

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Requests for Review of	)	
Decisions of the	)	
Universal Service Administrator by	)	
	)	
Net56, Inc.	)	File Nos. SLD-552545, <i>et al.</i>
Palatine, IL	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: November 7, 2012**

**Released: November 7, 2012**

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

1. Consistent with precedent,<sup>1</sup> we grant three requests from Net56, Inc. (Net56) seeking review of decisions by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program) to deny or rescind funding from Harrison School District 36's (Harrison) applications for funding years 2007, 2008, and 2009.<sup>2</sup> Specifically, for funding year 2007, USAC sought recovery of funds already disbursed to Harrison

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<sup>1</sup> See, e.g., *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029-9030, paras. 480-81 (1997) (*Universal Service Order*) (finding that while price should be the primary factor in selecting a bid, schools and libraries have maximum flexibility to take service quality into account and choose the offering that meets their needs most effectively and efficiently. Applicants may consider “prior experience, past performance, personnel qualifications, including technical excellence, management capability, including schedule compliance, and environmental objectives” to determine whether an offering is cost effective); *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26431 para. 53 (2003) (*Ysleta*) (“The Commission has determined that seeking competitive bids for eligible services is the most efficient means for ensuring that eligible schools and libraries are fully informed of their choices and are most likely to receive cost-effective services”); *Request for Review by Macomb Intermediate School District Technology Consortium of the Decision of the Universal Service Administrator*, CC Docket No. 02-6, Order, 22 FCC Rcd 8771, 8772 (2007) (*Macomb*) (applicants must select the most cost effective service offering). See also *Requests for Review by Allendale County School District, et. al. of the Decision of the Universal Service Administrator*, CC Docket No. 02-6, Order, 26 FCC Rcd 6109 (Wireline Comp. Bur. 2011) (*Allendale*). In *Allendale*, the Wireline Competition Bureau found that three petitioners had only one bid for E-rate supported services that was responsive to their FCC Form 470 postings. “As a result, in each of these three instances, the responsive bid necessarily offered the lowest price.” *Allendale*, 26 FCC Rcd at 6116, para. 10.

<sup>2</sup> See Appendix. Section 54.719(c) of the Commission’s rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c) (2012).

for services provided by Net56.<sup>3</sup> For funding years 2008 and 2009, USAC denied funds for Harrison's E-rate applications.<sup>4</sup>

2. For all three funding years, USAC found that in selecting Net56 to provide Internet access, wide area network (WAN), firewall services, and web and email hosting services, Harrison violated multiple Commission rules.<sup>5</sup> Specifically, with respect to Harrison's funding requests for Internet access, USAC found that Harrison did not have signed contracts in place prior to filing its FCC Forms 471, that it included ineligible products and services and did not cost allocate them, and that it failed to pay its discounted share for eligible services and therefore effectively and improperly accepted free services.<sup>6</sup> USAC made similar findings for Harrison's funding requests for WAN, firewall services, and web and email hosting services, and also found that Harrison failed to select cost-effective eligible services.<sup>7</sup>

3. Based on our review of the record,<sup>8</sup> we find that Harrison did have signed contracts in place prior to filing its FCC Form 471. We also find that Harrison did cost allocate ineligible from eligible services and did pay its discounted share for eligible services, and therefore did not accept free eligible services. Finally, we find that Net56 adequately demonstrated that the costs for the products and services in the funding requests were reasonable based on Harrison's circumstances and were therefore cost effective under Commission rules.<sup>9</sup> We therefore grant and remand Net56's requests to the extent provided below.

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<sup>3</sup> See Letter from USAC, Schools and Libraries Division, to Shirley Peterson, Harrison School District 36, at 4 (dated May 6, 2011) (regarding Harrison's funding year (FY) 2007 FCC Form 471 application number 552545, funding request numbers (FRNs) 1531745, 1531757, 1531771, 1531783, 1531795) (Harrison FY 2007 Commitment Adjustment Letter).

