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Federal Communications Commission
445 12th St., S.W.
Washington, DC 20554
Attn: Application for Review

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Re: APPLICATION FOR REVIEW TO THE FULL COMMISSION.

In The Matter of Administrator's Decision on Appeal dated December 5, 2012, For Funding Years 2008 and 2009, And Administrator's Decision on Appeal - Funding Year 2008-2009 and 2009-2010.

APPLICATION FOR REVIEW TO THE FULL COMMISSION

CC Docket No. 02-6; Docket No. 96-45

Applicant Name: Zion Elementary School District 6
Billed Entity Name: Zion Elementary School District 6
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Requesting Appeal From: Funding Commitment Decision Letters, dated February 2, 2010

Billed Entity Number: 135356

Funding Request Numbers: 1755454, 1755495, 1755527 and 1890106, 1890232, 1890293, 1890346, 1890373

Date of Funding Decision Commitment Letters: February 2, 2010.

Date of Administrator's Decision on Appeal: December 5, 2012.

Date of Order Before Federal Communications Commission: August 30, 2013.

Funds to be recovered: Funding Year 2008: \$248,724.00. Funding Year 2009: \$352,760.00

To Whom It May Concern:

Zion Elementary School District 6 (District 6), by their attorneys, Hinshaw & Culbertson, LLP, respectfully requests, pursuant to Sections 54.719 through 54.723 of the Commission's rules, that the Full Commission review and reverse the Federal Communications Order of August

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30, 2013, which affirmed the decision on Appeal of Universal Service Administrative Company ("USAC") for Funding Years 2008-2009 and 2009-2010 and the associated USAC funding commitment decision of the above referenced FRN's. The original decision of the administrator was issued on February 2, 2010 (Exhibit A), the Administrator's Decision on Appeal was December 5, 2012 (Exhibit B) and the Commission's Order was dated August 30, 2013 (Exhibit C).

For the reasons set forth herein, the Full Commission should grant Zion Elementary School District 6's appeal of the Administrator's Decision and remand the underlying funding application to USAC for immediate approval, as there exist special circumstances which justify a waiver of the original filing deadline.

I. Summary Of Issues On Review.

On February 2, 2010, Zion Elementary School District 6, (hereinafter District 6) was served with correspondence entitled: "Funding Commitment Decision Letter. Funding Year 2008: July 1, 2008 - June 30, 2009," "Funding Commitment Decision Letter. Funding Year 2008: July 1, 2009 - June 30, 2010," and letters including a "Further Explanation of Administrator's Funding Decision." (See Exhibit A.)

In total, USAC denied funds totaling \$248,724.00, for funding year 2008, and funds totaling \$352,760.00, for funding year 2009.

District 6 will demonstrate that special circumstances did exist which justify a waiver of the original filing deadline. The decision on Appeal by USAC and the Commission Order of August 30, 2013, both cite the lateness of the filing as the only reason for the denial. The original denials were made by USAC on February 2, 2010 and April 7, 2010. District 6 filed their first appeal to USAC on October 24, 2012 (See Exhibit D). While this is well beyond the sixty day limit set by the Commission Rules, District 6 will demonstrate that there was good cause for the delay.

USAC originally cited the following basis for their denial of funds, and each of which have been already resolved by the Commission in the applicants favor in prior orders involving the same issues and provider as involved herein.

- 1) Funding was requested for servers, which may have been eligible but for the manner in which Net56 employed the servers. The servers failed the Tennessee Order requirements and is not eligible for Priority One Reimbursement.
- 2) Funding was requested for certain services which were not eligible services.
- 3) That the wrong contract was provided for review.
- 4) That all of the requests were determined not to be cost effective, and that the applicant failed to select the most cost effective

approach, with price being the primary factor.

(See Exhibit A).

