

August 15, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554

Re: CC Docket Nos. 02-6, 96-45, Request for Review by Net56, Inc. of Decisions of the
Universal Service Administrator for

Harrison School District 36: 2007 Funding Year FRNs 1531745, 1531757, 1531771, 1531783,
1531795; 2008 Funding Year FRNs 1753187, 1753238, 1753268, 1753317; 2009
Funding Year FRNs 1852702, 1852749, 1852785, 1852800
Posen-Robbins School District 143 ½ 2009 Funding Year FRNs 1908586, 1908687
Country Club Hills School District 2009 Funding Year FRNs 1853415, 1853424, 1853437
Round Lake Area School District 116, 2009 Funding Year, FRNs 1901504, 1901546, 1901579,
1901630 and 1901654

In its above-referenced appeals, Net56 explained that “Net56 initially contacted USAC in February 2006 to try to determine if its proposed contract structure was acceptable, and it walked away from those discussions believing that it had been given a go-ahead.” However, because these conversations were oral, we did not have any independent evidence to corroborate that these conversations occurred or that it was reasonable for Net56 to have believed that USAC was providing firm, reliable guidance.

Net56 recently discovered independent third-party documents that substantiate and confirm the facts presented in Net56’s appeals.

In February 2006, Net56 was bidding to provide e-rate services to the Zion School District, which was advised by well-known e-rate consultant Jerry Steinberg. Mr. Steinberg’s firm handles e-rate for approximately 100 school districts across the country. Mr. Steinberg emphatically informed the District that he believed that Net56’s plan to have the District pay for e-rate services through a leasing company would violate program rules. Net56 informed Mr. Steinberg that USAC had advised otherwise, but he was not persuaded, and the district withheld submission of its Form 471 so that it could seek guidance from USAC.

Mr. Steinberg then sent the attached letter to David LeNard, Ombudsman of USAC, on February 9, 2006. This letter, and Mr. Steinberg's attached emails from the next day describing his follow-up conversations with USAC, provide extraordinary confirmation that USAC was indeed expressing unequivocal agreement that Net56's contract model was acceptable. The following is evident from the letter:

- The letter confirms that Net56 had indeed contacted USAC at 888-203-8100 and had been told that Net56's lease model was compliant, and that this conversation had been documented as USAC Case #21358542.
- However, that did not come close to satisfying Mr. Steinberg. Mr. Steinberg stated that he had "serious differences of opinion," and believed that "the contract would need to be re-written" unless USAC would conduct an immediate "on-site" "audit to review the paperwork and determine what is in compliance" with program rules.
- Mr. Steinberg's letter makes clear that unless he was completely satisfied that USAC would approve Net56's contracts and lease model, he would not process the District's paperwork to participate in the e-rate program with Net56.

But a day later, Mr. Steinberg had completely changed tune. In the attached e-mail to Net56 entitled "Ombudsman ruling," Mr. Steinberg reported that Mr. LeNard of USAC had made clear to him that the lease model was acceptable to USAC, "confirming the conversation that [Net56] had with the [USAC] Kansas e-rate group on 2-10-06."¹ A day after Mr. Steinberg had been demanding a new contract unless USAC would conduct an "on-site audit" to review and approve the contract and lease documents, he now said that "Net56 can bill for services as is." Clearly, Mr. LeNard must have been decisive and persuasive in order to instill such confidence in a previously skeptical e-rate expert such as Mr. Steinberg.

Under these facts, it is grossly unreasonable for USAC, five years later, to change course and claim that the Districts did not pay for e-rate services because their funds were delivered to Net56 through an equipment lease agreement. It is all the more unreasonable for USAC to do so when that would result in a complete denial and reimbursement for every cent of every e-rate service provided by Net56 for all of the school districts it served for five years.

Net56 is not claiming that a service provider should be forgiven for a clear program violation simply because a USAC representative gave inaccurate advice. But where a denial is based on debatable interpretation, and the service provider has substantially complied in a manner that is ultimately consistent with program rules, the Commission should consider the inequity of permitting USAC to go back in time and deny up to five years of funding on the

¹ We believe the 2-10-06 Net56 call to USAC was a follow-up reconfirmation call to prior conversations.