<sup>4</sup> See Letter from USAC, Schools and Libraries Division, to Jill Gildea, Harrison School District 36 (dated Feb. 24, 2010) (regarding Harrison's FY 2008 FCC Form 471 application number 634059, FRNs 1753187, 1753238, 1753268, 1753317) (Harrison FY 2008 Funding Commitment Decision Letter (FCDL)) (denying funds for FY 2008); Letter from USAC, Schools and Libraries Division, to Jill Gildea, Harrison School District 36 (dated Mar. 26, 2010) (regarding Harrison FY 2008 FCC Form 471 application number 634059, FRNs 1753187, 1753238, 1753268, 1753317) (FY 2008 Further Explanation of Administrator's Funding Decision); Letter from USAC, Schools and Libraries Division, to Jill Gildea, Harrison School District 36 (dated Apr. 13, 2010) (regarding Harrison's FY 2009 FCC Form 471 application number 678493, FRNs 1852702, 1852749, 1852785, 1852800) (Harrison FY 2009 FCDL) (denying funds for FY 2009); Letter from USAC, Schools and Libraries Division, to Jill Gildea, Harrison School District 36 (regarding Harrison FY 2009 FCC Form 471 application number 678493, FRNs 1852702, 1852749, 1852785, 1852800) (FY 2009 Further Explanation of Administrator's Funding Decision). Subsequently, USAC also denied Net56's appeals of Harrison's funding year 2008 and 2009 funding denials. See Letter from USAC, Schools and Libraries Division, to Paul B. Hudson, Counsel to Net56, Inc. (dated Aug. 4, 2010) (Administrator's Decision on Appeal – Funding Year 2008-2009); Letter from USAC, Schools and Libraries Division, to Paul B. Hudson, Counsel to Net56, Inc. (dated Oct. 26, 2010) (Administrator's Decision on Appeal – Funding Year 2009-2010).

<sup>5</sup> See generally *supra* nn. 3-4.

<sup>6</sup> See Harrison FY 2007 Commitment Adjustment Letter at 4; FY 2008 Further Explanation of Administrator's Funding Decision at 6-9; FY 2009 Further Explanation of Administrator's Funding Decision at 6-9.

<sup>7</sup> See Harrison FY 2007 Commitment Adjustment Letter at 6-13; FY 2008 Further Explanation of Administrator's Funding Decision at 1-5; FY 2009 Further Explanation of Administrator's Funding Decision at 1-5.

<sup>8</sup> The Bureau must conduct a *de novo* review of requests for review of decisions issued by USAC. 47 C.F.R. § 54.723 (2012).

<sup>9</sup> See 47 C.F.R. §§ 54.503(c)(2)(vii), 54.511(a) (2012). See also 47 C.F.R. §§ 54.504(c)(1)(xi), 54.511 (2007). See also *supra* n. 1. In this order, we describe the requirements of the E-rate program as they currently exist, but (continued...)

4. Under the Commission's rules, applicants must seek competitive bids for all services eligible for support,<sup>10</sup> submit an FCC Form 470 for posting on USAC's website,<sup>11</sup> and wait 28 days before making any commitments with a service provider.<sup>12</sup> Applicants must also select a service provider using price as the primary factor.<sup>13</sup> After selecting a service provider, applicants must enter into a contract prior to filing their FCC Forms 471 requesting support for eligible services.<sup>14</sup> Applicants must also clearly allocate the costs of eligible and ineligible services.<sup>15</sup>

5. The record before us demonstrates that Harrison complied with these rules for all three funding years and considered price as the primary factor when selecting Net56.<sup>16</sup>

6. In its decision to deny and rescind funding, USAC states that Harrison filed its FCC Form 471 and then signed a five-year contract with Net56.<sup>17</sup> USAC also concludes that this contract failed to cost allocate eligible from ineligible services.<sup>18</sup> It is uncontested that during USAC's special compliance review, Harrison had provided a five-year contract that included both eligible and non-eligible services

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because the order involves applications from funding years 2007-2009, and the Commission has re-organized the E-rate rules since then, where the Commission's rules have changed, we also cite to the relevant rules as they existed during the relevant funding years.

