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**EL MONTE CITY  
SCHOOL  
DISTRICT**

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March 10, 2006

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Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743

**DISTRICT  
ADMINISTRATION**

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District Superintendent

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Deputy Superintendent  
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Assistant Superintendent  
Student Support Services

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Deputy Superintendent  
Business Services

RICH WHITE  
Assistant Superintendent  
Personnel & Administrative  
Services

**LETTER OF APPEAL - REQUEST FOR REVIEW**

**FUNDING YEAR:** Year 8; 2005-2006  
**BILLED ENTITY NAME:** El Monte City School District  
**BILLED ENTITY NUMBER:** 143585  
**CC DOCKET NUMBER:** 02-6  
**FORM 471 APPLICATION NUMBERS:** 487944, 488074, & 488077

To Whom It May Concern:

The El Monte City School District ("District") is appealing the Schools and Libraries Division (SLD) Administrator's Decision on Appeal dated January 13, 2006 for each of the Form 471 Application Numbers listed above.

In particular, the District appeals the following explanation provided by the SLD Administrator in support of the decision to deny the District's appeal, reprinted here pursuant to the Federal Communication Commission's ("FCC") Procedures:

On appeal, you seek reversal of the SLD's decision to deny these FRNs because the Form 470 has not been certified. In support of your appeal, you state that the Form 470 certification was mailed the day you signed the certification on November 13, 2004 and via FedEx with the completed 471 applications on February 18, 2005. You provide documentation including a print out of the Form 470 certification signed on November 13, 2004 and FedEx tracking information for an envelope addressed to SLD Form 471. You also state that SLD did not notify the District that the Form 470 was not certified before the Funding Commitment Report

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denying the funding requests. Therefore, you conclude that SLD violated program rules by not notifying the District in a timely manner of the problem.

After thorough review of the appeal, relevant facts and documentation, it has been determined that on August 31, 2005, SLD notified the authorized contact that the referenced 470, 404820000509872, is not certified or was certified late. SLD requested verification of the establishing 470 for the FRN associated with this application. SLD also requested that, if the cited Form 470 was postmarked or before the close of the filing window, to provide proof of mailing, such as a certified mail receipt or other equivalent documentation. On September 12, 2005, the authorized contact confirmed that the establishing 470 for the FRNs on this application is the referenced 470. On appeal, you have provided a print out of the Form 470 certification from on-line with a handwritten signature and November 13, 2004 signature date and a declaration from the authorized contact. These items do not provide proof the Form 470 certification was mailed (see <http://www.universalservice.org/sl/about/document-retention-requirements/proof-postmark.aspx>). You are also claiming on appeal that the Form 470 certification was mailed with the District's Form 471 applications and certifications (for 471 #s 487944, 488071, 488074, 488079, 488082, 488084, 488085 and 488087) that were in the FedEx envelope with this tracking number. However, no Form 470 was in this envelope. Consequently, you still have not submitted proof that the certification was mailed within the filing window. SLD cannot certify a Form 470 without proof that the certification was postmarked within the filing window. It is the responsibility of the applicant to ensure that all Forms and documentation are submitted to SLD in a timely and correct manner. On appeal, you have failed to provide evidence that SLD erred in its initial determination.

You have not submitted any specific evidence to support that the documentation in question was mailed prior to the filing deadline.

SLD has determined that the required information was not received before the deadline. Without specific evidence to support that the documentation was mailed to SLD prior to the close of the filing window, SLD may not consider the documentation as timely. In the FCC's Waikiki decision, even though Waikiki claimed that it had mailed its Form 471 within the same package as other timely applications, the Commission determined that Waikiki was not able to demonstrate that the Form 471 was submitted on such a date. The Commission specifically noted that an applicant must "overcome the presumption of accuracy inherent in SLD's procedures for processing applications." Request for Review by Waikiki Elementary School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc., CC

Docket Nos. 96-45 and 97-21, Order DA 02-74, 17 FCC Rcd. 664 at ¶ 4 (rel. Jan. 14, 2002).

SLD denied your funding request(s) because it determined that your Form 470 Certification was not postmarked on or before the close of the filing window on February 18, 2005. As a result, this Form 470 cannot establish the competitive bidding process for the products and/or services in your funding request(s). During the review of your Form 471, you confirmed that this was the establishing Form 470. Consequently, your appeal is denied because your funding request(s) referenced a Form 470 that was not certified on or before the close of the filing window.