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grounds that the service provider did exactly what USAC expressly previously told them they could do.

As we have explained, there is no dispute that Net56 in fact provided valuable, eligible services to the Districts. There is no dispute that during the competitive bidding period, Net56 quoted specific rates to the Districts for each eligible service, and that the Districts signed that proposed contract. There is no dispute that the Districts paid the leasing companies or that the leasing companies in turn paid the proper amounts for eligible services to Net56. There is no dispute that the Internet Access services were provided at cost-effective rates. There is no dispute that the Districts properly sought competitive bids, or that Net56 was the best offer available. USAC's only bases for denying all funding is that the Districts and Net56 supposedly failed to clearly allocate prices between eligible and ineligible services – even though they timely executed contract terms that did exactly that, and that the Districts failed to pay their share for the services – even though they clearly did pay through the leasing company, using a model that USAC in 2006 expressly told them they could use. For these reasons, Net56's appeal should be granted.

Respectfully submitted,



Paul B. Hudson
Counsel for Net56, Inc.

Attachments

cc: James Bachtell

NOTE to USAC E-Rate
ASKING For help and Aud IT
ED NETS6 Clients ZION6
and LINCOLNWOOD 74

TO: MR. DAVID LENARD, USAC
UNIVERSAL SERVICES ADMINISTRATION CORPORATION

FROM: JERRY STEINBERG, TELESOLUTIONS CONSULTANTS, LLC

DATE: FEBRUARY 9, 2006

SUBJECT: BILLING ISSUES

Mr. Lenard, it was nice talking with you the other day about a particular billing issue with a vendor Net 56, Inc. – a provider of Internet, Managed Services, Web Hosting and E-Mail Services to several of my school district clients.

I am Jerry Steinberg, of Telesolutions Consultants, LLC, and we are an independent consulting firm that works with 72 (seventy-two) K-12 school districts to help them manage their E-Rate programs.

I would like to provide a brief summary of the issues (as I see it) being the E-Rate professional working on behalf of the schools that rely on me for advice and to be in compliance with the program. Net 56, the aforementioned vendor, also has its view and I believe that an on-premise audit of the billing and paperwork would help to provide direction and avoid a lot of the confusion among all parties.

A Brief Summary –

For Funding Year 8 (7-1-2005 to 6-30-2006)

Zion Schools District 6 – 471 Application Number 480459 and FRN 1328142 for Internet access and Lincolnwood Schools 74 – 471 Application Number 480344 and FRN 1327842 for Internet Access are two of the four accounts that are in question today.

Lincolnwood Schools 74 – I have been working with Lincolnwood Schools on E-Rate for at least the past five years.

In Funding Year 7 (7/1/2004 to 6/30/2005) they claimed Net 56, as their service vendor for Internet Access for about \$995 per month or \$11,940 annually. This is on 471 Application 391061 and FRN 1085561.

In Funding Year 8 (7/1/2005 to 6/30/2006) Net 56 sought and was funded for \$16,666 per month or \$201,300 annually for Internet Access which included WAN, Web Hosting, E-mail and Internet access. Lincolnwood is in the 40% E-Rate discount level which means that the school district is responsible to pay Net 56 as the service provider a total of \$120,780 annually.

When the funding commitment was approved for Year 8, I congratulated the school district and explained that they would be responsible for the 60% share to Net 56, Inc., per E-Rate rules. The client explained that would not be possible as their contract was a lease with Academic Capital to whom they pay their monthly fee. I told the school district that they were responsible for their non-discounted portion to the Service Provider, which in E-Rate terms is the holder of the contract or in this case Academic Leasing.

I notified Net 56 that I would not process their Bear Forms, as they are NOT the E-Rate service provider – although, they provide service to the school district. In my past experiences with leases and E-Rate, we always had the lease company providing the SPIN and they were the responsible party.