<sup>10</sup> See 47 C.F.R. § 54.503(a) – (b) (2012) (applicants “must conduct a fair and open competitive bidding process” and must “seek competitive bids . . . for all services eligible for support”). See also 47 C.F.R. § 54.504(a) (2007).

<sup>11</sup> See 47 C.F.R. § 54.503(c) (2012) (applicants “seeking to receive discounts for eligible services under this subpart, shall submit a completed FCC Form 470 to the Administrator to initiate the competitive bidding process”). See also 47 C.F.R. § 54.504(b) (2007). The rules also require USAC to post the FCC Forms 470 submitted by applicants on its website. See 47 C.F.R. § 54.503(c)(3) (2012). See also 47 C.F.R. § 54.504(b)(3) (2007).

<sup>12</sup> See 47 C.F.R. § 54.503(c)(4) (requiring that after an applicant’s FCC Form 470 is posted on USAC’s website, the applicant “wait at least four weeks from the date on which its description of services is posted on the Administrator’s website before making commitments with the selected providers of services”). See also 47 C.F.R. § 54.504(b) (4) (2007).

<sup>13</sup> See 47 C.F.R. § 54.511(a) (2012) (requiring that “in determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered”). See also 47 C.F.R. § 54.511(a) (2007).

<sup>14</sup> See 47 C.F.R. § 54.504(a) (2012) (applicants “shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator”). See also 47 C.F.R. § 54.504(c) (2007).

<sup>15</sup> See 47 C.F.R. § 54.504(e) (2012) (“A request for discounts for a product or service that includes both eligible and ineligible components must allocate the cost of the contract to eligible and ineligible components”). See also 47 C.F.R. § 54.504(g) (2007).

<sup>16</sup> See 47 C.F.R. § 54.503 (2012) (requiring applicants to seek competitive bids to procure E-rate services and providing instruction on the protocol for the bidding process). See also 47 C.F.R. § 54.504 (2007); Letter from Jill Gildea, Harrison School District 36, to Gary Tarantino, USAC, Schools and Libraries Division (dated Apr. 29, 2009) (explaining that Net56 was the only bidder and explaining the selection criteria and competitive bidding process for Harrison); Email from Net56, Inc. to Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission (dated May 21, 2012).

<sup>17</sup> See Harrison FY 2007 Commitment Adjustment Letter at 4, 6, 7, 8, 10, 12; FY 2008 Further Explanation of Administrator’s Funding Decision at 6; FY 2009 Further Explanation of Administrator’s Funding Decision at 6.

<sup>18</sup> See FY 2008 Further Explanation of Administrator’s Funding Decision at 6; FY 2009 Further Explanation of Administrator’s Funding Decision at 6.

without cost allocation between such services.<sup>19</sup> In its appeal, however, Net56 argues that it had submitted different contracts to USAC, but USAC reviewed the wrong document, and that the actual E-rate services contracts for all three funding years were one-year contracts signed in advance of Harrison's FCC Form 471 filings.<sup>20</sup> Net56 also argues that the E-rate contracts and documentation that it submitted to USAC did not cost allocate ineligible from eligible services.<sup>21</sup>

7. We find that the record before us reflects that after selecting Net56, Harrison signed contracts with Net56 for all three funding years prior to filing its annual FCC Forms 471.<sup>22</sup> In its appeal to the Commission of USAC's decisions to deny and rescind funding, Net56 submitted into the record the E-rate services contracts and documentation that listed costs associated with Internet access, wide area network services, firewall services, and web hosting and email services and also provided the cost of ineligible services.<sup>23</sup> Thus, based on the record before us, we conclude that Harrison and Net56 did have timely contracts in place that allocated costs for eligible and ineligible services.

