

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Requests for Waiver and Review of
Decisions of the
Universal Service Administrator by
Connect2 Internet Network, Inc., et al.
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-184985 et al.
CC Docket No. 02-6

ORDER

Adopted: October 16, 2018

Released: October 16, 2018

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this Order, we address seven requests for review and waiver filed by Connect2 Internet Networks, Inc. (Connect2) and one filed by Community Academic Prep. All concern decisions by the Universal Service Administrative Company (USAC) related to funding requests under the E-Rate program (more formally known as the schools and libraries universal service support program) for funding years 1998, 1999, and 2000.

2. We deny five requests for review because the underlying appeals were filed late with USAC. We deny two requests on the basis that Connect2: (1) violated its obligation to ensure compliance with the non-discount share requirement through its independent billing and collection responsibilities; (2) sought E-Rate support for providing services other than the services that the applicants applied for and that USAC approved; and (3) sought E-Rate support for providing services outside of the funding year for which they were granted. We grant one request, in part, on the basis that the record before us does not reflect that USAC had sufficient documentation to substantiate its finding of a rule violation; thus, we remand that request, in part, to USAC for further consideration.

1 See Appendices A-F. Additionally, we dismiss as moot an appeal filed by the Cathedral School. See Letter from Alex Mastoras, Administrator, Cathedral School, to Office of the Secretary, FCC, CC Docket No. 02-6 (filed Mar. 21, 2005). USAC has already taken the petitioner's requested action of directing recovery for certain violations against Connect2. See Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Al-Noor High School et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 27 FCC Rcd 8223, 8224, para. 2 (WCB 2012) (dismissing as moot requests for review where USAC had taken the action the petitioner requested).

2 For a list of all funding requests associated with each late-filed request for review, see Appendix A.

3 Appendices B, C, and D contain a list of the funding requests associated with these appeals.

4 See Appendices E and F.

## I. BACKGROUND

### A. Legal Background

3. The E-Rate program provides eligible schools, libraries, and consortia that include eligible schools and libraries funding for the purchase of telecommunications, telecommunications services, Internet access, internal connections, basic maintenance of internal connections, and managed internal broadband services.<sup>5</sup> To obtain support, an applicant must comply with the Commission's competitive bidding rules, enter into an agreement with a service provider, and file an FCC Form 471 with USAC to request E-Rate discounts for the purchase of the services.<sup>6</sup> The completed FCC Form 471 notifies USAC of the eligible services the applicant has ordered from the service provider, and provides the amount of E-Rate funds the applicant is requesting for those eligible services.<sup>7</sup> Applicants must limit their funding requests for a particular funding year to only those services that they will use within that funding year.<sup>8</sup> Applicants may apply for universal service discounts ranging from 20 percent to 90 percent of the price of eligible services (based on indicators of the applicant's need), and applicants must pay the balance.<sup>9</sup> The percentage of the price paid by USAC for eligible services is generally referred to as an applicant's "discount rate,"<sup>10</sup> and the amount paid by the applicant is referred to as the "non-discount share."<sup>11</sup> After reviewing the completed FCC Form 471, USAC issues a funding commitment decision letter (FCDL) indicating the E-Rate funding, if any, the applicant is approved to receive.

4. The Commission's rules require applicants to pay the non-discount share of any purchases subject to E-Rate discounts and prohibit the selected service provider from paying (and applicants from receiving from the selected service provider) any portion of the applicant's non-discount share of the costs of E-Rate eligible services.<sup>12</sup> Service providers are also required to make a bona fide

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<sup>5</sup> 47 CFR § 54.502(a).

<sup>6</sup> See 47 CFR § 54.504(c) (2001).

<sup>7</sup> See *id.*; Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000).

<sup>8</sup> See *Federal State Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9062, para. 544 (1997) (*First Report and Order*); 47 CFR § 54.507(e);

<sup>9</sup> See 47 CFR §§ 54.505(a)-(b), 54.523.

<sup>10</sup> See 47 CFR §§ 54.505(c).

<sup>11</sup> Applicants, i.e., schools and libraries, are required to pay their full non-discount share of the costs of eligible E-Rate services. See 47 CFR § 54.523; *Requests for Review of Decisions of the Universal Service Administrator by Achieve Telecom Network of MA*, 30 FCC Rcd 3653, 3669, paras. 23-24 (WCB 2015) (*Achieve Order*). Section 54.505 of the Commission's rules, which includes the discount matrix, determines the discount level that an applicant receives. 47 CFR § 54.505(c). The necessary resources rule requires applicants to certify that they will have sufficient funds "to pay for the 'non-discount' portion of" E-Rate services." See 47 CFR § 54.504(a)(1)(iii); see also *First Report and Order*, 12 FCC Rcd at 9079, para 577.

<sup>12</sup> See, e.g., 47 CFR § 54.523; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26929, para. 41 (2003) (*Schools and Libraries Third Report and Order*) (adopting section 54.523 of the rules to clarify and amend the Commission's codified rules to reflect the requirement "that an entity must pay the entire undiscounted portion of the cost of any services it receives through the schools and libraries program," which includes restrictions on providers' conduct, including "a prohibition on the provision of free services to an eligible entity by a service provider that is also providing discounted services to the entity"); USAC website, Schools and Libraries, Free Services Advisory, <http://sl.universalservice.org/reference/freeservices.asp> (content dated Jan. 4, 2002) (last visited May 2, 2017) (Free Services Advisory) ("Applicants and service providers are prohibited from using the Schools and Libraries Support Mechanism to subsidize the procurement of ineligible or unrequested products and services, or from participating in arrangements that have the effect of providing a discount level to applicants greater than that

effort to collect from applicants the non-discount portion of the costs of services supported by the E-Rate program and must certify on the FCC Form 473 that they have billed the applicant for its non-discount share.<sup>13</sup>

## B. Factual Background

### 1. Investigation and Audit Findings

5. In funding years 1998, 1999, and 2000, Connect2 provided E-Rate supported services to various private schools in the New York metropolitan area, including the schools listed in the appendices.<sup>14</sup> In 2002, during an investigation conducted by the Federal Bureau of Investigation (FBI), Connect2 voluntarily admitted to violating a number of E-Rate program rules.<sup>15</sup> Specifically, Connect2 admitted violations related to: (1) promising schools that it would not pursue payment of their non-discounted portion of the service if the school was unable to pay; (2) giving a monetary donation to a non-profit organization affiliated with an applicant that received monies from the E-Rate program; (3) providing services to the schools that were different than the services USAC approved; (4) inadvertently over-billing schools for services; (5) failing to provide the goods or services for which it received E-Rate support; and (6) invoicing USAC for services provided outside of the funding year for which they were approved.<sup>16</sup> Connect2 also disclosed the funding requests for which applicants failed to pay the full amount of their non-discount portion.<sup>17</sup> Connect2 expressed a willingness to make any necessary restitution due to these rule violations, and to establish an effective corrective action plan.<sup>18</sup>