District 6 has filed appeals for COMAD requests by USAC for Funding Years 2005, 2006, 2007 and 2008. Those letters are dated September 8, 2011, and April 4, 2012. (See Exhibits E and Exhibit F). The facts and arguments in those appeals, as well as the request for review to the FCC for funding years 2008 and 2009 filed on January 28, 2013 (Exhibit G), should be read together with this letter of appeal. All of the issues raised in these appeals have already been ruled upon by The Commission in resolving other matters involving Net56.

The FCC and USAC have ruled on a bulk of those Funding Years as they deal with District 6. The vast majority of the funding has been reinstated, and USAC is only seeking a small amount returned for funding years 2006 and 2007 from Net56, the service provider (See Exhibits H and I). At this time, that decision is under review with the FCC (See Exhibit J). Therefore, if the request for review is allowed, a substantial amount of funding, which was wrongfully denied, should be reinstated to District 6. This makes the only substantial issue under review, the issue of timeliness.

II. Statement Of Facts.

Zion Elementary School District 6 is located in Northern Illinois and is one of the poorest school districts in Illinois. District 6 spending per pupil is far below the Illinois State average, and at the time of initial filing, 75% of the student population came from low income households (See Exhibit K). Further, District 6's E-Rate discount rate in 2005 was 82% and, in 2008, District 6 reached the 90% discount rate.

Net56 first contacted District 6 sometime in 2004 with a plan to outsource their entire Information Technology Department. Bill Spakowski, the salesman for Net56 who sold District 6 this technology solution, stated at his discovery deposition that the first time he remembered visiting District 6 was sometime in January of 2005 (See Exhibit L, Page 34). Mr. Spakowski testified that he identified District 6 as a potential sale because it fit a particular sales profile: "Potentially a high E-Rate district that would be able to take advantage of the E-Rate eligible services to provide a better solution for the school district." (See Exhibit L, Pages 70-71)

Mr. Spakowski further testified that he first learned about E-Rate availability to school districts in the fall of 2004 (See Exhibit L, Page 30). In reviewing the eligible service list in USAC, he determined that E-Rate created a sales opportunity for customers whom Net56 had not worked with yet (See Exhibit L, Page 29). Therefore, Net56 targeted District 6 as it enabled Net56 to sell more services to a District because of their high E-Rate discount. District 6 was the first District Spakowski sold based on this marketing plan (See Exhibit L, Page 33).

Don Robinson was the assistant superintendent of business for District 6 in 2004 and 2005 but is currently employed by Net56 as an operations manager (See Exhibit M, Pages 12 and 29). Mr. Robinson led the evaluation of bids and the selection process for District 6 in 2005 (See Exhibit N, correspondence drafted by Don Robinson dated April 27, 2009). Net56 delivered to District 6 a full quote for their products and services dated January 19, 2005 (See

Exhibit O, a copy of the January 19, 2005, quote.). In that document, Net56 claims "Net56 is a(n) eligible service provider therefore providing services for which applicants may seek E-Rate discounts." (See Exhibit O, Page 6). Net56 also outlined a number of ways in which retaining Net56 was "Cost Effective with Immediate Cost Savings." (See Exhibit O, Page 6). This quote further identified a Monthly Service Fee of \$29,095.00, and stated that \$17,000.00 of same met Priority One Reimbursement, with the remainder meeting Priority Two Reimbursements (See Exhibit O, Page 12). This document demonstrated how Net56 was cost effective in comparison to the District's current environment, with nearly \$200,000.00/year in savings (See Exhibit O, attachments)

Mr. Robinson signed a document entitled "Zion School District 6 Internet Access Quote", which was drafted by Net56. The document is dated February 15, 2005 and was signed by both Bruce Koch (the President of Net56) and Mr. Robinson. It provides that Net56 would provide WAN/Internet Access, Firewall, Web Hosting, and Email Local and Web at a monthly cost of \$17,000.00 and a yearly cost of \$204,000.00. It also breaks down the costs associated with the various services (See Exhibit P, Zion School District 6 Internet Access Quote, attached). It became the standard operating procedure to execute this Internet Acces Quote in subsequent filing years, which became the basis for Priority One funding requests (See Exhibit Q, Internet Acces Quotes signed for Funding Years 2006, and 2007).

