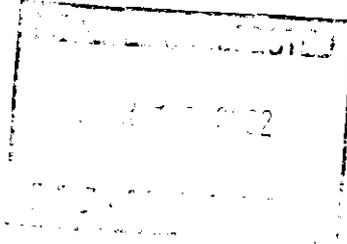


City Of Newport News

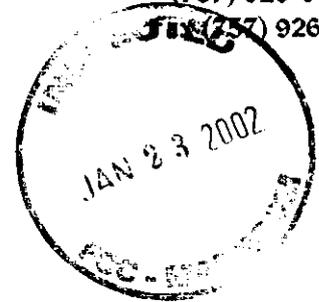


Office Of The City Manager

Virginia 23607



2400 Washington Avenue
(757) 926-8411
(757) 926-3503



November 16, 2001

Federal Communications Commission
Office of the Secretary
445 - 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Confirmed

MAR 14 2002

DISPATCH CENTER

Re: Request for Review by the City of Newport News, Virginia, of Decision of Universal Service Administrator
Billed Entity Number: 126530
471 Application Number: NEC.471.12-16-99.02700001
FCC Docket Nos.: 96-45 and 97-21

Dear Sir:

As Chief Executive Officer of the City of Newport News, Virginia, (the "City"), I hereby file on behalf of the City, an appeal of the denial of Newport News' application for a Schools and Libraries Division ("SLD") for funding for Funding Year 2000-2001. The Administrator's decision, dated October 26, 2001. (*see* Attachment 1) indicated that the appeal was "**Denied for Data Entry.**" (*Id.*)

The Newport News Mayor and my representative have met with FCC staff and have been encouraged to file an appeal. This letter of appeal is forwarded in accordance with Federal Communications Commission ("FCC") regulation and the instructions contained in the SLD decision letter of October 26, 2001. The City seeks further examination by the FCC of its application for funding, approval of that application, and funding pursuant to that application.

This appeal is based on the belief that the SLD decision is inequitable on its face and exhibits an incomprehensible exercise of punitiveness, given the facts underlying the request for appeal. (*see* Attachment 2 for summary Chronology of Events).

The SLD decision letter states the following:

Your appeal stated that your Form 471 was not processed because it lacked the signature of your Purchasing Director. Had this document been reviewed earlier on

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the part of SLD, you would have been able to have the form signed prior to the deadline of January 19, 2000. (*Emphasis supplied*)

Your application was incomplete when originally received by SLD on December 16, 1999. The application was returned by SLD on February 22, 2000, because the application was missing a signature in Block 6, thus failing the minimum processing standards.

On February 22, 2000, you sent an appeal along with a corrected Block 6 certification page. In your letter you acknowledge that the original form was sent without a signature and request that the correction be accepted and the application considered to be timely filed.

The apparent gravamen of SLD's reason for denial is that "Signature certifications ultimately satisfy the program's policy objective of binding applicants and service providers to the program requirements." (*Id. at p.2*) The City readily admits that the required signature was omitted. However this reason to justify denial lacks logic in that no applicant will be bound to the most significant program requirements - those involving the actual receipt and expenditure of funds - unless and until that applicant becomes a recipient of these grant funds.

The basis for the SLD denial is a classic "form over substance" approach and is reminiscent of the long-discredited writ system of historic England which exalted nit-picking detail over substance and rationality. Given that the only flaw cited in the application was the lack of a signature, rather than a substantive flaw such as omitting detail that would have prevented review and analysis of the application, and given the City's history of being bound by and responsibly administering the program requirements in past years, an appropriately and equitably balanced approach would have been to process the application on its merits while notifying the City that the signature was missing. Returning the application long after the period within which it could have been corrected was a communication failure not befitting the FCC, and an administrative act by your contractor, USAC, which insured the City's failure to successfully complete the application. This set of facts alone should be sufficient to justify granting our appeal, thereby reversing the SLD denial, and permitting the application to be processed and approved for funding.

City staff has accessed USAC's web site as a part of the analysis of this appeal. I acknowledge that the current web site is undoubtedly an improvement over previous years', but it is ironic that the current web site includes "Problem Resolution" information which includes a mechanism to deal with precisely the type of problem for which Newport News' application was rejected: the lack of a signature, creating an application which technically did not meet "minimum processing standards." It is simply arbitrary and capricious for USAC to deny processing of Newport News' application on the basis of a technical detail which you now refer to as a "minimum processing standard" (and which was corrected immediately once the defect was known).

