

November 17, 2004

Federal Communications Commission
Office of the Secretary
445 – 12th Street, SW
Washington, DC 20554

Subject: CC Docket No. 02-6 – Request for Review of USAC (SLD)
Administrator's Decision on Appeal

Re: Applicant Name: Chesapeake Public Library System
Billed Entity Number: 126518
FCC Form 471 Application Number: 409639 dated 1/29/2004
Funding Request Numbers: 1123295, 1123328

The Chesapeake Public Library ("CPL") hereby appeals and requests review of the decision of the USAC Schools and Library Division Administrator's Decision on Appeal dated October 11, 2004 with regard to the application referenced above. The application was originally denied with the Funding Commitment Decision Explanation of "No contract or legally binding agreement was in place when the Form 471 was filed." This decision was appealed by CPL letter dated July 7, 2004 and again denied in full by USAC SLD in a decision dated October 11, 2004. CPL respectfully requests that the decisions be reversed, for the following reasons.

CPL filed application 409639 on January 29, 2004. Contract 04-075-920-37 for telecommunications services was awarded to Cox Communications by the City of Chesapeake on January 27, 2004. Attached is a letter from the City of Chesapeake Purchasing and Contracts Department certifying that, upon receipt of the Best and Final Offer from Cox Communications on January 27, 2004, and subsequent telephone conversation that day, the City awarded the contract to Cox Communications, and a legally binding agreement was made. While formal signature of the contract document did not occur until February 3, 2004, as the Vice President authorized to sign contracts was in a series of meetings and inaccessible for several days, the required agreement was in place when Form 471 was filed by CPL.

By way of background, CPL first contracted with Cox Communications in March of 1999 for five (5) years and competitively renewed that contract on January 27, 2004. At the time of renewal, CPL had an existing contract with Cox that was re-awarded without interruption of service for another five (5) years.

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The Chesapeake Public Library requests that the FCC reconsider and approve application 409639 as filed. A legally binding agreement was entered into when award notification was provided to Cox Communications on 1/27/2004.

The information provided herein supports our full compliance with all filing requirements. CPL believes both the letter and spirit of program regulations was met with regard to this application and there was no intent to circumvent or non-comply with FCC regulations. CPL staff submitted the application when advised by the contracting officer on 1/27/2004 that a contract was in place. What this case comes down to is a four day paperwork delay between when the contract was actually awarded on 1/27/2004 and when the contract coversheet was signed on 2/3/2004. CPL should not be penalized and denied funding because of an administrative technicality.

We request that the decision to deny the application be reversed as denial of this application will result in reduction in services to the citizens of Chesapeake and would not be in the best public interest.

The Chesapeake Public Library's authorized point of contact is: Mr. James Pearson, Information Systems Manager, telephone number (757) 382-8882.

Sincerely,



Margaret P. Stillman, Director
Libraries & Research Services

Enclosures: Letter from City of Chesapeake Purchasing and Contracts Manager
City of Chesapeake Contract 04-075-920-37 Cover Sheet dated 2/3/2004

Finance Department
Purchasing Division
306 Cedar Road, 5th Floor
Chesapeake, Virginia 23322
(757) 382-6359 • Fax 382-6064

July 07, 2004

Letter of Appeal
Universal Service Administrative Company (USAC)
Schools & Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Subject: Contract 04-075-920-37 for Data Communication Circuits

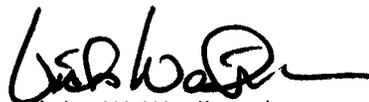
Reference: USAC Entity Number 126518; Application Number 409639, FRN Numbers 1123295 & 1123328; Application Number 414295, FRN Number 1138236

The City of Chesapeake issued RFP 4045 on 11/25/2003 for Data Communication circuits in support of the Chesapeake Public Library's telecommunication network and Internet access systems. The RFP was advertised both locally and on the SLD website through submission of Form 470 application numbers 324670000473969 and 176610000475486.