The FCC requires all parts of an application to be postmarked by the final date of the filing window for the relevant funding year for the application to be treated as having been filed within the filing window. *See Request for Review by Alpine County Unified School District, et. al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 96-45 and 97-21, Order, DA 02-75 ¶ 5 (rel. Jan. 14, 2002). This includes the Form 470 Certification, the Form 471 application, and the Form 471 Certification. If the Form 470 Certification is not postmarked by the final date of the filing window, that Form 470 cannot be used to establish the competitive bidding process for any funding requests that cite the Form 470.

(*See* SLD Administrator's Decision on Appeal for Form 471 Application Numbers 487944, 488074, and 488077 attached hereto as **Exhibit "1"**.)

The District respectfully disagrees with the SLD's reasoning, as set forth above, for denying the District's appeal for the following two reasons:

1. The District did provide specific evidence that its Form 470 was postmarked within the filing window pursuant to SLD's rules; and
2. By its own admission, the SLD's August 31, 2005 notification to the District that its Form 470 certification was "not certified or was certified late," was more than six months after the close of the filing window and in violation of the SLD's Minimum Processing Standards.

For ease of reference, the District provides its November 18, 2005 Letter of Appeal to the SLD ("District Appeal"), Declaration of Lawrence Tang, and Exhibits A – K attached hereto as **Exhibit "2"**.

**I. The District Maintained Proof of Postmark or Delivery Pursuant to the SLD's Rules.**

Contrary to the SLD's decision on appeal, the District provided specific proof of postmark and delivery of its package of documents which included a copy of its certified Form 470 pursuant to the SLD's rules. (See SLD's rules regarding "Proof of Postmark or Delivery", **Exhibit "2" - District's Appeal, Exhibit "E"**.)

The SLD's rules regarding Proof of Postmark or Delivery state in pertinent part:

Applicants can submit certain documents to the SLD on paper. These documents include FCC forms; certifications and/or documentation related to those forms; certifications and/or documentation related to specific requests . . . . In many cases, such documents are time-sensitive; in other words, the documents must be postmarked or received by a certain deadline in order to be processed or to be considered as simultaneously received.

Applicants are advised to keep legible proof of the date of postmark or date of delivery for documents submitted on paper. Documentation that includes both the postmark date and the delivery date is highly recommended. In the event that a deadline is the delivery, or receipt, date of a document, your documentation **must** also show the date of delivery.

Acceptable proof of postmark date or delivery date can include the following:

. . .

Applicants who submit items on paper to the SLD via express delivery services should obtain a copy of the tracking document showing the date that the delivery service accepted responsibility for delivery of the items. Delivery confirmation is also available and should be requested from the delivery service. This confirmation may be available via the internet or some other method. (Id.)

In accord with SLD's rules, the District maintained its FedEx "US Airbill" indicating that its package of Form 470 and 471 documents were shipped to the SLD on February 18, 2005. Moreover, the District provided a print-out from the tracking detail on <http://www.fedex.com> showing that the package was shipped on February 18, 2005, delivered to SLD on February 21, 2005, and signed for by an "R. Woodrell" at SLD. (See **Exhibit "2" - District's Appeal, Exhibit "F"**.) This evidence clearly demonstrates that this FedEx package was timely postmarked within the filing window, closing on February 18, 2005, in accord with the SLD's rules regarding Proof of Postmark or Delivery, as set forth above.

Notwithstanding the fact that the District demonstrated that it submitted the required documents prior to the closing of the filing window according to SLD's rules, SLD has

denied the District's Appeal by simply concluding that the District cannot prove that the certified Form 470 was included in the FedEx package. The SLD's decision on appeal states "no Form 470 was in this envelope."

Again, the District respectfully disagrees. The District's files indicate that the certified Form 470 document was provided in the FedEx package that was filed with the SLD on February 18, 2005. As the District had submitted its certified Form 470 on two separate occasions prior to the closing of the filing window, SLD either has the document in its possession or SLD has misplaced it. However, as the District cannot access SLD's files, it has no way to verify what documents SLD currently possesses.

The only way to prove the District filed specific documents with the SLD would be for the District to receive conformed copies of all documents the SLD acknowledged receiving, similar to a filing with a Court of law. However, the District is not aware that the SLD provides conformed copies of documents received and there is no SLD rule requiring any applicant to make this type of request.

The District respectfully requests that the FCC review SLD's file to determine whether: (1) the SLD has the District's certified Form 470 in its file and (2) the SLD has any date stamp or coding on the District's certified Form 470 to show when it was received by the SLD.

## **II. The SLD Failed to Provide the District with Timely Notice that the District Failed to Comply with the SLD's Minimum Processing Standards.**

In its decision on appeal, the SLD states that "[a]fter thorough review of the appeal, relevant facts and documentation, it has been determined that **on August 31, 2005**, SLD notified the authorized contact that the referenced 470, 404820000509872, is not certified or was certified late." (See **Exhibit "1"**.) (Emphasis added.)

