

**Before The
Federal Communications Commission
Washington, D.C.**

In the Matter of)	
)	
Request for Review by)	CC Docket No. 02-6
Net56, Inc. of the Administrator’s Decisions)	
On Appeal – Funding Years 2007-2008)	CC Docket No. 96-45
)	
Schools and Libraries Universal Service)	Deerfield School District 109
Support Mechanism)	2007 FRNs 1533512, 1533526,
)	1533496,
)	2008 FRNs 1719892, 1720008
)	1719642

**REQUEST FOR REVIEW BY NET56, INC. OF THE DECISIONS OF THE UNIVERSAL
SERVICE ADMINISTRATOR**

Net56, Inc. (“Net56”) respectfully requests, pursuant to Sections 54.719 through 54.7123 of the Commission’s rules,¹ that the Commission review the Universal Service Administrative Company (“USAC”) Decisions on Appeal for Funding Years 2007 and 2008 with respect to the above-referenced FRNs (“Administrator’s Decisions”).² The Administrator’s Decisions were issued on August 16, 2013 and August 20, 2013 in response to a Letter of Appeal filed by Net56 on June 28, 2013.³

In its Letter of Appeal to USAC, Net56 provided detailed cost information and documentation to refute the premise of the partial denial of funding in the Revised Funding Commitment Decisions issued by USAC on April 30, 2013 and May 1, 2013. USAC’s decision,

¹ 47 C.F.R. §§ 54.719-54.723.

² The FCC Form 471 Application Numbers on which the above-referenced 2007 FRNs were submitted to USAC were 555940, 555954, and 555958. The FCC Form 471 Application Numbers on which the above-referenced 2008 FRNs were submitted to USAC were 621232, 621475, and 621477. Deerfield School District 109 is the Billed Entity for the applications, and its Billed Entity Number (“BEN”) is 135226.

³ See Administrator’s Decisions on Appeal for Funding Years 2007 and 2008, dated August 16, 2013 and August 20, 2013, attached hereto as Exhibit 1 (“Administrator’s Decisions”).

however, does not reflect any consideration whatsoever of the merits of Net56's detailed appeal, but states only that Net56 "did not show that USAC's determination was incorrect."⁴ This statement should not by itself suffice to deny an appeal where, as is the case here, USAC did not make any showing in the first place that its determination is correct. The only evidence ever offered by USAC in support of its decision is a statement of a Net56 employee made casually in the context of a different school district for a different funding year. While it is fair for USAC to demand that Net56 and the applicant justify the requested funding in light of the past statement, it is unfair for USAC to summarily deem its determination of reduced funding to be irrefutably proven by such statement, without any opportunity to prove otherwise. Net56 believes it should have the opportunity to have its case heard on its merits, which are set forth in Net56's Letter of Appeal to USAC attached hereto as Exhibit 2.

Respectfully submitted,



Paul B. Hudson
Davis Wright Tremaine LLP
1919 Pennsylvania Ave., NW, Suite 800
Washington, DC 20006-3401
(202) 973-4275
Counsel for Net56, Inc.

October 14, 2013

⁴ See Administrator's Decisions.

CERTIFICATE OF SERVICE

I, Debra Sloan, hereby certify that a true and correct copy of the foregoing *Request for Review by Net56, Inc. of the Decisions of The Universal Service Administrator* was mailed postage prepaid this 17th day of October, 2013 to the following:

Universal Service Administrative Company
Schools and Libraries Division
100 South Jefferson Road
P.O. Box 902
Whippany, New Jersey 07981

/s/

Debra Sloan

EXHIBIT 1



Universal Service Administrative Company
Schools & Libraries Division

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

August 16, 2013

Paul B. Hudson
Davis Wright Tremaine LLP
1919 Pennsylvania Ave. NW, Suite 800
Washington, DC 20006

Re: Applicant Name: DEERFIELD SCHOOL DISTRICT 109
Billed Entity Number: 135226
Form 471 Application Number: 555954
Funding Request Number(s): 1533512
Your Correspondence Dated: June 28, 2013

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 Revised Funding Commitment Decision 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): 1533512
Decision on Appeal: **Denied**
Explanation:

- The firewall component of the Net56 solution includes firewall protection at both the applicant's site and the Net56 data center. The Net56 data center is an ineligible location; accordingly, equipment located there is ineligible for funding. USAC has also determined that the firewall protection at the data center is redundant and therefore not eligible for funding under program rules. In Bruce L. Koch of Net56, Inc., February 22, 2009, response to USAC's information request regarding cost allocation of this firewall component of the Net56 solution indicated that the cost associated with the firewall equipment located at the Net56 data center was \$1,350.00 per month or \$16,200.00 annually. The funding request was reduced by that amount. In your appeal, you did not show that USAC's determination was incorrect. Consequently, your appeal is denied.
- FCC rules provide that funding may be approved only for eligible products and services. See 47 C.F.R. secs. 54.502, 54.503. The USAC website contains a list of eligible

products and services. See the website, www.usac.org/sl, Eligible Services List. FCC rules further require that if 30% or more of the applicant's funding request includes ineligible products and/or services, then the funding request must be denied, otherwise the funding request will be reduced accordingly. See 47 C.F.R. sec. 54.504(d).

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Donna Manners



Universal Service Administrative Company
Schools & Libraries Division

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

August 16, 2013

Paul B. Hudson
Davis Wright Tremaine LLP
1919 Pennsylvania Ave. NW, Suite 800
Washington, DC 20006

Re: Applicant Name: DEERFIELD SCHOOL DISTRICT 109
Billed Entity Number: 135226
Form 471 Application Number: 555958
Funding Request Number(s): 1533526
Your Correspondence Dated: June 28, 2013

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 Revised Funding Commitment Decision 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): 1533526
Decision on Appeal: **Denied**
Explanation:

- FRN 1533526 requested funding in the amount of \$10,000.00 per month for Internet access. The documentation submitted in support of this funding request each of the Net56 solution components included in this FRN separately. The FRN is broken into the following areas: Web Hosting service - requesting \$5,000.00 per month and Email service - requesting \$5,000.00 per month. In Bruce L. Koch of Net56, Inc., February 22, 2009, response to USAC's information request regarding the specific services included in the Web Hosting and Email service of this funding request, it was indicated that these services include Web retention, Web journaling, Email retention and Email journaling. Web and Email retention are archiving of information. Web journaling and Email journaling are applications. These products/services are ineligible under program rules. Net56 provided additional documentation that enabled USAC to appropriately revise your funding request and remove the costs associated with ineligible products and/or services. The cost associated with the ineligible products/services was determined to be

\$2,000.00 per month. In your appeal, you did not show that USAC's determination was incorrect. Consequently, your appeal is denied.

- FCC rules provide that funding may be approved only for eligible products and services. See 47 C.F.R. secs. 54.502, 54.503. The USAC website contains a list of eligible products and services. See the website, www.usac.org/sl, Eligible Services List. FCC rules further require that if 30% or more of the applicant's funding request includes ineligible products and/or services, then the funding request must be denied, otherwise the funding request will be reduced accordingly. See 47 C.F.R. sec. 54.504(d).

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Donna Manners



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

August 20, 2013

Paul Hudson
Davis Wright Tremaine LLP
1919 Pennsylvania Ave. NW, Suite 800
Washington, DC 20006

Re: Applicant Name: DEERFIELD SCHOOL DISTRICT 109
Billed Entity Number: 135226
Form 471 Application Number: 555940
Funding Request Number(s): 1533496
Your Correspondence Dated: June 28, 2013

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 Revised Funding Commitment Decision 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): 1533496
Decision on Appeal: **Denied**
Explanation:

- Net56 WAN solution was evaluated and it was determined that the DNS/DHCP server at the applicant's site, while eligible, it does not meet the requirements for being priority one, on premises Internet access equipment. This server would therefore be considered priority two internal connections. As a consequence of this determination, it was necessary to separate the total cost of this component of the Net56 solution into the two categories. In Bruce L. Koch of Net56, Inc., February 22, 2009, response to USAC's information request regarding cost allocation of the DNS/DHCP server portion of the WAN solution component and all associated Net56 services and activities indicated that its cost was \$205.00 per month per building. The Online Item 21 attachment indicates that the request was for 8 buildings. This equates to \$1,640.00 per month or \$19,680.00 annually. The funding request was reduced by that amount. For Funding Year 2007 there

were not sufficient funds to provide Internal Connections discounts or Basic Maintenance of Internal Connections discounts to applicants at your discount rate. Deerfield School District 109 discount eligibility for Funding Year 2007 was 20 percent. In your appeal, you did not show that USAC's determination was incorrect. Consequently, your appeal is denied.