8. The Commission's rules also require that applicants, after completing the competitive bidding process and receiving services, must pay their non-discount portion of the cost of goods and services to the service providers.<sup>24</sup> Here, USAC concluded that Harrison did not pay its share for services,<sup>25</sup> and consequently that Harrison accepted free eligible services.<sup>26</sup> Net56 disputes this finding and explains that if USAC had considered the correct E-rate contract and accompanying documentation, which showed the price allocations for eligible and ineligible services, it would have determined that Harrison did pay its share for eligible services.<sup>27</sup> Net56 explains that it used a financial company, American Capital Financial Services, Inc. ("ACFS"), to facilitate payments from Harrison to Net56 for E-

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<sup>19</sup> See, e.g., Request for Review by Net56, Inc. of Decision of the Universal Service Administrator; Harrison School District 36, 2008 Funding Year, FRNs 1753187, 1753238, 1753268, 1753317, at 3-4 (filed Oct. 4, 2010) (Net56 Appeal FY 2008).

<sup>20</sup> See Request for Review by Net56, Inc. of Decision of the Universal Service Administrator; Harrison School District 36, 2007 Funding Year, FRNs 1531745, 1531757, 1531771, 1531783, 1531795, at 2 & Exhibit E (filed May 23, 2011) (Net56 Appeal FY 2007) (stating that for FY 2007, Harrison and Net56 entered into a contract on January 10, 2007, after which Harrison posted its FCC Form 471 on January 22, 2007); Net56 Appeal FY 2008 at 3 (stating that for FY 2008, Harrison and Net56 entered into a contract on February 3, 2008, and Harrison posted its FCC Form 471 on February 7, 2008); Request for Review by Net56, Inc. of Decision of the Universal Service Administrator; Harrison School District 36, 2009 Funding Year, FRNs 1852702, 1852749, 1852785, 1852800, at 3 (filed Dec. 22, 2010) (Net56 Appeal FY 2009) (stating that for FY 2009, Harrison and Net56 entered into a contract on February 3, 2009, and Harrison posted its FCC Form 471 on February 11, 2009).

<sup>21</sup> See Net56 Appeal FY 2007 at 2-7; Net56 Appeal FY 2008 at 3-7; Net56 Appeal FY 2009 at 3-7.

<sup>22</sup> See *supra* n. 20.

<sup>23</sup> See Net56 Appeal FY 2007 at Exhibit G (explaining that Harrison was responsible for \$4859.50 for E-rate Services and \$1,577.40 for other non-E-rate Services for FY 2007); Net56 Appeal FY 2009 at Attachment 4 (explaining that Harrison was responsible for \$4859.50 for E-rate Services and \$1,447.40 for other non-E-rate Services for FY 2009); Letter from Paul Hudson, Counsel to Net56, Inc., to Mel Blackwell, Vice President of the Schools and Libraries Division, USAC, at 11 (dated Feb. 19, 2010) (explaining that Harrison was responsible for \$4859.50 for E-rate Services and \$1,447.40 for other non-E-rate Services for FY 2008).

<sup>24</sup> See 47 C.F.R. 54.504(a)(1)(iii) (2012). See also 47 C.F.R. § 54.504 (c)(1)(iii) (2007).

<sup>25</sup> See Harrison FY 2007 Commitment Adjustment Letter at 4, 7, 8, 10, 12; FY 2008 Further Explanation of Administrator's Funding Decision at 6-8; FY 2009 Further Explanation of Administrator's Funding Decision at 6-8.

<sup>26</sup> See e.g., Harrison FY 2007 Commitment Adjustment Letter at 4.

<sup>27</sup> See Net56 Appeal FY 2007 at 6-7; Net56 Appeal FY 2008 at 5-7; Net56 Appeal FY 2009 at 5-7.

rate eligible services.<sup>28</sup> Net56 also states that it sought and received approval from USAC to use financiers, such as ACFS, to accept payments from applicants.<sup>29</sup>

9. After reviewing the record, we find that Harrison and Net56's contracts required Harrison to pay ACFS for eligible and ineligible services and goods.<sup>30</sup> Pursuant to a contract between Harrison and ACFS, ACFS would then remit part of Harrison's payment to Net56 for the eligible services.<sup>31</sup> Because the record reflects this process for payment continued through funding years 2007 through 2009,<sup>32</sup> we find that Harrison did pay its share for E-rate supported services in accordance with Commission rules. USAC's determination that Harrison accepted free services was premised on its allegation that Harrison did not pay its share for those services. Because we find that Harrison paid its share for the services at issue, we find that Harrison did not receive any free services.

