Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Application for Review of Decisions of	)	CC Docket No. 02-6
The Schools and Libraries Division of the	)	
Universal Service Administrative Company	)	
	)	
Appeal of Funding Year 2005-2006 Application	)	
Denials and the Denials of the Relevant Appeals	)	
	)	
Funding Year 2005	)	
Form 471 Application Number: 477733	)	
Funding Request Number: 1319002	)	
Applicant: YouthBuild Albuquerque,	)	
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 FY2005 application 477733, funding request 1319002.

SLD originally issued a Funding Commitment Decision Letter, denying the captioned application because they claimed service provider contact information was included on the Form 470. That denial was appealed to SLD in a timely manner. After a significant period of time passed without any information from SLD, and after USAC board intervention was sought, SLD never issued a response to the original denial reason as cited in the appeal, removed the denial reason from the database, subjected the application to a cost-effectiveness review (which were not being conducted to our knowledge in FY 2005), and subsequently denied the appeal for reasons of cost-effectiveness on September 5th, 2008.

Regarding Cost-Effectiveness

SLD's claims regarding cost-effectiveness are invalid and erroneous, and therefore should be reversed. We assume this position because:

i) The Academia order had showed the Commission had not established a test to determine whether an item was "cost-effective"

ii) The Commission had not agreed to allow the "cost-effective" adjective that SLD had proposed to add to the Eligible Services List

iii) SLD incorrectly drew a correlation between the number of students to be served and the dollar amount of the funding request – thereby creating a technology reimbursement dollar per student as opposed to providing the services that the students are entitled to

iv) SLD incorrectly drew a correlation between the number of students to be served and the dollar amount of the funding request – thereby creating a direct, but erroneous link between maintenance expenses and the number of students supported

v) There is no policy or guidance given by the Commission to support the guidelines used in the cost-effectiveness review

vi) The cost-effectiveness review did not take teachers and administrators into account when creating its statistics

vii) The review only took the current year's students into account, as if the requested products and services would only be in use for one year

viii) The SLD decision is against public policy as it penalizes smaller schools

ix) The school accepted the most cost-effective and efficient option available to it, despite SLD's assertions to the contrary

Regarding SLD's conduct in this matter

It is our opinion that SLD actively looked for one or more reasons to deny this application. Based on the public rules and regulations regarding the administration of e-rate applications, SLD overstepped its bounds by making its own subjective judgment calls about what products and services a school is eligible for based on the size of the school. This application was nearly identical to another application that was submitted for a larger school – both of which needed similar initial infrastructures. The application for the larger school was funded. Publicly available E-rate rules, in FY 2005 at least, did not support allocations to schools based on their size.

Additionally, it is our opinion that the prejudicial policies that have been adopted by SLD regarding cost-effectiveness come from the top of its application review department. During a conversation between the undersigned and David Gorbunoff, a Program Operations Director at SLD, when the concern was brought forth by the undersigned that e-rate may be becoming like a managed care program where insurance companies are overriding the judgment of healthcare professionals, Gorbunoff stated, "You can design your networks any way you want. We don't have to fund them." Based on this comment, as well as publicly available information, there may be an apparent bias by Gorbunoff that puts small schools at a disadvantage. While Gorbunoff was running for the Scotch Plains-Fanwood NJ School Board in April 2006, the Newark Star-Ledger quoted him as stating "Operations is all about efficiencies," he said. "We need to be efficient in how we provide supplies for the classroom. We need to be efficient in how

we manage our buildings. We need to be efficient in how we manage our personnel."[1]

In addition, in March 2007, the Westfield Leader and The Scotch Plains – Fanwood TIMES reported Gorbunoff as stating "Efficiency is a watchword that we should all take to heart."[2] We believe Gorbunoff's desire to be a leader in a multi-school school district, coupled with policies that are harmful to small schools under the auspices of efficiency, shows there may be a bias in the senior management of SLD that may be prejudicial to small schools – and therefore against public policy.

Additionally, we would respectfully request the Commission take the following four points into consideration:

i) SLD did not respond to our appeal as it did not respond to the original denial reasons and simply inserted a new denial reason since it could not substantiate the original denial reason.

ii) SLD's cost-effectiveness review is against public policy in that its policies unfairly harm smaller schools. Additionally, 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

[1] "It's old versus new in school contest", Newark Star Ledger, Thursday, April 06, 2006, Author: Molly Bloom
[2] Scotch Plains-Fanwood Board of Education Campaign Release: "Uniquely Qualified to Sit on BOE", by David Gorbunoff, Candidate for Scotch Plains BOE Seat. Published March 08, 2007 by The Westfield Leader and The Scotch Plains – Fanwood TIMES

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 initially 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.

iii) 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.

iv) 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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