6. On December 17, 2002, officers from the FBI arrested Connect2's owner, John Angelides, and charged him with, among other things, defrauding the E-Rate program by failing to require schools to pay their non-discount share of services provided by Connect2.<sup>19</sup> On May 22, 2003, Mr. Angelides pled guilty to fraudulent acts in connection with his participation in the E-Rate program.<sup>20</sup> Specifically, Mr. Angelides admitted to: (1) falsely representing to schools that they could participate in the program at no cost; (2) falsely representing to E-Rate administrators and government investigators that the schools would pay or had paid their non-discount share; and (3) falsifying documents to make it appear that Connect2 received payments from schools, as well as attempting to persuade school administrators not to reveal evidence to government investigators to conceal the scheme.<sup>21</sup> As a part of the plea agreement, Mr. Angelides forfeited \$290,000 to the U.S. Treasury, "representing the approximate

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to which applicants are entitled") (cited in *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26928, para. 41, n.75).

<sup>13</sup> See *School and Libraries Universal Service, Service Provider Annual Certification (FCC Form 473)*, OMB 3060-0806 (October 1998); *Request for Review of a Decision of the Universal Service Administrator by Hispanic Information and Telecommunications Network; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, 23 FCC Rcd 15432, 15436-37, paras. 9-11 (WCB 2008) (*HITN Order*) (remanding to USAC the question of whether the service provider made a bona fide effort to collect the school's non-discount share).

<sup>14</sup> See Letter from Jonathan Jacob Nadler, Counsel for Connect2 to George McDonald, USAC, at Appendix I (dated Dec. 10, 2002) (Nadler Letter).

<sup>15</sup> *Id.* at 2-5.

<sup>16</sup> *Id.*

<sup>17</sup> Nadler Letter at Appendix IV.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> See Complaint, *United States v. Angelides et al.* (filed Dec. 17, 2002) (Complaint).

<sup>20</sup> Letter from David M. Siegal, Assistant United States Attorney, Southern District of New York, to Ira Lee Sorkin, Counsel for John Angelides (signed May 22, 2003) (Plea Agreement).

<sup>21</sup> *Id.*

amount of proceeds obtained as a result of the offense charged” in one count of the Complaint.<sup>22</sup> On December 23, 2003, the Commission’s Enforcement Bureau debarred Mr. Angelides from participating in the E-Rate program for a period of three years because of his guilty plea.<sup>23</sup>

7. Additionally, in 2003 and 2004, the Commission’s Office of Inspector General (OIG) conducted audits of five schools that contracted with Connect2.<sup>24</sup> These audits found that beneficiaries generally did not pay the non-discounted share of the costs of E-Rate supported services; there was no documentation to support a competitive bidding process; and, that Connect2 substituted unapproved services for those that had been approved for support, billed the schools for services that it never provided, over-billed for services that it did provide, and billed for ineligible services.<sup>25</sup>

## 2. USAC Recovery Actions and Connect2 Appeals

8. Based on the findings noted above and Connect2’s admissions, USAC sent Connect2 and the relevant applicants Commitment Adjustment letters (COMADs) to recover support for the funding requests associated with the identified violations.<sup>26</sup> Connect2 filed appeals of those COMADs with USAC, which USAC denied.<sup>27</sup> In the denials, USAC found that: (1) Connect2’s appeal to USAC was late-filed; (2) the schools’ non-discount share was not paid by the schools; and/or (3) E-Rate discounts were used to pay Connect2 for services provided outside of the funding year of the pertinent funding requests or for unapproved services.<sup>28</sup> Connect2 subsequently filed seven different requests for review of USAC’s Decision on Appeal with the Commission, beginning in December 2004 and continuing until June 2006.<sup>29</sup> Community Academic Prep filed an appeal with the Commission in August 2004.<sup>30</sup>

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<sup>22</sup> See *id.* at 1.

<sup>23</sup> See Notice of Debarment of Mr. John Angelides, Letter Order, DA 03-4088, 2003 WL 23009187 (filed Dec. 23, 2003).

<sup>24</sup> FCC OIG, Report on Audit of the E-rate Program at Annunciation Elementary School, Report No. 02-AUD-02-04-021, [https://transition.fcc.gov/oig/Final\\_Audit\\_Report\\_AES\\_8-12-04.pdf](https://transition.fcc.gov/oig/Final_Audit_Report_AES_8-12-04.pdf) (dated Aug. 12, 2004); FCC OIG, Report on Audit of the E-rate Program at Children’s Storefront School, Report No. 02-AUD-02-04-025, [https://transition.fcc.gov/oig/Childrens\\_Store\\_Front\\_4-5-04.pdf](https://transition.fcc.gov/oig/Childrens_Store_Front_4-5-04.pdf) (dated Apr. 5, 2004); FCC OIG, Report on Audit of the E-rate Program at Immaculate Conception School, Report No. 02-AUD-02-04-020 (*OIG Audit of Immaculate Conception School*), [https://transition.fcc.gov/oig/Final\\_Audit\\_Report\\_IC\\_S.pdf](https://transition.fcc.gov/oig/Final_Audit_Report_IC_S.pdf) (dated Mar. 24, 2004); FCC OIG, Report on Audit of the E-rate Program at St. Augustine School, Report No. 02-AUD02-04-017, [https://transition.fcc.gov/oig/St\\_Augustine\\_5-18-04.pdf](https://transition.fcc.gov/oig/St_Augustine_5-18-04.pdf) (dated May 19, 2004) (*OIG Audit of St. Augustine School*); and FCC OIG, Report on Audit of the E-rate Program at St. Matthew Lutheran School, Report No. 02-AUD02-04-007, [https://transition.fcc.gov/oig/St\\_Matthews\\_Lutheran\\_School.pdf](https://transition.fcc.gov/oig/St_Matthews_Lutheran_School.pdf) (dated Dec. 22, 2003).

<sup>25</sup> See *id.*

<sup>26</sup> See, e.g., Letter from USAC, Schools and Libraries Division, to John Angelides, Connect2 Internet Networks, Inc. (dated Mar. 31, 2004) (Immaculate Conception).

<sup>27</sup> See, e.g., Letter from USAC, Schools and Libraries Division, to John Angelides, Connect2 Internet Networks, Inc. (dated Oct. 13, 2004) (St. Augustine School).

<sup>28</sup> See, e.g., *id.*; Letter from USAC, Schools and Libraries Division, to John Angelides, Connect2 Internet Networks, Inc. (dated Oct. 26, 2004).