10. USAC also determined that certain services requested by Harrison in its requests for WAN, firewall services, and email and web hosting services were ineligible for funding.<sup>33</sup> In its appeals, Net56 does not appeal USAC's eligibility determinations and instead asks that Harrison receive funding in the amounts deemed appropriate by USAC during its cost effectiveness review.<sup>34</sup> Because Net56 does not contest USAC's determinations with respect to eligibility of these services, we will not address them here.

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<sup>28</sup> See *supra* n. 27.

<sup>29</sup> Letter from Paul B. Hudson, Counsel to Net56, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (dated Aug. 15, 2011) ("Net56 . . . walked away from those discussions [with USAC] believing that it had been given a go-ahead"). "I spoke with the USAC Ombudsman tonight and he said that it does not matter if you have the lease or the lease is assigned . . . Net56 can bill for services as is." *Id.* at Attachment 2.

<sup>30</sup> See Harrison School District 36 – Net56 Master Service Agreement and Master Lease Agreement at 1 (dated June 21, 2007).

<sup>31</sup> See e.g., Net56 Appeal FY 2009 at Exhibit C, Attachment 3; see also Invoice from ACFS to Harrison School District 36 for Services Rendered by Net56 (dated July 1, 2007) (requesting a payment of \$7,377.25).

<sup>32</sup> See Letter from Paul B. Hudson, Counsel to Net56, Inc., to Anita Patankar-Stoll, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission at Exhibit 2 (dated May 31, 2012).

<sup>33</sup> See Harrison FY 2007 Commitment Adjustment Letter at 4 (listing the following services as ineligible for funding: "Maintenance, operation and repair of co-located equipment (customer equipment located at the Net56 data center), phone support of standard Microsoft applications running on co-located equipment, monitor 7 x 24 of co-located equipment, provide anti-virus services on co-located equipment and maintain and deploy anti-virus at desktop, Tier 1 help desk, onsite support to the desktop, on-site floating field engineer, redesign of District web site, Tier 1 & 2 help desk support, business continuity plan, application hosting services, application support for accounting and student information systems, SharePoint portal services, unlimited professional development on Microsoft Office and other applications"). USAC listed a DNS/DHCP server as being misclassified as eligible for priority 1 funding instead of priority 2 funding. *Id.* at 6. Finally, USAC found that Harrison asked for a firewall at the Net56 data center, which was an ineligible location, and for e-mail and web retention and journaling, which were also ineligible for funding. *Id.* at 8, 10, 12. See also FY 2008 Further Explanation of Administrator's Funding Decision at 1-4; FY 2009 Further Explanation of Administrator's Funding Decision at 1-4.

<sup>34</sup> See Net56 Appeal FY 2008 at 7-9; Net56 Appeal FY 2009 at 7-9. "Net56 is simply asking to be able to receive at least a fraction of the contract price for a service that no one denies has already been provided in full." *Id.* at 8. See also Letter from Paul B. Hudson, Counsel to Net56, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission at 2 (dated Jul. 31, 2012) (Net56 July 31, 2012 Letter) ("Net56 notes that it is not seeking funding for certain functions that had been included in the contract prices but that USAC held were ineligible").

