FCC REQUEST FOR REVIEW (APPEAL) TRANSMITTAL FORM

DATE:	December 5, 2006
FROM:	SAN JOSE CONSERVATION CORPS AND CHARTER SCHOOL 2650 SENTER ROAD SAN JOSE, CA 95111 ATTN: MR. NEIL KOZUMA ENTITY NUMBER: 228886
TO:	Federal Communications Commission Office of the Secretary 445 12th Street, SW Room TW-A325 Washington, DC 20554
VIA:	Electronic Comment File Submission
CC DOCKET NUMBERS:	02-6 96-45
DIRECT CORRESPONDENCE TO:	Chris A. Quintanilla Youth Empowerment Services 1231 N Broad St., FL 4 Philadelphia, PA 19122-4021 215/769-0340 X226 (voice) 215/769-2784 (facsimile) chrisqu@yesphilly.org (email)
RE:	REQUEST FOR REVIEW: SLD FUNDING COMMITMENT DECISIONS FOR FUNDING YEAR 2006-2007 FORM 471 APPLICATION NUMBER: 527777; FUNDING REQUEST NUMBER: 1455399
PAGES (INCL COVER):	15

December 5, 2006

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

RE: REQUEST FOR REVIEW FOR FUNDING YEAR 2006 APPLICATION 527777

To the Honorable Members of the Commission:

We submit this appeal for the captioned e-rate funding applications and respectfully request you remand this application back to the Universal Service Administrative Company's Schools and Libraries Division for further review.

The San Jose Conservation Corps Charter School, billed entity 228886, is a school located in San Jose, California that serves disadvantaged young people, as part of the YouthBuild USA network (http://www.youthbuild.org).

Youth Empowerment Services (YES) is a non-profit organization located in Philadelphia, Pennsylvania that also serves disadvantaged young people and provides technical assistance to other organizations with similar interests.

The school retained YES to be its e-rate program consultant in FY 2006. YES assisted the school with the application process and the school submitted three applications (527777, 527968, 527973) for discounts through the Universal Service Support Mechanism for Schools and Libraries (the e-rate program) in FY 2006. These applications were filed in a timely manner with the Universal Service Administrative Company's (USAC's) Schools and Libraries Division (SLD). SLD's Program Integrity Assurance (PIA) group subjected application 527777 to a Cost Effectiveness Review on or about September 6th, 2006 (attached as Exhibit A). YES responded to the Cost Effectiveness Review Request, in a timely fashion, on October 6th, 2006, on behalf of the school (attached as Exhibit B). On or about October 24th, 2006, USAC issued a Funding Commitment Decision Letter (FCDL) denying the submitted application. The reason stated in the FCDL for the application denial was: "This funding request is denied as a result of a Cost Effectiveness Review, which has determined that your request for Network Equipment and Cabling was not justified as cost effective as required by FCC rules."

As a result of this denial, which we believe to be incorrect, we are appealing this decision directly to the Commission. As part of this appeal, we would respectfully raise the following points that we ask to be taken into consideration:

1) There was no publicly available data showing any policy or guidance given by the Commission that supports the apparent guidelines used by PIA in its cost-effectiveness review.

2) SLD did not give our cost-effectiveness review response due consideration, as none of our points were addressed in any follow-up correspondence or in the denial letter.

3) The cost-effectiveness review incorrectly drew a correlation between the number of students to be served and the dollar amount of the funding request.

4) The cost-effectiveness review did not take non-student users (e.g. teachers, administrators, etc…) into account when calculating its figures.

5) The cost-effectiveness review erroneously made a direct link between maintenance expense and the number of students supported.

6) The cost-effectiveness review did not take life expectancy of the equipment into account when performing its calculations – it erroneously assumed only a one-year usage period for the equipment.

7) SLD erred by going against the public interest by penalizing smaller schools, and especially those smaller schools with disadvantaged populations.

8) SLD did not follow the Commission's policy set forth in the matter of the Wyoming Department of Education (DA-06-485A1), available Feb 28th, 2006, which stated "Although the Commission has concluded that price should be the primary factor in selecting a bid, applicants are given maximum flexibility to take service quality into account and may choose the offering that meets their needs most effectively and efficiently."

9) SLD's cost-effectiveness review is against the public interest as tThe FCC's Fifth report and order repeatedly states, "All bids submitted were carefully considered and the most cost-effective bid for services or equipment was selected, with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology plan goals," and requires that this statement be certified on FCC Forms 470 and 471.