The Board of Education thereafter signed and ratified a contract between the parties on February 28, 2005. This included the contract and finance agreement, which required District 6 to pay a monthly fee of approximately \$30,000.00 per month. This contract was the contract which was the basis for Priority One Funding, when read together with the internet access quote for that particular year. This agreement also included a financing arm.

Between 2005 and 2009, USAC allowed a total of \$755,406.00 in BEAR reimbursements to District 6. In excess of \$600,000.00 was denied by USAC for Funding Years 2008 and 2009, and which consists the monies sought returned in this application for review.

III. Timeliness of the Appeal.

Both USAC and the Chief denied the attached requests for review solely on the issue of timeliness (Exhibits B and C). The FCC in its order recognizes that the Commission may waive any provision of its rules for good cause shown pursuant to 47 C.F.R. Sec. 1.3 (See Exhibit C). Therefore, the question is whether District 6 can demonstrate good cause for granting a waiver for the filing of this request for review after the 60 day deadline. Thereafter, if a review is allowed, there must be a reinstatement of a significant portion of the funding which was previously denied pursuant to precedent set by the FCC and USAC.

While District 6 admits that they did not file their request for review from the denials for Funding Years 2008-2009 and 2009-2010 within the sixty day rule set by the Commission, the appeal should nevertheless be read as timely under these circumstances. First, there is currently in place an ongoing appeal review process dealing with all of the same issues which existed in the original denials for funding years 2008 and 2009. USAC had originally sought the return of all funds for funding years 2005, 2006, 2007 and 2008, an amount in excess of \$755,000.00. Both District 6 and Net56 filed separate appeals for these funding years. Currently, the FCC has

ruled on Net56's request involving funding years 2006, 2007 and 2008. The FCC allowed the appeal and remanded the issue to USAC for reinstatement of funding (See Exhibit R). Thereafter, USAC reinstated all but a small portion of the funding, and seeks to recover that portion from the Service Provider, Net56 (Exhibit S).

Net56 has sought review of the most recent decision by USAC with the FCC, which is currently pending (See Exhibit J).

District 6 had filed requests for review with USAC for funding years 2006, 2007 and 2008. USAC has followed the precedent set by the FCC in their decision. Therefore, USAC is not seeking any additional monies from District 6, and is only seeking those monies requested from the service provider, Net56, for funding years 2006, 2007 and 2008 (See Exhibit T). The only outstanding appeal for funding years 2006, 2007 and 2008 is the one filed by Net56 with the FCC (See Exhibit J).

A. District 6 Was Wrongfully Denied Funding For Funding Years 2008 and 2009.

District 6 was improperly denied E-Rate Funding in Funding Years 2008 and 2009 by USAC. As the justifications for the denials in Funding Years 2008 and 2009 were identical to the justifications for the COMAD requests for funding years 2005, 2006, 2007 and 2008, and as the vast majority of the COMAD requests have been overturned by the FCC, it is now clear that the reasons relied upon by USAC for the 2008 and 2009 denials were improper. Therefore, precedent would demand if the Commission grants a waiver in this case for the timeliness of the filing of a review, then the vast majority of the funding should be reinstated.

It should be further noted that there has yet to be a final decision on Funding Year 2005. USAC sent the request for the return of funding more than five years after the final date of services received for Funding Year 2005-2006 (See Exhibit E). District 6 was notified of the request on July 12, 2011, and the last date of services received was on June 30, 2006. Therefore, this request was filed outside of the five year limitations period set by the FCC in the Fifth Report and Order. FCC 04-190, Para. 33. Even more curiously, USAC responded to this issue in their decision for funding year 2006; however, District 6 did not raise the five year limitations period for funding year 2006 (See Exhibits F and T). Based on the precedent set for Funding Years 2006, 2007 and 2008, it should be anticipated that the request for review for funding year 2005 will also eventually be allowed.