<sup>29</sup> See *Request for Review Connect2 Internet Networks*, CC Docket No. 02-6 (filed Dec. 13, 2005) (*Connect2 Dec. 13, 2004 Appeal*); *Request for Review Connect2 Internet Networks*, CC Docket No. 02-6, SLD File No. 184985 et al. (filed Dec. 27, 2005) (*Dec. 27, 2004 Appeal I*); *Request for Review Connect2 Internet Networks*, CC Docket No. 02-6, SLD File No. 191068 et al. (filed Dec. 27, 2004) (*Dec. 27, 2004 Appeal II*); *Request for Review Connect2 Internet Networks*, CC Docket No. 02-6, SLD File No. 145391 et al. (filed Dec. 27, 2004) (*Dec. 27, 2004 Appeal III*); *Request for Review Connect2 Internet Networks*, CC Docket No. 02-6 (filed Feb. 14, 2005) (*Connect2 Feb. 14, 2006 Appeal*); *Request for Review Connect2 Internet Networks*, CC Docket No. 02-6 (filed Oct. 27, 2005); *Request for Review Connect2 Internet Networks*, CC Docket No. 02-6 (filed Jun. 19, 2006) (*Connect2 Jun. 19, 2006 Appeal*).

## II. DISCUSSION

9. We deny four of Connect2's requests for review because the underlying appeals with USAC were late filed. We deny two other requests for review for three distinct reasons. We find that Connect2: (1) violated the requirement that service providers attempt to collect payment for the applicant's non-discount share; (2) sought E-Rate reimbursement for services for which USAC had not issued a funding commitment; and (3) sought reimbursement for E-Rate supported services provided outside of the applicable funding year. We grant, in part, one of Connect2's requests for review, finding that USAC lacked documentation to conclude that a rule violation occurred. We also remand that appeal, in part, to USAC to determine whether Connect2 installed the equipment at issue. We deny the appeal filed by Community Academic Prep because it was late-filed with the Commission.

### A. Late-Filed Appeals

10. As an initial matter, we deny the requests for review identified in Appendix A because the underlying appeals were filed late to USAC or the Commission and we deny requests for waiver of those rules.

#### 1. Requests for Review Were Late-Filed

11. Commission rules in the time period relevant to Connect2 and Community Academic Prep's requests for review required that E-Rate applicants seeking review of a USAC decision file their appeals with USAC or the Commission within sixty days of the issuance of the decision.<sup>31</sup> USAC issued COMADs to Connect2 seeking recovery of funds disbursed for funding years 1998, 1999, and 2000 on March 15, March 31, and April 1, 2004.<sup>32</sup> These COMADs served as decisions that triggered the sixty-day deadline for appeals.<sup>33</sup> Connect2 did not file the appeals identified in Appendix A with USAC, however, until July 20, 2004 and June 22, 2005.<sup>34</sup> USAC denied those appeals because they were filed more than sixty days after the issuance of the COMADs.<sup>35</sup> Similarly, Community Academic Prep received a COMAD from USAC on April 1, 2004, but did not file a request for review of the COMAD until August 18, 2004, well beyond the sixty-day deadline.<sup>36</sup>

12. Connect2 contends that it did not receive notice of the COMADs because USAC addressed the COMADs to John Angelides after Mr. Angelides had been debarred from the E-Rate

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<sup>30</sup> See *Request for Review Community Academic Prep*, CC Docket No. 02-6 (filed Aug. 18, 2004).

<sup>31</sup> At the time the underlying appeal was filed, a party seeking review of a USAC decision was required to file an appeal with USAC or the Commission within 60 days of the issuance of the decision sought to be reviewed. 47 CFR § 54.720(a), (b) (2004). The Commission subsequently revised section 54.719 of its rules to require parties aggrieved by an action taken by a division of USAC to first seek review by USAC before filing an appeal with the Commission. *Modernizing the E-Rate Program for Schools and Libraries*; WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8970, para. 252 (2014); 47 CFR § 54.719(a), (b) (2015). See also *Requests for Review of USAC Decisions by Agra Public Schools I-134, Agra, OK et al.*, 25 FCC Rcd 5684, 5688, para. 6 (WCB 2010) (*Agra Order*) (explaining that strict adherence to appeal filing deadlines is necessary).

<sup>32</sup> See *infra* Appendix A.

<sup>33</sup> See *Application for Review of a Decision of the Wireline Competition Bureau by Net56, Inc.*, CC Docket No. 02-6, Order, 32 FCC Rcd 963, 964-65, para. 5 (2017) (*Net56 Order*) (holding that an appeal to USAC was untimely because it was not filed within 60 days of the issuance of a commitment adjustment).

<sup>34</sup> See *infra* Appendix A.

<sup>35</sup> See, e.g., *Connect2 Dec. 27, 2004 Appeal III* at 7.

<sup>36</sup> See Appendix A. Note, Community Academic Prep did not file an appeal with USAC; it filed its only appeal with the FCC.

program in 2003 and was terminally ill.<sup>37</sup> However, USAC sent COMAD letters to the address provided by Connect2 on its FCC Form 473 with “Connect2 Internet Networks, Inc.” listed in the line for the business name.<sup>38</sup> Connect2 offers no reason why, once Mr. Angelides was debarred or his health prevented him from taking action on E-Rate matters, other Connect2 staff did not handle these matters nor does it appear that Connect2 made any effort to update its contact information with USAC. Connect2 admits that it received other E-Rate related correspondence addressed to Mr. Angelides in the time period after he had been debarred and offers no explanation as to why that correspondence was received and the COMADs allegedly were not.<sup>39</sup> We therefore find that the COMAD letters provided Connect2 and Community Academic Prep with notice of USAC’s decision, in the absence of a sufficient showing to the contrary.<sup>40</sup>

## 2. Connect2’s Request for Waiver

13. Connect2 also requests waivers of the appeal filing deadlines applicable to the requests for review included in Appendix A.<sup>41</sup> We find, however, that Connect2 has not demonstrated the special circumstances required to justify a grant of a waiver of the filing deadline for its appeals.<sup>42</sup> Connect2 asserts two arguments in support of a waiver: (1) Mr. Angelides should not have been expected to respond to COMADs during his terminal illness; and (2) the unique issues in the appeal (i.e., Mr. Angelides’s illness and debarment and what it claims are “novel questions of fact, law and policy”) demand that it be addressed on the merits.<sup>43</sup> With respect to its first argument, Connect2 offers no explanation for why the company, or other staff within the company, could not have timely filed an appeal. Within this context, the illness of one person within a service provider’s company has previously not been sufficient grounds for waiving E-Rate appeal deadlines; further, the record before us does not persuade us to do so here.