Assuming *arguendo* that the SLD did notify the District of the certification problem, said notification by the SLD took place **over six months** after the filing window closed on February 18, 2005.

As set-forth in the District's Appeal and SLD's Form 470 Instructions, the SLD reviews submitted Forms 470 to make sure that they comply with the Minimum Processing Standards ("MPS") before commencing data entry and posting of such forms. An MPS review consists of making sure the applicant:

- (1) Used the Correct Form;
- (2) Included the Applicant's Address and Identifications;
- (3) Indicated the Services Sought; and
- (4) **Provided Valid Certification, i.e., a signature of an authorized person.**

In the instance where an applicant fails to provide an authorized signature in its Block 5 certification, the Form 470 will be rejected by SLD as not complying with the MPS

number 4. (See **Exhibit “2” - District’s Appeal, Exhibit “H”, pp. 7-8.**) Upon an MPS rejection, the rejected Form 470 is returned to the applicant so that the applicant may expeditiously resubmit a corrected form. (*Id.*) Then, once the data of the corrected form is successfully entered, the Form 470 is posted to the SLD website.

In accord with the rules of the E-rate program, applicants may submit their Form 470 online. However, even when Form 470 Blocks 1-5 are submitted online, the applicant must (1) submit the completed Block 5 certification online with a User ID and a PIN **or** submit the completed and signed Block 5 certification on paper by mail, express delivery or U.S. Postal Service Return Requested. The SLD will still review the Block 5 certification to make sure it complies with MPS number 4 – Valid Certification. (See **Exhibit “2”, District’s Appeal, Exhibit “H”, p. 8.**)

As explained in the District’s Appeal, the District completed its Form 470 online. Then, in accordance with the rules of the E-rate program, it submitted its Block 5 certifications on paper to the SLD on two separate occasions. The SLD later denied the District’s funding requests because the SLD allegedly did not receive the District’s completed Block 5 certifications by the close of the filing window.

However, contrary to the SLD’s MPS procedures, the SLD never notified the District of any MPS non-compliance issue regarding the District’s Form 470 submittal prior to the closing of the filing window. Moreover, inasmuch as the SLD (1) posted the District’s Form 470 to its website, (2) allowed the District to award E-rate services contracts after the Form 470 was posted for 28-days, (3) accepted the District’s Form 471 Applications, and (4) conducted a Selective Review that began in or about July, 2005, it was reasonable for the District to believe that its Form 470 application had already reached “certified” status.

If the SLD had rejected the District’s Form 470 pursuant to an MPS review for the alleged failure to provide a valid certification, then the District would have immediately corrected this minor oversight. However, the District was never provided with an opportunity to fix the minor oversight and resubmit its corrected Form 470 prior to the closing of the filing window notwithstanding a posting of its Form 470 to the SLD’s website as early as November 13, 2004. According to the SLD’s decision on appeal, it informed the District of the Form 470 certification problem for the **first time** on August 31, 2005, more than nine (9) months after the District’s Form 470 had been posted to the SLD’s website and more than (6) months after the closing of the filing window.

The MPS review by SLD is supposed to take place before the basic data entry begins, including, a “Valid Certification” review, so that minor oversights like a missing certification signature could be corrected expeditiously. Assuming *arguendo* that the SLD never received the District’s certified Form 470 prior to the close of the filing window on February 18, 2005, then at some time between November 13, 2004 when the District’s Form 470 was posted to the SLD’s website and February 18, 2005 (over 3 months time), the SLD’s MPS review should have discovered this minor oversight and SLD should have notified the District with enough time to correct it prior to the closing

of the filing window. SLD never did this and, as a result, the District has been denied hundreds of thousands of dollars in desperately needed E-rate funding.

Accordingly, the District requests that the FCC consider the foregoing and grant the District's appeal and fund its requests.

**III. Request for Relief.**

Based on the foregoing, the District respectfully requests that the FCC reverse the SLD's Administrator's Decision on Appeal and grant the District's Funding Requests for Form 471 Application Numbers 487944, 488074, and 488077.

If you have any questions or need further explanation, please contact Kristinn Olafsson, Deputy Superintendent of Business Services at: telephone (626) 453-3790; facsimile (626) 442-1063; or e-mail [kolafsson@emcsd.org](mailto:kolafsson@emcsd.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Seymour". The signature is written in a cursive, flowing style.