Federal Communications Commission

November 16, 2001

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I feel that Newport News is entitled to a favorable consideration based on the fact that we have successfully administered the receipt of past SLD grants and thus have a "record" of being responsible stewards of those funds for the educational benefit of the students in our school system. Given the above, I am confident that a fair-minded review of the situation will result in the application's review and approval and the consequent funding of that application.

Thank you for your attention to this matter. If you have need of additional information, my designated contact person is Assistant City Manager Neil A. Morgan (Telephone: 757.926.8893).

Sincerely,

A handwritten signature in black ink that reads "Ed Maroney". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

Ed Maroney
City Manager

Attachments

sek1022wpd



Administrator's Decision on Appeal - Funding Year 2000-2001

October 26, 2001

Mr. Gaddis Key
Newport News Public Schools
2400 Washington Avenue
Newport News, VA 23607

Re: Billed Entity Number: 126530
471 Application Number: NEC.471.12-16-99.02700001
Funding Request Number(s): 1 not assigned
Your Correspondence Dated: February 22, 2000 & April 3, 2000

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Three Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 30-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 1 not assigned
Decision on Appeal: **Denied for Data Entry**
Explanation:

- Your appeal stated that your Form 471 was not processed because it lacked the signature of your Purchasing Director. Had this document been reviewed earlier on the part of SLD, you would have been able to have the form signed prior to the deadline of January 19, 2000.
- Your application was incomplete when originally received by SLD on December 16, 1999. The application was returned by SLD on February 22, 2000 because the application was missing a signature in Block 6, thus failing the minimum processing standards.
- Consistent with the FCC Decision on South Barber Unified School District, the signature certification is fundamental to the administration of the program. SLD

relies on the signature certification to establish the authority of the signer to represent the applicant. Signature certifications ultimately satisfy the program's policy objective of binding the applicants and service providers to the program requirements. Failing to submit a signature certification omits the legally binding act that signifies compliance with program rules.¹

- On February 22, 2000, you sent an appeal along with a corrected Block 6 certification page. In your letter you acknowledge that the original form was sent without a signature and request that the correction be accepted and the application considered to be timely filed. As referenced in the South Barber decision, the purpose of a filing window is to put all applicants who file within the window on equal footing.² Allowing applicants to correct their applications and resubmit them after the window has closed would eliminate any incentive to comply with SLD's document demands in a timely fashion, and could jeopardize SLD's ability to accurately apply the rules of priority in years where requests for funding exceed the annual funding cap.³ Therefore, your appeal is denied in full and your application will not be data entered.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. Before preparing and submitting your appeal, please be sure to review the FCC rules concerning the filing of an appeal of an Administrator's Decision, which are posted on the website at <www.universalservice.org>. **You must file your appeal with the FCC no later than 30 days from the date on this letter for your appeal to be filed in a timely fashion.**

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

Schools and Libraries Division
Universal Service Administrative Company

¹ *Request for Review of the Decision of the Universal Service Administrator by South Barber Unified School District 255, Changes to the Board of Directors of the National Exchange Carriers Association, Inc.*, File No. SLD-158897, CC Dockets No. 96-45- and 97-21, Order, DA 01-2233 (Com. Car. Bur. Rel. Oct. 23, 2001).

² *Id.*

³ *Id.*

CHRONOLOGY OF EVENTS

- ◆ 10 December 1999: City of Newport News Information Technology (IT) Staff submitted Form 471 to USAC for Bell Atlantic Services for Newport News Public Schools; Purchasing Director's signature on form missing.
- ◆ 22 February 2000: IT Staff notified by letter dated 16 February 2000 that application for services not processed for lack of signature. **Letter notified IT Staff that correction period for application for services expired on 19 January 2000.**
- ◆ 22 February 2000: IT Staff immediately filed appeal of SLD decision.
- ◆ 31 March 2000: IT Staff informed by USAC Tech Services staff that appeal not received. Information faxed to USAC on that date.
- ◆ 4 April 2000: Second letter of appeal, dated 3 April 2000, sent to USAC; letter received 5 April 2000.
- ◆ IT Staff again informed that appeal was denied because application window closed on 19 January 2000 and the lack of signature could not be overcome.
- ◆ 26 October 2001: USAC "Administrator's Decision on Appeal" issued; the decision upheld the denial of application review for lack of signature.