

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the matter of: )  
 )  
Request for Review of Decisions ) Docket Nos. 02-6  
of the Universal Service Administrator) 06-54  
\_\_\_\_\_ )

**Filing Regarding a Pending Request for Review of a Decision of  
the Universal Service Administrator issued December 23, 2003.**

Ref.: Applicant Names: NYC Department of  
Education  
Entity Numbers: 153135  
Funding Year: 2002  
Form 471 Application Numbers: 286071  
Funding Request Numbers: 788540

## **Introduction**

On June 3, 2004 the New York City Department of Education (NYCDOE) filed a timely appeal with the Commission to review a December 23, 2003 decision of the Schools and Libraries Division (SLD). That decision denied 87% discount funding for 105 NYC public schools during Funding Year 2002. A possible problem with the SLD on-line electronic filing system resulted in our Form 471 (# 286071) being transmitted with a truncated school list on our Block 4 Worksheet (#366697). This specific Block 4 was intended to have 181 schools; a fact which was later verified by the SLD during the PIA review. The amount of funding requested and ultimately approved by the SLD was what was needed for work on 181 schools.

While the total amount requested and approved on the application was for the 181 schools, the SLD later, during the invoicing period, denied the discount for work designated at 105 of the 181 schools. Hence, 105 of our schools anticipated to receive internal connections under FRN 788540 did not receive service. To date no action has been taken by the Commission on the NYCDOE appeal.

On May 19, 2006, the Commission released an appeal decision affecting 196 appeals (Bishop Perry decision FCC 06-54) waving various procedural rules which the Commission found were “not substantive” and where the applicant would not receive “more funding than it was entitled to”. The circumstances surrounding the SLD’s rejection of the NYCDOE appeal are comparable to ones specifically addressed in the Bishop Perry decision.

The NYCDOE asks, therefore, that the Commission treat its pending appeal in a similar manner, directing the SLD to apply the 87% discount on approved internal connections for all 181 schools rather than only those schools on a truncated list of 76. Funding will not exceed the amount already approved for FRN 788540.

## **Background**

The annual NYCDOE E-rate application is massive in both size and complexity. Compiling the data and putting those details into the required application form takes months of work and requires weeks of review for accuracy.

When the Schools and Libraries Division introduced the electronic format of the E-rate application several years ago, they encouraged the NYCDOE to abandon the written application format and use the new process. The SLD promised the benefits would be greater data accuracy and quicker funding approval. In the spirit of cooperation, NYCDOE staff visited the SLD in Washington DC to further discuss the matter.

The NYCDOE initially rejected requests that it file its E-rate application electronically via the Internet. An examination of the on-line format of the application raised concerns of exposing the district to an increased possibility of data entry omissions and errors. Common "time-outs" in the system and the hours of re-entering data was a recipe for problems. The electronic filing process lacked any provision for a clean transfer of already prepared and reviewed data from the district thus eliminating further possibilities of data entry errors. In spite of these concerns, the NYCDOE bowed to the requests of the SLD and agreed, for the first time in 2002, to file its application on-line.

It is clear to the NYCDOE that certain program rules and practices reveal a lack of understanding and sensitivity for the needs and capabilities of the large school district applicant. The NYCDOE manages, by far, the largest public school system in the country. Our schools have benefited significantly from the E-rate program and have made great strides in bringing Internet access to more than one million students in 1400 schools. In light of the benefits of the program, it is always in the interest of the NYCDOE to fully comply with the rules and requirements to the best of the NYCDOE's ability as the rules and requirements are often unclear, contradictory, and, at times, in direct conflict with local municipal rules and practices.

The SLD makes an incorrect assumption that whatever works for a ten school district will apply to a school system 120 times larger. As an example, the electronic application process was designed for the small applicant. Previously prepared data in electronic form must be re-entered via an Internet connection to the SLD. This forced an applicant such as the NYCDOE to actually perform manual data entries in order to submit its

application electronically. The large amount of data compiled and proofed over periods of months is then required to be manually entered into the SLD online form under the time constraints of the application dateline. While this simplistic application process may work adequately for an applicant with few schools, it is an inefficient and a dangerously problematic way of doing business for a large school district such as New York City. It has always been the NYCDOE's expectations that as the program matured, the expanding body of E-rate rules and related guidance would be made clearer, the application process would be more efficient and reliable, and decisions on funding would be made in a timelier manner. Unfortunately these expectations have not yet been fully realized.

### **Issues and Arguments**

In the late summer of 2003, during the invoicing phase of the 2002 funding year, the SLD refused to reimburse the vendor for internal connections work in several schools associated with FRN 788540. After many weeks it became apparent that the SLD invoicing unit was working from a list of 76 schools associated with FRN 788540, while the NYCDOE and its vendor referenced a list of 181 schools. Our investigation of the matter identified a failure in the data entry stage of the on-line application process that truncated the intended list of schools. For several months that followed, the NYCDOE submitted evidence that the school list associated with FRN 788540 included 181 schools and that the SLD was aware of this fact prior to approving the FRN for approximately \$46 million dollars. In essence, the amount approved under the FRN was for 181 schools and not 76 schools, which would egregiously over-fund the FRN.

The evidence submitted to the SLD included the following.

1. The NYCDOE filed its application electronically for the first time in 2002. During that period, concern was expressed that the size of the application might be problematic when filing on-line. Inputting the data took days and the data entry staff experienced frequent connection "time-outs."
2. The review of all financial worksheets referenced during the actual electronic filing in January 2002 indicates 181 schools were used to calculate the actual amount of funding request for FRN 788540 in the

2002 application. The 76 schools on the SLD list is only a subset of the original 181 schools intended by the NYCDOE in its plan. The 46 million dollars requested and approved supports a full 181 schools for the defined work scope. The SLD list of 76 schools for this FRN would require less than half the amount requested.

3. During the PIA review of the 2002 application, the NYCDOE was asked if work and equipment requested for schools included under FRN 788540 were also being requested under other discount bands in the application. The NYCDOE response to that inquiry included a list of the 181 schools, which was reviewed and never challenged by PIA staff. This evidence was submitted three separate times to the SLD during the appeal process.

In November of 2003, NYCDOE staff visited SLD headquarters to discuss this serious discrepancy and was assured of a quick reply to the appeal. This outstanding problem denied the school district the use of already approved funding for 105 schools and Internet access for nearly 80,000 students.

### **Conclusion**

It is clear that the discount amount requested was intended for work in 181 and not 76 schools based on the amount requested on the application. Issues with the on-line application system were documented by the SLD but with no resolution except for applicant to re-enter the data. In either case, NYCDOE should not be penalized.

Further, written evidence shows that, during PIA review, the SLD was made aware of the 181 assigned schools for FRN 788540. It should also be noted that SLD website guidance at the time provided assurances that appeals of this nature would be approved.

*“If the applicant made a mistake in completing the Form 471 (for example, put in the wrong contract award date in Block 5) and had provided information to the SLD either with the application or during PIA review (for example, provided a copy of the contract to PIA during review with the award date indicated) and when the appeal points out the mistake (the wrong contract award date) and how the SLD could have seen the mistake (from the contract provided during review), the SLD will grant the appeal.”*

FCC 06-54 Corrections  
Form 471: 286071

If the problem was a result of an SLD system error, the SLD should correct the problem. If the cause was a clerical NYCDOE data entry error, the provisions of the Bishop Perry decision should apply.

The NYCDOE asks the FCC to reverse the decision of the SLD and recognize the full list of 181 schools associated with already approved FRN 788540.