Jeff Seymour, District Superintendent



Jeff Seymour  
El Monte City School District  
3540 North Lexington Avenue  
El Monte, CA 91731-2684

Billed Entity Number: 143585  
Form 471 Application Number: 487944  
Form 486 Application Number:



Universal Service Administrative Company  
Schools & Libraries Division

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Administrator's Decision on Appeal - Funding Year 2005-2006

January 13, 2006

Jeff Seymour  
El Monte City School District  
3540 North Lexington Avenue  
El Monte, CA 91731-2684

Re: Applicant Name: EL MONTE CITY ELEM SCHOOL DIST  
Billed Entity Number: 143585  
Form 471 Application Number: 487944  
Funding Request Number(s): 1356807  
Your Correspondence Dated: November 18, 2005

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 Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-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 you will receive a separate letter for each application.

Funding Request Number(s): 1356807  
Decision on Appeal: **Denied**  
Explanation:

- On appeal, you seek reversal of the SLD's decision to deny these FRNs because the Form 470 has not been certified. In support of your appeal, you state that the Form 470 certification was mailed the day you signed the certification on November 13, 2004 and via FedEx with the completed Form 471 applications on February 18, 2005. You provide documentation including a print out of the Form 470 certification signed on November 13, 2004 and FedEx tracking information for an envelope addressed to SLD Form 471. You also state that SLD did not notify the District that the Form 470 was not certified before the Funding Commitment Report denying the funding requests. Therefore, you conclude that SLD violated program rules by not notifying the District in a timely manner of the problem.

- After thorough review of the appeal, relevant facts and documentation, it has been determined that on September 13, 2005, SLD notified the authorized contact that the referenced 470, 404820000509872, is not certified or was certified late. SLD requested verification of the establishing 470 for the FRNs associated with this application. SLD also requested that, if the cited Form 470 was postmarked on or before the close of the filing window, to provide proof of mailing, such as a certified mail receipt or other equivalent documentation. On September 14, 2005, the authorized contact confirmed that the establishing 470 for the FRNs on this application is the referenced 470. On appeal, as support the Form 470 certification was mailed on November 13, 2004, you have provided a print out of the Form 470 certification from on-line with a handwritten signature and November 13, 2004 signature date and a declaration from the authorized contact. These items do not provide proof the Form 470 certification was mailed (see <http://www.universalservice.org/sl/about/document-retention-requirements/proof-postmark.aspx>). You are also claiming on appeal that the Form 470 certification was also mailed with the District's Form 471 applications on February 18, 2005. The proof of mailing has a FedEx tracking number of 8468 5595 5996. SLD received all of the District's FY2005 Form 471 applications and certifications (for 471 #s 487944, 488071, 488074, 488077, 488079, 488082, 488084, 488085 and 488087) that were in the FedEx envelope with this tracking number. However, no Form 470 certification was in this envelope. Consequently, you still have not submitted proof that the certification was mailed within the filing window. SLD can not certify a Form 470 without proof that the certification was postmarked within the filing window. It is the responsibility of the applicant to ensure that all Forms and documentation are submitted to SLD in a timely and correct manner. On appeal, you have failed to provide evidence that SLD erred in its initial determination.
- You have not submitted any specific evidence to support that the documentation in question was mailed prior to the filing deadline.
- SLD has determined that the required information was not received before the deadline. Without specific evidence to support that the documentation was mailed to SLD prior to the close of the filing window, SLD may not consider the documentation as timely. In the FCC's Waikiki decision, even though Waikiki claimed that it had mailed its Form 471 within the same package as other timely applications, the Commission determined that Waikiki was not able to demonstrate that the Form 471 was submitted on such a date. The Commission specifically noted that an applicant must "overcome the presumption of accuracy inherent in SLD's procedures for processing applications." Request for Review by Waikiki Elementary School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, Order DA 02-74, 17 FCC Rcd. 664 at ¶ 4 (rel. Jan. 14, 2002).
- SLD denied your funding request(s) because it determined that your Form 470 Certification was not postmarked on or before the close of the filing window on February 18, 2005. As a result, this Form 470 cannot establish the competitive bidding process for the products and/or services in your funding request(s).

During the review of your Form 471, you confirmed that this was the establishing Form 470. Consequently, your appeal is denied because your funding request(s) referenced a Form 470 that was not certified on or before the close of the filing window.

- The FCC requires all parts of an application to be postmarked by the final date of the filing window for the relevant funding year for the application to be treated as having been filed within the filing window. *See Request for Review by Alpine County Unified School District, et. al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 02-75 ¶ 5 (rel. Jan. 14, 2002). This includes the Form 470 Certification, the Form 471 application, and the Form 471 Certification. If the Form 470 Certification is not postmarked by the final date of the filing window, that Form 470 cannot be used to establish the competitive bidding process for any funding requests that cite that Form 470.

