you have described would be purely speculative."⁹

The Client Service Bureau was again on January 4, 2007, asked in case # 21-513852 by New Hope Foundation:

Is it permissible to use a free & reduced application as a survey form IF it meets all the requirements of a survey form as detailed in the SLD website under "Survey Guidelines" quoted below:

- The survey must be sent to all families whose children attend the school.
- The survey must attain a response rate of at least 50%.
- The survey must, at a minimum, contain the following information:
 - Address of family
 - Grade level of each child
 - Size of the family
 - Income level of the parents
- The survey must assure confidentiality (e.g., the names of the families are not required)
- The NSLP has strict guidelines concerning the confidentiality of all free & reduced applications that guard against unauthorized disclosure of the data contained in the application/survey.

If this is not permissible, please indicate why not.

The response provided by the Client Service Bureau was "This should not be an issue with SLD."¹⁰

⁹ See Exhibit 9.

¹⁰ See Exhibit 10.

Concurrent with the filing of the FY 2006 application for the District, many other school districts conducted a combined E-Rate Program income survey and free and reduced meals application. Those school districts responded to PIA questions in a similar fashion, furnished copies of the survey/applications to the reviewers, and, just like Johnston County, their funding applications were granted. PIA reviewers routinely referred to the combined surveys and applications as surveys/applications in their requests for clarification information sent to applicants. In every instance no reviewer ever raised any issue with the use of the combined survey/application that on its face met the SLD's announced requirements for alternative surveys.

F. The Appeal and the Denial Letter

On July 31, 2010, the District filed its Appeal seeking relief from the COMAD and the COMAD explanation supported by the Audit Report. Therein, the District explained its survey methods and the steps it took to confirm with USAC that the use of a combined survey/application was acceptable for determining the applicable poverty level.

On September 6, 2010, the Appeal was denied and USAC issued the Denial Letter. In the Denial Letter, USAC ultimately concluded that the District "did not demonstrate in your appeal that the initial audit findings were incorrect...." However, the Denial Letter does not address all of the District's arguments that were raised in support of its Appeal, specifically the fact that the Johnston County contacted the SLD to confirm that the use of a combined survey/application was acceptable.

IV. STANDARD OF REVIEW AND GOVERNING FCC PRECEDENT

USAC's authority to administer the E-Rate Program is limited to implementing and applying the Commission's rules and the Commission's interpretations of those rules as found in

agency adjudications.¹¹ USAC is not empowered to make policy, interpret any unclear rule promulgated by the Commission,¹² or to create the equivalent of new guidelines.¹³ USAC is responsible for “administering the universal support mechanisms in an efficient, effective, and competitively neutral manner.”¹⁴ The Commission’s review of the Denial Letter is *de novo*, without being bound by any findings of USAC.¹⁵

Furthermore, that *de novo* review in this case must consider the following relevant FCC precedents:

- Until an E-Rate rule is adopted, an applicant cannot be expected to comply with it.¹⁶
- Compliance with competitive bidding standards must be measured “as they existed at [the] time” of the alleged violation.¹⁷
- Clarifications or changes to E-Rate Program rules and policies are normally to be applied prospectively by USAC.¹⁸

¹¹ 47 C.F.R. § 54.702(c).

¹² *Id.*

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

¹⁴ 47 C.F.R. § 54.701(a).

¹⁵ 47 C.F.R. § 54.723.

¹⁶ *See Requests for Review of the Decisions of the Universal Service Administrator by Aiken County Public Schools, Aiken, SC et al., Schools and Libraries Universal Service Support Mechanism, Order*, 23 FCC Rcd 8735, 8737 ¶6 (2007).

¹⁷ *See In the Matter of Requests for Review of Decisions of the Universal Service Administrator by Colegio Nuestra Senora del Carmen et al., Schools and Libraries Universal Support Mechanism, Order*, 23 FCC Rcd 15568, 15573 ¶12 (Telecom. Access Pol. Div. 2008).

¹⁸ *See Request for Review of the Decision of the Universal Service Administrator by Ysleta, Independent School District, El Paso, Texas, Schools and Libraries Universal Support Mechanism, Order*, 18 FCC Rcd 26406, 26419-23 ¶¶26-38 (2003); *Request for Review of the Decision of the Universal Service Administrator by Winston Salem/Forsyth County School District, Winston-Salem North Carolina, Schools and Libraries Universal Support Mechanism, Order*, 18 FCC Rcd 26457, 26462 ¶13 (2003).

- COMADs must be based on a violation of the statute underlying the E-Rate Program or substantive rules implementing the same adopted by the FCC.¹⁹

- USAC should not be denying funding “where the applicant made a good faith effort to comply with the funding guidelines” and should inform the applicants prior to denying funding of “any errors regarding the discount application . . . , along with a specific explanation of how the applicant can remedy such errors.”²⁰

- If it were determined that there was a rule in effect that governed these surveys, such good faith reliance would justify a waiver of that rule in this case.²¹

- The Commission “has vested in USAC the responsibility of administering the application process for the schools and libraries universal service support mechanism;” pursuant to that authority, USAC developed procedures relating to the application and appeals process and in *Bishop Perry*, the Commission applied the 47 C.F.R. § 1.3 waiver rule to allow a limited waiver of USAC procedures.²²

A review of the Request in light of these standards and precedent will reveal that the Denial Letter is not supported by FCC law or policies. Most fundamentally, USAC failed to explain why it decided to ignore the District’s explanation of its survey methods and the guidance the District received directly from the SLD. This action flies in the face of repeated

¹⁹ See *In the Matter of Schools and Libraries Universal Support Mechanism, Fifth Report and Order*, 19 FCC Rcd 15808 (2004)(“*Fifth Report and Order*”).

²⁰ *Requests for Review of the Decision of the Universal service Administrator Academia Claret, Puerto Rico, et al.*, 21 FCC Rcd 10703, 10709 ¶14 (Wireline Compet. Bur. 2006).

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

²² *Request for Review of Decision by the Universal Service Administrator by Bishop Perry Middle School, Order*, 21 FCC Rcd 5316, 5618 ¶4 (2006)(“*Bishop Perry*”).

Commission admonitions that applicants should have the opportunity to correct their mistakes and that USAC must explain its actions.

V. ARGUMENT

As previously noted, the COMAD is based on the Audit Report assertions regarding the District’s survey/application and compliance with the service description procedures, which conclusions are discussed in detail and refuted by Johnston County as follows:

A. The District’s Response to the Audit Report Finding that the District Miscalculated Poverty Levels

Audit Report Assertion – “For the funding year(s) ... 2007, JCSD calculated the wrong poverty levels on the applicable FCC Form 471 ... by incorrectly applying an unacceptable survey method to the NSLP forms received, JCSD significantly and inappropriately increased the number of eligible students in certain schools ... this increase in eligible students improperly increased the JCSD’s determined poverty level and resulted in an incorrect and higher USCA discount rate.” Further, “[t]he [District] used an alternative discount mechanism to determine the poverty level; however, this alternative mechanism took the actual NSLP applications forms received and treated them as surveys. This is not allowed. JCSD did not have a survey process in place; they considered NSLP applications received for certain schools (through normal NSLP applications procedures) to be ‘surveys.’”

The District’s Response – As stated earlier, the District sent to each student a combined E-Rate income survey/NSLP application along with a letter explaining the following: (1) a student’s family could apply for the NSLP free and reduced lunch program and NOT participate in the E-Rate income survey by so indicating, (2) a student’s family could participate in the E-Rate income survey and NOT apply for the NSLP by so indicating, or (3) do both or neither. Therefore, it is incorrect to conclude that “only families wishing to apply to the Free and Reduced program responded to the applications sent from the school” or that “only families wishing to apply to the Free and Reduced lunch program responded to the applications.”

Further, the practice of the District was not an incorrect application of the alternative mechanism for the following reasons: (1) the requirements of a survey, as published by the SLD

in the alternative mechanism guidance, were met by the combined survey/application; (2) the practice was routinely approved by PIA reviewers over a period of several years who were aware of exactly what the combined survey/application contained as they had requested copies during PIA review; (3) the practice was at least twice approved by the SLD Client Service Bureau; (4) the other requirements relating to distribution to all students and survey response were met in accordance with SLD guidance; and (5) PIA reviewers routinely referred to the surveys as surveys/applications. It was not unreasonable for the District, after reviewing the published SLD guidance and in good faith relying on advice received from the SLD's own Client Service Bureau, to determine its E-Rate eligibility based on the surveys that it conducted. Those actions were further confirmed when the SLD's own PIA review process specifically considered the issue.

Indeed, the Audit Report itself concedes that this approach was not prohibited by SLD. The fact is that neither the Audit Report nor the COMAD cite any published FCC or USAC rule or policy applicable to the FY 2007 application in question that proscribed the use of such combined surveys.

It was not until June 21, 2007, at the end of FY 2006, that the SLD changed the guidance on its website to specifically prohibit the use of NSLP applications as surveys which had the effect of prohibiting the use of a combined income survey and NSLP application.²³ This change made it perfectly clear that the practice of combining the income survey and the NSLP application could no longer be used for the next round of E-Rate applications in FY 2008. This

²³ See Exhibit 11.

instance is the first time that there was any mention in the SLD official guidance of ending the previously, routinely-approved practice.²⁴

The FCC has long held that an applicant is expected to comply with the E-Rate Program rules that are in effect at the time the applications are filed.²⁵ There is no evidence that in announcing the change in view in June of 2007, near the end of FY 2006, that this revision was to be applied retroactively. The FCC has certainly not sanctioned such retroactive application.²⁶ Yet that is in effect what the Audit Report and COMAD impose.

B. The District's Response to the Audit Report Finding that NSLP Applications Cannot be Used as a Survey

Audit Report Assertion – “The USAC rules specifically state that NSLP applications cannot be used as surveys; however, there is some confusion as to when that rule came into effect.”

²⁴ Until an E-rate rule is adopted, an applicant cannot be expected to comply with it. *See Requests for Review of the Decisions of the Universal Service Administrator by Aiken County Public Schools, Aiken, SC et al., Schools and Libraries Universal Service Support Mechanism, Order, 23 FCC Rcd 8735, 8737 ¶6 (2007).*

²⁵ For example, The Commission has required compliance with competitive bidding standards “as they existed at [the] time” of the alleged violation. *See In the Matter of Requests for Review of Decisions of the Universal Service Administrator by Colegio Nuestra Senora del Carmen et al., Schools and Libraries Universal Support Mechanism, Order, 23 FCC Rcd 15568, 15573 ¶12 (Telecom. Access Pol. Div. 2008); see also Requests for Review of the Decisions of the Universal Service Administrator by Long Beach Unified School District, Long Beach, California, Schools and Libraries Universal Support Mechanism, Order, 22 FCC Rcd 11143, 11145 ¶7 (Wireline Compet. Bur. 2007); In the Matter of Federal Joint Board on Universal Service, Request for Review by Cook Telecom, Inc. of a Decision of the Universal Service Administrator, Order, 24 FCC Rcd 7611, ¶¶1, 5 (Telecom. Access Pol. Div. 2009); Request for Review of the Decision of the Universal Service Administrator by Academia Discipulos de Cristo et al. Schools and Libraries Universal Support Mechanism, Order, 21 FCC Rcd 9210, 9213-14 ¶¶9-10 (2006).*

²⁶ The FCC has generally recognized that clarifications of E-Rate Program rules and policies are normally to be applied prospectively by USAC. *See Request for Review of the Decision of the Universal Service Administrator by Ysleta, Independent School District, El Paso, Texas, Schools and Libraries Universal Support Mechanism, Order, 18 FCC Rcd 26406, 26419-23 ¶¶26-38 (2003); Request for Review of the Decision of the Universal Service Administrator by Winston Salem/Forsyth County School District, Winston-Salem North Carolina, Schools and Libraries Universal Support Mechanism, Order, 18 FCC Rcd 26457, 26462 ¶13 (2003).*

The District's Response – The District respectfully submits that this assertion is simply incorrect. The SLD guidance in effect at the time did not specifically so state. The Auditor obviously got confused with the guidance in effect at the time the Audit Report was written and was not aware of the SLD guidance in effect at the time the funding applications were filed (even though the District made the Auditor fully aware of that fact).

C. **The District's Response to the Audit Report Finding Regarding When NSLP Survey/Applications May No Longer be Used**

Audit Report Assertion – “The E-Rate consultant for JCSD misunderstood the instructions for determining poverty level and confused the NSLP applications with the survey that is allowed as an alternative mechanism.”

The District's Response – The characterization of the Consultant's position is incorrect. In fact it is the Consultant's position that prior to June 21, 2007, the method used by the District was allowable as that is the date on which the practice of combining an income survey and a NSLP free and reduced application on one form was expressly prohibited by USAC via a change in the published SLD guidance. If an E-Rate application practice is not prohibited, is routinely approved by PIA reviewers over the course of several years for many applicants, and was approved by the Client Service Bureau in two separate cases, it is imminently reasonable for the District to conclude that it would be permissible.

The District respectfully disagrees that the only period in question would be FY 2005. In fact, if the guidance was changed on June 21, 2007, it would effect only those applications filed after that date, *i.e.*, FY 2008. As an aside, one could also make an argument that since, according to the posted guidance, the results of a survey could be used for two years, surveys using the “old” method of the combined survey/application, distributed to students in August, 2006, used

to determine the discount in FY 2007 would also be valid for two years making them valid in FY 2008 as well.

As previously noted above, there is no basis for retroactive application of this change in SLD guidance. Moreover, the authority of the SLD to establish “guidance” that can be the basis for a COMAD, in the absence of FCC approval, is suspect to say the least. As the FCC rules governing the SLD prescribe, the SLD has no authority to develop or supply rules governing the E-Rate Program where they do not exist. 47 C.F.R. § 54.702(c). The FCC has made clear that COMADs must be based on a violation of the statute underlying the E-Rate Program or substantive rules implementing the same adopted by the FCC.²⁷ Again, no such rule is cited by the Audit Report or the COMAD.

Moreover, the FCC has stated that USAC should not be denying funding “where the applicant made a good faith effort to comply with the funding guidelines” and should inform the applicants prior to denying funding of “any errors regarding the discount application . . . , along with a specific explanation of how the applicant can remedy such errors.”²⁸ In this case, the District made a good faith effort to check on its approach and the appropriateness or viability was confirmed by the SLD in two different contexts before funding was approved. Now, years later, SLD, based on the Auditor’s findings that fail to cite any FCC rule in support of its recommendations, seeks to recover previously approved funds. The District respectfully submits that there is no required legal foundation for such recovery.²⁹

²⁷ See *Fifth Report and Order*, ¶18.

²⁸ *Requests for review of the Decision of the Universal service Administrator Academia Claret, Puerto Rico, et al.*, 21 FCC Rcd 10703, 10709 ¶14 (Wireline Compet. Bur. 2006).

²⁹ Indeed, even if it were determined that there was a rule in effect that governed these surveys, such good faith reliance would justify a waiver of that rule in this case. See *Request for Waiver of the Decision by the Universal Service Administrator by Great Rivers Education Cooperative, Forrest City, Arkansas*,

D. The District's Response to the Audit Report Finding Regarding the Use of Non-Random Sampling

Audit Report Assertion – “Regardless, the USAC program rules also specifically state that extrapolation from non-random samples, such as families of students who apply for financial aid, is an unacceptable alternative mechanism. Because the NSLP applications are generally only returned by families wishing to apply for financial aid and participate in the lunch program, the use of applications is, in effect, a non-random sample.”

The District's Response – This assertion is a mischaracterization of the process used by the District. Families were expressly notified by letter that the combined income survey/NSLP application was to be used for EITHER OR BOTH (1) providing a response to the income survey and/or (2) applying for the NSLP. Therefore, contrary to the Audit Report's assumptions, families were given the option of responding to the income survey and not applying to the NSLP. Since families were given a plain choice and the form was sent to all students enrolled, the sample was NOT non-random.

In addition, the District incorporates by reference previous arguments relating to retroactivity, SLD authority to “extrapolate” FCC rules where there is ambiguity or no applicable rule, the circumstances in which COMADs are authorized and all other relevant arguments.

E. The District's Response to the Audit Report Finding Regarding Inadequate FCC Form 470 Service Description

Audit Report Assertion – The District “did not provide an adequate description to allow vendors to bid in Block 2 of the FCC Form 470 of the requested services for Internal Connections Basic Maintenance. The entire description provided on the FCC Form 470 was ‘all eligible equipment.’”

The District's Response – The District posted a Form 470 No. 161690000612458 on December 26, 2006 requesting bids on, among other categories, Basic Maintenance of Internal

Schools and Libraries Universal Service Support Mechanism, Order, 21 FCC Rcd 14115, 14119 ¶9 (Wireline Compet. Bur. 2006).

Connections, and listing under the Service or Function, “Basic Maintenance,” and under the Quantity and/or Capacity, “All eligible equipment.”³⁰ Additionally, in Block 2, Line 12, the instructions of which read “(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 contract person listed in Item 6 nor the Authorized Person who signs this form,” Johnston County listed the name of its IT Director and his contact information. The form was electronically certified on December 26, 2006.

The District received one bid from 4Front Systems, Inc. quoting a price expressed as an hourly charge for various categories of maintenance labor. The Consultant also received an inquiry via email from CSI Outfitters, Inc. (“CSI”) asking for a list of equipment to be maintained. The Consultant called CSI to direct them to call the person named in Block 2, Line 12, of the 470 and during the call CSI asked what the selection criteria was going to be. The criteria contained in the attached E-Rate Bid Assessment Worksheet were discussed and when CSI learned that their company did not possess some of the important criteria of the scoring matrix, they elected not to bid.³¹

The District kept records of maintenance required on its equipment and network software and knew approximately the number of labor hours and parts required to adequately perform it. They therefore contracted with 4Front for that amount of maintenance labor and parts.

The District respectively disagrees that the description entered in Block 2 of the FCC Form 470 of “all eligible equipment” is inadequate to allow prospective service providers to bid. Indeed, the District received a bid from 4Front which was acceptable. Additionally many other

³⁰ See Exhibit 12.

³¹ See Exhibit 13.

service providers often respond to Form 470 postings with a similar description of services requested.

Qualified service providers with experience in providing basic maintenance service to schools understand full well what “eligible equipment” is and what the standard configuration of equipment is for elementary, middle, and high schools and often bid based on what the “normal” configuration is noting that there would be additional charges if amounts of equipment exist that exceed the “norm.” Prospective service providers also have the option of quoting an hourly labor rate instead of a rate per piece of equipment and many do just that as did 4Front.

The Commission has previously stated that “an applicant is required to provide only general information about the services for which it seeks discounts.”³² Here the general description was for basic maintenance service for all equipment owned by the school that was eligible to receive support for such basic maintenance. Unlike in *Ysleta*, there was no two-step bidding process here or any failure to consider price as a primary factor in the selection of the bidder.³³ And this FRN involved Basic Maintenance of Internal Connections; the problem in *Ysleta* was that the Form 470 specified that it was for virtually every service available on the eligible services list. The Commission’s concern was in part driven by the fact that a service provider could not really even tell which services the applicant wanted. Basic Maintenance for Internal Connections is a defined category of services.³⁴

³² See *Request for review of the Decision of the Universal Service Administrator by Brooklyn Public Library, Brooklyn, New York, Order*, 17 FCC Rcd 18598, ¶2 n. 4 (2000).