This is further highlighted by a number of decisions from the FCC. In Harrison, Posen-Robbins and Country Club Hills, the FCC reviewed and overturned USAC's decisions. In Harrison, the FCC points out that Net56 described its services to all of their districts and commercial clients as a centralized solution that housed most of the equipment at the Net56 location. Net56's solution was described as "robust and reliable" that used specific switches and firewall software for all of its applicants. Net56 demonstrated that their pricing differed based on the needs of the client (See Exhibits U, V and W). Nevertheless, USAC initially denied funding for all of the exact same services from the exact same provider.

Nevertheless, as the reasons for the denials and the COMAD requests for the return of funds were all based on the exact same reasons, and as the FCC has overturned those USAC decisions, the initial denial for funding years 2008 and 2009 must have also been improper and a substantial amount of monies, near \$600,000.00, were improperly denied to exactly the type of school district E-Rate seeks to help.

B. USAC Placed Funding Year 2008 At Issue On February 8, 2012.

It is very important to note, that USAC themselves placed funding year 2008 at issue when they sought the return of \$108,000.00 in funding on February 8, 2012. District 6 responded by filing a request for review in a timely manner on April 4, 2012 (See Exhibit F). Furthermore, that request for the return of funding was based on the same decisions which USAC initially denied \$600,000.00 of funding for District 6 in funding years 2008 and 2009.

Therefore, justice would demand that all of the Funding for Funding Year 2008 be reviewed as USAC themselves sought the return of a portion of disbursed 2008 funds. USAC is allowed to seek the return of funds for up to five years after they were disbursed, yet the applicant school district is not allowed the same amount of time to file an appeal when new information may be discovered at a later time, which exists in this case.

C. At The Time Of The Denial District 6 Was Concerned With The Reasons Net56 Was Being Investigated.

At the initial time of the denial, District 6 understood Net56's practices to be under investigation by USAC. District 6 further understood that waste, abuse and fraud were all top priority concerns at USAC, and the District had every reason to believe that this was why Net56 was being investigated, and funding for Net56 services was being denied. District 6 understood that the denials for funding years 2008 and 2009 were ultimately a universal denial of all funding where Net56 was a provider. USAC claimed Net56 was not "cost effective" which would sound to any lay person as "abuse of the E-Rate system."

As a result, District 6 believed that it would appear to USAC that District 6 was siding with Net56 if they had filed a timely appeal. District 6 did not want to create an impression that the District was somehow an accomplice in whatever Net56 was being investigated for. Therefore, at the time, the safest course would be to not file an appeal. In fact, as a result of the denials, District 6 reviewed the terms of the prior relationship with Net56 and determined to initiate litigation against them.

D. Net56 Shielded District 6 From Information Which District 6 Sought In An Attempt to File An Appeal.

In light of the above concern, District 6 began asking questions and voicing concerns with Net56, and Net56 shielded information from District 6 throughout the process, which made it difficult if not impossible for District 6 to file an appeal for Funding Years 2008 and 2009. During July and August of 2009, District 6 began to request information from Net56 in an attempt to reconstruct prior events, and determine what had happened to nearly \$700,000.00 of

reimbursements which had never been turned over to the District. The initial investigation lead to Net56 paying approximately \$334,000.00 back to District 6 as BEAR reimbursements

Furthermore, District 6 was faced with the significant issue of cost effectiveness. District 6 inquired as to Net56's billing practices, and essentially had no independent means to verify the actual costs to Net56 and their billing structure. In fact, Net56 did not submit this information to anyone until their counsel filed correspondence with the Commission dated July 31, 2012. This was the first time that Net56 had delivered this information to any third party as far as District 6 knows, and furthermore, this justification was never directly provided to District 6, despite the fact that there was ongoing litigation with Net56 at the time and requests for such documents were made in discovery. District 6 only discovered these filings while reviewing the Commission's orders attached at Exhibits U, V and W, as it was referenced therein.