14. With respect to Connect2’s second argument, we find that the existence of novel issues in an appeal is not grounds for waiving our deadline for filing appeals. Even if it were otherwise, illness of personnel and debarment are not novel issues for the E-Rate program, and we conclude that the rule violations at issue in the COMADs being appealed do not present novel questions of fact or law. Accordingly, we deny the requests for review identified in Appendix A because the underlying appeals to USAC by Connect2 and to the Commission by Community Academic Prep were late-filed.

### B. Failure to Pay Non-Discount Share

15. We deny the request for review from Connect2 identified in Appendix B because, based on the record before us, Connect2 violated its obligation to ensure compliance with the requirement that applicants pay the non-discount share of E-Rate eligible services through their independent billing and

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<sup>37</sup> See, e.g., *Connect2 Dec. 27, 2004 Appeal I* at 8-9; *Connect2 Dec. 27, 2004 Appeal II* at 8-9.

<sup>38</sup> See FCC Form 473 (Service Provider Annual Certification), Connect2 Internet Networks, Inc. (dated Aug. 30, 2000).

<sup>39</sup> See, e.g., *Connect2 Dec. 27, 2004 Appeal I* at 3.

<sup>40</sup> Connect2 also argues that the 60-day clock should not start for these matters until USAC issued Repayment/Offset Demand Letters (RODLs), because it claims that the RODLs were the first indication that USAC was requesting a return of the funding it had received. We reject this argument because COMADs constitute decisions that begin the period for filing an appeal. See *Net56 Order supra* n.33.

<sup>41</sup> See, e.g., *Connect2 Dec. 27, 2004 Appeal I* at 9-11. All of the appeals identified in Appendix A were filed by Connect2 except for an appeal filed by Community Academic Prep on August 18, 2004.

<sup>42</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (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.); *Agra Order*, 25 FCC Rcd at 5688, para. 7 (“In general, the Commission has enforced its appeal filing deadlines for the E-Rate program, allowing waivers of deadlines only in limited, compelling situations.”).

<sup>43</sup> See, e.g., *Connect2 Dec. 27, 2004 Appeal I* at 9-11.

collection actions.<sup>44</sup> Connect2 does not claim that it made a bona fide attempt to collect the non-discount share or that the applicant paid its non-discounted share. Rather, it argues that (1) during the 1998-2000 funding years at issue here, “the failure of the schools to pay their non-discounted shares was not even a violation of the Commission’s rules”; (2) the Commission rules at the time did not set any deadline for when an applicant must pay the non-discounted share of its E-Rate purchases; and (3) USAC may only recover committed E-Rate funding if a statutory violation has occurred and is precluded from doing so for a violation of the Commission’s rules.<sup>45</sup> None of these arguments has merit.

### 1. Requirement to Pay Non-Discount Share

16. The requirement that applicants expect to pay the non-discounted share of the price of E-Rate supported services has been a fundamental element of the E-Rate program since its inception. In its *First Report and Order*, establishing the E-Rate program, the Commission recognized “that [percentage] discounts would better assure efficiency and accountability,” because “[r]equiring schools and libraries to pay a share of the cost [of eligible services] should encourage them to avoid unnecessary and wasteful expenditures . . . [and] to seek the best pre-discount price and to make informed, knowledgeable choices among their options.”<sup>46</sup> Absent this requirement, service providers would have an incentive to promise not to seriously pursue payments from applicants if the applicants would agree to inflated pre-discount prices. Moreover, the requirement is implicit in the discount matrix, which has been codified in Commission rules since the beginning of the program, and spells out precisely what percentage of the pre-discount price of E-Rate services applicants must contribute towards payment for the E-Rate-supported services they purchase.<sup>47</sup>

17. Further, when the *Third Report and Order* codified the non-discount share requirement, it clearly stated that the codification clarified an “existing restriction” aimed at preventing the provision of “free services by the service provider to the entity constitut[ing] a rebate of the undiscounted portion of the costs . . . in violation of the Commission's rules.”<sup>48</sup> The necessary resources requirement also directs applicants to certify that they will have sufficient funds “to pay for the ‘non-discount’ portion of” E-Rate services.<sup>49</sup> Thus, Connect2’s arguments to the contrary are unavailing.

### 2. No Payment of Non-Discount Share

18. Connect2 offers no evidence, or even claim, that the applicants ever paid, or that it ever attempted to collect, the non-discount share in those instances where USAC found violations for failures to pay Connect2. Nonetheless, we address Connect2’s arguments dealing with deadlines for the payment of the non-discount share.

19. The Commission’s 2004 *Fifth Report and Order* observed that “[a]llowing schools and libraries to delay for an extended time their payment for services would subvert the intent” of the fundamental rule requiring them to make that payment.<sup>50</sup> Therefore, it adopted a prospective presumption

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<sup>44</sup> See *Connect2 Feb. 14, 2005 Appeal*.

<sup>45</sup> See, e.g., *Connect2 Dec. 27, 2004 Appeal I* at 14-15.

<sup>46</sup> *First Report and Order*, 12 FCC Rcd at 9036, para 493. See 47 CFR §54.504(a)(1)(iii); *First Report and Order*, 12 FCC Rcd at 9079, para. 577.

<sup>47</sup> See 47 CFR §54.505(c).

<sup>48</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26929, para. 41 (2003) (*Third Report and Order*).

<sup>49</sup> See 47 CFR §54.504(a)(1)(iii); *First Report and Order*, 12 FCC Rcd at 9079, para. 577.

<sup>50</sup> See *Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order, CC Docket No. 02-6, 19 FCC Rcd 15808, 15816, para. 24 (2004) (*Fifth Report and Order*).

that applicant payments must be made within 90 days after delivery of service.<sup>51</sup> For outstanding issues relating to audits conducted prior to that Order, like those at issue here, the Order held that if applicants failed to make their full payments prior to the completion of the audit work, this would constitute a rule violation warranting recovery of all amounts disbursed. We also note that, consistent with the rationale for the rule, the service provider must make a bona fide attempt to collect.<sup>52</sup> In any case, Connect2 fails to show that its customers paid the non-discount share prior to the completion of the audits or even intended to ever pay the non-discounted share.