³³ See *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, Order*, 18 FCC Rcd 26406, 26423 ¶35, n. 100 (2003).

³⁴ The Commission has provided general guidance about Basic Maintenance is deciding its eligibility for E-Rate Program support – “repair and upkeep of previously purchased eligible, hardware and basic technical support, including configuration changes.” See *Schools and Libraries Universal Support Mechanism, Third Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 26912, 26921-22 ¶23 (2003).

Furthermore, as noted above, the Form 47 provided a contact person to address the need for additional information about the services being sought and at least one potential bidder availed itself of that opportunity. Therefore, because any bidder could have made inquiry, all bidders were on a “level playing field” and therefore there could have been no actual harm to the competitive bidding process.³⁵ There is no evidence that any other bidders were not considered.³⁶ Absent any demonstration of any such competitive advantage, the competitive bidding process should not be deemed to have been compromised.³⁷

Audit Report Assertion - “Although JCSD received and accepted a bid from the eventual service provider for this FRN, JCSD did not respond to an additional FCC Form 470 responder. The additional responder 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 indicates that the service provider did not have enough information to submit a bid to JCSD for consideration.”

The District’s Response – The District did respond to the request for additional information, but it was the prospective service provider who decided not to bid based on his perceived inability to meet the criteria being used to determine the winning bidder by the District, not because he did not have adequate information to bid.

Audit Report Assertion – FCC Form 470 shall include, at a minimum, the following information, to the extent applicable with respect to the services requested:

- (ii) The internal connections, if any, that the school or library has in place or has budgeted to install in the current, next, or future academic years, or any specific plans for an organized voluntary effort to connect the classrooms.

³⁵ See *Requests for Review of Decisions of the Universal Service Administrator by Approach Learning and Assessment Centers et al.*, Order, 23 FCC Rcd 15510, 15513-14 ¶8 (Telecom. Access Policy Div. 2008).

³⁶ See *Request for Review of a Decision of the Universal Service Administrator by Aberdeen School District*, Order, 22 FCC Rcd 8757, 8763 ¶9 (2007).

³⁷ *Id.*, ¶8; See *Requests for Review of Decisions of the Universal Service Administrator by Delano Joint High School District et al.*, Order, 23 FCC Rcd 15399, 15403-04 ¶8 (Telecom. Access Pol. Div. 2008); *Request for Review of a Decision of the Universal Service Administrator by Hillsboro Independent School District*, Order, 23 FCC Rcd 15424, 15429 ¶10 (Telecom. Access Pol. Div. 2008).

(iii) The computer software necessary to communicate with other computers over an internal network and over the public telecommunications network currently available or budgeted for purchase for the current, next, or future academic years.”

The District's Response – These requirements relate normally to the Internal Connections category and not the Basic Maintenance of Internal Connections category. It would be impractical to list all of the basic maintenance eligible equipment within the Form 470; nor is it necessary to receive a proper bid as evidenced by the 4Front bid. The District did not desire to publish a formal RFP, but instead completed Block 12 which contains the specific instructions of “Please name the person 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 contract person listed in Item 6 or the Authorized Person who signs this form.” It seemed logical to the District by completing Block 12 that any prospective service provider needing additional information to bid would contact the person so named in Line 12. And one prospective bidder who did have questions made such a contact and that bidder decided not to proceed.³⁸

For these and all the foregoing reasons, the COMAD should be rescinded because there has been no violation of the applicable rules regarding the use of “surveys” or FCC Form 470 service descriptions. In the alternative, the Commission should waive the rules under these circumstances.

³⁸ Finally, there is no evidence of any intent to defraud or misuse the funds of the E-Rate Program and in such circumstances, when combined with the other factual circumstances, there is not grounds to justify the harsh penalty of a COMAD seeking to recover all the funds. *See generally Request for Waiver of the Decision of the Universal Services Administrator by Barberton City School District, Barberton, Ohio et al., Schools and Libraries Universal Service Support Mechanism, Order, 23 FCC Rcd 15526, 15530, ¶7 (Telecom. Access Pol. Div. 2008).* Considerations of equity and hardship also support such a result. *See generally Requests for Review of Decisions of the Universal Service Administrator by Approach Learning and Assessment Centers et al, Schools and Libraries Universal Service Support Mechanism, Order, 23 FCC Rcd 15510-15513-14, ¶8 (Telecom. Access Pol. Div. 2008).* *See Request for Review of Decision of the Universal Service Administrator by Radford City Schools, Radford, Virginia, Schools and Libraries Universal Support Mechanism, Order, 23 FCC Rcd 15451, 15453 ¶4 (Telecom. Access Pol. Div. 2008).*

VI. REQUEST FOR WAIVER

A. The Law

The Commission's rules allow for the waiver of a Commission rule "for good cause shown."³⁹ The Commission has extended this waiver authority to limited waivers of USAC rules. For example, in *Bishop Perry*, the Commission noted that it "has vested in USAC the responsibility of administering the application process for the schools and libraries universal service support mechanism."⁴⁰ Pursuant to that authority, USAC developed procedures relating to the application and appeals process.⁴¹ Thus, in *Bishop Perry*, the Commission applied the 47 C.F.R. § 1.3 waiver rule to allow a limited waiver of USAC procedures.⁴²

The FCC has established the following guidance for determining whether a waiver is appropriate:

A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁴³

³⁹ 47 C.F.R. § 1.3.

⁴⁰ *Bishop Perry*, ¶4.

⁴¹ *Bishop Perry* dealt with USAC application procedures known as "minimum processing standards." *Id.*

⁴² *Id.*

⁴³ *Requests for Review by Richmond County School District*, 21 FCC Rcd 6570, 6572 ¶5 (2006) (internal references omitted) (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972)).

B. Limited Request for Waiver of the Commission's Rules, Including the Rules Relating to Surveys

Should the Commission decide not to accept the District's interpretation of the FCC's survey rule, the District seeks a limited waiver of Section 54.505(b)(1) of the Commission's rules which states:

For schools and school districts, the level of poverty shall be measured by the percentage of their student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. School districts applying for eligible services on behalf of their individual schools may calculate the district-wide percentage of eligible students using a weighted average. For example, a school district would divide the total number of students in the district eligible for the national school lunch program by the total number of students in the district to compute the district-wide percentage of eligible students. Alternatively, the district could apply on behalf of individual schools and use the respective percentage discounts for which the individual schools are eligible.⁴⁴

The FCC's discount rule does not specify the survey mechanism to be used to determine the poverty level in an individual school or district-wide. As the facts indicate, the SLD did not expressly permit or prohibit the use of surveys/applications to determine a school's income level. In fact, when the District sought guidance from the SLD about the continued use of a combined survey/application for the NSLP, the SLD stated that it did not have a problem with such an approach. Furthermore, the SLD did not expressly prohibit the use of a survey/application until June of 2006. Since policy changes cannot be applied retroactively, the District's continued use of a survey/application was appropriate. In the event that the Commission disagrees, the District seeks a limited waiver of the FCC's discount rule and the SLD guidance adopted in June 2007 to permit the District to retain the funding that it has already received for FY 2007.

⁴⁴ 47 C.F.R. § 54.505(b)(1). All these various considerations relating to waivers discussed herein are equally applicable to and support a waiver of any technical violation of the requirements relating to service descriptions on FCC Form 470.

Strict compliance with the Commission’s rules would not be in the public interest. In *Bishop Perry*, the FCC granted 196 appeals of decisions denying funding due to “clerical or ministerial errors in the application.”⁴⁵ In that case, the FCC found good cause to waive the minimum processing standards established by USAC, finding that “rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest.”⁴⁶ Many of the appeals in *Bishop Perry* involved staff mistakes or mistakes made as a result of staff not being available.⁴⁷ The Commission granted the waivers for good cause, noting that:

[T]he primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to positions dedicated to pursuing federal grants, especially in small school districts. Even when a school official has learned how to correctly navigate the application process, unexpected illnesses or other family emergencies can result in the only official who knows the process being unavailable to complete the application on time. Given that the violation at issue is procedural, not substantive, we find that the complete rejection of each of these applications is not warranted. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. Furthermore, we find that denial of funding in these cases would inflict undue hardship on the applicants.⁴⁸

The Commission directed USAC to allow applicants the opportunity to fix ministerial and clerical errors and concluded that such an opportunity would “improve the efficiency and

⁴⁵ *Bishop Perry*, ¶1.

⁴⁶ *Id.*, ¶11. The Commission departed from prior Commission precedent, noting that the departure was, “warranted and in the public interest.” *Id.*, ¶9. The Commission noted that many of the rules at issue were procedural, and that a waiver is consistent with the purposes of Section 254, which directs the Commission to “enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries.” *Id.*

⁴⁷ *Id.*, ¶13.

⁴⁸ *Id.*, ¶14.

effectiveness of the Fund.”⁴⁹ The District clearly falls into the same category, due to the fact that the District sought advice from the SLD regarding its survey/application and the SLD confirmed that continued use of such a document would not be a problem. A limited waiver of the survey rule will not adversely affect any other applicant. The Commission may also take into consideration “hardship, equity, or more effective implementation of overall policy on an individual basis.”⁵⁰ In this case, deviation from the Commission’s rules would better serve the public interest than strict application of the appeal filing deadline. Moreover, the overwhelming contemporaneous evidence proves that the District took steps to confirm that the use of a combined survey/application was appropriate and received confirmation of the same from the SLD before proceeding. Thus, any errors in this case should not be considered substantive, and there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements.⁵¹

VII. CONCLUSION AND REQUEST FOR RELIEF

First, the District requests the Commission to make a finding that USAC did not properly apply its discount rules and, based on the evidence submitted, that there has been no discount

⁴⁹ *Id.*, ¶23.

⁵⁰ *Request for Waiver of the Decision of the Universal Service Administrator by Owensboro Public Schools, Owensboro, Kentucky, Order*, 21 FCC Rcd 10047, ¶5 (2006).

⁵¹ Where there is no evidence of any intent to defraud or misuse the funds of the E-Rate Program and in such circumstances, when combined with the other factual circumstances, there is not grounds to justify the harsh penalty of a denial of these funds. *See generally Request for Waiver of the Decision of the Universal Services Administrator by Barberton City School, Barberton, Ohio et al., Schools and Libraries Universal Service Support Mechanism, Order*, 23 FCC Rcd 15526, 15530 ¶7 (Telecom. Access Pol. Div. 2008). Considerations of equity and hardship also support such a result. *See generally Requests for Review of Decisions of the Universal Service Administrator by Approach Learning and Assessment Centers et al, Schools and Libraries Universal Service Support Mechanism, Order*, 23 FCC Rcd 15510, 15513-14 ¶8 (Telecom. Access Pol. Div. 2008). *See Request for Review of Decision of the Universal Service Administrator by Radford City Schools, Radford, Virginia, Schools and Libraries Universal Support Mechanism, Order*, 23 FCC Rcd 15451, 15453 ¶4 (Telecom. Access Pol. Div. 2008). Again all these considerations and the others described above also support a waiver of any technical violation of the requirements relating to service descriptions on FCC Form 470.

rule violation. The District respectfully requests that the Commission grant the Request and direct USAC to rescind the COMAD within 30 days. The District also respectfully requests that the Commission find that there has been no violation of the rules relating to service descriptions. As pointed out above, this is not a *Ysleta* case.

Second, in the alternative, if necessary, the Commission should waive its discount rule, because there is no evidence of waste, fraud, or abuse, or failure to comply with the core program requirements, and the District complied with the discount rule requirements. The funds have already been disbursed and put to good use by the District to provide much needed services to its students. The Commission should do the same under the circumstances here for the service description issue. The mistakes at the heart of this Request are not substantive errors and, thus, a limited waiver would be in the public interest. At all times the District made a good faith effort to comply with the Commission's rules and there is no evidence of waste, fraud or abuse.

In the spirit of *Bishop Perry*, the Commission should grant the Request. The District has demonstrated good cause for a limited waiver of the Commission's discount rules: any mistakes that were made with respect to the survey were not substantive and were inadvertent; there is no evidence of waste, fraud, or abuse, and the District complied with core program requirements; and the public interest would be served by permitting the District to keep the much-needed E-Rate Program funds.

Respectfully submitted,

A handwritten signature in blue ink that reads "John W. Hughes" with a stylized flourish at the end.

John W. Hughes
Johnston County School District
c/o New Hope Foundation
One Valentine Lane
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(919) 968-4332

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Counsel to New Hope Foundation

*Contracted Consultant & Contact
for Johnston County School District*

Dated: July 13, 2011

CERTIFICATE OF SERVICE

I, Carly T. Didden, certify on this 14th day of July, 2011, a copy of the foregoing Supplement to Request for Review has been served via electronic mail or first class mail, postage pre-paid, to the following:

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Letter of Appeal
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Carly T. Didden

EXHIBIT 1

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**

Applicant Name:	Johnston County School District
Billed Entity Number:	126867
Funding Year	2007
Form 471 App. Number:	569961
Funding Request Numbers:	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 rules¹, 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.²

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 funds³ 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.

¹ 47 C.F.R. §§ 54.719-54.721.

² Administrator’s Decision on Appeal - Funding Year 2007 – 2008, Johnston County School District (September 16, 2010), attached as Exhibit 1.

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

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

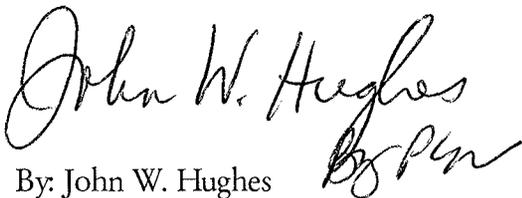
Johnston County is aggrieved by USAC's September 16, 2010 decision and submits that for various reasons outlined in its original August 5, 2010 appeal to USAC and others that the decision is unjustified and in error. The District's generic description of the services under Basic Maintenance for Internal 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.⁴ 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

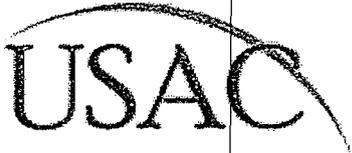


By: John W. Hughes

Contracted Consultant & Contact for Johnston County School District

⁴ Demand Payment Letter, September 17, 2010. See Exhibit 2 attached hereto.

EXHIBIT 1



Universal Service Administrative Company
Schools & Libraries Division

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



Universal Service Administrative Company

Schools & Libraries Division

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.

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.

Schools and Libraries Division - Correspondence Unit
100 South Jefferson Road, P.O. Box 902, Whippany, NJ 07981
Visit us online at: www.usac.org/sl

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/. 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

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

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.

Your submission has been accepted

ECFS Filing Receipt - Confirmation number: 20101014437250		
Proceeding		
Name	Subject	
02-6	In the Matter of Schools and Libraries Universal Service Support Mechanism	
Contact Info		
Name of Filer: Johnston County School District		
Attorney/Author Name: John W. Hughes		
Address		
Address For: Author		
Address Line 1: C/O New Hope Foundation		
Address Line 2: One Valentine Lane		
City: Chapel Hill		
State: NORTH CAROLINA		
Zip: 27516		
Details		
Type of Filing: APPEAL		
Document(s)		
File Name	Custom Description	Size
Johnston County School District FCC Appeal FY 2007 FRN 1590932.pdf	Johnston County School District Appeal	436 KB
Disclaimer		
<p>This confirmation verifies that ECFS has received and accepted your filing. However, your filing will be rejected by ECFS if it contains macros, passwords, redlining, read-only formatting, a virus, or automated links to other documents.</p> <p>Filings are generally processed and made available for online viewing within one business day of receipt. You may use the link below to check on the status of your filing:</p> <p>http://fjallfoss.fcc.gov/ecfs/comment/confirm?confirmation=20101014437250</p> <p>For any problems please contact the Help Desk at 202-418-0193.</p>		

EXHIBIT 2



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

EXHIBIT 3



Notification of Commitment Adjustment Letter
Funding Year 2007: July 1, 2007 - June 30, 2008

June 22, 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

Our routine review of Schools and Libraries Program (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 required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the 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 that 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." 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.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC 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 email 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 Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - 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 USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

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

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to 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 by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. 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.

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. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC 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 the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

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. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits 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: Angela Becker
NWN Corporation-Raleigh

Funding Commitment Adjustment Report for
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

EXHIBIT 4

THOMPSON, COBB, BAZILIO & ASSOCIATES, PC
Certified Public Accountants and Management, Systems, and Financial Consultants

☑ Main Office:
1101 15th Street, N.W.
Suite 400
Washington, DC 20005
(202) 737-3300
(202) 737-2684 Fax

☐ Regional Office:
100 Pearl Street
14th Floor
Hartford, CT 06103
(860) 249-7246
(860) 275-6504 Fax

☐ Regional Office:
21250 Hawthorne Boulevard
Suite 500
Torrance, CA 90503
(310) 792-7001
(310) 792-7004 Fax

Independent Accountant's Report
SL-2008-336

Johnston County School District
2320 US 70 Business East
PO Box 1336
Smithfield, NC 27577-1336
Attention: Dr. Ed Croom – Superintendent
Mr. Terry Thompson – MIS Director and E-Rate Contact

Universal Service Administrative Company
2000 L Street N.W.
Suite 200
Washington, D.C. 20036
Attn: Internal Audit

Federal Communications Commission
445 12th Street S.W.
Washington D.C. 20554
Attn: Inspector General

We have examined Johnston County School District's, Beneficiary Number 126867, compliance with the Federal Communications Commission's 47 C.F.R. Part 54 Rules and Related Orders identified in the accompanying Attachment 1 relative to disbursements of \$906,968.47 from the Universal Service Fund during the fiscal year ended June 30, 2008, for telecommunication services, Internet access, internal connections, and basic maintenance of internal connections and relative to its application and service provider selection processes for Funding Years 2006 and 2007. Management is responsible for Johnston County School District's compliance with those requirements. Our responsibility is to express an opinion on Johnston County School District's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States and, accordingly, included examining, on a test basis, evidence about Johnston County School District's compliance with those requirements and performing such other

procedures as we considered necessary under the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on Johnston County School District's compliance with specified requirements.

During our examination, we found material deviations from the program requirements of 47 C.F.R. Part 54 Rules and Related Orders. We noted (1) an inadequate description on FCC Form 470 to allow vendors to bid for basic maintenance of internal connections; (2) a wrong determination of the poverty level resulting in USAC overpayment; (3) no ongoing review of the Internet access filter to ensure minors' online activities were effectively monitored; (4) noncompliance with local purchasing regulations by not obtaining required board authorization for services obtained; (5) inadequate documentation for selecting the most cost-effective service offering; and (6) non-payment of some non-discounted portions of requested services. Detailed information relative to these instances of material noncompliance is described in Attachment 2.

In our opinion, because of the effect of the noncompliance described above, Johnston County School District has not complied with the aforementioned requirements relative to disbursements of \$906,968.47 from the Universal Service Fund during the fiscal year ended June 30, 2008, for telecommunication services, Internet access, internal connections, and basic maintenance of internal connections and relative to its application and service provider selection processes for Funding Years 2006 and 2007.