FCC rules require that where demand for funding exceeds available support, first priority be given to requests for Telecommunications Services and Internet Access. See 47 C.F.R. sec. 54.507(g)(1)(i). FCC rules further require that requests for Internal Connections be given second priority and be funded only if funds remain after support has been reserved for Telecommunications and Internet Access through all discount levels in a funding year. See 47 C.F.R. sec. 54.507(g)(1)(ii). For schools and libraries that create consortia for the purposes of making funding requests and sharing products and/or services, the discount level is calculated by averaging the applicable discounts of the schools and libraries that are members of the consortia. See 47 C.F.R. sec. 54.505(b)(4). Because discount levels for consortia are determined in this manner, the discount levels for shared products and/or services requests are single discount level percentages rather than the broad discount level percentages for individual schools and libraries as determined by the matrix. See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21 and 96-45, Fifth Order on Reconsideration in CC Docket No. 97-21, Eleventh Order on Reconsideration in CC Docket No. 96-45 and Further Notice of Proposed Rulemaking, 14 FCC Rcd 6033, FCC 99-49 (rel. May 28, 1999). Where demand for discounts for Internal Connections exceeds available support, FCC Rules require that funding be allocated to the most economically disadvantaged schools and libraries as determined by the matrix. See 47 C.F.R. secs. 54.505(c), 54.507(g)(1)(ii). Consequently, where demand for discounts for Internal Connections exceeds available support, FCC rules require that funding be awarded first to applicants eligible for a 90 percent discount level and then at each descending single discount percentage until funds are depleted. See 47 C.F.R. sec. 54.507(g)(1)(iii).

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division

Universal Service Administrative Company

cc: Donna Manners



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2008-2009

August 16, 2013

Paul B. Hudson
Davis Wright Tremaine LLP
1919 Pennsylvania Ave. NW, Suite 800
Washington, DC 20006

Re: Applicant Name: DEERFIELD SCHOOL DISTRICT 109
Billed Entity Number: 135226
Form 471 Application Number: 621475
Funding Request Number(s): 1719892
Your Correspondence Dated: June 28, 2013

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 2008 Revised Funding Commitment Decision 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): 1719892
Decision on Appeal: **Denied**
Explanation:

- The firewall component of the Net56 solution includes firewall protection at both the applicant's site and the Net56 data center. The Net56 data center is an ineligible location; accordingly, equipment located there is ineligible for funding. USAC has also determined that the firewall protection at the data center is redundant and therefore not eligible for funding under program rules. In Bruce L. Koch of Net56, Inc., February 22, 2009, response to USAC's information request regarding cost allocation of this firewall component of the Net56 solution indicated that the cost associated with the firewall equipment located at the Net56 data center was \$1,350.00 per month or \$16,200.00 annually. The funding request was reduced by that amount. In your appeal, you did not show that USAC's determination was incorrect. Consequently, your appeal is denied.

- FCC rules provide that funding may be approved only for eligible products and services. *See* 47 C.F.R. secs. 54.502, 54.503. The USAC website contains a list of eligible products and services. See the website, www.usac.org/sl, Eligible Services List. FCC rules further require that if 30% or more of the applicant's funding request includes ineligible products and/or services, then the funding request must be denied, otherwise the funding request will be reduced accordingly. *See* 47 C.F.R. sec. 54.504(d). The FCC's Aiken County Public Schools Order directed USAC to permit the applicant 15 calendar days from the date of receipt of notice in writing by USAC to revise its funding request to remove the ineligible services or allow the applicant to provide additional documentation to show why the services are eligible. *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, File No. SLD-397612, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8735, FCC 07-61 para. 11 (May 8, 2007).