After receipt of offers, technical review, contract negotiations, and Best and Final Offer, the City of Chesapeake, Purchasing and Contracts Department, made an official verbal award notification to Cox Communications Hampton Roads, LLC on 1/27/2004. Formal signature of the contract document did not occur until 2/3/2004 as the Vice President of Cox Communications was in a series of meetings and inaccessible for several days.

The City of Chesapeake entered into a legally binding agreement with Cox Communications when award notification was made on 1/27/2004. Applications made with the SLD for funding on or after 1/27/2004 were supported by this contract.

Sincerely,



Victor W. Westbrook
Purchasing and Contracts Manager

Chesapeake VIRGINIA

1. CONTRACT NO.: 04-075-920-37	2. DEPARTMENT / AGENCY: DEPARTMENT OF INFO. TECH.	PAGE 1 OF 1	
3. CAPTION: COMMUNICATION DATA CIRCUITS FOR CHESAPEAKE LIBRARIES AND PUBLIC SCHOOLS			
4. NAME AND ADDRESS OF CONTRACTOR: COX COMMUNICATIONS HAMPTON ROADS, LLC 225 CLEARFIELD AVENUE VIRGINIA BEACH, VA 23462 PHONE: (757) 434-0865 FAX: (757) 222-8890	ISSUED BY: CITY OF CHESAPEAKE PURCHASING DIVISION 306 CEDAR ROAD, 5 TH FLOOR CHESAPEAKE, VA 23320 TELEPHONE: (757) 382-6359 FAX: (757) 382-6900		
6. ACCOUNTING AND APPROPRIATIONS: SEE INDIVIDUAL DELIVERY ORDERS			
7. ITEM NO.	8. SUPPLIES AND SERVICES	9. UNIT	10. TOTAL COST
	<p>COMMUNICATION DATA CIRCUITS FOR CHESAPEAKE LIBRARIES AND PUBLIC SCHOOLS</p> <p>AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that that city shall be bound hereunder only to the extent to the funds available or which may hereafter become available for the purpose of this agreement.</p> <p>INCORPORATION PRIORITY:</p> <p>This agreement incorporates by reference (in order of precedence):</p> <ul style="list-style-type: none"> ▪ COX COMMUNICATIONS' BEST AND FINAL OFFER LETTER dated January 27, 2004 ▪ FCC COMMUNICATIONS DATA CIRCUITS RFP 4045 ▪ Cox Communications response letter to RFP 4045 dated December 23, 2003 <p>NOTE: The City of Chesapeake accepts no exceptions to the Terms and Condition of RFP 4045.</p> <p>IN THE EVENT OF A DISPUTE UNDER THIS AGREEMENT, THE ABOVE DOCUMENTS SHALL TO THE EXTENT POSSIBLE, BE READ IN HARMONY, WHERE NECESSARY FOR CLARIFICATION PURPOSES, THE DOCUMENTS SHALL BE AFFORDED IN THE ABOVE ORDER OF PRECEDENCE.</p> <p>WHERE ANY CONFLICT IN THE TERMS OF THESE DOCUMENTS CANNOT BE RESOLVED BY GIVING PRECEDENCE TO ONE OVER ANOTHER, THIS AGREEMENT SHALL BE CONSTRUED AGAINST COX COMMUNICATIONS SO THAT THE PROVISION REQUIRING COX COMMUNICATIONS TO PERFORM THE MOST OR BEST WORK SHALL CONTROL.</p>		AS NEEDED
11. TOTAL CONTRACT COST: CONTRACT TO BE USED AS NEEDED			AS NEEDED
12. CONTRACT PERIOD: 5 YEARS		13. DISCOUNT: N/A	
AUTHORIZED REPRESENTATIVE, for COX COMMUNICATIONS.: <u>Don Wilborne, V.P.</u> <small>NAME AND TITLE (Please print)</small> <small>SIGNATURE</small>		CITY OF CHESAPEAKE VICTOR WESTBROOK, PURCHASING & CONTRACTS MANAGER <small>SIGNATURE</small>	
<u>2-3-04</u> <small>DATE</small>		<u>02/03/04</u> <small>DATE</small>	