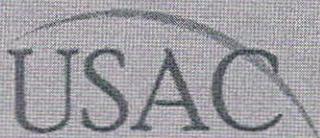
If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

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

Schools and Libraries Division  
Universal Service Administrative Company

Jeff Seymour  
El Monte City School District  
3540 North Lexington Avenue  
El Monte, CA 91731-2684

Billed Entity Number: 143585  
Form 471 Application Number: 488074  
Form 486 Application Number:



Universal Service Administrative Company  
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

January 13, 2006

Jeff Seymour  
El Monte City School District  
3540 North Lexington Avenue  
El Monte, CA 91731-2684

Re: Applicant Name: EL MONTE CITY ELEM SCHOOL DIST  
Billed Entity Number: 143585  
Form 471 Application Number: 488074  
Funding Request Number(s): 1353624  
Your Correspondence Dated: November 18, 2005

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 Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-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 you will receive a separate letter for each application.

Funding Request Number(s): 1353624  
Decision on Appeal: **Denied**  
Explanation:

- On appeal, you seek reversal of the SLD's decision to deny these FRNs because the Form 470 has not been certified. In support of your appeal, you state that the Form 470 certification was mailed the day you signed the certification on November 13, 2004 and via FedEx with the completed Form 471 applications on February 18, 2005. You provide documentation including a print out of the Form 470 certification signed on November 13, 2004 and FedEx tracking information for an envelope addressed to SLD Form 471. You also state that SLD did not notify the District that the Form 470 was not certified before the Funding Commitment Report denying the funding requests. Therefore, you conclude that SLD violated program rules by not notifying the District in a timely manner of the problem.

- After thorough review of the appeal, relevant facts and documentation, it has been determined that on August 31, 2005, SLD notified the authorized contact that the referenced 470, 404820000509872, is not certified or was certified late. SLD requested verification of the establishing 470 for the FRN associated with this application. SLD also requested that, if the cited Form 470 was postmarked on or before the close of the filing window, to provide proof of mailing, such as a certified mail receipt or other equivalent documentation. On September 12, 2005, the authorized contact confirmed that the establishing 470 for the FRNs on this application is the referenced 470. On September 2, 2005 and on appeal, the applicant provided a print out of the Form 470 certification from on-line with a handwritten signature and November 13, 2004 signature date and a declaration from the authorized contact. These items do not provide proof the Form 470 certification was mailed (see <http://www.universalservice.org/sl/about/document-retention-requirements/proof-postmark.aspx>). On appeal, you are also claiming that the Form 470 certification was mailed with the District's Form 471 applications on February 18, 2005. The proof of mailing has a FedEx tracking number of 8468 5595 5996. SLD received all of the District's FY2005 Form 471 applications and certifications (for 471 #s 487944, 488071, 488074, 488077, 488079, 488082, 488084, 488085 and 488087) that were in the FedEx envelope with this tracking number. However, no Form 470 certification was in this envelope. Consequently, you still have not submitted proof that the certification was mailed within the filing window. SLD can not certify a Form 470 without proof that the certification was postmarked within the filing window. It is the responsibility of the applicant to ensure that all Forms and documentation are submitted to SLD in a timely and correct manner. On appeal, you have failed to provide evidence that SLD erred in its initial determination.
- You have not submitted any specific evidence to support that the documentation in question was mailed prior to the filing deadline.
- SLD has determined that the required information was not received before the deadline. Without specific evidence to support that the documentation was mailed to SLD prior to the close of the filing window, SLD may not consider the documentation as timely. In the FCC's Waikiki decision, even though Waikiki claimed that it had mailed its Form 471 within the same package as other timely applications, the Commission determined that Waikiki was not able to demonstrate that the Form 471 was submitted on such a date. The Commission specifically noted that an applicant must "overcome the presumption of accuracy inherent in SLD's procedures for processing applications." Request for Review by Waikiki Elementary School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, Order DA 02-74, 17 FCC Red. 664 at ¶ 4 (rel. Jan. 14, 2002).
- SLD denied your funding request(s) because it determined that your Form 470 Certification was not postmarked on or before the close of the filing window on February 18, 2005. As a result, this Form 470 cannot establish the competitive bidding process for the products and/or services in your funding request(s). During the review of your Form 471, you confirmed that this was the establishing

Form 470. Consequently, your appeal is denied because your funding request(s) referenced a Form 470 that was not certified on or before the close of the filing window.