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Donna Manners



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2008-2009

August 16, 2013

Paul B. Hudson
Davis Wright Tremaine LLP
1919 Pennsylvania Ave. NW, Suite 800
Washington, DC 20006

Re: Applicant Name: DEERFIELD SCHOOL DISTRICT 109
Billed Entity Number: 135226
Form 471 Application Number: 621477
Funding Request Number(s): 1720008
Your Correspondence Dated: June 28, 2013

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 2008 Revised Funding Commitment Decision 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): 1720008
Decision on Appeal: **Denied**
Explanation:

- FRN 1720008 requested funding in the amount of \$10,075.00 per month for Internet access. The documentation submitted in support of this funding request each of the Net56 solution components included in this FRN separately. The FRN is broken into the following areas: Web Hosting service - requesting \$5,000.00 per month, Email service - requesting \$5,000.00 per month and Domain Registration - requesting \$75.00 per month. In Bruce L. Koch of Net56, Inc., February 22, 2009, response to USAC's information request regarding the specific services included in the Web Hosting and Email service of this funding request, it was indicated that these services include Web retention, Web journaling, Email retention and Email journaling. Web and Email retention are archiving of information. Web journaling and Email journaling are applications. These products/services are ineligible under program rules. Net56 provided

additional documentation that enabled USAC to appropriately revise your funding request and remove the costs associated with ineligible products and/or services. The cost associated with the ineligible products/services was determined to be \$2,000.00 per month. In your appeal, you did not show that USAC's determination was incorrect. Consequently, your appeal is denied.

- FCC rules provide that funding may be approved only for eligible products and services. *See* 47 C.F.R. secs. 54.502, 54.503. The USAC website contains a list of eligible products and services. See the website, www.usac.org/sl, Eligible Services List. FCC rules further require that if 30% or more of the applicant's funding request includes ineligible products and/or services, then the funding request must be denied, otherwise the funding request will be reduced accordingly. *See* 47 C.F.R. sec. 54.504(d). The FCC's Aiken County Public Schools Order directed USAC to permit the applicant 15 calendar days from the date of receipt of notice in writing by USAC to revise its funding request to remove the ineligible services or allow the applicant to provide additional documentation to show why the services are eligible. *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, File No. SLD-397612, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8735, FCC 07-61 para. 11 (May 8, 2007).

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Donna Manners



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2008-2009

August 20, 2013

Paul Hudson
Davis Wright Tremaine LLP
1919 Pennsylvania Ave. NW, Suite 800
Washington, DC 20006

Re: Applicant Name: DEERFIELD SCHOOL DISTRICT 109
Billed Entity Number: 135226
Form 471 Application Number: 621232
Funding Request Number(s): 1719642
Your Correspondence Dated: June 28, 2013

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 2008 Revised Funding Commitment Decision 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): 1719642
Decision on Appeal: **Denied**
Explanation:

- Net56 WAN solution was evaluated and it was determined that the DNS/DHCP server at the applicant's site, while eligible, it does not meet the requirements for being priority one, on premises Internet access equipment. This server would therefore be considered priority two internal connections. As a consequence of this determination, it was necessary to separate the total cost of this component of the Net56 solution into the two categories. In Bruce L. Koch of Net56, Inc., February 22, 2009, response to USAC's information request regarding cost allocation of the DNS/DHCP server portion of the WAN solution component and all associated Net56 services and activities indicated that its cost was \$205.00 per month per building. The Online Item 21 attachment indicates that the request was for 8 buildings. This equates to \$1,640.00 per month or \$19,680.00 annually. The funding request was reduced by that amount. For Funding Year 2007 there

were not sufficient funds to provide Internal Connections discounts or Basic Maintenance of Internal Connections discounts to applicants at your discount rate. Deerfield School District 109 discount eligibility for Funding Year 2007 was 23 percent. In your appeal, you did not show that USAC's determination was incorrect. Consequently, your appeal is denied.