11. Finally, we address USAC's determination that Harrison's funding requests for WAN services, firewall services, and email and web hosting services were not cost effective.<sup>35</sup> Applicants are required to request discounts based on their reasonable needs and resources and their bids for services should be evaluated based on cost-effectiveness.<sup>36</sup> In the instant matter, Net56 describes its service to Harrison, as well as other school districts and commercial clients, as a centralized solution that housed most of the equipment at the Net56 location, rather than on Harrison's premises.<sup>37</sup> For firewall services, Net56 provided a "robust and reliable" solution that used a specific switch and firewall software for all of its applicants.<sup>38</sup> For WAN services, Net56 explained that its pricing varied per applicant depending on how many routers were needed and bandwidth requirements, and that Harrison had one router on its location to send and receive Internet services.<sup>39</sup> For email and web hosting services, Net56 explained that it used a "network-based architecture" and provided costs associated with the equipment needed for these services.<sup>40</sup>

12. USAC determined that Net56's services for WAN, firewall services, and email and web hosting services, "exceed[ed] twice the cost of a commercially available solution" and were therefore, not cost effective.<sup>41</sup> USAC used a five-year contract between Harrison and Net56 and calculated costs based on that length of time.<sup>42</sup> USAC argued that Harrison could have purchased equipment for school premises for significantly less than the leased option provided by Net56.<sup>43</sup> To arrive at its cost estimates for the commercially available solution, USAC conducted web searches for the purchase prices of specific network equipment and added an additional fifty percent of that price to estimate charges for installation and annual maintenance.<sup>44</sup> Net56 argues that USAC's solution for Harrison severely understates the costs associated with a premises-based solution.<sup>45</sup> For example, Net56 argues that USAC's estimate of the cost to obtain a commercially available solution fails to include costs for licenses, load balancers, additional bandwidth, obsolete equipment, hiring personnel, and training personnel to

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<sup>35</sup> See FY 2008 Further Explanation of Administrator's Funding Decision at 3 (concluding that Net56's WAN solution cost \$35,400 over the course of a five year contract, whereas USAC's theoretical premises-based solution would cost \$7,200). For firewall services over five years, according to USAC, Net56's solution would cost \$69,000, whereas USAC's theoretical premises-based solution would cost \$20,000. *Id.* at 3-4. Also, for web hosting and e-mail services, USAC claims that Net56's solution would cost \$240,000 over the course of five years, whereas USAC's theoretical premises-based solution would cost \$57,000. *Id.* at 4. *See also* Harrison FY 2007 Commitment Adjustment Letter at 6-12; FY 2009 Further Explanation of Administrator's Funding Decision at 3-4.

<sup>36</sup> *See supra* n. 1.

<sup>37</sup> See Net56 July 31, 2012 Letter at 1-4; Email from Paul B. Hudson, Counsel to Net56, Inc., to Anita Patankar-Stoll, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission (dated Sept. 13, 2012).

<sup>38</sup> See Net56 July 31, 2012 Letter at 3.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *See*, Harrison FY 2007 Commitment Adjustment Letter at 7. *See also supra* n. 34.

<sup>42</sup> See FY 2008 Further Explanation of Administrator's Funding Decision at 3-4 (using the Harrison School District 36 – Net56 Master Service Agreement and Master Lease Agreement, which was signed June 21, 2007).

<sup>43</sup> *See e.g.*, FY 2008 Further Explanation of Administrator's Funding Decision at 3-4. *See also supra* n. 34.

<sup>44</sup> *See e.g.*, FY 2008 Further Explanation of Administrator's Funding Decision at 3-4.

<sup>45</sup> See Email from Paul B. Hudson, Counsel to Net56, Inc., to Anita Patankar-Stoll, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission (dated Sept. 13, 2012).

operate, monitor and maintain purchased equipment.<sup>46</sup> Net56 argues that USAC's estimated price for the requested services would have been more expensive, and that Net56's leased solution is much more cost effective for Harrison.<sup>47</sup> Additionally, Net56 states that USAC used the wrong contract and should not have been projecting costs for five years and instead, USAC should have considered the E-rate one-year contracts.<sup>48</sup> With respect to USAC's finding that the installation and maintenance costs it charged Harrison were excessive, Net56 argues that it used formulas given by USAC to determine installation and maintenance costs.<sup>49</sup> Therefore, Net56 argues that the prices for services and products to Harrison were cost effective.<sup>50</sup>

13. The Commission has not established a bright line test for determining when costs for services are excessive.<sup>51</sup> The Commission has, however, noted that there may be instances where costs for services are so exorbitant that they cannot be cost effective and gave the example of a router that is sold for two to three times the commercial market price.<sup>52</sup> Based on the information before us, that is not the case here, as the services requested by Harrison were not two to three times the estimated commercial market price.