In addition, in accordance with *Government Auditing Standards*, we noted other matters that we have reported to the management of Johnston County School District in a separate letter dated June 19, 2009.

This report is intended solely for the information and use of Johnston County School District management and others within the organization, the Universal Service Administrative Company, and the Federal Communications Commission and is not intended to be, and should not be, used by anyone other than these specified parties.

Thompson, Cobb, Baylis & Associates, P.C.

Washington, DC
June 19, 2009

ATTACHMENT 1

Federal Communications Commission's (FCC's) 47 C.F.R. Part 54 Rules and Related Orders With Which Compliance was Examined

Document Retention Matters

Section 54.516 (a), which was effective from July 17, 1997 through November 11, 2004

Application Matters:

Section 54.501 (b), which was effective as of July 17, 1997
Section 54.504 (a), which was effective as of July 17, 1997
Section 54.504 (b), which was effective as of July 17, 1997
Section 54.504 (b) (1), which was effective as of July 17, 1997
Section 54.504 (b) (2), which was effective as of July 17, 1997
Section 54.504 (c), which was effective as of February 12, 1998
Section 54.505 (b), which was effective as of July 17, 1997
Section 54.505 (c), as revised, which was originally effective as of July 17, 1997
Section 54.502, which was effective as of February 12, 1998
Section 54.503, which was effective as of February 12, 1998
Section 54.506 (b), which was effective as of February 12, 1998
Section 54.518, which was effective as of February 12, 1998
FCC Order 03-313, paragraph 56, which was issued December 8, 2003

Service Provider Selection Matters:

Section 54.504 (a), which was effective as of July 17, 1997
Section 54.504 (b) (4), which was effective as of February 12, 1998
Section 54.511 (a), which was effective as of July 17, 1997
FCC Order 03-101, paragraph 24, which was issued on July 15, 2003
FCC Order 00-167, paragraph 10, which was issued on May 23, 2000

Receipt of Services and Reimbursement Matters:

Section 54.505 (a), which was effective as of July 17, 1997
Section 54.514 (b), which was effective as of August 14, 2003
Section 54.504 (b) (2) (ii), which was effective as of July 17, 1997
Section 54.500 (b), which was effective as of August 14, 2003
Section 54.504 (b) (2) (iii), which was effective as of July 17, 1997
Section 54.513 (c), which was effective as of March 11, 2004
Section 54.504 (b) (2) (v), which was effective as of July 17, 1997
Section 54.504, which was effective as of July 17, 1997
Section 54.504 (g), which was effective as of March 11, 2004
FCC Order 03-313, paragraph 60, which was issued on December 8, 2003

ATTACHMENT 2

Detailed Information Relative to Material Noncompliance (Findings)
(Presented in accordance with the standards applicable to attestation engagements contained in
Government Auditing Standards)

Finding No.	SL2008BE336_F01 Inadequate Description on FCC Form 470 for Requested Services of Basic Maintenance of Internal Connections
Assertion	<p>B.2 The School/District submitted a completed FCC Form 470, including the required certifications, signed by the person authorized to order telecommunications and other supported services.</p> <p>C.1 The School/District made a request for competitive bids for all eligible goods and/or services for which Universal Service Fund support was requested and complied with applicable state and local procurement processes included in its documented policies and procedures.</p>
Condition	<p>For FRN 1590932 under FCC Form 471 # 569961 for Funding Year 2007, Johnston County School District (JCS D) did not provide an adequate description in Block 2 of the FCC Form 470 of the requested services for Internal Connections Basic Maintenance to allow vendors to bid. The entire description provided on the FCC Form 470 was "all eligible equipment."</p> <p>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.</p> <p>Although JCS D received and accepted a bid from the eventual service provider for this FRN, there was no evidence that JCS D 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:</p> <p style="padding-left: 40px;">"...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]."</p> <p>This request indicated that the Form 470 did not have enough information to allow the interested service providers to submit bids to JCS D for consideration. See further discussion of this matter in Finding No. SL2008BE336_F05.</p>

Criteria

C.F.R. Title 47, Volume 3 § 54.504(b)(1)(ii) and (iii): Requests for Services which states:

“(b) Posting of FCC Form 470. (1) An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart, shall submit a completed FCC Form 470 to the Administrator. FCC Form 470 shall include, at a minimum, the following information, to the extent applicable with respect to the services requested:

(ii) The internal connections, if any, that the school or library has in place or has budgeted to install in the current, next, or future academic years, or any specific plans for an organized voluntary effort to connect the classrooms.

(iii) The computer software necessary to communicate with other computers over an internal network and over the public telecommunications network currently available or budgeted for purchase for the current, next, or future academic years.”

Cause

JCSD officials misunderstood the requirements to complete the FCC Form 470 for Funding Year 2007 and believed that the description provided was adequate.

Effect

Potential service providers did not have enough information to bid on services requested. As a result, a more cost-effective service provider may not have bid. The total amount disbursed under the FRN of \$352,080.00 is subject to recovery by USAC. This FRN is also discussed in other findings where there may be duplication of potential recovery amounts.

Recommendation

We recommend that JCSD comply with FCC Rules and Orders by providing sufficient written detail of the services requested on the FCC Form 470 or in a separate RFP.

Beneficiary Response

The referenced responding potential service provider was called after their inquiry and it was determined that they did not possess the necessary skills and employee certifications to provide basic maintenance to Johnston Schools.

TCBA Evaluation

During our examination, JCSD never mentioned contacting the potential service provider nor did they provide evidence of such a contact. Regardless of whether the potential service provider would have been deemed to be qualified had they bid, their request for information indicated that the Form 470 did not provide an adequate description to allow all interested vendors to bid for Internal Connections Basic Maintenance.

Finding No.

SL2008BE336_F02

Wrong Determination of Poverty Level Due to Unacceptable Method of Calculation

Assertion

B.7. The School/District accurately determined its level of poverty, for use in determining its available discount rate, by using the percentage of its student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism in the public school district in which they are located.

Condition

For FRNs 1488717, 1488460, 1488845 under FCC Form 471 #537593 for Funding Year 2006; FRNs 1489487 and 1489064 under FCC Form 471 #537731 for Funding Year 2006; and FRN 1590932 under FCC Form 471 #569961 for Funding Year 2007, the JCSD calculated the wrong poverty levels on the applicable FCC Forms 471. By applying an unacceptable survey method to the NSLP ("National School Lunch Program") forms received, JCSD significantly and inappropriately increased the number of eligible students in certain schools within the District on its FCC Form 471 applications. This increase in eligible students improperly increased the JCSD's determined poverty level and resulted in an incorrect and higher USAC discount rate.

To demonstrate, the following chart details 16 schools on the FCC Form 471 #569961 for Funding Year 2007 comparing the number of eligible students ("NSLP Students") reported on the FCC Forms 471 to the number of students who actually were eligible based on NSLP application forms on file for those schools

(See next page)

Funding Year 2007, FCC Form 471 #569961

School	NSLP Students reported on FCC Form 471	Actual NSLP Students per district records	Number over-reported due to unacceptable survey method
1	507	330	177
2	401	233	168
3	481	154	327
4	600	398	202
5	958	575	383
6	479	256	223
7	586	319	267
8	514	251	263
9	460	254	206
10	574	292	282
11	608	477	131
12	797	465	332
13	1,506	752	754
14	493	321	172
15	487	376	111
16	657	421	236
Total	10,108	5,874	4,234

For the FCC Form 471 #569961 application used in the example, 18 schools were used in determining the poverty level; the poverty level for the remaining 2 schools not shown in the above chart was calculated using the approved NSLP method.

The 16 schools shown in the above chart were reported using the survey method, which is an acceptable alternative discount mechanism to determine the poverty level. However, the survey method was improperly applied because JCSD used the actual NSLP application forms received and treated them as surveys rather than doing an actual survey. This is not allowed. JCSD did not have a survey process in place; they treated NSLP applications received (through normal NSLP application procedures) to be "surveys" for any school in which over 50 percent of the NSLP applications were returned, and the JCSD treated these schools on the FCC Form 471 under what was termed the "survey method". The "survey method" results were used to project the percentage of students eligible for

free or reduced price lunch by computing a percentage of approved applications to total applications received and applying that percentage to the total enrolled students. By applying the survey method incorrectly, the calculation used by JCSD skewed the results to achieve a higher poverty level as only families wishing to apply to the Free and Reduced Lunch program responded to the applications sent from the schools.

For the two schools not shown on the chart above, the actual NSLP application forms received were greater than 74 percent of the total school enrollment and resulted in achieving the highest discount rate for these schools at 90 percent. Therefore, the "survey method" was not used for these two schools and the actual approved NSLP method was used instead.

The USAC rules specifically state that NSLP applications cannot be used as surveys; however, there is some confusion as to when that rule came into effect. Regardless, the USAC program rules also specifically state that extrapolation from non-random samples, such as families of students who apply for financial aid, is an unacceptable alternative mechanism. Because the NSLP applications are generally only returned by families wishing to apply for financial aid and participate in the lunch program, the use of applications is, in effect, a non-random sample.

Criteria

Per 47 C.F.R. 54.505(b)(1) which states: "For schools and school districts, the level of poverty shall be measured by the percentage of their student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism."

Additionally, the FCC sanctions other mechanisms to determine a school's level of need, as long as those mechanisms are based on – or do not exceed – the same measure of poverty used by NSLP [FCC 97-157 ¶ 510], and the approach used by JCSD contravenes this FCC regulation.

Cause

The E-Rate consultant for JCSD held the opinion that NSLP applications could be used as surveys because USAC had not specifically prohibited it although it was generally understood that surveys had to be separate from applications, *i.e.*, since it was not specifically prohibited, it must be allowable. Therefore, the opinion was that if greater than 50 percent of the students returned their NSLP applications, the percentage eligibility could be calculated as would a survey, based on the number of responses rather than the total enrollment. Because the percentage of students eligible for free and reduced lunch was miscalculated for these schools, the resulting discount percentages used to calculate the shared discount rate were incorrect.

Effect

The effect of the misapplication of the rules for determining poverty levels is that higher shared discount rates were calculated for the FRNs under

review and USAC over-reimbursements occurred. The shared rates reported on the FCC Forms 471 on which the funding commitments were approved were more than what would be calculated with the proper poverty level determinations.

In addition to the FRNs sampled and reviewed, the Condition mentioned above also pertains to other FRNs under FCC Form 471 # 537593 that had disbursements in the fiscal year ending June 30, 2008. Those other FRNs are included in this effect. The chart below indicates the differences in the resulting USAC discount rates as a result of correcting the poverty level to the level indicated by the number NSLP application forms on hand in the school district for eligible students:

**Correction of USAC Discount Percentage by Using
Corrected Proper Poverty Level Determination**

Funding Year	FRN Number	Funded Percentage	Corrected Percentage
2006	1489487	90%	79%
2006	1488475	64%	61%
2006	1488756	64%	61%
2006	1488460	64%	61%
2006	1489064	90%	79%
2006	1488717	64%	61%
2006	1488845	64%	61%
2007	1590932	90%	74%

By using the corrected USAC Discount Percentages Rates above, the resulting overpayment by USAC relative to disbursements made during the year ended June 30, 2008, was calculated to be \$92,566.53. This amount is subject to recovery by USAC. The FRNs are also discussed in other findings where there may be duplication of potential recovery amounts

Funding Year	FRN Number	Amount Disbursed by USAC	Correct Disbursement Amount	Amount Overpaid by USAC
2006	1489487	\$ 32,467.50	\$ 28,499.25	\$ 3,968.25
2006	1488475	9,208.24	8,776.61	431.63
2006	1488756	66,031.44	62,936.22	3,095.22
2006	1488460	88,404.22	84,260.27	4,143.95
2006	1489064	20,144.11	17,682.05	2,462.06
2006	1488717	313,980.16	299,262.34	14,717.82
2006	1488845	24,652.80	23,497.20	1,155.60
2007	1590932	352,080.00	289,488.00	62,592.00
TOTAL				<u>\$ 92,566.53</u>

Recommendation

We recommend that JCSD obtain training on the proper completion of the Form 471, including calculation of the poverty level and resulting discount rate, and that they properly comply with FCC Rules and Orders.

**Beneficiary
Response**

The Beneficiary Response took exception to the Condition, stating the belief that they accurately determined the level of poverty using the percentage of its student enrollment eligible for a free or reduced price lunch under both the national school lunch program and a federally-approved alternative mechanism. The JCSD officials stated that the NSLP application form qualified as a survey form for the Funding Years under review and as a federally-approved alternative mechanism because there wasn't explicit language at the USAC website that prohibited the use of the NSLP application form as a survey form. The JCSD pointed out that the NSLP application form contained all the information needed for conducting a survey and met all the requirements of a survey as delineated on the USAC website at that point in time. JCSD officials also stated that since NSLP application forms were made available to all enrolled students, the receipt of the completed application forms qualified as a survey. Further, JCSD officials stated: "The requirement of conducting a random survey is met when the survey is distributed to all students and those students' parents are prompted to complete a survey regardless of their income or eligibility for NSLP. Indeed many parents who did not qualify for NSLP did in fact complete surveys."

According to the JCSD consultant, prior to June 21, 2007, USAC Program Integrity assurance (PIA) reviewers routinely referred to surveys as "survey/applications". Further, JCSD indicated copies of these "survey/applications" were provided to PIA reviewers during PIA review of JCSD E-Rate funding applications for Funding Years 2006 and 2007 and those funding applications were approved.

Additionally, JCSD stated they made a request to USAC in case numbers 21-513852 & 21-490224 to rule on the matter of using a NSLP application form as a survey and the ruling on both cases specifically approved this practice.

(See Appendix I for the full verbatim response received from the Beneficiary.)

**TCBA
Evaluation**

This same finding was reported last year dealing with funds disbursed for the year ending June 30, 2007 (Funding Years 2005 and 2006), and USAC concurred with the findings and sought recovery of funds from JCSD.

In JCSD's current response, they do not refute that the survey method used was an extrapolation from a non-random sample; that is, that the survey consisted of student families applying for financial aid. Since the

extrapolation from such a non-random sample is explicitly an unacceptable alternative mechanism, the fact that the USAC website may not have yet explicitly prohibited using the NSLP application forms as a survey form does not mean the survey method used was in compliance with FCC Rules and Orders.

In addition, for Funding Year 2006 and beyond, USAC informed PIA Reviewers that NSLP application forms could not be accepted as surveys, which has been noted on PIA reviews of other schools system. Although USAC accepted the NSLP application **form** (emphasis added) as a survey tool in their responses in case numbers 21-513852 & 21-490224, JCSD had not made it clear that it was the actual application returned to receive financial aid that was being used as the survey. As a result, we believe the ruling made by USAC in these cases was the approval of using a NSLP application form for use in a separate survey that would request response from all households and not just those applying for meal subsidy.

Regarding the Beneficiary Response that "many parents who did not qualify for NSLP did in fact complete surveys", the actual number of NSLP application respondents who did not qualify for the NSLP was approximately 3 percent of the NSLP applications received.

Finding No.

SL2008BE336_F03

No Monitoring of Internet Access Filter

Assertion

B.11. The School/District submitted a certification on FCC Form 486 that an Internet safety policy is being enforced and complied with the certification such that:

- a. it enforced a policy of Internet safety that includes monitoring the online activities of minors and the operation of a technology protection measure, with respect to any of its computers with Internet access, that protects against access through such computers to visual depictions that are obscene, child pornography or harmful to minors, and
- b. its Internet safety policy addresses each of the following:
 - i) access by minors to inappropriate matter on the Internet and World Wide Web;
 - ii) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;
 - iii) unauthorized access, including so-called 'hacking', and other unlawful activities by minors online;
 - iv) unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and

- v) measures designed to restrict minors' access to materials harmful to minors.

Condition

For FRN 1590932 under FCC Form 471 #569961 for Funding Year 2007, there was no evidence that the JCSD monitored the effectiveness of the Internet safety protection-filtering device. No filtering device activity or monitoring logs were generated for determining either the effectiveness of the filter or to monitor the online activities and Internet access by minors.

According to the filter device vendor, JCSD officials have the ability to receive automated weekly reports on the Internet activity including trend reporting to identify emerging threats. JCSD can set thresholds to determine when further investigation is required, run specific user activity, and identify the sites accessed before and after websites are blocked. These actions were not performed by the JCSD.

A filtering device was observed in place during the site visits. The JCSD provided the invoice covering Funding Year 2007 from the vendor providing the service.

JCSD officials indicated that continual proactive measures are taken through on-line research for inappropriate websites, meetings with other school districts, and contacting the vendor providing the filtering device to block new sites identified as inappropriate. On-site school personnel monitor Internet use and activity by observing students' computer use in the classroom. JCSD officials also indicated that there is the additional control of no "tiered blocking" of sites, i.e., sites blocked for access by students also cannot be accessed by JCSD employees.

Criteria

Per 47 C.F.R. 54.520(c)(1): "The billed entity for a school that receives discounts for Internet access or internal connections must certify on FCC Form 486 that an Internet safety policy is being enforced." In addition, per 47 C.F.R. 54.520(c)(1)(i), "The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. This Internet safety policy must also include monitoring the online activities of minors."

Cause

JCSD officials were not aware of system capabilities, the need for monitoring the filtering system performance, and believed that the proactive measures in place were sufficient. The JCSD officials explained that generating and reviewing filtering logs would not give them information on whether the sites were prohibited or not, and would, therefore, not be useful.

Effect

Due to the Internet filtering logs not being generated and no measures taken by JCSD officials to monitor online access, there was no evidence that the filtering device that was put in place was functioning properly. It could not be determined whether the Internet access filter prohibited minors' online access from viewing inappropriate matter for Funding Year 2007.

Recommendation

We recommend that the JCSD comply with FCC Rules and Orders by enforcing the Internet safety policy through monitoring the operation of the Internet technology protection measure. This enforcement can be accomplished by producing and reviewing the reports available from the Internet technology protection measure. We also recommend retaining these electronic reports if economically feasible.

Beneficiary Response

There is no requirement that a monitoring log be generated for determining either the effectiveness of the filter or to monitor the online activities. The only requirement is that the filter be installed and tested to insure that it works properly. This was done at the time of installation. However, since the time of the audit a procedure has been put in place to generate a report of activity on the Internet by site, user, and category.

TCBA Evaluation

The Beneficiary Response indicates that an Internet filter was installed and tested at the time of installation. However, without oversight of the effectiveness of the Internet filter, minors' online activities were not effectively monitored as required by 47 C.F.R. 54.520(c)(1)(i).

Finding No.

SL2008BE336_F04

Noncompliance with Local Purchasing Regulations: No Required Board Authorization for Services Obtained

Assertion

C.1. The School/District made a request for competitive bids for all eligible goods and/or services for which Universal Service Fund support was requested and complied with applicable state and local procurement processes included in its documented policies and procedures.

