



DOCKET FILE COPY ORIGINAL

COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION

P.O. BOX 2120

RICHMOND, VA. 23218-2120

November 17, 2000

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Petition for Review

File Number SLD-209024

CC Docket Number 96-45 ✓

CC Docket Number 97-21

Dear Ms. Salas:

Enclosed for your consideration and in accordance with Title 47, Part 1, 1.51(c)(2) of the Code of Federal Regulations is an original and four copies of a petition for review from the Virginia Department of Education. This petition is filed in support of a petition for review of a Schools and Libraries Division decision filed by Henrico County Public Schools, Virginia. This petition also seeks redress for other applicants either denied or yet to be denied funding.

Should you have any questions, please contact me directly at (804) 692-0335.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Weisiger".

Greg Weisiger
E-Rate Coordinator

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Original

Before the
Federal Communications Commission
Washington, DC

In the Matter of:

Request for Review of Decision of)	
the Universal Service Fund Administrator)	
)	
)	
Henrico County Public Schools)	File No. SLD-209024
Richmond, Virginia)	
)	
and)	
)	
Other Schools and Libraries in Virginia)	
Similarly Affected by Current Administrator)	
Policy)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

The Virginia Department of Education files this Petition in support of Henrico County Public Schools' Request for Review, file number SLD-209024, and in support of other Virginia schools and libraries denied funding, or not yet denied funding for year two out-of-window E-Rate applications. We are moved to submit this petition because the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) failed to follow Federal Communications Commission (FCC) regulations regarding Internet posting of FCC Form 470 submitted by year two out-of-window applicants. We ask the Commission to direct the SLD to accept year three Forms 470 filed for year two out of window applications.

Background

Funding for the Universal Service E-Rate program was initially envisioned by the FCC as a "first come first served" program, where schools and libraries were required to file a Form 470 with the E-Rate Administrator (SLD) who would post certain information from the Form 470 on a website operated by the Administrator. The website posting was intended to notify vendors of services desired by schools and libraries. In the Third Report and Order adopted October 10, 1997, the FCC recognized that a first come first served approach was not feasible and mandated that the SLD establish a "filing window" approach, where all applications received within a designated time period would be considered simultaneously filed. Should funds remain after satisfying all applications received within the filing window, prior regulations remained in effect to fund applications on a first come first served basis, with a limited exception when available funds reached a specified level.

The SLD established a policy of designating Form 470 postings to certain years, although Federal Communications Commission regulations are vague on the matter. Applicants select the year for which the Form 470 applies by specifying it on line 2 of the form, or using a pull down menu when filing online. In September 1999 a new version of the Form 470 was introduced. When the new Form 470 was posted on the SLD website, applicants were unable access year two (1999-2000) on the pull down menu.

After October 25, 1999 the SLD refused to accept online submissions of year two Forms 470, even though only four months of year two had passed and there was evidence that funds would be available to fund applications submitted after October 25.

Discussion

Federal Communications Commission regulation Title 47, Part 54, Section 54.504 (b)(3) clearly requires the SLD to "...post each FCC Form 470 that it receives from an eligible school, library, or consortium that includes an eligible school or library on its website designated for this purpose."

The SLD failed to timely post properly filed Forms 470 for year two from a number of Virginia schools. Because the SLD improperly closed the year two Form 470 website on or about October 25, 1999, schools and libraries had no choice but to submit Forms 470 manually. The Virginia Department of Education sought advice from the SLD on this issue. Matt Harcourt, SLD employee advised applicants to file Forms 470 and 471 manually and mail them to the SLD. The Department issued two statewide notices on November 18, 1999 and November 23, 1999 (attachment A) encouraging applicants to submit year two funding requests. The Department filed a petition for review with the Commission on March 10, 2000 (attachment B) when we discovered that the manually filed Forms 470 were not posted on the SLD website in a timely manner.

Because the Forms 470 were submitted manually, the signed certification pages, required under FCC regulations, were delivered simultaneously. The SLD registers and posts on its website the date certifications were received. The SLD also posts the date Forms 470 were posted on the website. Based on dates posted on the SLD website, it is clear that some Virginia Forms 470 were not posted for more than two months.

The following Forms 470 were not posted by the Administrator in a timely manner: Northampton County, certification received 12/7/99, posting date 2/16/00; Hampton City, certification received 12/20/99, posting date 2/16/00; Madison County, certification received 12/16/99, posting date 2/23/00; Richmond County, certification received 12/27/99, posting date 2/16/00; Greene County, certification received 1/3/00, posting date 2/16/00.