- The FCC requires all parts of an application to be postmarked by the final date of the filing window for the relevant funding year for the application to be treated as having been filed within the filing window. *See Request for Review by Alpine County Unified School District, et. al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc. , CC Docket Nos. 96-45 and 97-21, Order, DA 02-75 ¶ 5 (rel. Jan. 14, 2002).* This includes the Form 470 Certification, the Form 471 application, and the Form 471 Certification. If the Form 470 Certification is not postmarked by the final date of the filing window, that Form 470 cannot be used to establish the competitive bidding process for any funding requests that cite that Form 470.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

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Schools and Libraries Division  
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Jeff Seymour  
El Monte City School District  
3540 North Lexington Avenue  
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Billed Entity Number: 143585  
Form 471 Application Number: 488077  
Form 486 Application Number:



Universal Service Administrative Company  
Schools & Libraries Division

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Administrator's Decision on Appeal – Funding Year 2005-2006

January 13, 2006

Jeff Seymour  
El Monte City School District  
3540 North Lexington Avenue  
El Monte, CA 91731-2684

Re: Applicant Name: EL MONTE CITY ELEM SCHOOL DIST  
Billed Entity Number: 143585  
Form 471 Application Number: 488077  
Funding Request Number(s): 1353631  
Your Correspondence Dated: November 18, 2005

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 Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-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 you will receive a separate letter for each application.

Funding Request Number(s): 1353631  
Decision on Appeal: **Denied**  
Explanation:

- On appeal, you seek reversal of the SLD's decision to deny these FRNs because the Form 470 has not been certified. In support of your appeal, you state that the Form 470 certification was mailed the day you signed the certification on November 13, 2004 and via FedEx with the completed Form 471 applications on February 18, 2005. You provide documentation including a print out of the Form 470 certification signed on November 13, 2004 and FedEx tracking information for an envelope addressed to SLD Form 471. You also state that SLD did not notify the District that the Form 470 was not certified before the Funding Commitment Report denying the funding requests. Therefore, you conclude that SLD violated program rules by not notifying the District in a timely manner of the problem.

- After thorough review of the appeal, relevant facts and documentation, it has been determined that on August 31, 2005, SLD notified the authorized contact that the referenced 470, 404820000509872, is not certified or was certified late. SLD requested verification of the establishing 470 for the FRN associated with this application. SLD also requested that, if the cited Form 470 was postmarked on or before the close of the filing window, to provide proof of mailing, such as a certified mail receipt or other equivalent documentation. On September 12, 2005, the authorized contact confirmed that the establishing 470 for the FRNs on this application is the referenced 470. On appeal, you have provided a print out of the Form 470 certification from on-line with a handwritten signature and November 13, 2004 signature date and a declaration from the authorized contact. These items do not provide proof the Form 470 certification was mailed (see <http://www.universalservice.org/sl/about/document-retention-requirements/proof-postmark.aspx>). You are also claiming on appeal that the Form 470 certification was mailed with the District's Form 471 applications on February 18, 2005. The proof of mailing has a FedEx tracking number of 8468 5595 5996. SLD received all of the District's FY2005 Form 471 applications and certifications (for 471 #s 487944, 488071, 488074, 488077, 488079, 488082, 488084, 488085 and 488087) that were in the FedEx envelope with this tracking number. However, no Form 470 certification was in this envelope. Consequently, you still have not submitted proof that the certification was mailed within the filing window. SLD can not certify a Form 470 without proof that the certification was postmarked within the filing window. It is the responsibility of the applicant to ensure that all Forms and documentation are submitted to SLD in a timely and correct manner. On appeal, you have failed to provide evidence that SLD erred in its initial determination.
- You have not submitted any specific evidence to support that the documentation in question was mailed prior to the filing deadline.
- SLD has determined that the required information was not received before the deadline. Without specific evidence to support that the documentation was mailed to SLD prior to the close of the filing window, SLD may not consider the documentation as timely. In the FCC's Waikiki decision, even though Waikiki claimed that it had mailed its Form 471 within the same package as other timely applications, the Commission determined that Waikiki was not able to demonstrate that the Form 471 was submitted on such a date. The Commission specifically noted that an applicant must "overcome the presumption of accuracy inherent in SLD's procedures for processing applications." Request for Review by Waikiki Elementary School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, Order DA 02-74, 17 FCC Red. 664 at ¶ 4 (rel. Jan. 14, 2002).
- SLD denied your funding request(s) because it determined that your Form 470 Certification was not postmarked on or before the close of the filing window on February 18, 2005. As a result, this Form 470 cannot establish the competitive bidding process for the products and/or services in your funding request(s). During the review of your Form 471, you confirmed that this was the establishing Form 470. Consequently, your appeal is denied because your funding request(s)

referenced a Form 470 that was not certified on or before the close of the filing window.