However, cost-effectiveness decisions should be up to the applicant and not be made by SLD on a case-by-case basis, using guidelines that exist, yet are not publicly available. While the educational needs of all students is similar, smaller schools serving disadvantaged populations will be unfairly harmed by making a correlation between technology dollars and the number of students it served.

10) SLD overstepped its authority in implementing the cost-effectiveness review as the school's technology plan takes cost-effectiveness into account. When the technology plan is approved by a USAC-certified reviewer, it is implied that the technology plan is cost-effective. SLD undermines that approval by unnecessarily subjecting elements of a plan, approved by one if its approval authorities, to additional scrutiny.

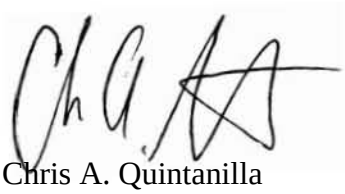
Additionally, the Commission's decision to have applicants certify that an application is cost-effective puts the onus on the applicant to make that determination. That determination is made by an individual school based on the resources it has available, and should not be made by a third party that has its own, non-public, cost-effectiveness guidelines.

Additionally, the Ysleta order does not apply to this situation: a) By applying the test set forth in paragraph 54 of that order, it is our contention that the prices set forth by sole proposal, were not exorbitant, nor did SLD claim they were exorbitant; b) the school did not violate competitive bidding practices and it selected the most cost-effective bid that it received; and c) the application is not a maintenance request.

11) SLD's "all or nothing" approach is against the public interest. Instead of denying the entire request, SLD could have denied certain line items it deemed to be ineligible because of cost-effectiveness concerns. At that point, it would then have to be determined if the "30% rule" applied to the application. If not, the applicant could move forward with parts of the funding request, while appealing the line-item denials as opposed to the entire application.

Thank you in advance for taking our request for review into consideration. We hope the Commission will be willing to remand these applications back to USAC for further review. Please feel free to contact us if we may be of further assistance.

Sincerely,



Chris A. Quintanilla
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cc: Neil Kozuma, San Jose Conservation Corps Charter School
Michael Sack, Youth Empowerment Services
Taylor Frome, Youth Empowerment Services

EXHIBIT A

USAC SLD COST-EFFECTIVNESS INQUIRY
(San Jose Conservation Corps Charter School, Can Jose, CA,
BEN 228886, 471 application: 527771)

5 PAGES

USAC
Universal Service Administrative Company

Schools and Libraries Division

Sep 06, 2006

Neil Kozuma/Chris Quintanilla
SAN JOSE CONSERVATION CORPS
CHARTER SCHOOL

Telephone:	**(408) 2837171**
Application Number	**527777 / 527968**

Response Due Date: ***September 21, 2006***

You may have answered some of the questions asked in this letter. Please reply again as these applications are under a special review.

As we discussed in our conversation, we are in the process of reviewing all Funding Year 2006 Form 471 applications for schools and libraries discounts to ensure that they are in compliance with the rules of the Universal Service program. I am currently in the process of reviewing your Funding Year 2006 Form 471 Application. To complete my review I need some additional information. The information needed to complete the PIA Review is listed below.

Notification of Possible Errors:
The following items on your Form 471 may contain errors, but we were unable to detect them during our review process:

- Block 1 - Billed Entity Name, Billed Entity Number or Billed Entity contact information.
- Block 4 - Discount calculation worksheets
- Block 5 - Service Provider Identification Number (SPIN) or service provider name (if the change is a corrective rather than operational change)
- Block 5 - Contract number
- Block 5 - Billing account number
- Block 5 - Funds requested in an FRN
- Block 5 – Entity(ies)/Worksheet cited in an FRN
- Block 6 – Amount budgeted for ineligible services

If you detect any errors in these items, you can make corrections during the next 15 days. To request a correction, make a copy of your Form 471 and draw a line through each incorrect item and mark clearly next to it the corrected information.

It is your responsibility to review your Form 471 application and provide corrections to us. All corrections should be submitted to me by fax or email.

Additional Questions

Review of your below mentioned Form 471 application raises significant questions about whether basic maintenance funding requests are cost effective as required by FCC rules. You have submitted app# 527777, FRN 1455399 ($278,360.00 yearly) Internal Connections and app# 527968, FRN 1456119 ($372,435.00 yearly) for Internal Connections, that totals $650,795.00 annually.