14. In this case, we find, first, that the record supports a determination that Harrison followed the Commission's rules in conducting its bidding and selection process.<sup>53</sup> In all three funding years, Net56 was the only bidder to respond to Harrison's FCC Form 470.<sup>54</sup> Thus, necessarily, Net56's bid offered the lowest price.<sup>55</sup> Second, we are not persuaded that USAC took into account all the relevant costs when estimating the cost of a premises-based solution for Harrison compared to Net56's leased solution for Harrison. Third, the record reflects that Net56 complied with the Commission's rules regarding lowest corresponding price, which requires service providers to provide applicants with prices no higher than the lowest price that it charges to similarly-situated non-residential customer for similar services.<sup>56</sup> Net56 provided examples of prices for its commercial customers for Internet access, wide area network, web and email hosting, and firewall services and compared them to the lower prices that it

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<sup>46</sup> See *id.*

<sup>47</sup> See Net56 July 31, 2012 Letter at 3.

<sup>48</sup> See *id.*

<sup>49</sup> See *id.* at 2.

<sup>50</sup> See Net56 July 31, 2012 Letter at 2.

<sup>51</sup> See *Ysleta*, 18 FCC Rcd at 26432, para. 54 ("The Commission has not, to date, enunciated bright-line standards for determining when particular services are priced so high as to be considered not cost-effective under our rules.")

<sup>52</sup> See *id.*

<sup>53</sup> See *supra* n. 16.

<sup>54</sup> See Email from Paul B. Hudson, Counsel to Net56, Inc., to Anita Patankar-Stoll, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission (dated May 21, 2012).

<sup>55</sup> See *Allendale*, 26 FCC Rcd at 6115-16.

<sup>56</sup> See 47 C.F.R. § 54.511(b) (2007) ("Providers of eligible services shall not charge schools, school district, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding prices is not compensatory. Promotional rates offered by a service provider for a period of more than 90 days must be included among the comparable rates upon which the lowest corresponding price is determined."); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, 13 FCC Rcd 2372, para. 133 (1997).

charged to Harrison.<sup>57</sup> Based on all of these factors, we conclude that USAC did not establish that Harrison failed to select a cost-effective service.

15. Lastly, on our own motion, we waive section 54.507(d) of the Commission's rules and direct USAC to waive any procedural deadline, such as the invoicing deadline, that might be necessary to effectuate our ruling.<sup>58</sup> We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause the applicant to miss the program's subsequent procedural deadlines in that funding year.

16. Therefore based on our review of the record, we grant the requests of Net56 with respect to Harrison's funding year 2007 through 2009 E-rate applications. On remand, we direct USAC to process the grant using the services and pricing found in Harrison's E-rate contracts dated January 1, 2007, February 3, 2008, and February 3, 2009, and reduce the funding request by the amount of any ineligible charges consistent with this order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed in the appendix and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the underlying applications. We direct USAC to discontinue recovery actions relating to requests for review that are addressed herein. At this time, we find that there is also no evidence of waste, fraud or abuse, in the record.

17. ACCORDINGLY, IT IS 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 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), the requests for review filed by Net56, Inc. as listed in the Appendix ARE GRANTED and the underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

18. 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 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that section 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d), IS WAIVED for the parties to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>57</sup> See Net56 July 31, 2012 Letter at 4-5.

<sup>58</sup> 47 C.F.R. § 54.507(d) (2012) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

**APPENDIX**

<b>Petitioner</b>	<b>Application Number</b>	<b>Funding Year</b>	<b>Date Request for Review Filed</b>
Net56, Inc. Palatine, Illinois (Harrison School District 36, Wonderlake, Illinois)	552545 634059 678493	2007 2008 2009	May 23, 2011 Oct. 4, 2010 Dec. 22, 2010