As further evidence of the lack of information that was within the District's control, on September 22, 2009, John Ahlgrim, Superintendent for District 6, wrote to Net56 requesting:

- 1) Any amendments, correspondence or any other written communication demonstrating that District 6 had requested an upgrade in services.
 - 2) An engineering study that demonstrated that the District required an increase in bandwidth.
 - 3) Documentation as to costs associated with the increased services; and,
 - 4) Copies of Forms 471 and Item 21 attachments for Funding Years 2007, 2008 and 2009, as the District could not retrieve them.
- (See Exhibit X, a copy of the September 22, 2009, correspondence.)

On November 12, 2009, District 6 again made certain requests to Net56, Inc. in an attempt to comply with the USAC rules and pending requests for information, and to prepare for the eventual possibility of needing to file an appeal. At that time, District 6 requested:

- (1) A chart that differentiates for us the eligible and ineligible services, and accompanying costs, that are covered under the first contract between Net56 and District 6.
 - (2) A report detailing the bandwidth utilization in District 6. Please differentiate between bandwidth in, out and between buildings within the District.
- (See Exhibit Y, a copy of the November 12, 2009, correspondence).

Net56, failed to provide the information requested. Thereafter, on December 4, 2009, District 6 again wrote to Net56 making these same requests for information. (See Exhibit Z, a copy of the December 4, 2009, correspondence.) Again, Net56 failed to provide the requested information to the District.

Therefore, given the concerns District 6 had with the appearance of impropriety given the ongoing investigation into Net56, and the fact that Net56 appeared to be shielding information from District 6 and any attempt they could make at launching a defense of a denial of funds, an environment was created where District 6 did not feel they could file a request for review in good faith.

E. District 6 Should Be Allowed A Waiver Under These Circumstances To Have Their Request For Review Heard.

Therefore, as USAC has made these appeals timely by their COMAD requests, and that District 6 was never provided all the information they felt was required to file a timely appeal by Net56, the Commission should waive the sixty day rule, and accept these appeals as timely. Furthermore, District 6 did not want to give the appearance to USAC that they were somehow complicit in improper activities by their service provider at the time, and now having the Commission's reversal of USAC's prior decisions involving Net56, it is proper to allow District 6 to file this response as timely.

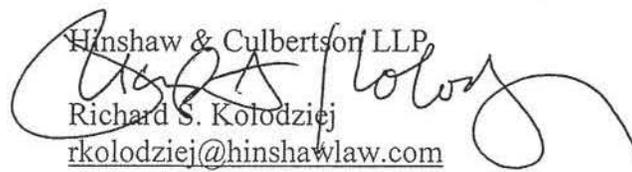
IV. Conclusion And Prayer For Relief.

Zion Elementary School District 6 requests that the Commission reverse and remand the decision of USAC for Funding Years 2008 and 2009 and approve the requests. District 6 relied upon the claimed expertise of Net56 in providing E-Rate eligible equipment and services and on additional representations made by USAC. District 6 received no "free" services and has demonstrated same with the documents submitted. District 6 additionally implemented a cost-effective strategy in selecting Net56, made all payments required of them under the Contract, and further demonstrated that USAC did not review the proper contract when they made their funding denials for years 2008 and 2009.

Furthermore, the FCC should allow a waiver of the sixty day rule pursuant to 47 C.F.R. Sec. 1.3, as District 6 can demonstrate ample reasons for its failure to file the same in a timely manner. There were significant concerns with Net56 and the possibility of impropriety. Additionally, Net56 shielded information from District 6, and justice now demands that the funding be reinstated as clearly the initial reasons for the denial by USAC were improper. District 6 was wrongly denied as much as \$600,000.00 in Funding.

District 6 services a low income community and attempted to follow each and every rule and regulation of USAC and the E-Rate process. In contracting with Net56, District 6 attempted to provide a better educational environment for its students. Indeed, the E-rate program was designed for school districts just like District 6 to provide better access to the Internet for their students. District 6 respectfully requests that the decision be overturned for the reasons stated and argued above.

Very truly yours,

Hinshaw & Culbertson LLP

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Enclosures