### 3. Recovery for Violations of Program Rules

20. We also reject Connect2's claim that USAC may only recover for statutory violations, rather than violations of Commission rules.<sup>53</sup> Connect2 asserts that USAC compromised Connect2's due process rights by recovering for this violation because any rule requiring applicants to pay the non-discount share is only a program rule, and USAC could only recover for statutory violations at the time of the recovery.<sup>54</sup> Connect2 contends that, although the Commission's 2000 *Commitment Adjustment Implementation Order* implemented procedures for recovering funds disbursed in violation of statutory requirements, the Commission did not direct USAC to recover funds disbursed in violation of programmatic rules that do not implicate statutory requirements until 2004.<sup>55</sup>

21. This argument is unavailing. The Communications Act provides the Commission with authority to establish rules 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."<sup>56</sup> The Commission adopted the non-discount share requirement pursuant to this authority. In 1999, the Commission issued an order granting a limited waiver for four violations of E-Rate program rules by first year applicants for funding requests for which funding had been disbursed.<sup>57</sup> The need for a waiver reflects an understanding by the Commission that a violation of program rules would lead USAC to seek recovery of disbursed funding. Had the Commission not expected USAC to recover disbursed funding tied to a violation of a program rule that was not implementing a specific statutory requirement,

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<sup>51</sup> *Id.*

<sup>52</sup> See *Request for Review of a Decision of the Universal Service Administrator by Hispanic Information and Telecommunications Network; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, 23 FCC Rcd 15432, 15436, text accompanying n.37 (WCB 2008) (*HITN Order*) (upholding USAC's determination that the service provider is liable for repayment if it fails to demonstrate a bona fide effort to collect the school's non-discount share), cited in *Achieve Order*, 30 FCC Rcd at 3670, para. 25.

<sup>53</sup> See *Connect2 Feb. 14, 2005 Appeal* at 9.

<sup>54</sup> See *id.*

<sup>55</sup> 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, Order, 15 FCC Rcd 22975 (2000) (*Commitment Adjustment Implementation Order*); *Fifth Report and Order*, 19 FCC Rcd at 15814-15, para. 18.

<sup>56</sup> 47 USC § 254(h)(2)(A).

<sup>57</sup> 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, Order, 15 FCC Rcd 7197 (1999) (*Commitment Adjustment Order*). In that Order, the Commission granted one-time, limited waivers to applicants in the first year of the program for programmatic rules violations (three involving competitive bidding and one involving funding priority rules) for funding requests that had already been disbursed. *Id.* at 7202, para 13. See also *Request for Review of USAC Decision by School for Language and Communication Development, Glen Cove, NY*, CC Docket No. 02-6, Order, 17 FCC Rcd 15166, 15170, para. 9 (WCB 2002) ("Indeed, where a commitment of funds has been made for an application that violated our regulations, the commitment will ordinarily be cancelled or adjusted and efforts will be made to recoup any funds improperly disbursed."); see also *Request for Review of a Decision of the Universal Service Administrator by Cascade School District #422, Cascade, ID*, CC Docket No. 02-6, Order, 26 FCC Rcd 6865, 6865, para. 1 (WCB 2011) (directing USAC to seek recovery of disbursed funding related to a violation of program rules for a funding year 2001 funding request).

the waiver would have been unnecessary. Furthermore, contrary to Connect2's argument, the *Commitment Adjustment Implementation Order* does not limit recovery to statutory violations or violation of program rules that directly address statutory requirements. That order describes the adopted recovery plan as being for "erroneously disbursed" funding, which is not limited to funds disbursed as a result of a statutory violation.<sup>58</sup> Commission action after release of the *Commitment Adjustment Implementation Order* shows and reiterates that the Commission contemplates USAC would seek recovery of disbursed funding for program rule violations. Thus, Connect2's unsupported claim that USAC may only recover for statutory violations lacks merit.

### C. E-Rate Support for Unapproved Services

22. We deny Connect2's requests for review concerning the funding requests listed in Appendices C and D because Connect2 provided applicants with services not approved for support. In some instances, Connect2 provided services outside of the approved funding year. In other instances, applicants were approved to receive a particular service, but Connect2 provided a different service.

#### 1. Services Provided Outside of Funding Year

23. We deny Connect2's request seeking review of USAC's denial of the funding requests for funding year 2000 listed in Appendix C because those services were delivered primarily during funding year 2001. USAC grants E-Rate funding requests for recurring services one funding year at a time, with the funding year beginning July 1 and running through June 30 of the following year.<sup>59</sup> Applicants may use E-Rate discounts for recurring services only in the funding year for which USAC has approved such discounts and may not use E-Rate funds for those services in a later funding year.<sup>60</sup>

24. Here, USAC granted the requests for E-Rate support for Internet access for funding year 2000, which ran from July 1, 2000 to June 30, 2001.<sup>61</sup> Auditors found documentation from Connect2, however, that showed that the applicants actually received the supported services from June 2001 to June 2002.<sup>62</sup> Therefore, the services the applicants received from July 2001 through June 2002 (11 of the 12 months of service) fell outside of funding year 2000 and were ineligible for funding year 2000 E-Rate support. We find that USAC properly issued COMAD letters, which reduced the funding commitment for these services by eleven-twelfths. We also find that USAC properly sought recovery from Connect2 for these rule violations<sup>63</sup> because it was the entity that submitted the invoices for reimbursement for services that were not provided during the approved period.<sup>64</sup>

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<sup>58</sup> See *Commitment Adjustment Implementation Order*, 15 FCC Rcd at 22975, para. 1.

<sup>59</sup> 47 CFR § 54.507(b).

<sup>60</sup> 47 CFR § 54.507(d) (applicants "must use recurring services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought").

<sup>61</sup> See *Connect2 June 19, 2006 Appeal* at 4.

<sup>62</sup> See *supra* n.24.

<sup>63</sup> When USAC determines that E-Rate funding has been improperly disbursed and should be recovered, it must consider which party was in a better position to prevent a violation of E-Rate program rules, and which party committed the act or omission that forms that basis for the violation. See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15257, para. 15 (2004) (*Fourth Report and Order*).

<sup>64</sup> See FCC Form 474 (Service Provider Invoice Form), Connect2 Internet (dated Apr. 2, 2001); FCC Form 474 (Service Provider Invoice Form), Connect2 Internet (dated Mar. 1, 2001); FCC Form 474 (Service Provider Invoice Form), Connect2 Internet (dated Aug. 8, 2001); FCC Form 474 (Service Provider Invoice Form), Connect2 Internet (dated Sept. 10, 2001).

## 2. Providing Services Other than Approved Services

25. We deny Connect2's request seeking review of USAC's denial of appeals for the funding requests listed in Appendix D because Connect2 provided services different from those requested on the applicant's FCC Form 471. E-Rate rules require that, unless an applicant requests a service substitution and USAC approves it, applicants may only receive E-Rate funding for the services for which they applied and that USAC approved.<sup>65</sup> Here, applicants had not requested service substitutions for these funding requests. USAC thus issued COMADs in instances in which it found that Connect2 provided an unapproved service in place of the approved service. Connect2 therefore provided unapproved services to applicants, and we deny its request for review.<sup>66</sup>

26. In particular, Rice High School requested and was approved to receive an Internet gateway, but received a bundle of IP addresses instead.<sup>67</sup> St. Augustine School requested and was approved support for T-1 service for both funding years 1998 and 1999, but Connect2 only provided it with inferior ISDN service.<sup>68</sup> Additionally, Connect2 filed FCC Form 474s inaccurately indicating that it had provided the approved services, even though that was untrue.<sup>69</sup> We find that Connect2 violated program rules by seeking reimbursement for services that were not approved and therefore not eligible for E-Rate support. Because we find that Connect2 was in a better position than the applicant to prevent the rule violation, we direct USAC to seek recovery from Connect2 for these violations.<sup>70</sup> Connect2 knew which service it was providing and that its FCC Forms 474 were not accurate.<sup>71</sup> Although Connect2 objects that it did not have access to the audit reports concluding that it sought E-Rate support for unapproved services, and therefore could not challenge the reports,<sup>72</sup> we find that at the time that it filed its appeals to the Commission, Connect2 had received the audit reports. Moreover, Connect2 did not offer any explanation or reason to alter the holding that it sought reimbursement for unapproved services.