Additionally, other Virginia applicants filed Forms 470 online using year three applications but identifying them as year two forms. These applications were not identified by the SLD as year two Forms 470 in a spreadsheet posted on the SLD website of year two Forms 470 filed after October 25, 1999. SLD has subsequently moved year two Forms 470 from the spreadsheet to the year two Form 470 search site. Forms 470 posted on the year three search site and identified as year two forms remain on the year three search site.

Because of SLD's failure to timely post Forms 470 received after October 25, because year two out-of-window funding applications were, in many cases completed after year three applications were filed, and because the SLD will not

process year two out of window applications until it completes year three funding applications, the SLD must accept Forms 470 posted on the year three 470 website.

In Runnemedede (Common Carrier DA99-2957), the commission waived the 28 day posting requirement when the SLD failed to timely post Runnemedede's Form 470. Runnemedede had no other Form 470 to cite and was forced to appeal for a waiver. Virginia applicants were able to cite properly filed year three Forms 470 and will not require waivers of the 28 day posting requirement. Contracts signed as a result of those postings were bid in accordance with FCC regulations and were signed during the second funding year. The SLD has however refused to accept these forms for processing year two out-of-window applications. We ask that the FCC overturn this policy and allow funding for year two out of window applications citing year three Forms 470.

Respectfully Submitted this 15th day of November, 2000,

A handwritten signature in black ink, appearing to read "Lar Neugent", with a long, sweeping flourish extending to the right.

Lar Neugent
Assistant Superintendent for Technology

Virginia Department of Education
P. O. Box 2120
Richmond, Virginia 23219

ATTACHMENT A

E-Rate Update November 18, 1999

Filing Window Opens for Year Three

The year three filing window for services received between July 1, 2000 and June 30, 2001 is now open! The filing window is scheduled to close January 19, 2000. All E-Rate discount applications received during the window will be treated as if they were received at the same time. The last possible day to safely file a form 470, wait 28 days, sign a contract, file a form 471, and have it delivered to Kansas is about December 17.

Year Two Funding Commitments Finished – Virtually

According to Kate Moore, President of the Schools and Libraries Division, funding commitment wave 20 is being released today. Today's mailing represents the last major funding release for year two. There are only a few year two applications, that arrived within the year two window, remaining to be processed. Moore said that about 2000 applications have arrived since the window closed on April 6, 1999.

Virginia schools and libraries have received almost \$25 million in commitments for year two. Thus far, 118 Virginia school divisions have received funding commitments for year two. Once a commitment letter has been received, applicants must file form 486 to begin the discount process. In some cases a form 472 must also be filed for applicants receiving retroactive discounts.

Not too Late to File for Year Two Discounts

Applicants that did not file for discounts for year two, had applications denied or rejected, or have need of additional services should file a new form 471 for year two funding now. As the Schools and Libraries Division closes the books on year one, a large amount of money collected for the program has gone unspent – perhaps hundreds of millions of dollars. Librarians and educators have urged the Federal Communications Commission to use this money to fund year two applications received outside the filing window. The FCC is expected to act on these requests shortly. Applications received outside the filing window will be funded on a first-come-first-served basis. Currently there are approximately 2,000 applications waiting for funding representing about \$200 million. It is estimated that the year one carryover funds will be more than sufficient to fund all 2,000 applications plus more!

Applicants that filed a form 470 for existing contracts or services that have already started can file a form 471 requesting funding as early as July 1, 1999, or when services began – whichever is later. Applicants that have never filed a form 470 should have it posted on the SLD website now and file a form 471 after the 28 day posting period.

See the Department of Education E-Rate website for more information on filing:
<http://www.pen.k12.va.us/VDOE/Technology/erate.html>

Because funding will be granted on applications in the order that they are received, Virginia schools and libraries are urged to submit applications as soon as possible!

Contact Greg Weisiger at (804) 692-0335 for assistance with applications, appeals, or the E-Rate process.

Details on Statewide Contracts

The Commonwealth has a number of statewide contracts public schools and libraries can utilize. Information on those contracts is listed below:

Network Virginia

ATTACHMENT A

E-Rate Update

To be E-Rate Eligible, Network Virginia services must be ordered directly from Virginia Tech.
Contact Jeff Crowder (540) 231-3300

Information on the Network Virginia contracts is available at: <http://www.networkvirginia.net/>

Universal Service Control Number for both contracts: 746400000117260

SPIN for Bell Atlantic: 143001422

SPIN for Sprint 143005695

Department of Information Technology Contracts

Information on DIT contracts is available at: <http://www.dit.state.va.us/usf/usf.htm>

DIT holds contracts for long distance services, routers, switches and other hardware.
Contact Suzanne Piland at (804) 371-5544 for details on E-Rate eligible services.

The Department of Education does not endorse one contract over another, but provides this information as a service to schools and libraries.