Net 56 insisted that they were the service provider and that Academic Capitol was their "billing agent" or "financial arm" and that the contract had not been sold. The client, Lincolnwood Schools 74, stated that it was a lease. I called and spoke with James Harris, working on the E-Rate Customer Service 888-203-8100 and he verbally stated that if the vendor enters into a lease, whereby the school district's payments are remitted to a lease company or a bank that the lease company or bank then must provide a Service Provider ID Numbers or SPIN.

I was advised to obtain a written opinion which I did with Case # 21358598. Net 56 still insisted that their financial arrangement was with the bank or financial institution as a "financial arm" or billing agent only and that the contract stated so.

They called in to the E-Rate 888-203-8100 number and also asked for an opinion with Case # 21358542 that asks if a vendor can use a bank or a lease company to do its billing and that for cash flow reasons that this is easier on the school district's cash flow.

The answer they received was that yes a vendor or provider of services can use a billing agent or bank to bill for them.

We (Telesolutions Consultants, LLC) have serious differences of opinion (with Net 56, Inc.).

Zion Schools 6 - Another account that both we and Net 56 were involved with is Zion Schools 6.

They were approved for Internet Access for their Web Hosting, WAN/Internet Access, E-mail service, Firewall Services, for Funding Year 8 (7/1/2005 to 6/30/2006).

The Funding Commitment amount was \$167,280 or \$13,940 per month for services.

Zion Schools 6 is in the 82% E-Rate discount bracket - a poorer school district. We agreed to place quarterly Bear Forms or 472 Forms for collection for better cash flow to the school district. We placed a Bear Form for July, August, and September 2005 for Net 56 Services. The USAC paid \$41,820 to Net 56, Inc. as required by program rules.

When invoices were provided again to us for Bear Forms, to be placed for the second quarter - October, November and December 2005, they had Zion Schools 6 to remit to First Bank c/o of Net 56.

I stopped our Bear Form process until the USAC can rule whether Net 56 or its lease company is the correct E-Rate service provider and receiver of E-Rate funds.

In the case of Zion Schools, I met with the business manager, and spoke on a conference call with school district's lawyer, who stated that the Net 56 deal is definitely a lease between Zion Schools 6 and Millennium Leasing Company and that the original lease was "sold" or "assigned" to a financial institution - First Bank, which is to where Zion Schools 6 remits its payments..

I inquired, in writing, to the USAC on Case # 21-366886 on what is the ruling if Vendor A (Net 56) provides services but has a lease arrangement with Lease Company ABC (Millennium Leasing) which then has assigned or sold its contract to DEF Bank (First Bank). The USAC responded that DEF Bank would need to be the service provider and to provide a SPIN.

I informed the vendor, Net 56 and the Zion Schools 6, that the contract would need to be re-written with Net 56 being the owner of the contract or there would need to be a change of the SPIN to First Bank, in order for me to process the Bear Forms or paperwork.

I was told that the contract is NOT a lease but rather a "financial arm/outsource or billing agent" arrangement.

In Case # 21-369334, Bruce Koch from Net 56 asks about Discount billing (rather than Bear Forms) being used where Net 56 would bill Zion Schools or Lincolnwood or any other school district and discount the bill minus the approved E-Rate funding.

My answer was a vendor who OWNS the contract can discount the bill.

Our Request - The vendor, Net 56, Inc., Zion Schools 6 and I request an audit to review the paperwork and determine what is in compliance with E-Rate ruling.

I would appreciate an audit so that I can legally proceed to process the paperwork for Zion Schools, Lincolnwood and two other school districts where their billing issue is occurring.

Please contact me on my mobile phone 630.240.3056, or my office number 630.351.6200 or via e-mail at Jstele1@aol.com with any questions you might have on this memo and I appreciate your attention on this.

Thank you,

Jerry

Jerry Steinberg
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From: jstele1@aol.com
Sent: Friday, February 10, 2006 7:14 PM
To: Bill Spakowski; Bruce Koch
Subject: Ombudsman ruling

I spoke with the USAC Ombudsman tonight and he said that it does not matter if you have a lease or the lease is assigned confirming the conversation that Rick Terhune and Bruce Koch had with the Kansas E-rate group on 2-10-06.

Net 56 can bill for services as is.

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