- FCC rules require that where demand for funding exceeds available support, first priority be given to requests for Telecommunications Services and Internet Access. *See* 47 C.F.R. sec. 54.507(g)(1)(i). FCC rules further require that requests for Internal Connections be given second priority, and be funded only if funds remain after support has been reserved for Telecommunications and Internet Access through all discount levels in a funding year. *See* 47 C.F.R. sec. 54.507(g)(1)(ii). For schools and libraries that create consortia for the purposes of making funding requests and sharing products and/or services, the discount level is calculated by averaging the applicable discounts of the schools and libraries that are members of the consortia. *See* 47 C.F.R. sec. 54.505(4). Because discount levels for consortia are determined in this manner, the discount levels for shared products and/or services requests are single discount level percentages rather than the broad discount level percentages for individual schools and libraries as determined by the matrix. *See* Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21 and 96-45, Fifth Order on Reconsideration in CC Docket No. 97-21, Eleventh Order on Reconsideration in CC Docket No. 96-45 and Further Notice of Proposed Rulemaking, 14 FCC Rcd 6033, FCC 99-49 (rel. May 28, 1999). Where demand for discounts for Internal Connections exceeds available support, FCC Rules require that funding be allocated to the most economically disadvantaged schools and libraries as determined by the matrix. *See* 47 C.F.R. secs. 54.505(c), 54.507(g)(1)(ii). Consequently, where demand for discounts for Internal Connections exceeds available support, FCC rules require that funding be awarded first to applicants eligible for a 90 percent discount level, and then at each descending single discount percentage until funds are depleted. *See* 47 C.F.R. sec. 54.507(g)(1)(iii).

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Donna Manners

EXHIBIT 2

June 28, 2013

Letter of Appeal
Schools and Libraries Division – Correspondence Unit
100 S. Jefferson Rd.
P.O. Box 902
Whippany, NJ 07981
VIA EMAIL: appeals@sl.universalservice.org

To Whom It May Concern:

The purpose of this letter is to appeal the decisions set forth in the USAC Revised Funding Commitment Decision Letters regarding Funding Years 2007 and 2008 for Deerfield School District 109 (the “District”).

Identifying Information:

Appellant Name: Net56, Inc.
Applicant Name: Deerfield School District 109
Applicant BEN: 135226
Service Provider SPIN: 143025679
Funding Years: 2007 and 2008

2007 Form 471 Nos.: 555940, 555954, 555958
2008 Form 471 Nos.: 621232, 621475, 621477

2007 FRNs: 1533496, 1533512, 1533526
2008 FRNs: 1719642, 1719892, 1720008

USAC Actions: April 30, 2013 Revised Funding Commitment Decision
May 1, 2013 Revised Funding Commitment Decision

Appeal Contact:

Paul B. Hudson
Davis Wright Tremain LLP
1919 Pennsylvania Ave. NW, Suite 800
Washington, DC 20006
202-973-4275
paulhudson@dwt.com

Appeal

USAC has reduced funding commitments by the following amounts:

- \$205/month from the WAN Internet Access service for each IBM server (used to provide DNS and DHCP functionality for Net56’s Internet Access service) on the grounds that these servers should have been classified as providing internal connection instead of Internet access
- \$1350/month from the Firewall service for the firewall equipment at the Net56 data center, which USAC found to be an “ineligible location” and “redundant”; and
- \$1000/month from the Web Hosting services for archiving and journaling, which USAC found to be ineligible services.
- \$1000/month from the Email services for archiving and journaling, which USAC found to be ineligible services.

While USAC’s Revised Funding Commitment Decisions Letters did not clearly explain the basis of its decision, Net56 assumes that it is based on the same findings made by USAC for funding year 2009 for a different school district to which Net56 provided similar services.¹

I. The DNS/DHCP Server Was an Integral Part of Internet Access Service, Not an Internal Connection

USAC reduces the FRN by \$205/month from the WAN Internet Access service for each IBM server (used to provide DNS and DHCP functionality for Net56’s Internet Access service) on the grounds that these servers should have been classified as providing internal connection instead of Internet access.

The relevant Eligible Service Lists (ESL) expressly provide that Priority 1 Internet Access service can include Domain Name Service to translate the alphabetical names input by users into the IP addresses used by Internet devices and Dynamic Host Configuration Protocol to assist with providing devices with a unique address.² The ESL also provides eligibility for funding as a part of Internet Access for a “Wide Area Network” (WAN) that provides connections from within an eligible school location to other locations “if the service is limited to basic conduit access to the Internet and the offering is the most cost-effective means of accessing

¹ See Further Explanation of Administrator’s Funding Decision Letter regarding to Country Club Hills School District for Funding Year 2009 (March 26, 2010) (hereinafter “2009 Further Explanation Letter”).

² See, e.g., Schools and Libraries’ Eligible Services List for Funding Year 2007, pp. 6, 30-31.

the Internet.”³ Net56 deployed IBM servers at each premises to provide DNS and DHCP functionality for its Internet Access service, which was delivered via a WAN.