Condition

For FRN 1488717 under FCC Form 471 #537593 for Funding Year 2006 and FRN 1590932 under FCC Form 471 #569961 for Funding Year 2007, the JCSD did not comply with local procurement guidelines in purchasing telecommunications and basic maintenance of internal connections in that the JCSD officials who signed the service provider contracts did not have evidence of proper authorization, *i.e.*, the Board of Education approval, to purchase the goods and services that were greater than \$90,000.00 in total.

The Board of Education 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."

The pre-discount amount requested on the FCC Form 471 for FRN 1488717 was \$490,594.00, and the pre-discount amount requested on the FCC Form 471 for FRN 1590932 was \$391,200.00. Both exceeded the \$90,000.00 approval threshold per the JCSD Board of Education policies.

Criteria

C.F.R. Title 47 § 54.504 (a) [Revised as of October 1, 2005] which states: "Except as provided in Sec. 54.511(c), an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under Sec. 54.502 and 54.503. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements."

C.F.R. Title 47 § 54.504 (c)(1) FCC Form 471 shall be signed by the person authorized to order telecommunications and other supported services for the eligible school, library, or consortium and shall include that person's certification under oath that:

(vi) The entities listed on the FCC Form 471 application have complied with all applicable state and local laws regarding procurement of services for which support is being sought.

JCSD Board of Education Purchasing Policies state:

Section 6000 Support Services, Policy Code 6000 Purchasing: "The superintendent is authorized to approve purchases that are within the adopted budget resolution and within the contracting authority limits established by Board policy 7400."

Section 7000, Policy Code 7400 Contract Administration: "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. Unless otherwise prohibited by statute, state regulation or other board policy, the superintendent or his/her designee is authorized to enter into contracts involving amounts up to ninety thousand dollars (\$90,000.00)."

Cause

The JCSD officials overlooked abiding by policies and did not obtain Board of Education approval for procurements exceeding \$90,000.00.

Effect

Due to the lack of JCSD Board of Education authorization to procure telecommunications and internal connections maintenance services, it could not be determined if the JCSD officials who contracted the services

had the appropriate authority to procure the services and enter into contracts.

Recommendation

We recommend that JCSD comply with FCC Rules and Orders by following the appropriate state and local procurement guidelines for purchasing USAC-funded services.

Beneficiary Response

Accepted and agreed.

Finding No.

SL2008BE336_F05

Inadequate Documentation for Selecting the Most Cost-Effective Service Offering

Assertion

C.3. The School/District considered all bids submitted and selected the most cost-effective service offering, with price being the primary factor considered.

A.2. The School/District retained, to date, all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services. Also, any other document that demonstrated compliance with the statutory or regulatory requirements for the schools and libraries mechanism was retained.

Condition

For FRN 1590932 under FCC Form 471 #569961 for Funding Year 2007, there was inadequate documentation concerning how the JCSD selected the most cost-effective service offering, with price being the primary factor considered.

In addition to not having any analysis or documentation on how the eventual service provider's proposal was evaluated and awarded, as discussed in Finding 01, there were these additional circumstances: there was no documentation of a response to an interested service provider's inquiry to provide services; the contracted amount was increased from the offer without documented explanation; and the documentation support for services received under this FRN disclosed that services received were materially and substantially less than what was paid for.

No documented response to potential service provider's inquiry

As indicated in Finding No. SL2008BE336_F01, the FCC Form 470 applicable for this FRN was inadequate as it requested Basic Maintenance of Internal Connections for "all eligible equipment". In addition to the quote received from the eventual service provider for this FRN, there was also an e-mail received from a second potential service provider. That potential service provider responded to the FCC Form 470 posting (within 28 days of posting) 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].” There was no documentation of a response to the interested responder by JCSD.

No explanation for increase of proposed amount

The service provider proposal indicated a proposed amount of \$345,600.00 for the services; however, the final contracted amount was \$391,200.00. There was no documentation justifying the difference, and there was no documentation supporting any communication with the eventual service provider concerning the offering price.

Documentation of services received does not support price

All maintenance logs for receipt of the internal connections maintenance were provided by JCSD for the Funding Year 2007, but the logs only covered two months of maintenance services. There was no indication that any maintenance logs were missing. The logs included the hours but not the rates charged, and JCSD did not have any additional documentation concerning the services received.

Based on the hours recorded on the logs and the highest hourly rates proposed in the service provider proposal, an estimate of the highest cost was made for the services received for Funding Year 2007. For the 480 reported technician hours logged at a maximum hourly rate of \$200.00, the highest service amount of services possibly received under contract would have been \$96,000.00, which was \$295,200.00 less than the \$391,200.00 fixed-rate contracted amount.

Criteria

47 C.F.R. 54.511(a) states under “Selecting a provider of eligible services:” “In selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering.”

The USAC website states that for bid evaluation, “Applicants must construct an evaluation for consideration of bids received in response to the posting of the Form 470 that makes price the primary factor in the selection of a vendor.”

47 C.F.R. 54.516 (a) (1) [Revised as of October 1, 2005] which states: “Schools and libraries shall retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least 5 years after the last day of service delivered in a particular Funding Year. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well.”

47 C.F.R. Sec. 54.504(c)(1)(x) [Revised as of October 1, 2005] which states: "The applicant recognizes that it may be audited pursuant to its application, that it will retain for five years any and all worksheets and other records relied upon to fill out its application, and that, if audited, it will make such records available to the Administrator."

The USAC website link also states that for document retention "Applicants must save all documentation pertaining to the competitive bidding process and vendor selection for five years. Applicants must certify and acknowledge on the FCC Form 470 and the *Services Ordered and Certification Form* (FCC Form 471) that they may be audited and that they must retain all records that can verify the accuracy of information."

The USAC guidance "Best Practice" for compliance to the FCC's Fifth Order and Report concerning competitive bidding issues requires applicants to "...maintain documentation of the process and any related analysis leading to the selection of the winning bid; including selection criteria and the weighting of those criteria."

Cause

USAC guidelines for documentation were overlooked and the decision process was not documented to accept the most cost-effective service provider. Since documentation was not retained, there was no understanding of what was communicated to the interested service provider, nor any knowledge of why the proposed amount was increased, nor any understanding of why the contracted amount significantly exceeded the services received.

Effect

Without proper supporting documentation of the service provider analysis, evaluation, and selection, we were unable to confirm that the most cost-effective service provider was selected by JCSD. The total amount disbursed under the FRN of \$352,080.00 is subject to recovery by USAC. This FRN is also discussed in other findings where there may be duplication of potential recovery amounts.

Recommendation

We recommend that the JCSD comply with FCC Rules and Orders by documenting and retaining information related to the service provider evaluation and selection process governing the procurement of USAC-funded services.

**Beneficiary
Response**

The Beneficiary Response indicated the referenced responding potential service provider was called after their inquiry and it was determined that they did not possess the necessary skills and employee certifications to provide basic maintenance to JCSD.

In addition, the Beneficiary Response stated that the service provider and a school district official discussed the level/type of service to be provided

after the submission of the bid and determined to increase the number of locations which increased the price and thus the contracted price.

The Beneficiary also responded that the \$391,200.00 contract for basic maintenance covered an annual maintenance agreement for all the E-Rate eligible equipment in selected locations. The agreement covered repairing the equipment and its associated operating software in the event of malfunction. The Beneficiary stated that maintenance logs are not normally required in these types of contracts.

(See Appendix 1 for the full verbatim response received from the Beneficiary.)

**TCBA
Evaluation**

There was no documentation created or retained concerning the evaluation and selection of the service provider. There was also no documentation of the discussion that increased the contracted price to the service provider awarded the contract.

In addition, there was no evidence that any further services were received from the service provider in excess of the services documented through the maintenance logs. Therefore, there was no documentation or evidence that the Beneficiary did not overpay for the services received.

Finding No.

SL2008BE336_F06

Not All Non-Discounted Portions of Requested Services Were Paid

Assertion

D.6. The School/District paid all "non-discount" portions of requested goods and or services.

Condition

For FRN 1590932 under FCC Form 471 # 569961 for Funding Year 2007, the JCSD did not provide documentation to support that the undiscounted portion of the services were fully paid.

For basic maintenance of internal connections, the documentation provided by JCSD did not adequately support that the non-discounted portion of 10 percent due to the service provider of \$39,120.00 was actually paid.

Two service provider invoices dated April 24, 2008, were provided from the E-Rate consultant that were represented as being the service provider invoices paid by the JCSD. However, neither service provider invoice, the first one being for the full non-discounted amount of \$391,200.00 submitted to USAC for reimbursement through the SPI (Service Provider Invoice) and the second one being the 90 percent discounted rate of \$39,120.00, were stamped as received or paid by JCSD finance

department. In fact, there was no documentation that either invoice had ever been received or paid by the JCSD finance department.

The JCSD finance department later provided a different set of five invoices that the JCSD paid in full as evidenced by the finance department payment stamp and a copy of the cancelled check for \$330,970.00 dated June 20, 2008. These invoices included charges for internal connections equipment, which are not part of the FRN, as well as basic maintenance; therefore, not all of the amounts billed were included in the FRN under review. Of the \$330,970.00 in invoices, \$325,464.00 was identified as paid by the JCSD directly to the service provider for basic maintenance under this FRN. However, the invoice dated April 29, 2008, for \$325,464.00 was paid in error by JCSD since the FRN was to be billed using the SPI method, where the service provider bills USAC rather than receiving total payment from the beneficiary.

The service provider later refunded JCSD \$292,917.60 of the \$325,464.00, which was exactly 90 percent of the amount paid and the exact amount of the approved USAC discount rate for this FRN. Also, the refunded amount matches the discounted amount on the service provider bill paid by the JCSD finance department.

The difference between the \$325,464.00 payment and the \$292,917.60 refund is \$32,546.40. Therefore, there is only evidence that \$32,546.60 was paid and this is \$6,573.60 less than the non-discounted portion due to the service provider of \$39,120.00. JCSD had no further documentation to explain the details concerning the payments or the refund.

Criteria

Per 47 C.F.R. 54.523: "An eligible school, library, or consortium must pay the non-discount portion of services or products purchased with universal service discounts."

Cause

The Beneficiary was not monitoring disbursements to the service provider due to inadequate internal controls. In addition, for FRN 1590932 for basic maintenance of internal connections, errors in the service provider billing caused the JCSD to pay for both the non-discounted and discounted portion of the amounts due to the service provider, which was already paid directly from USAC through the SPI to the service provider. Reimbursements for overpayment were given by the service provider to JCSD, but reconciliation was not provided by the JCSD showing that all amounts due to the service provider were paid or that the JCSD did not overpay.

Effect

Due to the overpayment by JCSD to the service provider and then the service provider refund, less the amount they thought JCSD owed, JCSD did pay most, but not all, of its share. As a result, we could not determine the monetary effect.

Recommendation

We recommend that control procedures be developed and implemented to ensure that USAC payments to service providers are reconciled.

Beneficiary Response

The Beneficiary disagreed with the Condition and indicated that the service provider was paid "in the amount of \$325,464.00 instead of \$32,546.40 which would have been the JCSD undiscounted share. The total check was for \$330,978.00. JCSD received the refund back from the service provider on July 25, 2008 in the amount of \$292,917.60 which reconciled the transaction."

(See Appendix 1 for the full verbatim response received from the Beneficiary.)

TCBA Evaluation

The Beneficiary's Response agrees with the amounts detailed in the Condition; however, as shown below, these amounts do not result in the Beneficiary having paid the full non-discount portion for FRN 1590932.

Disbursements by USAC	\$	352,080.00	
Discount rate		<u>÷ 90%</u>	
Pre-discount cost	\$	<u>391,200.00</u>	
Beneficiary share at 10 %	\$	<u>39,120.00</u>	
Amount paid by Beneficiary	\$	325,464.00 (a)	
Refund from Service Provider		<u>(292,917.60)</u>	
Net paid by Beneficiary	\$	32,546.40	
Underpayment	\$	<u>6,573.60</u>	

(a) The total check of \$330,978 included payment on another FRN. Only \$325,464 applied to FRN 1590932

APPENDIX
Full Verbatim Responses Received from the Beneficiary

Below are the responses received verbatim from the Beneficiary with changes made for:

- 1) Spelling and grammatical errors;
- 2) Preferences in capitalization and formatting;
- 3) Conversion of specific individual or entity names to general descriptions; and
- 4) Deletion of a Condition rectified by new documentation provided by the Beneficiary.

In addition to providing new information not previously provided, the Beneficiary Response contained some information we consider inaccurate.

The Response for Finding No. SL2008BE336_F02 (Wrong Determination of Poverty Level Due to Unacceptable Method of Calculation) "*Johnston Schools had a well defined survey process in place. It sent out a request to all students enrolled to complete a survey regardless of their income level.*" was not supported by audit evidence; no school district official represented that a survey was ever conducted; and there was no documentation provided to support such an event. National School Lunch Program applications were, however, provided to any school district student and his or her family interested in participating in the Free and Reduced Lunch Program and were provided in accordance with the policies and procedures dictated by the National School Lunch Program.

We also believe the Response statement for Finding No. SL2008BE336_F05 (Inadequate Documentation for Selecting the Most Cost-Effective Service Offering) that indicated "*the auditors...insisted on examining logs that do/did not exist nor are they required*" distorts the actual request for any documentation supporting the receipt of services rendered under the contract.

SL2008BE336_F02

Wrong Determination of Poverty Level Due to Unacceptable Method of Calculation

Beneficiary Response

The School/District absolutely did accurately determine its level of poverty using the percentage of its student enrollment eligible for a free or reduced price lunch under the national school lunch program and a federally-approved alternative mechanism in the public school district in which it is located depending upon the school in question. The use of the survey method was in complete compliance with the guidance and practice in effect at the time the surveys were conducted. Any representation that they were not is reflective of a lack of understanding and training on the part of the auditing firm conducting the audit. Specifically:

Johnston Schools had a well-defined survey process in place. It sent out a request to all students enrolled to complete a survey regardless of their income level. This survey also served as a NSLP application. The survey/application met all the requirements of a survey as delineated on the SLD (USAC School and Library Division) website at that time (see below), i.e. they were

sent to all enrolled students, contained the name and address of the family and the student along with the student's grade level, contained the size of the family and income of the parents, confidentiality was assured, and the surveys were kept on file for five years.

There was no such prohibition against using NSLP applications as surveys when the Johnston School surveys were conducted. That prohibition was published on June 21, 2007 which would have affected any survey conducted for E-Rate Year 2008, not E-Rate year 2006 or 2007 as the surveys would have been conducted prior to June 21, 2007.

Prior to June 21, 2007, USAC PIA reviewers routinely referred to surveys as "survey/applications". Copies of combination survey/applications were provided to PIA reviewers during PIA review of Johnston Schools applications for E-Rate years 2006 & 2007 and they were considered in the approval of the applications for those years. There is absolutely no confusion as to when the guidance changed. It was well documented on the SLD website, but apparently not made available to auditing firms who are new to E-Rate and not informed about the history of rule changes.

The requirement of conducting a random survey is met when the survey is distributed to all students and those students' parents are prompted to complete a survey regardless of their income or eligibility for NSLP. Indeed many parents who did not qualify for NSLP did in fact complete surveys.

Additionally a request was made to the SLD in case numbers 21-513852 & 21-490224 to rule on the matter of using a NSLP application as a survey and both cases specifically approved this practice.

Also, numerous audits have been concluded by other accounting firms without a finding or even a comment that NSLP forms as surveys were not allowed. Most recently, a 2006 audit concluded that their survey was valid and it in fact used the NSLP form.

It would appear that only this auditing firm finds fault with this practice prior to June 21, 2007; not the SLD's client service bureau, not the SLD's PIA reviewers, not the SLD's Selective Reviewers, and not other accounting firms that are engaged by the FCC to conduct attestation audits.

The following is the guidance from the SLD website prior to June 21, 2007:

Primary measure for E-rate

The primary measure for determining E-rate discounts is the percentage of students eligible for free and reduced lunches under the National School Lunch Program, calculated by individual school. Students from family units whose income is at or below 185% of the federal poverty guideline are eligible for the NSLP.

The FCC's rationale for using NSLP data is as follows:

"[T]he national school lunch program determines students' eligibility for free or reduced-price lunches based on family income, which is a more accurate measure of a school's level of need than a model that considers general community income."

— FCC 97-157 ¶ 509

A chart defining the Income Eligibility Guidelines (IEG) for NSLP eligibility for the current year (07/01/2000 – 06/30-2001) is available by [clicking here](#).

2. Alternative mechanisms

The FCC also sanctions other mechanisms to determine a school's level of need, as long as those mechanisms are based on — or do not exceed — the same measure of poverty used by NSLP:

"[A] school may use either an actual count of students eligible for the national school lunch program or federally-approved alternative mechanisms to determine the level of poverty for purposes of the universal service discount program

"[S]chools that choose not to use an actual count of students eligible for the national school lunch program may use only the federally-approved alternative mechanisms contained in Title I of the Improving America's School Act, which equate one measure of poverty with another."

— FCC 97-157 ¶ 510

These federally approved alternative mechanisms use data comparable to NSLP data which are:

- (1) collected through alternative means such as a survey; or**
- (2) from existing sources such AFDC or tuition scholarship programs."**

— 34 CFR Ch. II, § 200.28 (a)(2)(i)(B)(1) and (2)

3. Survey guidelines

If a school chooses to do a survey, the following guidelines apply:

- a. The survey must be sent to all families whose children attend the school.**
- b. The survey must attain a return rate of at least 50%.**
- c. The survey must, at a minimum, contain the following information:**
 - o Address of family**
 - o Grade level of each child**
 - o Size of the family**
 - o Income level of the parents**
- d. The survey must assure confidentiality. (The names of the families are not required.)**

4. Acceptable alternative measures of poverty

The following measures of poverty are currently acceptable alternatives to NSLP eligibility:

- a. Family income level at or below 185% of the federal poverty guideline cited above.**
- b. Participation in one or more of the following programs:**

Medicaid

Food stamps

Supplementary Security Income (SSI)

Federal public housing assistance or Section 8 (a federal housing assistance program administered by the Department of Housing and Urban Development)

Low Income Home Energy Assistance Program

Participation in Temporary Assistance for Needy Families (TANF) is an acceptable alternative measure of poverty **ONLY IF** the family income of participants is at or below the IEG for NSLP. Similarly, participation in need-based tuition assistance programs is acceptable if the family income of participants is at or below the IEG for NSLP.

5. Existing sources

Schools may also use existing sources of data which measure levels of poverty, such as TANF or need-based tuition assistance programs. However, these measures are acceptable for E-rate purposes only if the family income of participants is at or below the IEG for NSLP.

6. Matching siblings

The siblings of a student in a school that has established that the student's family income is at or below the IEG for NSLP may also be counted as eligible for E-rate purposes by the respective schools the siblings attend. For example, an elementary school has established, through a survey, that a student's family income is at or below the IEG for NSLP. That student has a brother and a sister who attend the local high school. The high school may use the status of the elementary school sibling to count his high school siblings as eligible for E-rate purposes, without collecting its own data on that family.