- The FCC requires all parts of an application to be postmarked by the final date of the filing window for the relevant funding year for the application to be treated as having been filed within the filing window. *See Request for Review by Alpine County Unified School District, et. al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 02-75 ¶ 5 (rel. Jan. 14, 2002). This includes the Form 470 Certification, the Form 471 application, and the Form 471 Certification. If the Form 470 Certification is not postmarked by the final date of the filing window, that Form 470 cannot be used to establish the competitive bidding process for any funding requests that cite that Form 470.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

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

Schools and Libraries Division  
Universal Service Administrative Company





**SENT VIA FEDERAL EXPRESS**

**EL MONTE CITY  
SCHOOL  
DISTRICT**

November 18, 2005

**BOARD OF  
EDUCATION**

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ADMINISTRATION**

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NORMA Y. HERRERA  
Assistant Superintendent  
Student Support Services  
  
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Assistant Superintendent  
Personnel & Administrative  
Services

**LETTER OF APPEAL**

**FUNDING YEAR:** 2005: 7/1/2005 – 6/30/2006  
**BILLED ENTITY NAME:** El Monte City School District  
**BILLED ENTITY NUMBER:** 143585  
**FORM 471 APPLICATION NUMBERS:** 487944, 488074 & 488077

To Whom It May Concern:

The El Monte City School District ("District") is appealing the Schools and Libraries Division ("SLD") Funding Commitment Decisions of September 21, 2005 for each of the Form 471 Application Numbers listed above.

In particular, the District appeals the following Funding Commitment Decision Explanation provided by the SLD as a basis for its decision to deny the District's requests for funding, reprinted here pursuant to the SLD's Procedures:

"The FRN references a Form 470 which has not been certified."

Accordingly, the SLD's decision to deny the District over \$875,000.00 in E-rate funding was based solely on the District's alleged failure to certify its Form 470. The District maintains that its Form 470 was timely certified and submitted to the SLD and that the SLD's decisions to deny the District E-rate funding should be reversed.



**I. Executive Summary**

**A. There is Only One Issue in this Appeal.**

The sole issue is whether the District timely certified its Form 470 pursuant to the rules and requirements of the E-rate program. The District will prove herein that it did timely certify its Form 470. Moreover, the District will show that it timely certified its Form 470 even though the SLD did not provide the District notice that the SLD believed that the District's Form 470 allegedly failed to comply with the SLD's Minimum Processing Standards.

**1. The District Timely Certified its Form 470.**

The SLD requires that an applicant's Form 470 certification be received by the SLD or postmarked by 11:59 p.m., Eastern Standard Time ("EST") on the close of the Form 471 application filing window. In Funding Year 2005, the Form 471 application filing window closed on **February 18, 2005**. In the instant matter and as more fully explained herein, the District provided SLD with its Form 470 Block 5 certifications on two separate occasions:

- **On November 13, 2004:** Upon completing the Form 470 filing online, as instructed by the SLD, the District's authorized representative printed the Block 5 section of the Form 470, signed it, dated it, and mailed the completed Form 470 Block 5 certification to the SLD.
- **On February 18, 2005:** In addition to filing its completed Form 471 applications, the District provided the SLD via express delivery ("Fed Ex") with a copy of its completed Form 470 Block 5 certifications.

Therefore, the District respectfully disagrees with the SLD's decision to deny the District's funding requests based on the mistaken belief that the District did not timely certify its Form 470.

**2. The SLD Never Notified the District that the SLD Did Not Think the District's Form 470 Did Not Comply with the SLD's Minimum Processing Standards.**

It appears that the SLD has based its funding denial on its belief that it did not receive the mailed copy of the District's certified Form 470. If that is the case, the SLD never notified the District of this. Moreover, the SLD (1) posted the District's Form 470 to its website, (2) allowed the District to award E-rate services contracts after the Form 470 was posted for 28-days, (3) accepted the District's Form 471 Applications, and (4) conducted a Selective Review that concluded in or about September, 2005. It was reasonable for the District to believe that its Form 470 application had already reached "certified" status.

If the SLD had timely notified the District pursuant to the SLD's own processing requirements (discussed herein) that the SLD had not received a certified Form 470 from the District, then the District would have immediately re-sent a copy. However, the District was not provided with this opportunity or the opportunity to resubmit its Form 470. Unfortunately, and contrary to the SLD's own processing procedures, the District learned of the Form 470 certification problem for the first time in the SLD's Funding Commitment Report, dated September 21, 2005, that its funding requests were denied because "[t]he FRN references a Form 470 which has not been certified."

The District respectfully requests that the SLD considers the foregoing and grant the District's appeal thereby reversing its funding commitment decisions.