DNS is essential to Internet Access, as maps domain names to IP addresses so that users can access third party websites. DHCP is used to provide dynamic IP addresses to devices so that they may interact with the Internet. Net56’s Internet Access service could not have performed properly without these functions, and the use of the Internet Access service was the purpose for which this server was deployed. This is why these functions were included in the ESL, and USAC cannot dispute that Net56 is permitted to incorporate the cost of DNS and DHCP into its integrated Internet Access service.

While USAC did not clearly explain the basis of its decision, in a similar case, USAC decided that the servers were internal connections under the Commission’s *Tennessee Order*.⁴ USAC claimed that the servers “failed” the guidelines for rebutting an internal connection classification for two reasons. First, in the *Tennessee* case, the Commission found that the on-premises equipment should be included in Priority 1 funding because “the schools’ internal networks would continue to function without connection to the equipment.”⁵ For Net56’s typical service configuration in 2009, USAC found that Net56 “failed” to meet this criterion “because the DHCP/DNS service would not be able to function if the servers were removed.”⁶ But that is not the question. Of course DNS and DHCP would have been affected by removal of the equipment that was performing those Internet Access functions. The question is whether the District’s internal networks would have continued to function during the funding years at issue in this appeal without Net56’s DNS/DHCP service, and the answer is yes, because the DNS/DHCP functions were part of the Internet Access service. This indicates that the server was *not* actually part of the schools’ internal connections.

Second, USAC’s 2009 funding year letter points to the *Tennessee* test factor that on-premises equipment would appear to warrant Priority 1 classification where “There is no contractual, technical, or other limitation that would prevent the service provider from using its network equipment, in part, for other customers.” USAC found that the servers “failed” this part of the test “because the servers are located at an applicant site; as such, it would not be possible for the vendor to utilize the same servers to provide DNS/DHCP service to another customer.” This is not the FCC’s test. By definition, the *Tennessee* test is applied to equipment on the premises of the school, so it cannot be that equipment would fail it if located on school premises. USAC’s circular reasoning would obliterate the meaning of the FCC’s *Tennessee Order*, which in fact did find that certain on-premises equipment should have been classified as Priority 1.

³ *Id.* at p. 7.

⁴ See 2009 Further Explanation Letter, citing *In Re Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator*, Order, 14 FCC Rcd 13734 (FCC rel. Aug. 11, 1999) (hereinafter “*Tennessee Order*”).

⁵ *Tennessee Order*, ¶ 38.

⁶ See 2009 Further Explanation Letter.

While of course the location of the equipment at the time made it less likely that it would be used for other customers, Net56 could re-locate the equipment because it retained ownership. The relevant test is only that “There is no contractual, technical, or other limitation that would prevent the service provider from using its network equipment, in part, for other customers.” There was no such limitation.

The reality is that the servers were an integrated part of Net56’s basic Internet access service. The server was the beginning and end point of the Internet Access service so that devices at the schools could utilize the service. By contrast, Internal Connections are “components located at the applicant site that are necessary to transport information to classrooms, publicly accessible rooms of a library, and to eligible administrative areas or buildings. Internal Connections include connections within, between or among instructional buildings that comprise a school campus or library branch, but do **not** include services that **extend beyond** the school campus or library branch.”⁷ Net56’s Internet Access service, including its DNS and DHCP functions, of course did “extend beyond” the District’s premises.

In this case, the servers were provided by Net56, the same service provider that provides the eligible Internet access service. Net56 had responsibility for maintaining the equipment, not the District. Net56 retained ownership of the equipment, even today, and it will not transfer to the District. The agreements between the parties do not contain any option for the District to purchase the equipment. Net56 did not charge any upfront, capital charges for the equipment, but instead bore such costs itself to be defrayed through the ongoing price of the services. All of these are factors that USAC has considered to weigh in favor of a Priority 1 classification.

For all of these reasons, the servers are an integral part of the basic Internet Access service and not internal connections. Therefore, USAC should not reduce funding for the portion of the Internet Access WAN that Net56 previously allocated to the DNS/DHCP servers.