7. Projections based on surveys

If a school has sent a questionnaire to all of its families, and if it receives a return rate of at least 50 percent of those questionnaires, it may use that data to project the percentage of eligibility for E-rate purposes for all students in the school. For example, a school with 100 students sent a questionnaire to the 100 homes of those students, and 75 of those families returned the questionnaire. The school finds that the incomes of 25 of those 75 families are at or below the IEG for NSLP. Consequently, 33 percent of the students from those families are eligible for E-rate purposes. The school may then project from that sample to conclude that 33 percent of the total enrollment, or 33 of the 100 students in the school, are eligible for E-rate purposes.

8. Unacceptable alternative mechanisms

The following alternative measures of poverty are NOT acceptable for determining E-rate discounts. They rely on projections rather than on the collection of actual data:

- a. Feeder school method. This method projects the number of low-income students in a middle or high school based on the average poverty rate of the elementary school(s) which "feeds" students to the middle or high school.
- b. Proportional method. This method projects the number of low-income students in a school using an estimate of local poverty.
- c. Extrapolation from non-random samples. This method uses a non-random sample of students chosen to derive the percentage of poverty in a school, such as those families personally known by the principal ("Principal's method") or the families of students who apply for financial aid (a non-random sample).
- d. Title I eligibility. This method uses eligibility for Title I funds as the criterion for estimating the level of poverty in a particular school. Some measures of poverty eligible under Title I are indirect estimates of poverty, and do not necessarily equate to the measure of poverty for E-rate, namely eligibility for NSLP.

The following is the guidance from the SLD website subsequent to June 21, 2007:

The primary measure for determining E-rate discounts is the percentage of students eligible for free and reduced lunches under the National School Lunch Program (NSLP), calculated by individual school. Students from households whose income is at or below 185% of the federal poverty guideline are eligible for the NSLP.

The FCC's rationale for using NSLP data is as follows:

"[T]he national school lunch program determines students' eligibility for free or reduced-price lunches based on family income, which is a more accurate measure of a school's level of need than a model that considers general community income."

- FCC 97-157 ¶ 509

Income Eligibility Guidelines for NSLP eligibility are available on the web page of the United States Department of Agriculture Child Nutrition Programs by following the links for "National School Lunch Program" and "Income Eligibility Guidelines."

The FCC also sanctions other mechanisms to determine a school's level of need, as long as those mechanisms are based on — or do not exceed — the same measure of poverty used by NSLP:

"[A] school may use either an actual count of students eligible for the national school lunch program or federally-approved alternative mechanisms to determine the level of poverty for purposes of the universal service discount program...

"[S]chools that choose not to use an actual count of students eligible for the national school lunch program may use only the federally-approved alternative mechanisms contained in Title I of the Improving America's School Act, which equate one measure of poverty with another."

- FCC 97-157 ¶ 510

SURVEYS

A school may design a survey that provides the necessary information that measures a family's level of need. Applicants cannot use National School Lunch Application forms as surveys. Surveys must be based on the following guidelines:

- The survey must be sent to all families whose children attend the school.
- The survey must, at a minimum, contain the following information:
- Name of family and students
- Size of the family
- Income level of the family

Income data (or eligibility data based on income) from a survey used to support a discount level for a funding request cannot be older than two years before the start of the funding year. For example, the data gathered from an income survey done in September 2005 can be used for funding requests for Funding Year 2006 and Funding Year 2007, but not for Funding Year 2008. Therefore, surveys must be done at least every other year.

Survey retention documentation

Applicants should maintain a record of the survey documentation collected to assist in responding to PIA inquiries. Such records should be maintained for a period of five years after the last day of delivery of the discounted services.

Collecting income data on a survey

Consistent with NSLP eligibility guidance, income data (or eligibility data based on income) used to support the discount level for a funding request should be collected based on income received by the household during the month before the month in which the survey is conducted. However, the monthly income of a household containing one or more seasonal workers, self-employed workers, or other workers whose income varies from month to month may not accurately represent the actual circumstances of the household. Such a household can project its annual rate of income for the current year based on the income data that is available.

NOTE: In general, income data gathered for NSLP is annualized based on the monthly household income from the month preceding the month in which the application is submitted; applications are distributed at the beginning of the school year. The income data gathered is used to determine eligibility for the twelve-month school year (July 1 to the following June 30) in which the survey is conducted.

Information on the definition of income under NSLP, other income guidelines of the program, and the "Eligibility Guidance for School Meals Manual" can be obtained from the website of the National School Lunch Program.

Collecting data on acceptable alternative measures of poverty on a survey

Participation in one or more of the following programs is currently acceptable as an alternative to NSLP eligibility. Questions on eligibility for these programs can also be included in a survey:

- Medicaid
- Food stamps
- Supplementary Security Income (SSI)
- Federal public housing assistance or Section 8 (a federal housing assistance program administered by the Department of Housing and Urban Development)
- Low Income Home Energy Assistance Program

Participation in Temporary Assistance for Needy Families (TANF) is an acceptable alternative measure of poverty ONLY IF the state income eligibility guidelines are equal to or below the level of the Income Eligibility Guidelines (IEGs) for NSLP. Similarly, participation in need-based tuition assistance programs is acceptable if the household income of participants is at or below the IEGs for NSLP.

Projections based on surveys

If a school has sent a survey to the households of all of its students, and if it receives a return rate of at least 50 percent of those questionnaires, it may use that data to project the percentage of eligibility for NSLP for all students in the school. For example, a school with 100 students sent a survey to the 100 households of those students, and 75

of those households returned the questionnaire. The school finds that the incomes of 25 of those 75 households are at or below the IEGs for NSLP. Consequently, 33 percent ($25 / 75 * 100$) of the students from those households can be counted as eligible for NSLP. The school may then project from that sample to conclude that 33 percent of the total enrollment, or 33 of the 100 students in the school, can be counted as eligible for NSLP.

OTHER ACCEPTABLE MECHANISMS FOR COLLECTING DATA

Collecting data from existing sources

Schools may also use existing sources of data that measure levels of poverty, such as TANF or need-based tuition assistance programs. However, these measures are acceptable for E-rate purposes only if the income eligibility guidelines are equal to or below the IEGs for NSLP.

Matching siblings

If a school has established that the household income of one of its students is at or below the IEGs for NSLP, the siblings of that student may also be counted as eligible for NSLP. For example, an elementary school has established, through a survey, that a student's household income is at or below the IEGs for NSLP. That student's household also has a brother and a sister who attend the local high school. The high school may use the status of the elementary school sibling to count his high school siblings as eligible for NSLP, without collecting its own data on that household.

Combining data from different sources

Unless a school is able to use a projection based on a survey as described above, data used to support a particular discount level must be collected and verifiable on an individual student basis. However, data from multiple sources can be combined to complete the count of students eligible for NSLP. For example, a school with 100 students sent a survey to the 100 households of these students, and 40 of those households returned the survey. The school finds the income of 20 of those 40 households, each of which has one student in the school, are at or below the IEGs for NSLP. This rate of return (40%) is too low to allow a projection based on that survey. However, the school has also matched 10 students not represented in the survey responses with siblings who are eligible for NSLP, and the school has verified that 15 additional students not represented in the survey responses participate in a need-based tuition assistance program that requires the household income of participants to be below the IEGs for NSLP. The school can combine the individual results from these three sources to conclude that 45% of the total enrollment, or 45 ($20+10+15$) of the 100 students in the school, are eligible for NSLP. The school must be able to verify that it has counted each eligible student only once.

Provision 1, Provision 2 or Provision 3 schools

The National School Lunch Act incorporates three alternative provisions to the normal requirements for annual determinations of eligibility for free and reduced price school meals. For schools that meet the requirements of one of these provisions, annual notification of program availability and certification of children eligible for free meals may be reduced to once every two consecutive school years or less. USAC defers to these reporting requirements and does not require more documentation than is required under these provisions.

Schools participating in one of these three provisions can use the percentage of students eligible for free and reduced lunches acceptable under that provision to determine the discount they enter on their Form 471. However, such schools must be able to produce the documentation required under that provision if requested. Specifically, a Provision 2 or Provision 3 school must have copies of its site application, approval letter from its state to participate in that provision, base year statistics, and the state letter approving an extension (if applicable).

Special provisions for schools in Puerto Rico and the U.S. Virgin Islands

The Code of Federal Regulations contains special provisions for determining NSLP eligibility for schools in Puerto Rico and the U.S. Virgin Islands. All students in these territories are provided with a free lunch regardless of actual income. However, a survey must be conducted to determine the socio-economic level of the territory and the applicable reimbursement rate for the NSLP, and it is that reimbursement rate that determines the E-rate discount. USAC will work with the relevant territorial agencies to determine the eligibility numbers approved by the U.S.

Department of Agriculture for each territory. This determination is applicable to public schools and libraries. Nonpublic schools are not automatically eligible to receive the same discount rate.

UNACCEPTABLE MECHANISMS

The following alternative measures of poverty are NOT acceptable for determining E-rate discounts:

- Feeder school method. This method projects the number of low-income students in a middle or high school based on the average poverty rate of the elementary school(s) that "feeds" students to the middle or high school.
- Proportional method. This method projects the number of low-income students in a school using an estimate of local poverty.
- Extrapolation from non-random samples. This method uses a non-random sample of students chosen to derive the percentage of poverty in a school, such as those families personally known by the principal ("Principal's method") or the families of students who apply for financial aid (a non-random sample).
- Title I eligibility. This method uses eligibility for Title I funds as the criterion for estimating the level of poverty in a particular school. Some measures of poverty eligible under Title I are indirect estimates of poverty, and do not necessarily equate to the measure of poverty for E-rate, namely eligibility for NSLP.

Last modified on 6/21/2007

SL2008BE336_F05

Inadequate Documentation for Selecting the Most Cost-Effective Service Offering Beneficiary Response

In response to the assertion that there was no response to a potential service provider's inquiry, the referenced responding potential service provider was called after their inquiry and it was determined that they did not possess the necessary skills and employee certifications to provide basic maintenance to Johnston Schools.

In response to the assertion that there was no explanation for increase of proposed amount, the service provider and a school district official discussed the level/type of service to be provided after the submission of the bid and determined to increase the number of locations which increased the price and thus the contracted price.

In response to the assertion that the documentation of services received does not support price, this assertion reflects a complete misunderstanding of the nature of the contract on the part of the audit firm. The \$391,200 contract for basic maintenance covers an annual maintenance agreement for all the E-Rate eligible equipment in selected locations. These contracts cover repairing the equipment and its associated operating software in the event it malfunctions. Maintenance logs are not normally required in these types of contracts. This was explained in detail to the auditors however, they insisted on examining logs that do/did not exist nor are they required.

SL2008BE336_F06

Not All Non-Discounted Portions of Requested Services Were Paid

Beneficiary Response

We disagree with this finding. This situation has been explained in detail to the auditors numerous times. Below is a further explanation and copies of the checks in questions.

The Service Provider invoice # IN63890 was paid in the amount of \$325,464.00 instead of \$32,546.40 which would have been the JCSD undiscounted share. The total check was for \$330,978.00. JCSD received the refund back from the service provider on July 25, 2008, in the amount of \$292,917.60 which reconciled the transaction. Attached you will find where the deposit was made and the tape showing the check amount.

EXHIBIT 5

Alternative Discount Mechanism Guidance Posted on the SLD Website Prior to 6/21/2007.

1. Primary measure for E-rate

The primary measure for determining E-rate discounts is the percentage of students eligible for free and reduced lunches under the National School Lunch Program, calculated by individual school. Students from family units whose income is at or below 185% of the federal poverty guideline are eligible for the NSLP.

The FCC's rationale for using NSLP data is as follows:

"[T]he national school lunch program determines students' eligibility for free or reduced-price lunches based on family income, which is a more accurate measure of a school's level of need than a model that considers general community income."

— FCC 97-157 ¶ 509

A chart defining the Income Eligibility Guidelines (IEG) for NSLP eligibility for the current year (07/01/2000 – 06/30-2001) is available by [clicking here](#).

2. Alternative mechanisms

The FCC also sanctions other mechanisms to determine a school's level of need, as long as those mechanisms are based on — or do not exceed — the same measure of poverty used by NSLP:

"[A] school may use either an actual count of students eligible for the national school lunch program or federally-approved alternative mechanisms to determine the level of poverty for purposes of the universal service discount program...

"[S]chools that choose not to use an actual count of students eligible for the national school lunch program may use only the federally-approved alternative mechanisms contained in Title I of the Improving America's School Act, which equate one measure of poverty with another."

— FCC 97-157 ¶ 510

These federally approved alternative mechanisms use data comparable to NSLP data which are:

- (1) [c]ollected through alternative means such as a survey; or
- (2) [f]rom existing sources such AFDC or tuition scholarship programs."

— 34 CFR Ch. II, § 200.28 (a)(2)(i)(B)(1) and (2)

3. Survey guidelines

If a school chooses to do a survey, the following guidelines apply:

- a. The survey must be sent to all families whose children attend the school.
- b. The survey must attain a return rate of at least 50%.
- c. The survey must, at a minimum, contain the following information:
 - o Address of family

- o Grade level of each child
 - o Size of the family
 - o Income level of the parents
- d. The survey must assure confidentiality. (The names of the families are not required.)

4. Acceptable alternative measures of poverty

The following measures of poverty are currently acceptable alternatives to NSLP eligibility:

- a. Family income level at or below 185% of the federal poverty guideline cited above.
- b. Participation in one or more of the following programs:

- Medicaid
- Food stamps
- Supplementary Security Income (SSI)
- Federal public housing assistance or Section 8 (a federal housing assistance program administered by the Department of Housing and Urban Development)
- Low Income Home Energy Assistance Program

Participation in Temporary Assistance for Needy Families (TANF) is an acceptable alternative measure of poverty ONLY IF the family income of participants is at or below the IEG for NSLP. Similarly, participation in need-based tuition assistance programs is acceptable if the family income of participants is at or below the IEG for NSLP.

5. Existing sources

Schools may also use existing sources of data which measure levels of poverty, such as TANF or need-based tuition assistance programs. However, these measures are acceptable for E-rate purposes only if the family income of participants is at or below the IEG for NSLP.

6. Matching siblings

The siblings of a student in a school that has established that the student's family income is at or below the IEG for NSLP may also be counted as eligible for E-rate purposes by the respective schools the siblings attend. For example, an elementary school has established, through a survey, that a student's family income is at or below the IEG for NSLP. That student has a brother and a sister who attend the local high school. The high school may use the status of the elementary school sibling to count his high school siblings as eligible for E-rate purposes, without collecting its own data on that family.

7. Projections based on surveys

If a school has sent a questionnaire to all of its families, and if it receives a return rate of at least 50 percent of those questionnaires, it may use that data to project the percentage of eligibility for E-rate purposes for all students in the school. For example, a school with 100 students sent a questionnaire to the 100 homes of those students, and 75 of those families returned the questionnaire. The school finds that the incomes of 25 of those 75 families are at or below the IEG for NSLP. Consequently, 33 percent of the students from those families are eligible for E-rate purposes. The school may then project from that sample to conclude that 33 percent of the total enrollment, or 33 of the 100 students in the school, are eligible for E-rate purposes.

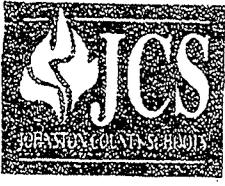
8. Unacceptable alternative mechanisms

The following alternative measures of poverty are NOT acceptable for determining E-rate discounts. They rely on projections rather than on the collection of actual data:

- a. Feeder school method. This method projects the number of low-income students in a middle or high school based on the average poverty rate of the elementary school(s) which "feeds" students to the middle or high school.
- b. Proportional method. This method projects the number of low-income students in a school using an estimate of local poverty.

- c. Extrapolation from non-random samples. This method uses a non-random sample of students chosen to derive the percentage of poverty in a school, such as those families personally known by the principal ("Principal's method") or the families of students who apply for financial aid (a non-random sample).
- d. Title 1 eligibility. This method uses eligibility for Title 1 funds as the criterion for estimating the level of poverty in a particular school. Some measures of poverty eligible under Title 1 are indirect estimates of poverty, and do not necessarily equate to the measure of poverty for E-rate, namely eligibility for NSLP.

EXHIBIT 6



JOHNSTON COUNTY SCHOOLS

(919) 934-6031 • P.O. Box 1336, Smithfield, N.C. 27577 • (919) 989-6277 FAX

August 4, 2004

Dear Parents,

The E-rate program is a Federal program which provides schools (including ours) and libraries across the country with substantial discounts on their telephone, internet, and technology services. Our school has been participating in the E-rate program since its inception in 1998.

These discounts reduce the costs of our telephone service, Internet access, and the equipment we use to build and maintain the computer networks that link our classrooms and allow our students access to the Internet. The size of the discounts which we receive is based on the average income level of all our student's families. Our local public library also benefits since it shares our discount rate. These discounts save the district and taxpayers a substantial amount of money and allow us to increase the level of technology we offer your children.

WE NEED YOUR HELP IN QUALIFYING FOR THE LARGEST DISCOUNT ALLOWABLE BY PROVIDING US WITH SOME INFORMATION.

Please complete the attached form so that we can use some of the information on the form to assist us in qualifying for E-Rate and return it to your child's classroom teacher. You will notice that you may use this form to also apply for free & reduced priced meals for your child. You have four choices in completing this form:

- If you want to participate in both the E-rate income survey AND apply for free & reduced lunch, then simply complete the form.
- If you want to participate in the income survey and NOT apply for free & reduced lunch, then write "No free & reduced lunch" on the form.
- If you want to apply for free & reduced lunch and NOT participate in the E-rate income survey, then write "No E-rate" on the form.
- And of course you may elect to do neither.

It is important that we have as much participation as possible, so even if you do not wish to participate in or qualify for the Free & Reduced Meals program, we need you to complete the form so that we may calculate the average income level of our students' families.

This information will remain confidential and will be reported only as a total group, not by individual families, and will not be used for any purpose other than to assist us in increasing our E-rate discounts.

Thank you for your participation in helping Johnston County Schools stretch its resources to best serve all our students. If you have any questions, please call your school principal's office or your child's teacher.

Thank you,

Tony Parker, PhD
Superintendent

EXHIBIT 7

Balancing Education and Technology

New Hope Technology Foundation
534 Dogwood Drive
Chapel Hill, NC 27516

(919)968-4332
Fax (919)929-9074
newhopetech.org

July 22, 2005

Rossana H. Sabio
Schools And Libraries Division
Program Integrity Assurance
80 South Jefferson Road
Whippany, NJ

SENT VIA FAX

Re: 471 Application Number 453668 & 484709
Johnston County School District

Dear Ms. Sabio:

I am in receipt of your email dated July 8, 2005 (copied below). I have attempted to answer each of your questions in red and bolded below each question. Please let me know if you need any additional information or would like clarification concerning any of my answers.

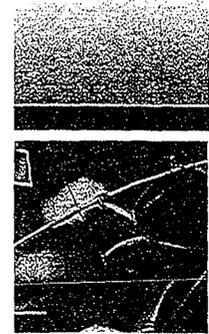
Thank you!