Based on information before us at this time, we are unable to make a positive determination that these funding requests are cost effective as required by FCC rules. However, we are affording you an opportunity to submit further information that would justify these requests. A favorable determination requires that we have a full understanding of the specific services to be provided for the amounts requested, and a justification that establishes that the funding requests are cost effective. The information needed to complete this evaluation is as follows.

Application 527968, FRN 1456119

- Based on the information you provided in your FY2006 Form 471 # **527968**, for a different funding year (Form 471, Block 5, Item #10 was checked) FRN **1456119** is a duplicate of (prior year) FRN **1334733**, Application **# 482177**.

A duplicate is defined as the same service/product, provided to the same location, for the same end-users, during the same time frame. If the FRNs are duplicates, then funding cannot be approved for both FRNs.

Was Form 471, Block 5, Item # 10 populated in error? (Yes/No).

If Yes, please provide a written explanation of the error, signed and dated by the Superintendent or Chief School Official.

If No, and funding has not yet been approved for the (prior year) FRN or you have appealed the USAC decision that is pending, please provide a signed written authorization to cancel one of the FRNs, specifying which FRN you wish to cancel.

If you prefer to have the review of the current Form 471 application put on hold pending the funding decision on the prior year's FRN, please send a written authorization that the review be placed on hold until the funding decision is determined, specify the FRN you wish to place on hold. The review of the current Form 471 application will continue after the funding commitment decision is made on the prior year FRN.

If a FCDL has been issued for the prior year FRN, approving funding, and you wish to keep the FY2006 new FRN, please provide evidence that a Form 500 was submitted for the prior year original FRN canceling the funding for that FRN otherwise, the duplicate FY2006 (new) FRN will be denied.

➢The first observation associated with this evaluation is the there appears to be a duplicate request between app# 527777, FRN 1455399 and app# 527968, FRN 1456119 for the current funding year 2006/2007. The difference is the requested dollar amount for funding. For app# 527777, FRN 1455399 the amount requested is $278,360.00 yearly and app# 527968, FRN 1456119 the amount requested is $372,435.00. Additionally app# 527968, FRN 1456119 reflects additional equipment. If these are duplicates, please indicate as such and authorize in writing which one to cancel. If they are not duplicates, please provide an explanation on how they are different and how they are appropriate and cost effective for a school of 149 students.

Application #527777, FRN 1455399 ($278,360.00 yearly) for Internal Connections

• For FRN1455399, there are 250 cabling drops being requested in Internal Connections, and there is a student population of 149 which equates to 1.6 drops per student, please explain how this is appropriate and cost effective.

• There are (7) APC UPS backups being requested (APC UPC 1500va and APC UPS 2200va), what pieces of equipment are they supporting? Please list the make and model of the equipment and explain why 7 UPS systems are needed.

• For this application, why are there 4 servers required for a school of 149 students? Why are 4 servers dedicated to individual purposes (DHCP, DNS, Terminal Sever and E-Mail Server) when an individual file server can accomplish these functions?

• Why is a Terminal Server at a cost of $41,000.00 appropriate and cost effective for a school of 149 students? Please provide the make, model and component makeup of the equipment for the Terminal Server.

• Why is an E-MAIL Server at a cost of $41,000.00 appropriate and cost effective for a school of 149 students? Please provide the make, model and component makeup of the equipment for the E-MAIL Server.

• Please explain what on-site tech support one day block is and why are 5 needed for this FRN. Please also include a list of tasks to be performed as on-site tech support and provide the number of hours for each task.

• Please explain what 'Domain name registration for 10 year' is, why are 3 needed at a cost of $500.00 each? What is actually be registered? Please explain how this appropriate and cost effective.

Application # 527968, FRN 1456119 ($372,435.00 yearly for Internal Connections

• There are (12) APC UPS backups being requested (APC UPC 1500va and APC UPS 2200va), what pieces of equipment are they supporting? Please list the make and model of the equipment and explain why 12 UPS systems are needed.

• Why is a Terminal Server at a cost of $41,000.00 appropriate and cost effective for a school of 149 students? Please provide the make, model and component makeup of the equipment for the Terminal Server.

• Why is an E-MAIL Server at a cost of $41,000.00 appropriate and cost effective for a school of 149 students? Please provide the make, model and component makeup of the equipment for the E-MAIL Server.