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<sup>65</sup> See *Request for Review or Waiver of a Decision of the Universal Service Administrator by RECTec Technology and Communications (Colcord Public Schools)*, CC Docket No. 02-6, Order, 29 FCC Rcd 8180, 8083, paras. 7-8 (WCB 2014) (denying waiver request when the applicant sought reimbursement from USAC for unapproved services and stating that providing E-Rate support for services that were not initially sought by the applicant and not approved by USAC for support would promote waste, fraud and abuse); 47 CFR § 54.504(c) (1998) ("A commitment of support is contingent upon the filing of an FCC Form 471."); 47 CFR § 54.504(d) (2001) (requiring applicants to file applications each year, requiring applicants to use discounts for recurring services in the funding year for which they requested the discount, and establishing September 30 after the end of the relevant funding year at the deadline for implementation of non-recurring services).

<sup>66</sup> One of USAC's recovery letters sought recovery on the basis of unauthorized service substitutions. See, e.g., Letter from USAC, Schools and Libraries Division, to John Angelides, Connect2, dated Apr. 20, 2006. However, because the applicants did not request service substitutions, the service substitution rules do not apply in this situation. Commission rules require the Bureau to conduct *de novo* reviews of appeals before it, however, and we thus address these rule violations in terms of receipt of unapproved services. See 47 CFR § 54.723(a) (directing the Wireline Competition Bureau to conduct *de novo* reviews).

<sup>67</sup> See *Connect2 June 19, 2006 Appeal* at 11.

<sup>68</sup> See *Connect2 Dec. 13, 2004 Appeal* at 12-13.

<sup>69</sup> See FCC Form 474 (Service Provider Invoice Form), Connect2 Internet (dated Oct. 16, 1999) (for service provided to St. Augustine School); FCC Form 474 (Service Provider Invoice Form), Connect2 Internet (dated Jan. 13, 2001) (for services provided to Rice High School).

<sup>70</sup> See *Fourth Report and Order*, 19 FCC Rcd at 5256-27, paras. 13-15 (determining that recovery of E-Rate funds disbursed in violation of the statute or a rule should be directed to the party or parties responsible for the statutory or rule violation, including a school or library). Prior to that decision, recovery for violations was sought from the service provider.

<sup>71</sup> See *Fourth Report and Order*, 19 FCC Rcd at 15256, para. 11 (stating "the service provider is likely to be the entity that fails to deliver supported services within the relevant funding year").

<sup>72</sup> See *Connect2 Jun. 19, 2006 Appeal* at 9.

### 3. Correct Recovery Amount

27. Connect2 also challenges the amount USAC seeks to recover concerning the provision of ISDN service instead of T-1 service to St. Augustine School for the funding requests listed in Appendix E on the grounds that USAC seeks to recover more than the Commission OIG's recommended.<sup>73</sup> Specifically, OIG concluded that the appropriate recovery should be \$17,286,<sup>74</sup> but USAC's COMADs sought \$21,066.<sup>75</sup> Because no evidence in the record contradicts OIG's finding, we direct USAC to revise the amount it seeks concerning the funding requests identified in Appendix E to OIG's figure of \$17,286.

#### D. Impact of Plea Agreement

28. Mr. Angelides' plea agreement with the U.S. Department of Justice does not prevent USAC from recovering improperly disbursed funding from Connect2. Commission orders require USAC to recover E-Rate funds that have been disbursed in violation of certain program rules.<sup>76</sup> Connect2 contends that the May 2003 plea agreement that the Department of Justice reached with Mr. Angelides prohibits USAC from recovering the funding at issue in those appeals.<sup>77</sup> In that agreement, Mr. Angelides agreed, among other things, to pay the U.S. Treasury \$290,000 and the Department of Justice agreed that it would not further prosecute Mr. Angelides or Connect2 for fraud.<sup>78</sup>

29. We reject Connect2's argument because the plea agreement explicitly permits recovery from other government entities and because E-Rate program rules require recovery of improperly disbursed funding. The plea agreement expressly states that "this Agreement *does not* bind any federal, state, or local prosecuting authority other than this Office" and "neither the defendant [Mr. Angelides] nor Connect 2 Internet Networks, Inc. will be further prosecuted *criminally by this Office* [U.S. Attorney for the Southern District of New York]" (emphasis added to both).<sup>79</sup> Furthermore, while Mr. Angelides paid \$290,000 to the U.S. Treasury for the purpose of satisfying his obligations under the plea agreement, USAC is seeking to recover funds from Connect2 for the purpose of compensating the Universal Service

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<sup>73</sup> See *Connect2 Dec. 13, 2004 Appeal* at 12-13.

<sup>74</sup> See *OIG St. Augustine Report* at 6-7.

<sup>75</sup> See Letter from USAC, Schools and Libraries Division, to John Angelides, concerning St. Augustine School (Application No. 1048729) at 5 (dated Jun. 7, 2004).

<sup>76</sup> See *Commitment Adjustment Implementation Order*, 15 FCC Rcd at 22976, para. 3 (both the Debt Collection Improvement Act (DCIA) and the Commission's rules require collection of any disbursements it made in violation of the Communications Act of 1934); *Fifth Report and Order*, 19 FCC Rcd 15815, para. 20 (stating that amounts disbursed in violation of the statute or a rule that implements the statute or a substantive program goal must be recovered in full); *Changes to the Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, 17 Communications Reg. (P&F) 1192, para. 7 (1999) (*Commitment Adjustment Order*) (directing USAC to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitment would result in violation of a federal statute). Although the *Commitment Adjustment Order* and the *Commitment Adjustment Implementation Order* were adopted after some of the funding requests at issue in this appeal were made, the orders state that they apply retroactively to all funding requests since the program began. See *Commitment Adjustment Order*, 17 Communications Reg. (P&F) 1192, paras. 3-6 (discussing year one funding requests that received disbursements despite applicants failing to satisfy requirements); *Commitment Adjustment Implementation Order*, 15 FCC Rcd at 22979 (directing USAC to apply its recovery plan to year one funding requests).