Regards,

John W. Hughes
President

July 8, 2005

John Hughes
JOHNSTON COUNTY SCHOOL DIST
Telephone: (919) 9684332
Application Number: **453668 & 484709**



Dear John Hughes,

The Program Integrity Assurance (PIA) team is in the process of reviewing all Form 471 Applications for schools and libraries discounts to ensure that they are in compliance with the rules of the federal universal service program. We are currently in the process of reviewing your Funding Year 2005 Form 471 Application. To complete our review, we need some additional information. The information needed to complete the review is listed below.

On your Form 471 application #s 453668 and 484709, you stated that you used an alternative discount mechanism to calculate the number of students eligible for NSLP, for the entity West Smithfield Elementary School (Entity No. 28361).

Please provide a complete description of the methodology used to calculate the number of students eligible for NSLP.

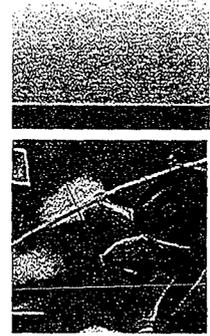
ANSWER: The discount rate for West Smithfield Elementary School was determined using the survey method.

A spreadsheet can be found at the end of this letter showing enrollment, number of surveys sent out, number of surveys returned, and projected number of students qualified for NSLP for West Smithfield Elementary.

A further explanation of the survey method and our calculations follows:

The Alternative Discount Mechanism Fact Sheet, found on the SLD web site (<http://www.sl.universalservice.org/reference/alt.asp>) (see complete citation below) states in Paragraph 7 that "If a school has sent a questionnaire to all of its families, and if it receives a return rate of at least 50 percent of those questionnaires, it may use that data to project the percentage of eligibility for E-rate purposes for all students in the school". We elected to utilize this method in our district for the above referenced schools. For each school we sent out a survey conforming to Paragraph 3 (below) to each student enrolled at the school.

West Smithfield Elementary (entity number 28361) has an enrollment of 442, a free & reduced participation of 358 or 81% participation, dictating that the school qualifies for a 90% e-Rate discount. SLD regulations allow the district to elect to utilize the survey



method to determine the school's discount (see paragraph 7 below). Using that method, the school sent out 442 surveys (to all its students) conforming to the standards in paragraph 3 below and received 358 responses which qualified for free or reduced participation and 7 responses that did not qualify (denials). The total response was 82.6%, or greater than 50% of the surveys sent out. Paragraph 7 below indicates that if we use the survey method and achieve a response rate of greater than 50%, we may choose to use that response rate as the sample. In this case, there were 365 total responses of which 98.08% qualify for free or reduced so we can conclude that 98.08% of the total enrollment is eligible for e-Rate purposes. Such a projection would mean that 398 students (98.08% of the original enrollment of 442) are eligible and the school would qualify for a 90% discount using the survey method.

The 471 block 4 form on line 10 asks if we are using an alternative discount mechanism, but to force the system to calculate the appropriate discount when one elects to use the survey method and checks the appropriate box, you have to calculate a projected or "new" free & reduced participation based on the methodology described above. Unfortunately, the block 4 form does not automatically calculate the correct discount outcome if one elects to use the survey method and we are either forced to utilize a projected NSLP number to force line 7 to calculate the correct discount. We have attached a spreadsheet indicating the projected number we used for each school where we elected to utilize the survey method.

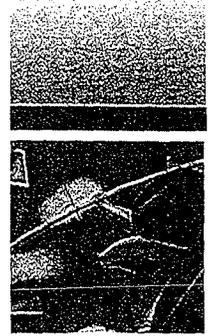
The citation below is from The Alternative Discount Mechanism Fact Sheet, found on the SLD web site (<http://www.sl.universalservice.org/reference/alt.asp>):

1. Primary measure for E-rate

The primary measure for determining E-rate discounts is the percentage of students eligible for free and reduced lunches under the National School Lunch Program, calculated by individual school. Students from family units whose income is at or below 185% of the federal poverty guideline are eligible for the NSLP.

The FCC's rationale for using NSLP data is as follows:

"[T]he national school lunch program determines students' eligibility for free or reduced-price lunches based on family income, which is a more accurate measure of a school's level of need than a model that considers general community income."



— FCC 97-157 ¶ 509

A chart defining the Income Eligibility Guidelines (IEG) for NSLP eligibility for the current year (07/01/2000 – 06/30-2001) is available by [clicking here](#).

2. Alternative mechanisms

The FCC also sanctions other mechanisms to determine a school's level of need, as long as those mechanisms are based on — or do not exceed — the same measure of poverty used by NSLP:

"[A] school may use either an actual count of students eligible for the national school lunch program or federally-approved alternative mechanisms to determine the level of poverty for purposes of the universal service discount program...

"[S]chools that choose not to use an actual count of students eligible for the national school lunch program may use only the federally-approved alternative mechanisms contained in Title I of the Improving America's School Act, which equate one measure of poverty with another."

— FCC 97-157 ¶ 510

These federally approved alternative mechanisms use data comparable to NSLP data, which are:

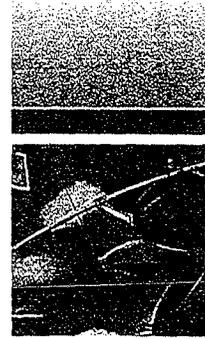
- (1) [c]ollected through alternative means such as a survey; or
- (2) [f]rom existing sources such AFDC or tuition scholarship programs."

— 34 CFR Ch. II, § 200.28 (a)(2)(i)(B)(1) and (2)

3. Survey guidelines

If a school chooses to do a survey, the following guidelines apply:

- a. The survey must be sent to all families whose children attend the school.
-



- b. The survey must attain a return rate of at least 50%.
- c. The survey must, at a minimum, contain the following information:
 - o Address of family
 - o Grade level of each child
 - o Size of the family
 - o Income level of the parents
- d. The survey must assure confidentiality. (The names of the families are not required.)

4. Acceptable alternative measures of poverty

The following measures of poverty are currently acceptable alternatives to NSLP eligibility:

- a. Family income level at or below 185% of the federal poverty guideline cited above.
- b. Participation in one or more of the following programs:
 - o Medicaid
 - o Food stamps
 - o Supplementary Security Income (SSI)
 - o Federal public housing assistance or Section 8 (a federal housing assistance program administered by the Department of Housing and Urban Development)
 - o Low Income Home Energy Assistance Program

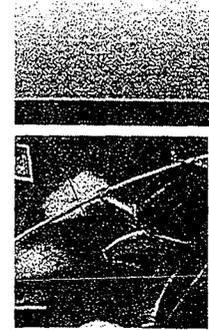
Participation in Temporary Assistance for Needy Families (TANF) is an acceptable alternative measure of poverty **ONLY IF** the family income of participants is at or below the IEG for NSLP. Similarly, participation in need-based tuition assistance programs is acceptable if the family income of participants is at or below the IEG for NSLP.

5. Existing sources

Schools may also use existing sources of data which measure levels of poverty, such as TANF or need-based tuition assistance programs. However, these measures are acceptable for E-rate purposes only if the family income of participants is at or below the IEG for NSLP.

6. Matching siblings





The siblings of a student in a school that has established that the student's family income is at or below the IEG for NSLP may also be counted as eligible for E-rate purposes by the respective schools the siblings attend. For example, an elementary school has established, through a survey, that a student's family income is at or below the IEG for NSLP. That student has a brother and a sister who attend the local high school. The high school may use the status of the elementary school sibling to count his high school siblings as eligible for E-rate purposes, without collecting its own data on that family.

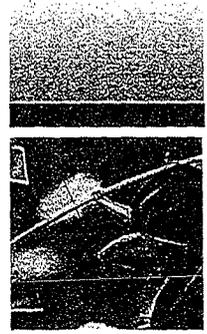
7. Projections based on surveys

If a school has sent a questionnaire to all of its families, and if it receives a return rate of at least 50 percent of those questionnaires, it may use that data to project the percentage of eligibility for E-rate purposes for all students in the school. For example, a school with 100 students sent a questionnaire to the 100 homes of those students, and 75 of those families returned the questionnaire. The school finds that the incomes of 25 of those 75 families are at or below the IEG for NSLP. Consequently, 33 percent of the students from those families are eligible for E-rate purposes. The school may then project from that sample to conclude that 33 percent of the total enrollment, or 33 of the 100 students in the school, are eligible for E-rate purposes.

8. Unacceptable alternative mechanisms

The following alternative measures of poverty are NOT acceptable for determining E-rate discounts. They rely on projections rather than on the collection of actual data:

- a. Feeder school method. This method projects the number of low-income students in a middle or high school based on the average poverty rate of the elementary school(s) which "feeds" students to the middle or high school.
 - b. Proportional method. This method projects the number of low-income students in a school using an estimate of local poverty.
 - c. Extrapolation from non-random samples. This method uses a non-random sample of students chosen to derive the percentage of poverty in a school, such as those families personally known by the principal ("Principal's method") or the families of students who apply for financial aid (a non-random sample).
 - d. Title 1 eligibility. This method uses eligibility for Title 1 funds as the criterion for estimating the level of poverty in a particular school. Some measures of poverty eligible under Title 1 are indirect estimates of
-



poverty, and do not necessarily equate to the measure of poverty for E-rate, namely eligibility for NSLP.

If a survey method was used to calculate the number of students eligible for NSLP, please provide the following information:

1.) The date that the survey was conducted

ANSWER:

The survey was conducted on August 2, 2004

2.) The number of students enrolled in the school at the time of the survey

ANSWER:

The number of students enrolled was 442.

3.) The number of families that were sent the survey (the number of surveys sent out)

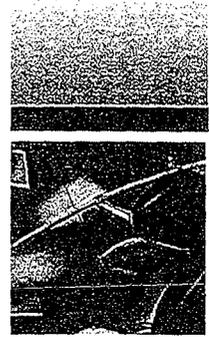
ANSWER:

The survey was send to 442 students.

4.) The number of surveys returned

ANSWER:

365 surveys were returned.



- 5.) The number of students determined to be eligible for NSLP based on the returned surveys

ANSWER:

The number of students eligible for NSLP was 358.

- 6.) Provide copies of all returned surveys with the child's personal information blackened out to ensure confidentiality, but retaining the information that helped you determine if the family was eligible for Free & Reduced Lunch.

ANSWER:

Copies are attached

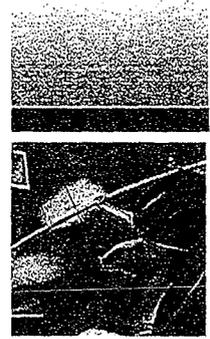
- 7.) Indications on each survey form or on a separate sheet of the Free & Reduced Lunch Eligibility determination for **EACH** survey. If provided on a separate sheet, provide a means to cross-reference the survey to which each determination relates. For example, a code of "001" on the survey and "001" on the separate sheet with the eligibility determination of that survey indicated.
- 8.) A signed certification that states: "I certify that only those students who meet the Income Eligibility Guidelines of the National School Lunch Program have been included in Column 5 of Item 9a, of Block 4 of the Form 471."

ANSWER:

The certification is attached.

Please fax or e-mail the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested so we can complete our review. **Failure to do so may result in a reduction or denial of funding.**



Should you wish to cancel this application, or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s); along with the application number and/or funding request number(s), and the complete name, title and signature of the authorized individual.

Please send the requested information within seven calendar days. If you need additional time to prepare your response, please let me know as soon as possible.

Thank you for cooperation and continued support of the Universal Service Program.

Sincerely,

Rossana H. Sabio

Schools And Libraries Division

Program Integrity Assurance

Phone: 973-560-4486

FAX: 973-599-6522

e-mail: rsabio@sl.universalservice.org

Johnston County School District

School Name	Rural/ Urban	BEN	Enrollment & Surveys	F&R Eligible	Denial Responses	Total Responses	% Surveys	Qualifies For	Free & Reduced	Projected Eligible
			Sent Out	Responses Returned	Returned	Returned (Survey Base)	returned	Survey Method	% of Survey Base	NSLP Students
West Smithfield Elementary	U	28361	442	358	7	365	82.6%	Yes	98.08%	398

7933585695

Johnston County Schools Free & Reduced Price Meal Application

Please print clearly using ONE CAPITAL LETTER per block. Use BLUE or BLACK INK only.

Applications that were sent to PIA in survey / response to Ms. Sabie's letter 8 July 8, 2004

SECTION 1: ADULT HEAD OF HOUSEHOLD INFORMATION

First Name: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Address: [Redacted] Social Security Number: [Redacted]
 Lot or Apt: [Redacted] City: [Redacted] Zip: [Redacted] (Area Code) Phone Number: [Redacted]
 Food Stamp Case Number if applicable: [Redacted]

TOTAL NUMBER of people living in the household (include all adults and children) **1200** **13**

List MONTHLY income before ANY deductions of the Adult listed in Section 1 ONLY. Round income to the nearest dollar. (No cents)
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Gross Monthly Income 3: [Redacted]

I certify that all of the information listed on this form is true and correct and that the FOOD STAMP and WORK FIRST numbers are correct. I certify that the income information includes all income received by household members. I understand that this information has been given for the receipt of Federal Funds; that school officials may verify the information on the application and that deliberate misrepresentation of the information may subject me to prosecution under applicable Federal and State Laws.

THE APPLICATION CANNOT BE PROCESSED WITHOUT A SIGNATURE.

SIGNATURE: [Signature] DATE: 8-5-04

SECTION 2: 1) Below list EACH ADDITIONAL member of the household (not the one above) who receives INCOME. Income can be from EMPLOYMENT (fill in gross MONTHLY paycheck before deductions) or income can be from OTHER SOURCES (fill in MONTHLY amount from any source including Social Security, Retirement, Pensions, Strike Benefits, Alimony, Child Support, Unemployment, Workers Compensation, Other). 2) Below also list ALL students in the household who attend a Johnston County School. Be sure to print the NAME OF THE SCHOOL and the GRADE the student will attend in the coming year. 3) If any student is a FOSTER CHILD, check the small box on the right. Fill out a separate application form for EACH foster child in the household. If the foster child receives personal income, list the monthly amount in the income boxes. The head of the household for a foster child does not need to list monthly income in Section 1.

First Name of Household Member with Income or of the Student: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Social Security Number: [Redacted] Student Work First Case Number - if applicable: [Redacted] Foster Child:
 Johnston County School that this Student attends - if applicable: [Redacted] Grade: [Redacted] Teacher: [Redacted] Office Use:

First Name of Household Member with Income or of the Student: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Social Security Number: [Redacted] Student Work First Case Number - if applicable: [Redacted] Foster Child:
 Johnston County School that this Student attends - if applicable: [Redacted] Grade: [Redacted] Teacher: [Redacted] Office Use:

First Name of Household Member with Income or of the Student: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Social Security Number: [Redacted] Student Work First Case Number - if applicable: [Redacted] Foster Child:
 Johnston County School that this Student attends - if applicable: [Redacted] Grade: [Redacted] Teacher: [Redacted] Office Use:

First Name of Household Member with Income or of the Student: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Social Security Number: [Redacted] Student Work First Case Number - if applicable: [Redacted] Foster Child:
 Johnston County School that this Student attends - if applicable: [Redacted] Grade: [Redacted] Teacher: [Redacted] Office Use:

First Name of Household Member with Income or of the Student: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Social Security Number: [Redacted] Student Work First Case Number - if applicable: [Redacted] Foster Child:
 Johnston County School that this Student attends - if applicable: [Redacted] Grade: [Redacted] Teacher: [Redacted] Office Use:

Section 3: ALL OTHER HOUSEHOLD MEMBERS: Please list all other household members not listed in SECTION 1 or 2. This would include anyone living in the household that does not receive income or attend a Johnston County School. EVERY individual residing in the home MUST be listed on this application

Section 4: Waiver of Privacy Act: I give permission for Johnston County Schools to give my name, address, and whether my child qualifies for free/reduced priced meals to the following program: You are not required to answer this question.

- NC Health Choice
- Dental Benefits
- Title I Office
- Workforce Development
- All

Section 5: Race/Ethnic Identity: You are not required to answer this question:

Fill in appropriate circles.

- White
- Black
- Hispanic
- Asian
- American Indian
- Bi Racial
- Other

EXHIBIT 8

Balancing Education and Technology



New Hope Technology Foundation
534 Dogwood Drive
Chapel Hill, NC 27516

(919) 968-4332
Fax (919) 929-9074
newhopetech.org

October 12, 2005

Rossana H. Sabio
Schools And Libraries Division
Program Integrity Assurance
80 South Jefferson Road
Whippany, NJ

SENT VIA FAX

Re: 471 Application Number 453668 & 484709
Johnston County School District

Dear Ms. Sabio:

I am in receipt of your letter dated October 12, 2005 (copied below). I have attempted to answer each of your questions in red and bolded below each question. Please let me know if you need any additional information or would like clarification concerning any of my answers.

Thank you!

Regards,

John W. Hughes
President

October 12, 2005

John Hughes
JOHNSTON COUNTY SCHOOL DIST
Telephone: (919) 968-4332
Application Number: **453668 & 484709**

Dear John Hughes,

The Program Integrity Assurance (PIA) team is in the process of reviewing all Form 471 Applications for schools and libraries discounts to ensure that they are in compliance with the rules of the federal universal service program. We are currently in the process of reviewing your Funding Year 2005 Form 471 Application. To complete our review, we need some additional information. The information needed to complete the review is listed below.

A) On your email dated 5/25/2005, you have indicated that a survey method was used in determining the discount for the entities listed below.

Entity No.	Entity Name
28180	BENSON MIDDLE SCHOOL
28181	BENSON ELEMENTARY SCHOOL
28222	COOPER ELEMENTARY SCHOOL
28237	FOUR OAKS MIDDLE SCHOOL
28239	FOUR OAKS ELEMENTARY SCHOOL
28305	GLENDALE-KENLY ELEM SCHOOL
28323	NORTH JOHNSTON MIDDLE SCHOOL
28339	MICRO-PINE LEVEL ELEM SCHOOL
28352	SELMA MIDDLE SCHOOL
28359	SMITHFIELD MIDDLE SCHOOL
28360	SOUTH SMITHFIELD PRIMARY SCH
28382	WILSON'S MILLS ELEM SCHOOL
28386	CORINTH-HOLDERS ELEM SCHOOL

Please provide / answer the following:

1) Are the surveys/applications and results kept on file.

ANSWER:

Yes, the surveys/applications are kept on file

2) Provide a sample copy of a FILLED OUT SURVEY/APPLICATION with the child's personal information crossed out for confidentiality for EACH of the school.

ANSWER:

Each school uses the same district standard free & reduced application survey that is used district wide in each school. A sample is attached (Attachment A).