• For this application, why are there 7 servers required for a school of 149 students? Why are 7 servers dedicated to individual purposes (Domain, Web, Backup, DHCP, DNS, Terminal Sever and E-Mail Server) when an individual file server can accomplish these functions?

• For the Web Server, please provide the actual functionality of the server.

• You are requesting 1 year maintenance – cabling for network and Phone System at a cost of $22,000.00. Please answer the following:

- Separate the cost out for maintenance for cabling and separate the cost for the Phone System.

- Provide a task list for cabling and associated cost per task for cabling. Indicate the total number of classrooms/rooms with cabling.

- Please provide the total number of drops for the phone system.

• Please explain what on-site tech support one day block is and why are 6 needed for this FRN. Please also include a list of tasks to be performed as on-site tech support and provide the number of hours for each task.

➢Please provide any special circumstance, rationale, or justification that we should be aware of that would validate your funding request as cost effective.

➢ Please provide a description of how you chose your service provider as a cost effective source for the services requested

Discount Information

The information you provided is signed by the applicant. This is not acceptable. Please have the certification signed by either the Superintendent or Assistant Superintendent, Principal or Vice-Principal.

Please fax or e-mail the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested **within 15 calendar days** so we can complete our review. **Failure to do so may result in a reduction or denial of**

funding. If you need additional time to prepare your response, please let me know as soon as possible. If you are unable to provide the requested information because your school has closed or will shortly close for summer break, let me know when you will be available to respond to these questions.

Please advise me if the Contact Person on the application(s) has changed from that on the original application. This change must include the Form 471 application number(s) and be signed by the original application's Contact Person, the original application's Authorized Person or a school official (with name and title provided).

Should you wish to cancel this Form 471 application, or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s); along with the application number and/or funding request number(s), and the complete name, title and signature of the authorized individual.

Thank you for your cooperation and continued support of the Universal Service program.

Danilo Sta. Ana - Program Integrity Assurance
Associate Manager - Initial Reviewer
Schools & Libraries Division
Phone: 973-581-5037
Fax: 973-599-6578
Email: dstaana@sl.universalservice.org

EXHIBIT B

RESPONSE TO SLD COST EFFECTIVENESS INQUIRY

4 PAGES

We identified no errors in the captioned form 471 applications, but we reserve the right to identify such errors in the future, should they become apparent.

Regarding your inquiry:

1) The following statement was included on page 2 of the inquiry:

"Review of your below mentioned Form 471 application raises significant questions about whether basic maintenance funding requests are cost effective as required by FCC rules. You have submitted app# 527777, FRN 1455399 ($278,360.00 yearly) Internal Connections and app# 527968, FRN 1456119 ($372,435.00 yearly) for Internal Connections, that totals $650,795.00 annually."

That statement is inaccurate. These were non-recurring charges, as shown in the (23f) fields for both FRNs, and not annual charges.

2) Regarding application 527968, FRN 1456119 – the block 5, item #10 was not populated in error. This FRN was submitted as a contingency application for FRN 1334733 as part of application 482177. FRN 1334733 was under appeal with USAC and this appeal was partially granted. We are now pursuing the remainder of this appeal with the FCC. As the final status of FRN 1334733 is not yet known, we want the review for FRN 1456119 put on-hold until such time that the final status of FRN 1334733 is known.

3) Regarding the first observation cited on page 3 of your inquiry – application 527968 is a contingency application for application 482177, which was submitted in FY2005. Application 527777, FRN 1455399 is for FY 2006, and reflects the additional needs of the school as it just acquired a large (50K sq. ft') empty building adjacent to its current building, and it intends on expanding into that building, and thereby increasing its current enrollment. This was supposed to be part of a multi-year implementation strategy.

5) Regarding your cost-effectiveness questions for application 527777, FRN 1455399:

a) the $278,360.00/yearly figure is inaccurate. This is a non-recurring charge.

b) for the record, I have reviewed the links that Mr. Sta. Ana provided from the USAC website on 09/06/2006 regarding cost effectiveness[1]. Based on my review of this information, as well as information I have reviewed in the various FCC Reports and Orders, I can find no justification for the questions asked herein regarding MIS dollar : student ratio, or server : student ratio. Based on my review of the products commercially available, both at the time of the application and today, I find the pricing of the equipment specified in the application is not exorbitant.

c) As stated in paragraph #3, the school recently procured a large building adjacent to its current building. They are on the same physical campus. They will be increasing their enrollment and outfitting this building with cabling is

necessary. The student:drop ratio stated is inaccurate. The concept of a student:drop ratio is inaccurate as well as it is biased against schools with lower student:teacher ratios, as is necessary in this school.