<sup>77</sup> See, e.g., *Connect2 Dec. 13, 2004 Appeal* at 7-8; *Feb. 14, 2005 Appeal* at 7 (incorporating by reference arguments made in previous appeals).

<sup>78</sup> Plea Agreement.

<sup>79</sup> See Plea Agreement at 2, 5.

fund.<sup>80</sup> The Commission has recognized its responsibility to try to make the universal service fund whole.<sup>81</sup> Therefore, consistent with the Commission's requirement that USAC recover improperly-disbursed E-Rate funds, we find that Mr. Angelides' plea agreement does not prevent USAC from recovering from Connect2.

**E. De Minimis Amounts**

30. Connect2 also asserts that USAC should terminate all collections for certain funding requests that vary from \$4,085 to \$56,133 because recovery would be for *de minimis* amounts.<sup>82</sup> Quoting from the *Fifth Report and Order*, Connect 2 states that the Commission has concluded that "it does not serve the public interest to seek to recover funds associated with statutory or rule violations when the administrative costs of seeking such recovery outweigh the dollars subject to recovery" and thus it has directed USAC "not to seek recovery of such *de minimis* amounts."<sup>83</sup>

31. Connect2 misunderstands the Commission's directions concerning *de minimis* amounts. The administrative costs addressed in the *Fifth Report and Order* related to *the costs to the Universal Service Fund* incurred as a result of recovery efforts. USAC and the Commission, not Connect2, are the entities that determine whether a recovery would exceed the *de minimis* amount referred to in that context. Connect2's reliance on this Commission statement is misplaced and inapposite here. Accordingly, we deny Connect2's request that USAC terminate all recovery actions on the basis that they are *de minimis* amounts

**F. Documentation for Recoveries**

32. Connect2 also asserts that USAC's efforts at recovery violate its due process rights because it did not gain access to the audit reports of its E-Rate funding prior to the deadline for filing its initial appeals and it even lacks access to its own records, because they were seized by the FBI.<sup>84</sup> Due process requires that Connect2 have an opportunity to challenge, correct, and refute charges that it violated E-Rate program rules and that Connect2 be given sufficient access to charges against it so that it can provide evidence or explanations to contest the findings.<sup>85</sup> Failure to provide a party with the opportunity to comment on an audit report does not deprive it of due process, however, if the party has a later opportunity to respond.<sup>86</sup>

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<sup>80</sup> See *Commitment Adjustment Order*, 17 Communications Reg. (P&F) 1192, para. 7 (1999) (comparing E-Rate payments, which involve a Congressionally-authorized fund, to payments from the Treasury).

<sup>81</sup> See *Request for Review of a Decision of the Universal Service Administrator by Harrisburg City School District, Schools and Libraries Universal Service*, CC Docket No. 02-6, Order, 31 FCC Rcd 13549, 13553, para. 14 (WCB 2016) (directing USAC to increase the amount it sought to recover from the parties to try to provide full restitution to the universal service fund).

<sup>82</sup> See, e.g., *Dec. 27, 2004 Appeal I* at 16; *Dec. 27, 2004 Appeal II* at 16.

<sup>83</sup> See, *Connect2 Jun. 19, 2006 Appeal* at 9 (citing *Fifth Report and Order*, 19 FCC Rcd. at 15819, para. 35).

<sup>84</sup> See *Connect2 Jun. 19, 2006 Appeal* at 8-9.

<sup>85</sup> *In the Matters of Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*; Federal State-Board on Universal Service, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25091-96, paras. 66-74 (establishing procedures for appeals of USAC decisions).

<sup>86</sup> See *Request for Review of Decision of the Universal Service Administrator by Integrity Communications, Ltd.*, Order, 27 FCC Rcd 772, 781-83, paras. 24-26 (2012) (denying Integrity's claim that it was denied due process when it was not given a chance to comment on an audit letter before the letter was circulated more widely since it had a chance to address the issues raised before it would be deprived of anything).

33. Although Connect2 did not receive access to all audit reports prior to USAC actions, it received access to those audits before it filed the appeals addressed here.<sup>87</sup> We therefore find that in its appeal to the Commission, Connect2 had an opportunity to address and challenge the particular charges that USAC and auditors had made.

34. We find, however, that in one instance, a more detailed review is appropriate, and that in a second instance, the lack of documentation requires us to grant Connect2's appeal. First, USAC seeks to recover \$6,240 from Connect2 for two funding requests, concerning service to Al-Noor School, because, according to USAC, the applicant requested a funding reduction of that amount on December 10, 2002.<sup>88</sup> Connect2 states that it is unaware of such a request.<sup>89</sup> In a letter in the record from Connect2 to USAC, however, Connect 2 acknowledges that it over-billed by \$6,240 due to a clerical error and pledges to refund the over-payment to USAC.<sup>90</sup> Based on this letter, we find that Connect2 had the opportunity to challenge this recovery, and conceded that it was appropriate. We deny its appeal concerning the service to Al-Noor School, listed in Appendix D.

35. With respect to the second matter, Connect2 challenges USAC's decision to recover \$4,314 in E-Rate support disbursed for equipment that could not be located at St. Augustine School.<sup>91</sup> Connect2 points out that the equipment could have been missing due to the actions of a subsequent service provider, and that the auditors were not able to determine if Connect2 or the other service provider was responsible for the missing equipment.<sup>92</sup> We remand the funding request listed in Appendix F to USAC to evaluate whether there is sufficient evidence to establish whether Connect2 installed the equipment in question.

### III. ORDERING CLAUSES

36. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 254.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), that the Requests for Review for the E-Rate program funding requests listed in Appendices A through D ARE DENIED.

37. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 254.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), that the Requests for Review for the E-Rate program funding requests listed in Appendix E ARE GRANTED IN PART as discussed herein.

38. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 254.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), that USAC SHALL CONTINUE its recovery actions against Connect2, Inc., for the funding requests listed in Appendices A through D and MODIFY the amount it seeks to recover from Connect2, Inc. for the funding request listed in Appendix E.

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<sup>87</sup> Connect2's late filing of the appeals identified in Appendix A did not stem from the time it took for Connect2 to receive the audit reports. All of Connect2's late-filed appeals to USAC were filed on July 20, 2004, well before it received the audit reports in November 2004. *See Connect2 Dec. 27, 2004 Appeal III* at 3.

<sup>88</sup> *See Connect2 Jun. 19, 2006 Appeal* at 8-9.

<sup>89</sup> *Id.*

<sup>90</sup> *See* Nadler Letter at IV-17 ("The amount billed was \$12,590. The correct amount should have been \$6,350.").

<sup>91</sup> *See* Connect2 Dec. 13, 2004 Appeal at 8-11.