II. The Firewall Service Should Not be Partially Defunded for Locating Equipment in the Net56 Data Center

USAC reduced its funding commitment for the firewall service by \$1350/month, presumably upon the same grounds as USAC denied funding for subsequent years: that (1) the “Net56 data center is an ineligible location” and (2) “since the funding request includes the firewall capability of the software running on the switch, which is located at the point of entry of each building, it has been determined that the equipment located at the Net56 data center is redundant and therefore ineligible for that reason as well.”⁸

It is puzzling that USAC would argue that funding would not be appropriate for services powered in any part by equipment located in the service provider’s data center. Such a rule

⁷ Schools and Libraries’ Eligible Services List for Funding Year 2007, p.9 (emphasis added).

⁸ See 2009 Further Explanation Letter.

would render ineligible every Internet Access service, and it is particularly strange when USAC has at the same time faulted Net56 for locating its DNS/DHCP servers on school premises rather than in its data center. The presence of some firewall functionality at more than one location is not “redundant.” Net56’s best-practice standard firewall service, which it provides to its commercial customers as well, permits customers to tailor its firewall needs for each location, rather than requiring all customers to have the same service, and this required the presence of firewall functionality at the premises and the data center. In addition, the service could not be as robust if all firewall functions were only in one location. It is true of many services that portions of functionalities are performed by multiple pieces of equipment that may be at multiple locations: just as Internet Access service may be powered by a modem and router at the customer premises and by network equipment at the provider’s data center. Therefore, USAC has not identified any valid reason why funding for the firewall service should be partially reduced. Finally, we note that it would be particularly unjust to reduce funding based upon an unclear basis when the FCC acknowledged at the time that the “eligibility of firewall service is now ambiguous and confusing.”⁹

III. The Funding Reduction for Archiving and Journaling is Excessive

Net56 acknowledges that it provided retention (archiving) and journaling functionality in connection with its Web Hosting and Email Services, and that these functions are ineligible for e-rate support. However, the incremental cost to Net56 for these functions was much, much smaller than the \$1,000 per month per service sought by USAC. A Net56 representative provided that figure to USAC in 2009 when asked about these services. That person is no longer with the company, and we have been unable to determine the source of his information. It may be that he estimated the cost of purchasing these services separately using different, stand-alone equipment. If so, that is not a reasonable method for determining the portion of the funding request to allocate to the ineligible function in this case, because a stand-alone solution would be much more expensive. The equipment that Net56 needed and used in any case to deliver the *eligible* services was able to perform the retention and journaling functions with only one additional incremental cost for storage. Net56 purchased two 500 GB IBM-39M4554 hard drives for the District for \$526 each to provide storage for both of these two services, combined – far less than the \$24,000 per year funding reduction.

In the attached Exhibit, Net56 has used the same formula employed in other successful appeals to USAC to generate a monthly service price allocable to these hard drives. This formula adds 50% for installation cost and 50% annually for maintenance, and 11.25% for Net56’s overhead, spread over 36 months. Using this formula, the hard drives represent \$60.30 per month per service. USAC should limit its reduction in funding to this amount per month, for a total reduction of \$723.60 ($\60.30×12 months) for each of the services.

⁹ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, 23 FCC Rcd 11703, ¶ 20 (2008).

Letter of Appeal
Schools and Libraries Division – Correspondence Unit
June 28, 2013
Page 6

Conclusion

For the foregoing reasons, USAC should grant Net56's appeal and restore funding for 2007 FRNs 1533496, 1533512, and 1533526 and 2008 FRNs 1719642, 1719892 and 1720008.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. Hudson", written in a cursive style.

Paul B. Hudson
Counsel for Net56, Inc.

cc: Deerfield School District 109

Net 56, Inc.

Email and Web Hosting Retention and Journaling Allocation

	Cost per	Install	Total of	Monthly Cost	Monthly	Monthly	Total Monthly	Number	Monthly
Equipment	Hard Drive	Cost	Equipment	Spread over	Maintenance	Overhead	Allocation	of	Allocation
			and Install	36 months	for 12 months	Costs	Per Hard Drive	Hard Drives	(Both Services)
IBM-39M4554 500 GB Hard Drive	\$ 526.00	\$ 263.00	\$ 789.00	\$ 21.92	\$ 21.92	\$ 16.47	\$ 60.30	2	\$ 120.61
Equipment Cost and Install spread over a 36 month period.									
Maintenance Cost per month									
Equipment must be replaced on average after 36 months.									
Overhead of 11.25% added for operations, cost of money and other overhead expenses									