B) Based upon review of your Form 471 application, we were not able to validate your requested discount percentage of 60% for MCGEE'S CROSSROADS ELEMENTARY, Entity No. 163530 and 60% for MCGEE'S CROSSROADS MIDDLE SCHOOL, Entity No. 232663. If you choose to validate your original requested discount percentage of 60% for these entities, then please provide the appropriate documentation if one of the following acceptable methods were used:

a. If the school participates in a National School Lunch Program (NSLP), please provide us a signed copy (preferably by the Principal, Vice-Principal, Superintendent, or Director of Food Services) of the Reimbursement Claim Form that the school sends to the state each month. Make sure that the following 3 items are identified:

1) The Entity name

- 2) The total number of students enrolled at the entity
- 3) The total number of students eligible for Free/Reduced Lunch Program for the entity

If the school district fills out an aggregate Reimbursement Claim Form for the district, provide the following:

- A copy of the aggregate claim form that the school submits to the state
 - A signed letter from a school official (preferably by the Principal, Vice-Principal, Superintendent or chief school official, or Director of Food Services) that lists the enrollment and Free/Reduced information for each school in the district (MIS report/spreadsheet acceptable as an attachment).
 - Totals of the above two items must be equal and must represent the same period of time.
- a. If the discount percentage was determined by information obtained from a survey/application, please provide the following information:
 - 1) Total number of students enrolled
 - 2) Total number of surveys/applications sent out
 - 3) Number of surveys/applications returned
 - 4) Total number of students qualified for NSLP per the returned surveys/applications
 - 5) Are the surveys/applications and results kept on file.
 - 6) Provide a sample copy of a FILLED OUT SURVEY/APPLICATION with the child's personal information crossed out for confidentiality.
 - 7) A signed certification that reads: "I certify that only those students who meet the Income Eligibility Guidelines of the National School Lunch Program have been included in Column 5 of Item 10b, of Block 4 (Worksheet A) of the Form 471."
 - 8) This information must be in writing on school letterhead and signed by a school official (such as the Principal, Vice-Principal, Superintendent, Director of Food Services).

ANSWER:

The information was determined by using a survey/application.

The total number of students enrolled and the total number of applications sent out at McGee's Elem was 960 and at McGee's Middle was 624.

The total number of students qualified for NSLP at McGee's Elem was 367 and at McGee's Middle was 222 as of the 2/7/05 (see attached demographic report Attachment C)

All surveys are kept on file.

Sample copies are attached (Attachment B).

A signed certification is attached (Attachment D).

- b. If the discount was determined using a different method than what was identified above, please indicate the method that was used and provide all relevant data.

C) Based upon review of your Form 471 application and/or the documentation you provided, we were not able to determine the eligibility of the entities listed below. In order to be eligible to receive discounted services, per the rules of this support mechanism, the entity providing classroom instruction must be considered part of an elementary or a secondary school found in the No Child Left Behind Act of 2001 (20 U.S.C. Section 7801 (18) and (38)) which is not operating as a for-profit businesses, and does not have an endowment exceeding \$50 million. Please provide documentation that will verify that the entity meets the definition provided above.

Entity No.	Entity Name
162762	JOHNSTON COUNTY SCHOOLS NORTH CAMPUS
16020642	JOHNSTON COUNTY FACILITY SERVICES
16020644	JOHNSTON COUNTY WEST CAMPUS
16020645	JOHNSTON COUNTY BUS GARAGE
16031018	MCGEE'S AREA ELEMENTARY SCHOOL
16031021	CLEVELAND AREA ELEMENTARY SCHOOL
16031022	NORTHWEST JOHNSTON MIDDLE SCHOOL

If any of the entities above is a non-instructional facility, which can be eligible for services under certain circumstances, please provide a written response to the following questions for EACH of the non-instructional facility:

Do either of these two descriptions accurately and completely describe your school, school district or library's situation? If so, which one or both?

- The non-instructional facility is owned by the school, school district or library and is used solely for school, school district or library business.
- Only school, school district or library employees use the non-instructional facility.

ANSWER:

Entity numbers 162762, 16020642, 16020644, & 16020645 are non-instructional facilities owned by the school district, used solely for school district business, and used only by school district employees.

Entity numbers 1631018, 16031021, & 16031022 are new schools currently under construction or soon to be under constructions and due to open in the spring of 2006. We utilized the shared district discount percentage for each of these schools..

For further information about funding requests to non-instructional facilities, consult the "Educational Purposes" document at www.sl.universalservice.org/reference/educational_purposes.asp

- D) If any of the entities identified on item C is a new construction school, please provide appropriate documentation evidence that the construction is underway. This proof may take the form of a construction contract or RFP to bid on the construction. Please provide any additional information relevant to the appropriate discount level for this new construction.

ANSWER:

A notice to proceed (the official award of the bid) with construction issued by the consulting engineer for Dixon Road Elem and West Cleveland is attached Attachment E). At the time we requested the BEN for these schools, they were not officially named. BEN 16031018, McGee's Area Elementary School, was the

working name for what has been officially named Dixon Road Elementary. Similarly, Cleveland Area Elementary School was the working name for what is not officially named West Cleveland Elementary (BEN 16031021). Northwest Johnston Middle School is not yet under construction, but is scheduled to start in the next month. To confirm this fact, I have attached a certification from the Assistance Superintendent

Form 471 # 453668

- E) For FRN 1343087 and FRN 1343238 for Internet Access services, please provide a statement that the services will only be delivered to eligible users at eligible locations. The rules of this support mechanism do not allow for services or products to be provided to residential homes or other non-school/library facilities (i.e., students and teachers may not dial in from home to access the Internet; there can be no community access, etc). "Remote access" where users from any location use their own Internet account to access school or library information, is eligible for funding. If this funding request for Internet Access is strictly limited to services used only at eligible locations by eligible users, then please confirm in writing the following:

ANSWER:

"The Internet Access service for which I seek discounts will be strictly limited to providing services only at eligible locations and used only by eligible users. Access to the Internet will not be provided to homes or other non-school or non-library sites."

(Signed) 
(Name) John Hughes
(Title) Agent
(Date) October 12, 2005

The above statement must be signed and dated. If you are unable to make such a statement, because the statement is not correct, please indicate such.

- F) Based on your Item 21 documentation for FRNs 1341312, 1343238, 1343087 and 1343026, services will be provided to MCGEE'S AREA ELEM, Entity No. 16031018. This entity is not included on block of your Form 471 # 453668. Please confirm if this entity will be receiving services on your funding request for the FRNs mentioned and I will add the entity to block 4.

ANSWER:

Please add McGee's Area Elem, Entity # 16031018 to Block 4, worksheet # 646512 on 471 # 453668.

- G) Based on your documentation FRN 1341312 is a request for cellular service. The documentation does not indicate the number of lines for which funding is being requested. Please indicate the number of lines for which you are requesting service on this FRN.

ANSWER:

The number of cellular lines is 559 (see attached Attachment 21, Attachment F).

H) Based on your documentation, FRN 1343238 is a request for Internet Access Service, but the documentation does not indicate the bandwidth of the service being provided. Please indicate the bandwidth of the Internet Access that is being provided (e.g., 56-K, T-1, DSL, ISDN, and/or OC-3).

ANSWER:

The bandwidth of the Internet access is 12 mbs delivered via 8 T1's (see attached Attachment 21 Attachment G).

Please fax or e-mail the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested so we can complete our review. **Failure to do so may result in a reduction or denial of funding.**

Should you wish to cancel this application, or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s); along with the application number and/or funding request number(s), and the complete name, title and signature of the authorized individual.

Please send the requested information within seven calendar days. If you need additional time to prepare your response, please let me know as soon as possible.

Thank you for cooperation and continued support of the Universal Service Program.

Sincerely,

Rossana H. Sabio
Schools and Libraries Division
Program Integrity Assurance
Phone: 973-560-4486
FAX: 973-599-6513
e-mail: rsabio@sl.universalservice.org

Johnston County Schools Free & Reduced Price Meal Application
Please print clearly using ONE CAPITAL LETTER per block. Use BLUE or BLACK INK only.

Attach A

SECTION 1: ADULT HEAD OF HOUSEHOLD INFORMATION

First Name: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Address: 155 Marshall Lane [Redacted]
 Lot or Apt: [Redacted] City: Smithfield Zip: 27587 (Area Code) Phone Number: [Redacted]
 Food Stamp Case Number if applicable: [Redacted]

TOTAL NUMBER of people living in the household (include all adults and children) 08

List MONTHLY income before ANY deductions of the Adult listed in Section 1 ONLY. Round income to the nearest dollar. (No cents)

Gross Monthly Income 1: 1100 [Redacted]
 Gross Monthly Income 2: [Redacted]
 Gross Monthly Income 3: [Redacted]

I certify that all of the information listed on this form is true and correct and that the FOOD STAMP and WORK FIRST numbers are correct. I certify that the income information includes all income received by household members. I understand that this information has been given for the receipt of Federal Funds; that school officials may verify the information on the application and that deliberate misrepresentation of the information may subject me to prosecution under applicable Federal and State Laws.

THE APPLICATION CANNOT BE PROCESSED WITHOUT A SIGNATURE.

SIGNATURE: Pamela W King DATE: 7-29-04

SECTION 2: 1) Below list EACH ADDITIONAL member of the household (not the one above) who receives INCOME. Income can be from EMPLOYMENT (fill in gross MONTHLY paycheck before deductions) or income can be from OTHER SOURCES (fill in MONTHLY amount from any source including Social Security, Retirement, Pensions, Strike Benefits, Alimony, Child Support, Unemployment, Workers Compensation, Other). 2) Below also list ALL students in the household who attend a Johnston County School. Be sure to print the NAME OF THE SCHOOL and the GRADE the student will attend in the coming year. 3) If any student is a FOSTER CHILD, check the small box on the right. Fill out a separate application form for EACH foster child in the household. If the foster child receives personal income, list the monthly amount in the income boxes. The head of the household for a foster child does not need to list monthly income in Section 1.

First Name of Household Member with Income or of the Student: Angelo MI: M Last Name: King Sr
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Student Work First Case Number - if applicable: [Redacted] Foster Child:
 Johnston County School that this Student attends: [Redacted] Teacher: [Redacted] Office Use:

First Name of Household Member with Income or of the Student: Angelo MI: M Last Name: King Sr
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Student Work First Case Number - if applicable: [Redacted]
 Johnston County School that this Student attends - if applicable: Smithfield Middle 06 Grade: [Redacted] Teacher: [Redacted] Office Use: 397

First Name of Household Member with Income or of the Student: Shacama MI: M Last Name: King
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Student Work First Case Number - if applicable: [Redacted]
 Johnston County School that this Student attends - if applicable: West S Elementary 03 Grade: [Redacted] Teacher: [Redacted] Office Use: 396

First Name of Household Member with Income or of the Student: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Social Security Number: [Redacted] Student Work First Case Number - if applicable: [Redacted]
 Johnston County School that this Student attends - if applicable: [Redacted] Grade: [Redacted] Teacher: [Redacted] Office Use: [Redacted]

First Name of Household Member with Income or of the Student: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Social Security Number: [Redacted] Student Work First Case Number - if applicable: [Redacted]
 Johnston County School that this Student attends - if applicable: [Redacted] Grade: [Redacted] Teacher: [Redacted] Office Use: [Redacted]

Section 3: ALL OTHER HOUSEHOLD MEMBERS: Please list all other household members not listed in SECTION 1 or 2. This would include anyone living in the household that does not receive income or attend a Johnston County School. EVERY individual residing in the home MUST be listed on this application

Section 4: Waiver of Privacy Act: I give permission for Johnston County Schools to give my name, address, and whether my child qualifies for free/reduced priced meals to the following program: You are not required to answer this question.

- NC Health Choice
- Dental Benefits
- Title I Office
- Workforce Development
- All

Section 5: Race/Ethnic Identity: You are not required to answer this question.

Fill in appropriate circles.

- White
- Black
- Hispanic
- Asian
- American Indian
- Bi Racial
- Other

7933585695

Johnston County Schools Free & Reduced Price Meal Application
Please print clearly using ONE CAPITAL LETTER per block. Use BLUE or BLACK INK only.

Attach B

SECTION 1: ADULT HEAD OF HOUSEHOLD INFORMATION

First Name: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Address: [Redacted] Social Security Number: [Redacted]
 City: [Redacted] State: [Redacted] Zip: [Redacted] Phone Number: [Redacted]
 Food Stamp Case Number (if applicable): [Redacted]
 TOTAL NUMBER of people living in the household (include all adults and children): **05**
 List MONTHLY income before ANY deductions of the Adult listed in Section 1 ONLY. Round income to the nearest dollar. (No cents)
 Gross Monthly Income 1: **1600** Gross Monthly Income 2: [Redacted] Gross Monthly Income 3: [Redacted]

I certify that all of the information listed on this form is true and correct and that the FOOD STAMP and WORK FIRST numbers are correct. I certify that the income information includes all income received by household members. I understand that this information has been given for the receipt of Federal Funds; that school officials may verify the information on this application and that deliberate misrepresentation of the information may subject me to prosecution under applicable Federal and State Laws.

THE APPLICATION CANNOT BE PROCESSED WITHOUT A SIGNATURE.

SIGNATURE: [Signature] DATE: **10-25-04**

SECTION 2: 1) Below list EACH ADDITIONAL member of the household (not the one shown who receives INCOME. Income can be from EMPLOYMENT (fill in gross MONTHLY paycheck before deductions) or income can be from OTHER SOURCES (fill in MONTHLY amount from any source including Social Security, Retirement, Pensions, Strike Benefits, Alimony, Child Support, Unemployment, Workers Compensation, Other). 2) Below list ALL students in the household who attend a Johnston County School. Be sure to print the NAME OF THE SCHOOL and the GRADE the student will attend in the coming year. 3) If any student is a FOSTER CHILD, check the small box on the right. Fill out a separate application form for EACH foster child in the household. If the foster child receives personal income, list the monthly amount in the income boxes. The head of the household for a foster child does not need to list monthly income in Section 1.

First Name of Household Member with Income or of the Student: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Social Security Number: [Redacted] Student Work First Case Number - (if applicable): [Redacted] Foster Child:
 Johnston County School that this Student attends - if applicable: [Redacted] Grade: [Redacted] Teacher: [Redacted] Office Use: [Redacted]

First Name of Household Member with Income or of the Student: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Social Security Number: [Redacted] Student Work First Case Number - if applicable: [Redacted] Foster Child:
 Johnston County School that this Student attends - if applicable: **MCGEE'S CROSS RD MI** Grade: [Redacted] Teacher: [Redacted] Office Use: **359**

First Name of Household Member with Income or of the Student: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Social Security Number: [Redacted] Student Work First Case Number - if applicable: [Redacted] Foster Child:
 Johnston County School that this Student attends - if applicable: **MCGEE'S CROSS RD EL 05** Grade: [Redacted] Teacher: [Redacted] Office Use: **358**

First Name of Household Member with Income or of the Student: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Social Security Number: [Redacted] Student Work First Case Number - if applicable: [Redacted] Foster Child:
 Johnston County School that this Student attends - if applicable: **MCGEE'S CROSS RD EL 02** Grade: [Redacted] Teacher: [Redacted] Office Use: **358**

First Name of Household Member with Income or of the Student: [Redacted] MI: [Redacted] Last Name: [Redacted]
 Gross Monthly Income 1: [Redacted] Gross Monthly Income 2: [Redacted] Social Security Number: [Redacted] Student Work First Case Number - if applicable: [Redacted] Foster Child:
 Johnston County School that this Student attends - if applicable: [Redacted] Grade: [Redacted] Teacher: [Redacted] Office Use: [Redacted]

Section 3: ALL OTHER HOUSEHOLD MEMBERS: Please list all other household members not listed in SECTION 1 or 2. This would include anyone living in the household that does not receive income or attend a Johnston County School. EVERY individual residing in the home MUST be listed on this application.

Section 4: Waiver of Privacy Act: I give permission for Johnston County Schools to give my name, address, and whether my child qualifies for free/reduced price meals to the following program: You are not required to answer this question.

- NC Health Choice
- Dental Benefits
- Title I Office
- Workforce Development
- All

Section 5: Racial/Ethnic Identity: You are not required to answer this question.

- White
- Black
- Hispanic
- Asian
- American Indian
- Bi Racial
- Other

358

7933985695

Johnston County Schools Free & Reduced Price Meal Application
Please print clearly using ONE CAPITAL LETTER per block. Use BLUE or BLACK INK only.

7 Attach B

SECTION 1: ADULT HEAD OF HOUSEHOLD INFORMATION

First Name, MI, Last Name, Social Security Number, Johnston County School that this student attends - if applicable, Grade, Teacher, Office Use, Food Stamp Case Number - if applicable, TOTAL NUMBER of people living in the household (include all adults and children)

List MONTHLY income before ANY deductions of the Adult listed in Section 1 ONLY. Round income to the nearest dollar. (No cents) Gross Monthly Income 1: 297, Gross Monthly Income 2: 370, Gross Monthly Income 3: 279

I certify that all of the information listed on this form is true and correct and that the FOOD STAMP and WORK FIRST numbers are correct. I certify that the income information provided is all income received by household members. I understand that this information has been given for the receipt of Federal Funds, that school officials may verify the information on the application and that deliberate misrepresentation of the information may subject me to prosecution under applicable Federal and State laws.

THE APPLICATION CANNOT BE PROCESSED WITHOUT A SIGNATURE.

SIGNATURE: [Signature] DATE: Sept 1, 2004

SECTION 2: 1) Below list EACH ADDITIONAL member of the household that the one student who receives INCOME. Income can be from EMPLOYMENT (fill in gross MONTHLY paycheck before deductions) or income can be from OTHER SOURCES (fill in MONTHLY amount from any source including Social Security, Retirement, Pensions, Strike Benefits, Alimony, Child Support, Unemployment, Workers Compensation, Other). 2) Below also list ALL students in the household who attend a Johnston County School. Be sure to print the NAME OF THE SCHOOL and the GRADE the student will attend in the coming year. If any student is a FOSTER CHILD, check the small box on the right. Fill out a separate application form for EACH foster child in the household. If the foster child receives permanent income, list the monthly amount in the income boxes. The head of the household for a foster child does not need to list monthly income in Section 1.

First Name of Household Member with Income or of the Student, MI, Last Name, Gross Monthly Income 1, Gross Monthly Income 2, Social Security Number, Student Work First Case Number - if applicable, Johnston County School that this student attends - if applicable, Grade, Teacher, Office Use

First Name of Household Member with Income or of the Student, MI, Last Name, Gross Monthly Income 1, Gross Monthly Income 2, Social Security Number, Student Work First Case Number - if applicable, Johnston County School that this Student attends - if applicable, Grade, Teacher, Office Use

First Name of Household Member with Income or of the Student, MI, Last Name, Gross Monthly Income 1, Gross Monthly Income 2, Social Security Number, Student Work First Case Number - if applicable, Johnston County School that this Student attends - if applicable, Grade, Teacher, Office Use

First Name of Household Member with Income or of the Student, MI, Last Name, Gross Monthly Income 1, Gross Monthly Income 2, Social Security Number, Student Work First Case Number - if applicable, Johnston County School that this Student attends - if applicable, Grade, Teacher, Office Use

First Name of Household Member with Income or of the Student, MI, Last Name, Gross Monthly Income 1, Gross Monthly Income 2, Social Security Number, Student Work First Case Number - if applicable, Johnston County School that this Student attends - if applicable, Grade, Teacher, Office Use

Section 3: ALL OTHER HOUSEHOLD MEMBERS: Please list all other household members not listed in SECTION 1 or 2. This would include anyone living in the household that does not receive income or attend a Johnston County School. EVERY individual residing in the home MUST be listed on this application.