## **II. Factual Background / Chronology**

**November 5, 2004:** On or about this date, the SLD established the Form 471 filing window for Funding Year 2005. (See SLD's November 2004 Announcements, page 2 attached hereto as **Exhibit "A"**.) The window for filing Form 471 applications opened on December 14, 2004 and closed on February 18, 2005.<sup>1</sup>

**November 13, 2004:** The District's authorized representative, Lawrence Tang, submitted and filed online Blocks Nos. 1-5 of Form 470 with the SLD. Upon completion of the online filing, Mr. Tang printed a copy of the Form 470 and completed the Block 5 certification by providing the date and his signature. (See District's Block 5 Certification dated November 13, 2004 attached hereto as **Exhibit "B"**.) That same day, Mr. Tang mailed the completed Block 5 certification to the SLD pursuant to the E-rate program's rules.<sup>2</sup> (See Declaration of Lawrence Tang (hereinafter "Tang Decl."), ¶3 attached hereto.) Moreover, on or about this date, the District's Form 470 application and information therein were posted to the SLD's website. As of the date of this appeal, the District's Form 470 is still posted on the SLD's website. (See District Form 470 as posted to the SLD's website attached hereto as **Exhibit "C"**.)

**December 14, 2004:** On this day, at noon (EST), the SLD opened the window for the filing of Form 471 applications for Funding Year 2005. (See, *supra*, **Exhibit "A"**.)

**February 11, 2005:** The District opened its formal bids from the E-rate service providers. (See p. 3 of Chief Business Officer Kristinn Olafsson's February 15, 2005 Board Approved Recommendation attached hereto as **Exhibit "D"**.)

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<sup>1</sup> The SLD extended its closing date by one additional day from February 17, 2005 to February 18, 2005. (See, *infra*, **Exhibit "G"**.)

<sup>2</sup> The District did not send this copy of its Form 470 Application via certified mail or by an express delivery service. The District does have documentation proving that it sent another copy of the certified Form 470 to SLD on February 18, 2005, as detailed herein.

**February 15, 2005:** The District entered into several contracts for E-rate work to be performed at its various schools in anticipation of qualifying for the discounts provided via the E-rate program. (See, *supra*, **Exhibit "D"**.)

**February 18, 2005:** The District timely filed with the SLD via "Fed Ex" (an accepted method of delivery and proof of postmark by the SLD)<sup>3</sup> the following documents:

- (1) A copy of the District's Form 470 Block 5 Certification signed and dated by the District's authorized person on November 13, 2004; and
- (2) The District's Form 471 Applications for E-rate funding, including the Form 471 Applications at issue.

(See Fed Ex proof of postmark and delivery, the District's Form 470 Block 5 Certification, and Form 471 Applications attached hereto as **Exhibit "F"**.) Hence, the District provided for the second time its Form 470 Block 5 certifications signed and dated by the District's authorized representative to the SLD.

**February 18, 2005:** On this date, at 11:59 p.m. (EST), the SLD closed the window for the filing of Form 471 applications for Funding Year 2005. (See SLD's January 2005 Announcements and attached Letter to the Field for 2005 attached hereto as **Exhibit "G"**.) Pursuant to the E-rate program rules, any Form 471 funding request based on a Form 470 whose certification has not been **received or postmarked** by 11:59 p.m. (EST) on the close of the Form 471 application filing window will be denied. (See p. 8 of Instructions for Completing the SLD's Description of Services Requested and Certification Form (Form 470) attached hereto as **Exhibit "H"**.)

**July 12, 2005:** On or about this date, the SLD's Selective Reviewer John Januszonis notified the District that he was in the process of conducting a Selective Review of the District's Funding Year 2005 Form 471 Applications. The Selective Reviewer provided the District with a 17-page Selective Review Information Request. This document does

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<sup>3</sup> Pursuant to the E-rate program rules an applicant "can submit certain documents to the SLD on paper. These documents include FCC forms; certifications and/or documentation related to those forms; certifications and/or documentation related to specific requests . . . . In many cases, such documents are time-sensitive; in other words, the documents must be postmarked or received by a certain deadline in order to be processed or to be considered as simultaneously received." Moreover, an "[a]cceptable proof of postmark date or delivery date can include the following: . . .

- Applicants who submit items on paper to the SLD via express delivery services should obtain a copy of the tracking document showing the date that the delivery service accepted responsibility for delivery of the items. Delivery confirmation is also available and should be requested from the delivery service. This confirmation may be available via the internet or some other method."

(See SLD's rules regarding "Proof of Postmark or Delivery" attached hereto as **Exhibit "E"**.)