d) The APC UPS 1500va systems each support an individual network switch. One of the systems also supports a router. The APC UPS 2200va systems each support an individual server. Two of those systems will also each support a cabinet. Two more of those systems will also each support a monitor. The UPS systems maximize the protection and availability of the equipment, and there is precedent for this configuration being approved by your group.

e) You ask, "For this application, why are there 4 servers required for a school of 149 students? Why are 4 servers dedicated to individual purposes (DHCP, DNS, Terminal Sever and E-Mail Server) when an individual file server can accomplish these functions?"

This question is inaccurate as it does not take into account:

> i) the school's expansion (the second 50K' building identified in paragraph 3 of this document) into account.
> ii) length of service of the equipment into account as it presumes a lifespan of one school-year, which is an egregiously unreasonable assumption to make.
> iii) staff usage (number of staff)
> iv) network resource bandwidth and utilization best-practices (it is somewhat unreasonable to expect one server to efficiently handle a possible 150+ concurrent terminal sessions, concurrent email RPC and HTTP sessions, incoming/outgoing SMTP traffic, email attachment handling, and internal/external DNS and Active-Directory lookups)

Therefore, since the question is inaccurate and misrepresentative of the facts, I don't think it can be answered properly.

f) You ask, "Why is a Terminal Server at a cost of $41,000.00 appropriate and cost effective for a school of 149 students?" This question is inaccurate as it does not take into account:

> i) the school's expansion (the second 50K' building identified in paragraph 3 of this document) into account.
> ii) length of service of the equipment into account as it presumes a lifespan of one school-year, which is an egregiously unreasonable assumption to make.
> iii) staff usage (number of staff)

Therefore, since the question is inaccurate and misrepresentative of the facts, I don't think it can be answered properly.

g) You ask, “Why is an E-MAIL Server at a cost of $41,000.00 appropriate and cost effective for a school of 149 students?” This question is inaccurate as it does not take into account:

i) the school’s expansion (the second 50K’ building identified in paragraph 3 of this document) into account.
ii) length of service of the equipment into account as it presumes a lifespan of one school-year, which is an egregiously unreasonable assumption to make.
iii) staff usage (number of staff)

Therefore, since the question is inaccurate and misrepresentative of the facts, I don’t think it can be answered properly.

The make, model and component makeup of the terminal server was included during the extensive SRIR review.

h) As explained in prior reviews, the on-site technical support one-day block is for immediate post-installation assistance that may be required in order to ensure the availability and basic functionality of the systems after installation. The block was included as a maximum amount of time that may be necessary after installation. The tasks to be performed would be based on the issues that arise immediately after installation. The vendor has stated that a one-day block would encompass a total of 8 man-hours.

i) Domain name registration is to cover the cost of registering the school’s Internet domain names. After review, this should have been categorized as an Internet access request. It’s appropriate because the school needs domain names for obvious reasons.

5) Regarding your cost-effectiveness questions for application 527968, FRN 1456119 – I would submit that, since the review of this application should be placed on hold pending a final outcome for application 482177, there is no reason to answer these questions at the current time. However, I would identify the question as being invalid as it cites an annual figure and not a non-recurring figure.

6) You ask, “Please provide any special circumstance, rationale, or justification that we should be aware of that would validate your funding request as cost effective.” We cannot effectively answer this question as we have no baseline to determine what PIA considers “cost effective”. Additionally, this determination seems to be based on very subjective and possibly discriminatory criteria and, in our opinion, with the exception of the question of service provider proposal selection, is out of PIA’s jurisdiction. It is our understanding of the program that PIA’s function is to determine compliance of program

rules – not to make them. We can find no FCC rule that would permit a cost-effectiveness review. Similar opinions have been issued by others.[2p]

7) The matter of selecting a service provider was disclosed in the SRIR review. The selection was based on a fair and open competition that was publicly advertised both in a newspaper and online, per CA state law.

8) The discount letter signed by the Executive Director was already provided.

[1]http://www.universalservice.org/_res/documents/sl/html/sl-newsbrief-sr3-20060515.aspx
http://www.universalservice.org/_res/documents/sl/html/SL-newsbrief-20060331.aspx

[2]http://www.e-ratecentral.com/archive/News/News2006/weekly_news_2006_0313.asp