Section 4: Waiver of Privacy Act: I give permission for Johnston County Schools to give my name, address, and whether my child qualifies for free/reduced priced meals to the following programs: You are not required to answer this question.

- NC Health Choice, Dental Benefits, Title I Office, Workforce Development, All (checked)

Section 5: Race/Ethnic Identity: You are not required to answer this question.

- White, Black, Hispanic, Asian, American Indian, Bi Racial, Other



JOHNSTON COUNTY SCHOOLS

(919) 934-6031

P.O. Box 1336, Smithfield, NC 27577

(919) 989-6277 FAX

August 8, 2005

Rossana H. Sabio
Schools And Libraries Division
Program Integrity Assurance
80 South Jefferson Road
Whippany, NJ

SENT VIA FAX

Re: 471 Application Number 453668 & 484709
Johnston County School District

Dear Ms. Sabio:

I certify that only those students who meet the Income Eligibility Guidelines of the National School Lunch Program have been included in Column 5 of Item 9a, of Block 4 of the Form 471.

Regards,

Mr. Ernest (E.D.) Hall
Associate Superintendent

EXHIBIT 9

Date: Thu, 2 Nov 2006 16:14:39 -0500

> From: sldnoreply@sl.universalservice.org
> Subject: RE: Initial Contact, case# 21-490224
> To: sheaton@hotmail.com

>
> Thank you for your inquiry. Yes you can do this, as for a rationale, that we can not provide, any assumption as to why a school would determine their discount using the method you have described would be purely speculative.

>
> If you have any further questions, please feel free to contact our Schools and Libraries Helpline at 1-888-203-8100. Please remember to visit our website for updates:
<http://www.sl.universalservice.org>

>
> Thank you,
> Schools and Libraries Division
> Universal Service Administrative Company

>
>
>
>
>
>
> -----Original Message-----

>
> From: sheaton@hotmail.com
> Subject: Initial Contact
>
> [FirstName]=Scott
> [LastName]=Heaton
> [JobTitle]=
> [EmailAddress]=sheaton@hotmail.com
> [WorkPhone]=9122450721
> [FaxPhone]=
> [PreviousCaseNumber]=0
>
> [FormType]=Discount
> [Owner]=TCSB
> [DateSubmitted]=11/2/2006 8:21:45 AM
> [AttachmentFlag]=N[BenOrSpinNumber]=127339
> [ApplicantFormID]=Internal Connections
> [ApplicationNumber]=531213
> [FundingYear]=FY9 (07/01/2006 - 06/30/2007)
> [WorksheetNumber]=NA
> [Question2]=To Whom It May Concern:

>
> Can a school system use its' National School Lunch Program application/survey as the data source in determining alternative discount eligibility as to the alternative discount survey mechanism, as long as the National School Lunch Program application/survey meets the SLD alternative discount survey mechanism guidelines?

>
> If possible please provide a yes or no answer with rationale.

>
> Thank You
>

>

> The previous Response which is only a partial answer to my question is as follows.

>

> Thank you for your inquiry. The decision to do a survey (or use another method to determine eligibility, also detailed in the web guidance) can be made on a school-by-school basis. If some schools in a district want to do a survey, however, they should check with their district to be sure that it is okay, as the district may be the one filing the Form 471/486 and may feel it should have the final say. Be sure to follow the guidelines on the website. You will need to send the survey to all families in the school and if their response rate is higher than 50%, then you can extrapolate the rest. Keep in mind that if you choose to do the survey you will be required to provide copies of the surveys to determine their accuracy. If you have any further questions, please feel free to contact our Schools and Libraries Helpline at 1-888-203-8100. Please remember to visit our website for updates: <http://www.sl.universalservice.org> Thank you, Schools and Libraries

EXHIBIT 10

John Hughes

From: sldnoreply@sl.universalservice.org
Sent: Thursday, January 04, 2007 5:48 PM
To: John Hughes
Subject: RE: Initial Contact Case #21-513852

Thank you for your inquiry. This should not be an issue with SLD.

If you have any further questions, please feel free to contact our Schools and Libraries Helpline at 1-888-203-8100. Please remember to visit our website for updates: <http://www.sl.universalservice.org>

Thank you,
Schools and Libraries Division
Universal Service Administrative Company

-----Original Message-----

From: jhughes@vistatm.com
Subject: Initial Contact

[FirstName]=john
[LastName]=hughes
[JobTitle]=president
[EmailAddress]=jhughes@vistatm.com
[WorkPhone]=9199684332
[FaxPhone]=9199299074
[PreviousCaseNumber]=0

[FormType]=Other
[Owner]=TCSB
[DateSubmitted]=1/4/2007 12:19:21 PM
[AttachmentFlag]=N[Question2]=Is it permissible to use a free & reduced application as a survey form IF it meets all the requirements of a survey form as detailed in the SLD website under "Survey Guidelines" quoted below:

"The survey must be sent to all families whose children attend the school.
The survey must attain a response rate of at least 50%.
The survey must, at a minimum, contain the following information:
Address of family
Grade level of each child
Size of the family
Income level of the parents
The survey must assure confidentiality (e.g., the names of the families are not required)"

The NSLP has strict guidelines concerning the confidentiality of all free & reduced applications that guard against unauthorized disclosure of the data contained in the application/survey.

If this is not permissible, please indicate why not.

EXHIBIT 11

Alternative Discount Mechanism Guidance After 6/21/07

The primary measure for determining E-rate discounts is the percentage of students eligible for free and reduced lunches under the National School Lunch Program (NSLP), calculated by individual school. Students from households whose income is at or below 185% of the federal poverty guideline are eligible for the NSLP.

The FCC's rationale for using NSLP data is as follows:

"[T]he national school lunch program determines students' eligibility for free or reduced-price lunches based on family income, which is a more accurate measure of a school's level of need than a model that considers general community income."

- FCC 97-157 ¶ 509

Income Eligibility Guidelines for NSLP eligibility are available on the web page of the United States Department of Agriculture Child Nutrition Programs by following the links for "National School Lunch Program" and "Income Eligibility Guidelines."

The FCC also sanctions other mechanisms to determine a school's level of need, as long as those mechanisms are based on — or do not exceed — the same measure of poverty used by NSLP:

"[A] school may use either an actual count of students eligible for the national school lunch program or federally-approved alternative mechanisms to determine the level of poverty for purposes of the universal service discount program...

"[S]chools that choose not to use an actual count of students eligible for the national school lunch program may use only the federally-approved alternative mechanisms contained in Title I of the Improving America's School Act, which equate one measure of poverty with another."

- FCC 97-157 ¶ 510

SURVEYS

A school may design a survey that provides the necessary information that measures a family's level of need. Applicants cannot use National School Lunch Application forms as surveys. Surveys must be based on the following guidelines:

- The survey must be sent to all families whose children attend the school.
 - The survey must, at a minimum, contain the following information:
 - Name of family and students
 - Size of the family
 - Income level of the family
-

Income data (or eligibility data based on income) from a survey used to support a discount level for a funding request cannot be older than two years before the start of the funding year. For example, the data gathered from an income survey done in September 2005 can be used for funding requests for Funding Year 2006 and Funding Year 2007, but not for Funding Year 2008. Therefore, surveys must be done at least every other year.

Survey retention documentation

Applicants should maintain a record of the survey documentation collected to assist in responding to PIA inquiries. Such records should be maintained for a period of five years after the last day of delivery of the discounted services.

Collecting income data on a survey

Consistent with NSLP eligibility guidance, income data (or eligibility data based on income) used to support the discount level for a funding request should be collected based on income received by the household during the month before the month in which the survey is conducted. However, the monthly income of a household containing one or more seasonal workers, self-employed workers, or other workers whose income varies from month to month may not accurately represent the actual circumstances of the household. Such a household can project its annual rate of income for the current year based on the income data that is available.

NOTE: In general, income data gathered for NSLP is annualized based on the monthly household income from the month preceding the month in which the application is submitted; applications are distributed at the beginning of the school year. The income data gathered is used to determine eligibility for the twelve-month school year (July 1 to the following June 30) in which the survey is conducted.

Information on the definition of income under NSLP, other income guidelines of the program, and the "Eligibility Guidance for School Meals Manual" can be obtained from the website of the **National School Lunch Program**.

Collecting data on acceptable alternative measures of poverty on a survey

Participation in one or more of the following programs is currently acceptable as an alternative to NSLP eligibility. Questions on eligibility for these programs can also be included in a survey:

- Medicaid
- Food stamps
- Supplementary Security Income (SSI)
- Federal public housing assistance or Section 8 (a federal housing assistance program administered by the Department of Housing and Urban Development)
- Low Income Home Energy Assistance Program

Participation in Temporary Assistance for Needy Families (TANF) is an acceptable alternative measure of poverty **ONLY IF** the state income eligibility guidelines are equal to or below the level of the Income Eligibility Guidelines (IEGs) for NSLP. Similarly, participation in need-based tuition assistance programs is acceptable if the household income of participants is at or below the IEGs for NSLP.

Projections based on surveys

If a school has sent a survey to the households of all of its students, and if it receives a return rate of at least 50 percent of those questionnaires, it may use that data to project the percentage of eligibility for NSLP for all students in the school. For example, a school with 100 students sent a survey to the 100 households of those students, and 75 of those households returned the questionnaire. The school finds that the incomes of 25 of those 75 households are at or below the IEGs for NSLP. Consequently, 33 percent ($25 / 75 * 100$) of the students from those households can be counted as eligible for NSLP. The school may then project from that sample to conclude that 33 percent of the total enrollment, or 33 of the 100 students in the school, can be counted as eligible for NSLP.

OTHER ACCEPTABLE MECHANISMS FOR COLLECTING DATA

Collecting data from existing sources

Schools may also use existing sources of data that measure levels of poverty, such as TANF or need-based tuition assistance programs. However, these measures are acceptable for E-rate purposes only if the income eligibility guidelines are equal to or below the IEGs for NSLP.

Matching siblings

If a school has established that the household income of one of its students is at or below the IEGs for NSLP, the siblings of that student may also be counted as eligible for NSLP. For example, an elementary school has established, through a survey, that a student's household income is at or below the IEGs for NSLP. That student's household also has a brother and a sister who attend the local high school. The high school may use the status of the elementary school sibling to count his high school siblings as eligible for NSLP, without collecting its own data on that household.

Combining data from different sources

Unless a school is able to use a projection based on a survey as described above, data used to support a particular discount level must be collected and verifiable on an individual student basis. However, data from multiple sources can be combined to complete the count of students eligible for NSLP. For example, a school with 100 students sent a survey to the 100 households of these students, and 40 of those households returned the survey. The school finds the income of 20 of those 40 households, each of which has one student in the school, are at or below the IEGs for NSLP. This rate of return (40%) is too low to allow a projection based on that survey. However, the school has also matched 10 students not represented in the survey responses with siblings who are eligible for NSLP, and the school has verified that 15 additional students not represented in the survey responses participate in a need-based tuition assistance program that requires the household income of participants to be below the IEGs for NSLP. The school can combine the individual results from these three sources to conclude that 45% of the total enrollment, or 45 ($20+10+15$) of the 100 students in the school, are eligible for NSLP. The school must be able to verify that it has counted each eligible student only once.

Provision 1, Provision 2 or Provision 3 schools

The National School Lunch Act incorporates three alternative provisions to the normal requirements for annual determinations of eligibility for free and reduced price school meals. For schools that meet the requirements of one of these provisions, annual notification of program availability and certification of children eligible for free meals may be reduced to once every two consecutive school years or less. USAC defers to these reporting requirements and does not require more documentation than is required under these provisions.

Schools participating in one of these three provisions can use the percentage of students eligible for free and reduced lunches acceptable under that provision to determine the discount they enter on their Form 471. However, such schools must be able to produce the documentation required under that provision if requested. Specifically, a Provision 2 or Provision 3 school must have copies of its site application, approval letter from its state to participate in that provision, base year statistics, and the state letter approving an extension (if applicable).

Special provisions for schools in Puerto Rico and the U.S. Virgin Islands

The Code of Federal Regulations contains special provisions for determining NSLP eligibility for schools in Puerto Rico and the U.S. Virgin Islands. All students in these territories are provided with a free lunch regardless of actual income. However, a survey must be conducted to determine the socio-economic level of the territory and the applicable reimbursement rate for the NSLP, and it is that reimbursement rate that determines the E-rate discount. USAC will work with the relevant territorial agencies to determine the eligibility numbers approved by the U.S. Department of Agriculture for each territory. This determination is applicable to public schools and libraries. Nonpublic schools are not automatically eligible to receive the same discount rate.

UNACCEPTABLE MECHANISMS

The following alternative measures of poverty are NOT acceptable for determining E-rate discounts:

- Feeder school method. This method projects the number of low-income students in a middle or high school based on the average poverty rate of the elementary school(s) that "feeds" students to the middle or high school.
- Proportional method. This method projects the number of low-income students in a school using an estimate of local poverty.
- Extrapolation from non-random samples. This method uses a non-random sample of students chosen to derive the percentage of poverty in a school, such as those families personally know by the principal ("Principal's method") or the families of students who apply for financial aid (a non-random sample).
- Title 1 eligibility. This method uses eligibility for Title 1 funds as the criterion for estimating the level of poverty in a particular school. Some measures of poverty eligible under Title 1 are indirect estimates of poverty, and do not necessarily equate to the measure of poverty for E-rate, namely eligibility for NSLP.

EXHIBIT 12

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: 161690000612458
Applicant's Form Identifier: Johnston 2007 P1& BM
Application Status: CERTIFIED
Posting Date: 12/26/2006
Allowable Contract Date: 01/23/2007
Certification Received Date: 12/26/2006

1. Name of Applicant: JOHNSTON COUNTY SCHOOL DIST		
2. Funding Year: 07/01/2007 - 06/30/2008	3. Your Entity Number 126867	
4a. Applicant's Street Address, P.O.Box, or Route Number 2320 US 70 E		
City SMITHFIELD	State NC	Zip Code 27577
b. Telephone number (919) 934- 6031	c. Fax number (919) 989- 6277	
5. Type Of Applicant <input type="checkbox"/> Individual School (individual public or non-public school) <input checked="" 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 outlet/branch or library consortium, as defined under LSTA) <input type="checkbox"/> Consortium (intermediate service agencies, states, state networks, special consortia of schools and/or libraries)		
6a. Contact Person's Name: John Hughes		
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 <input checked="" type="checkbox"/> New Hope Foundation 534 Dogwood Drive		

City Chapel Hill	State NC	Zip Code 27516
Check the box next to your preferred mode of contact and provide your contact information. One box MUST be checked and an entry provided.		
<input checked="" type="checkbox"/> 6c. Telephone Number (919) 968- 4332		
<input type="checkbox"/> 6d. Fax Number (919) 929- 9074		
<input checked="" type="checkbox"/> 6e. E-mail Address jhughes@newhopetech.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 an 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.

<input checked="" type="checkbox"/> Check this box if you prefer discounts on your bill.	<input type="checkbox"/> Check this box if you prefer reimbursement after paying your bill in full.	<input type="checkbox"/> Check this box if you do not have a preference.
--	---	--

Service or Function:	Quantity and/or Capacity:
Local Service	5 locations
Long Distance Service	5 locations
Cellular Service	600 lines

Wide Area Network

40 locations up to 100 Mbs each

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 an 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

Up to 100 Mbs

Email

3,000 student accounts

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 an 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.

Service or Function:

Quantity and/or Capacity:

Switches

1 high school

Servers

DNCP/DNS for 1 high school

Cabling

1 high school

Servers

replacement email servers

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 an 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:
Basic Maintenance	All eligible equipment

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: **Terry Thompson** Title: **IT Director**

Telephone number
(919) 934 - 4361

Fax number
(919) 934 - 4752

E-mail Address
terrythompson@johnston.k12.nc.us

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	40
<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
919	284, 359, 365, 550, 553, 894, 934, 936, 963, 965

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
JOHNSTON COUNTY SCHOOL DIST	126867

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): 12/26/2006

29. Printed name of authorized person: Terry Thompson

30. Title or position of authorized person: IT Director

31a. Address of authorized person: 230 North Equity Drive
City: Smithfield State: NC Zip: 27577

31b. Telephone number of authorized person: (919) 934 - 4361

31c. Fax number of authorized person: (919) 9344752

31d. E-mail address number of authorized person: terrythompson@johnston.k12.nc.us

31e. Name of authorized person's employer: Jonston County School District

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

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FCC Form 470

Universal Service Program Description of Services Requested and Certification Form



Entity Number: 126867

Applicant's Form Identifier: Johnston 2007 P1& BM

Contact Person: John Hughes Phone Number: (919)968-4332

FCC Form

Approval by OMB
3060-0806

Do not write in this area

470

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

Form 470 Application Number: 161690000612458

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. 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. 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 statute 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 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 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 service 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 the 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.

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. Cert ID = 86491	28. Date 12/26/2006
29. Printed name of authorized person Terry Thompson	
30. Title or position of authorized person IT Director	
31a. Street Address, P.O Box or Route Number 230 North Equity Drive Smithfield, NC 27577	
31b. Telephone number of authorized person: (919) 934-4361	
31c. Fax number of authorized person: (919) 934-4752	
31d. E-mail of authorized person: terrythompson@johnston.k12.nc.us	
31e. Name of authorized person's employer: Jonston County School District	
<p>ATTENTION: If you are signing Form 470 using the PIN assigned to you by SLD, you are reminded that using the PIN is equivalent to your handwritten signature on the form. Your use of the PIN to affirm these certifications means that should they prove untrue, you will be held to the same enforcement standards as those who affirm the certifications on paper. Also, by using the PIN, you are affirming that you have the authority to make these certifications and represent the entity featured in Block One of this funding request.</p> <p>Please Check to affirm your compliance <input checked="" type="checkbox"/></p>	

Form 470 Application Number:
JOHNSTON COUNTY SCHOOL DIST
 2320 US 70 E
 SMITHFIELD, NC 27577-

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 SLD 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.

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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.

Done

EXHIBIT 13

School District: Johnston County Schools

Project or Service Description: Basic Maintenance

Vendor Scoring (use additional worksheets if necessary)

Vendor Name	Weight*	NWN		Raw Score	Weighted Score						
		Raw Score**	Weighted Score***								
Selection Criteria											
Price of Eligible Products/Services	21%	5	1.05		0		0		0		0
Product Certifications	20%	5	1		0		0		0		0
Previous Experience	20%	5	1		0		0		0		0
Project Management Capability	10%	5	0.5		0		0		0		0
References	15%	5	0.75		0		0		0		0
Location	14%	5	0.7		0		0		0		0
Other (describe)			0		0		0		0		0
Overall Ranking	100%		5		0		0		0		0

Vendor Selected: NWN
 Approved By: E.D. Hall
 Title: Asst. Super.

Notes:

* Percentage weights must add up to 100%. Price must be weighted the heaviest.

** Evaluated on a scale of 1 to 5: 1=worst, 5=best.

*** Weight x Raw Score

Date above must be after the 28 day posting of the 470 and before the signing of the contract (if any) and the submission date of the 471.