

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Application for Review of Decision of)	CC Docket No. 02-6
The Schools and Libraries Division of the)	
Universal Service Administrative Company)	
)	
Appeal of Funding Year 2006-2007 Application)	
Denial and the Denial of the Relevant Appeal)	
)	
Funding Year 2006)	
Form 471 Application Number: 524250)	
Funding Request Number: 1443906)	
Applicant: Youthbuild Albuquerque (a.k.a.)	
Youthbuild Trade and Technology Charter High)	
School), Albuquerque NM (BEN 16028780))	

APPEAL OF YOUTHBUILD ALBUQUERQUE

Youthbuild Albuquerque, hereby respectfully appeals the decision of the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC”), to uphold its decision to not fund FY2006 application 524250, funding request 1443906.

On November 7th, 2006, SLD issued a Funding Commitment Decision Letter, denying the captioned application. The reason for the denial was listed as “Applicant has not provided sufficient documentation to determine the eligibility of this item.”

On January 8th, 2007, Youth Empowerment Services (“YES”), the school’s e-rate consultant, filed a timely appeal¹ with SLD with respect to this matter. In this appeal, one argument was provided to counter the claim made by SLD.

¹The filed SLD appeal is attached as Exhibit A

We stated that there was adequate information in the file to determine the eligibility of the items requested. Additionally, we stated that “this item” remained undefined, and it was therefore unclear as to whether the 30% rule should have been applied to the application. Finally, we commented that the actions of the Program Integrity Assurance department were against public policy and that it was not prudent to simply discard an application without exhausting all means of obtaining the data needed in order to successfully process the application.

On January 19th, 2007, SLD issued its “Administrator’s Decision on Appeal – Funding Year 2006-2007”² in response to our appeal. In this decision, SLD denies our appeal. In their denial, they claim that because we did not respond to cost-effectiveness questions concerning the application, they had insufficient documentation to determine the eligibility of the requested service. They also claim they made contact with the applicant’s authorized contact via email and fax.

In response to their denial - first, we contend that while SLD probably did email and fax the requested information to the authorized contact, there is no evidence that she ever received this information. SLD does not state in their appeal denial that they ever confirmed (via return email, return fax or via a telephone conversation) that the authorized contact did in fact receive the inquiries.

Second, it is our contention that this application should not have been subjected to a cost effectiveness review, and that the cost-effectiveness review is in fact invalid:

²The Administrator’s Decision on Appeal – Funding Year 2006-2007 is attached as Exhibit B

a) SLD's cost-effectiveness review is against the public interest

The 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 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.

b) SLD overstepped its authority in implementing the cost-effectiveness review

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 of 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:

- i) By applying the test set forth in paragraph 54 of that order, it is our contention that the prices set forth by the proposal, were not exorbitant, nor did SLD claim they were exorbitant
- ii) the school did not violate competitive bidding practices and it selected the most cost-effective bid that it received
- iii) the application is not a maintenance request.

c) 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.

d) The cost-effectiveness review is flawed

- i) The cost-effectiveness review does not take non-student users (e.g. teachers, administrators, etc...) into account
- ii) The cost-effectiveness review erroneously makes a direct link between maintenance expense and the number of students supported.
- iii) The cost-effectiveness review does not take life expectancy of the equipment into account – it erroneously assumes only a one-year usage for the equipment
- iv) The cost-effectiveness review incorrectly draws a correlation between the number of students to be served and the dollar amount of the funding request.

- v) There is 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.

We contend that because this application should not have been subjected to the cost-effectiveness review, that there was sufficient information in the application file to allow for the successful processing of the application.

Considering the school that is applying for these funds has a highly disadvantaged population (nearly 100% of the enrolled students qualify for the NSLP), SLD should have taken a more responsible approach with respect to helping the school and its population.

Therefore, we would respectfully request the Commission overturn the SLD decision in this matter.

Respectfully submitted,



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March 8, 2007