The Department of Education does endorse the Technology Leadership Conference at the Hotel Roanoke December 13 through 15. Two E-Rate training sessions are scheduled. Bring applications, appeals and E-Rate questions!

Greg Weisiger

wparrott <wparrott@greenville.k12.va.us>

E-Rate Update 11/18/99 (Clarified)

Additional Information for Filing Year Two Applications

The E-Rate Update of 11/18 generated a great deal of interest from applicants wishing to request additional services for the current funding cycle. There is a possibility that the Federal Communications Commission will order that year one carryover funds should be used to fund year two applications that arrived outside the filing window, which closed on April 6, 1999. Applicants wishing to receive discounts should file NOW for funding.

Year two discount requests (both forms 470 and 471) can only be filed on paper and mailed to Kansas. Online filing for year two requests will not be permitted. Applicants may use either the new or old form 470, but can only use the new 471. The Schools and Libraries Division anticipates a flood of year two applications and has assigned additional people for processing. Year two applications filed now may also request funding back to the start of the current funding cycle (July 1, 1999), if a 470 has already been filed for those services.

The year three window (funding for July 1, 2000 through June 30, 2001) is also open and will close on January 19, 2000. Year three funding requests should also be filed now. Both year three application forms can be filed online.

ATTACHMENT 13

DOCKET FILE COPY ORIGINAL

Original

Before the Federal Communications Commission
Washington DC 20554

In the Matter of

Petition for Commission Review
of Certain Virginia Universal
Service Applications

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

The Virginia Department of Education requests Federal Communications Commission (FCC) accommodation of certain Universal Service, E-Rate applications for discounted telecommunications service, Internet access, and internal connections. We also ask that the Commission more closely monitor actions by the Schools and Libraries Division (SLD) and its contractors.

On November 18, 1999, the Virginia Department of Education issued a statewide notice that Universal Service, E-Rate funding may be available for year two applicants (Attachment A). The Department urged applicants to file forms 470 for new year two services, or file forms 471 for services for which a form 470 previously had been filed. This advice was repeated at training sessions in December 1999. A number of Virginia applicants filed forms 470 in November, December, and January 1999, for year two services. Another group of Virginia applicants filed forms 471 requesting funding for year two services prior to March 2, 2000, but after November 18, 1999.

The Department has learned that the Schools and Libraries Division contractor failed to post form 470 applications in a timely manner for Virginia applicants from Madison County, Northampton County, Hampton City, Richmond County, Greene County, and Culpeper County. We understand that a number of forms 470 were returned to applicants without being posted on the Web site. We also know of at least one year two form 470, from Pulaski County, was posted on the SLD year three Web site.

The Schools and Libraries Division is required under CFR Title 47, Part 54, Subpart F, Section 54.504 (b)(3) to post form 470 requests for service on its website. The Schools and Libraries Division failed to post forms 470 for the above Virginia applicants in a timely manner, resulting in a loss of funding opportunity from the time the applications should have been posted to the time they were actually posted. Further, because the forms 470 in question were not posted until mid-February 2000, contracts for those services cannot be signed before mid-March, at which time forms 471 may be submitted. Applications submitted between March 2 and March 31, 2000, will fall under the "Rules of Priority" and may not receive funding, because of limited availability of funds.

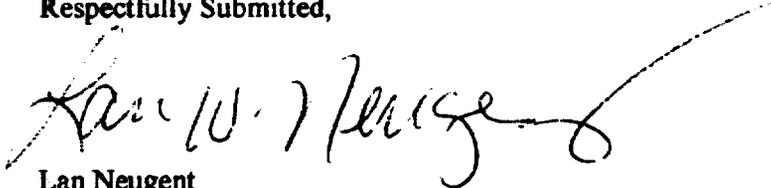
By searching the posted forms 470 on the SLD Web site, we have identified other affected applicants in Tennessee, Vermont, North Carolina and California, although it appears Virginia has the largest number.

**Virginia Petition
Page 3**

We ask that the above named Virginia applicants, and any other Virginia applicant the Virginia Department of Education, SLD, or FCC may identify as having filed timely year two 470 or 471 applications be granted the opportunity to receive funding for equipment and services retroactive to the time their applications should have been posted on the SLD Web site. We also ask that all form 470 applications incorrectly posted as year three services be considered as year two postings. Finally, We ask the FCC to investigate the reason for the apparent disregard for FCC regulations by the SLD.

In the alternative, we ask that the FCC designate School and Library Program year one unspent funds to year two 471 applications received by SLD between March 2, and March 31, 2000. We ask that sufficient funds be allocated to fund all approved applications received during this period.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lan Neugent", with a long, sweeping flourish extending to the right.

**Lan Neugent
Assistant Superintendent for Technology**

**Virginia Department of Education
Post Office Box 2120
Richmond, VA 23218**

March 10, 2000