<sup>92</sup> *Id.* at 9, citing *OIG Audit of St. Augustine School* at 7-8.

39. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 254.722(a) of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3 and 54.722(a), that the E-Rate program funding request listed in Appendix F is REMANDED to USAC for further consideration in accordance with the terms of this order.

FEDERAL COMMUNICATIONS COMMISSION

Ryan B. Palmer  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

## APPENDIX A

## Denial of Connect2 and Community Academic Prep Appeals to USAC for Being Filed Late

| Date of Appeal to FCC       | Applicant   | Application Number(s) | Funding Request Number (FRN) | USAC COMAD Decision Date | Date Appeal to USAC Filed |
|-----------------------------|---|-----------------------|------------------------------|--------------------------|---------------------------|
| Aug. 18, 2004               | Community Academic Prep (this appeal was filed by the applicant, all others in Appendix A were filed by Connect2) | 180447                | 403952                       | Apr. 1, 2004             | No appeal to USAC filed   |
| Dec. 27, 2004 I             | Association of the Help of Retarded Children Elementary School at Brooklyn  | 184985                | 383870                       | Apr. 1, 2004             | Jul. 20, 2004             |
|                             | Christ Crusader Academy   | 148572                | 284676                       | Apr. 1, 2004             |                           |
|                             | Grace Lutheran Day School   | 176664                | 354919                       | Apr. 1, 2004             |                           |
|                             | Grace Lutheran Elementary and Middle School   | 195175                | 421315                       | Apr. 1, 2004             |                           |
|                             |   |                       | 421446                       |                          |                           |
|                             |   |                       | 421546                       |                          |                           |
|                             |   |                       | 421681                       |                          |                           |
|                             | Islamic Elementary School   | 196013                | 424165                       | Apr. 1, 2004             |                           |
|                             |   |                       | 424201                       |                          |                           |
|                             |   |                       | 424283                       |                          |                           |
|                             |   |                       | 424338                       |                          |                           |
|                             | Mary Help of Christians   | 145217                | 234642                       | Apr. 1, 2004             |                           |
|                             |   |                       | 234710                       |                          |                           |
|                             |   | 180900                | 368447                       |                          |                           |
| St. Matthew Lutheran School | 145427  | 235099                | Mar. 31, 2004                |                          |                           |
|                             |   | 235103                |                              |                          |                           |
|                             |   | 235106                |                              |                          |                           |
|                             |   | 180657                |                              | 367629                   |                           |
| St. Rocco School            | 180437  | 407356                | Apr. 1, 2004                 |                          |                           |
| Summit School               | 166150  | 336798                | Apr. 1, 2004                 |                          |                           |
| Dec. 27, 2004 II            | Cathedral School  | 191068                | 405672                       | Apr. 1, 2004             | Jul. 20, 2004             |
|                             | Christ Crusader Academy   | 181141                | 369754                       | Apr. 1, 2004             |                           |
|                             | Clara Muhammad School of Masjid Khalifah  | 180301                | 402791                       | Apr. 1, 2004             |                           |
| 402812                      |   |                       |                              |                          |                           |

|                   |   |        |                  |               |               |
|-------------------|---|--------|------------------|---------------|---------------|
|                   | Community Academic Prep                 | 180447 | 403952           | Apr. 1, 2004  |               |
|                   | D & G Koloidis Parochial School         | 192159 | 409816           | Apr. 1, 2004  |               |
|                   | Greek American Institute                | 180273 | 405254           | Apr. 1, 2004  |               |
|                   | Lutheran School of Flushing and Bayside | 148299 | 283910           | Apr. 1, 2004  |               |
|                   | Martin Luther High School               | 188159 | 394744           | Apr. 1, 2004  |               |
|                   | St. John Lutheran School                | 180370 | 417811           | Apr. 1, 2004  |               |
|                   | School of the Transfiguration           | 191121 | 406185<br>406201 | Apr. 1, 2004  |               |
|                   | Sinai Academic Center                   | 180210 | 366094           | Apr. 1, 2004  |               |
| Dec. 27, 2004 III | Immaculate Conception School            | 145391 | 235038<br>235043 | Mar. 31, 2004 | Jul. 20, 2004 |
| Oct. 27, 2005     | Annunciation Elementary School          | 105155 | 106036<br>106514 | Mar. 15, 2005 | Jun. 22, 2005 |

**APPENDIX B**

**Denial of Connect2 Appeal for Failure to Pay Non-Discount Share**

| Date Filed at FCC | Applicant                     | Application Number(s) | Funding Request Numbers (FRNs) |
|-------------------|-------------------------------|-----------------------|--------------------------------|
| Feb. 14, 2005     | Children’s Store Front School | 181005                | 369258                         |
|                   |                               |                       | 369289                         |
|                   |                               |                       | 417057                         |
|                   |                               |                       | 417137                         |

**APPENDIX C**

**Denial of Connect2 Appeal for Providing Services Outside of Funding Year**

| Date Filed at FCC                   | Applicant  | Application Number(s) | Funding Request Number (FRN) |
|-------------------------------------|--|-----------------------|------------------------------|
| June 19, 2006                       | Association of the Help of Retarded Children Elementary School at Brooklyn (I) | 184985                | 383220                       |
|                                     | Al-Noor School   | 180438                | 388417                       |
|                                     |  |                       | 388426                       |
|                                     |  |                       | 388432                       |
|                                     | Rice High School   | 180904                | 368499                       |
| Robert Treat Academy Charter School | 180391   | 369750                |                              |

**APPENDIX D****Denial of Connect2 Appeal for Providing and Invoicing for Unapproved Services**

| <b>Applicant</b> | <b>Date Filed at FCC</b> | <b>Application Number</b> | <b>Funding Request Number (FRN)</b> |
|------------------|--------------------------|---------------------------|-------------------------------------|
| Al-Noor School   | June 19, 2006            | 180438                    | 388489                              |
| Rice High School | June 19, 2006            | 180904                    | 368506                              |

**APPENDIX E****Connect2 Appeal Granted in Part**

| <b>Applicant</b>     | <b>Date Filed at FCC</b> | <b>Application Number(s)</b> | <b>Funding Request Number (FRN)</b> |
|----------------------|--------------------------|------------------------------|-------------------------------------|
| St. Augustine School | Dec. 13, 2004            | 107031                       | 108768                              |
|                      |                          | 148729                       | 247607                              |

**APPENDIX F****Connect2 Appeal Remanded, in Part, to USAC**

| <b>Applicant</b>     | <b>Date Filed at FCC</b> | <b>Application Number(s)</b> | <b>Funding Request Number (FRN)</b> |
|----------------------|--------------------------|------------------------------|-------------------------------------|
| St. Augustine School | Dec. 13, 2004            | 107031                       | 108769                              |