

There is always something going on @ Your Lewis and Clark Library!



December 19, 2012

Office of the Secretary
445 12th Street SW
Washington, DC 20554
CC Docket no. 02-6

RE: FCC Form 471 Application number 825092, Funding Request Number 2348191

Lewis and Clark Public Library (Lewis & Clark), in accordance with Sections 54.719 through 54.721 of the Federal Communications Commission's (Commission) Rules, respectfully requests review of a decision by Universal Service Administrative Company (Administrator) and if necessary waiver of the Item 21 Deadline requirements of the Commission's Public Notice, DA 10-2218 (released November 19, 2010) and subsequent Clarification Order, DA 11-88 (released January 14, 2011.)

Although Lewis & Clark believed that all of their Item 21 attachments were submitted and received by the Administrator (the Administrator confirmed receipt of the Item 21 attachments via Submit a Question in addition to the automated email that was generated when the Item 21 attachments were submitted by email) before the extended filing deadline of May 9, 2012, the Administrator denied Funding Request Number (FRN) 2348191 because Lewis & Clark, "failed to provide sufficient documentation demonstrating the Item 21 Attachment was submitted timely."

Background:

On March 19, 2012 Lewis & Clark submitted Form 471 Application number 825092. On March 20, 2012 Item 21 Attachments were submitted for Application 825092. An automated email was received by Lewis & Clark from the Administrator as acknowledgement of receipt of each item 21 attachment submitted. The email had no identifying information to show which FRN or application was submitted. USAC issued around 7,600 letters to applicants in April, 2012 notifying them of missing Item 21 attachments. Letters were issued for the following situations:

- An Item 21 attachment was not submitted.
- An Item 21 attachment was started online but the Submit button on the last page was not clicked.
- An Item 21 attachment was submitted by email, fax, or delivery service but the FRN associated with the item 21 attachment was not clearly identified.¹

¹ Schools and Libraries News Brief 4/20/2012

The, "Notification of Form 471 with No Certification," letters were sent before USAC had completed processing of forms and applicants were told that letters may have gone out for applications for which Item 21 Attachments had been received but had not completed processing on the date the letters were sent.

Lewis & Clark received a, "Notification of Form 471 with No Certification," letter. Upon receipt of the letter, believing that all Item 21 attachments had been submitted to the Administrator and having a confirmation receipt for the number of Item 21 Attachments sent, the contact sent via Submit a Question a request for confirmation that the Item 21 Attachments had been received for Application 825092. A response was sent by the Administrator on April 30, 2012 (Case #22-364754) confirming receipt of Item 21 Attachments for application 825092.

On June 28, 2012 Program Integrity Assurance contacted Lewis & Clark and communicated that FRN 2348191 would be denied because the Item 21 Attachment to support the FRN was not received on or before the filing deadline. Lewis & Clark sent the reviewer a copy of the confirmation response that they received from Submit a Question along with the Item 21 Attachment for the referenced FRN. The reviewer continued the review of the application and Lewis & Clark received no more questions from PIA after July 5, 2012. In August, when the application was still not funded, an inquiry was made and the reviewer responded that the application was still being reviewed. In November, when Lewis & Clark had still not received a Funding Commitment Decision Letter, the ombudsman was contacted by the applicant. On November 8 questions resumed. Again, Lewis & Clark was asked to submit proof that they had submitted the Item 21 Attachments in window. Again, Lewis & Clark produced the confirmation email from USAC dated saying that the Item 21 Attachments had been received. In response, PIA said that the confirmation from USAC that all Item 21 Attachments had been received before May 9, 2012 was not sufficient documentation that the Item 21 Attachments were sent before May 9, 2012. A Funding Commitment Decision Letter was issued on November 29, 2012 denying funding for FRN 2348191 but approving funding for the other FRNs on the application.

Discussion:

Eligible applicants for discounts under the E-rate program are required to post an FCC Form 470, go through a procurement period, and after 28 days may make a service provider selection based on responses to the Form 470. The applicant subsequently files a Form 471 which describes the services ordered for which the applicant is requesting discounts. Applicants requesting discounts on Form 471 must submit the form within a window of time designated by the Commission. Item 21 of the Form 471 consists of a document submitted separately from the Form 471. The Form 471 Instructions direct applicants to submit item 21 attachments, "to the SLD online or via e-mail, fax or mail."² Beginning in Funding Year 2011 applicants were required to submit Item 21 Attachments during the window to be considered as filing, "within window." Since 1999 due to high demand, no applications submitted, "out of window" have been funded.

On April 12, 2011, the Commission issued a Corrections Order (FCC-11-60) which extended, "the deadline for applicants under the E-rate program (formally known as the schools and libraries universal support program) to submit corrections of clerical or ministerial errors on their FCC Form 470 and FCC Form 471 applications."³ In this order, the Commission directed the Administrator to

² Form 471 Instructions, III Window Filing Requirements

³ FCC 11-60, 1.

allow applicants to correct clerical and ministerial errors on their Form 471 applications until an FCDL is issued. Additionally, the Commission says, "Given the complexity and detail that is often involved in completing these forms and associated documentation, we recognize that such errors may not be discovered until significantly after a request for funding was filed. Currently, if applicants discover the error after the 15-day deadline, they have to file an appeal with the Commission to correct a ministerial or clerical error. Those types of appeals unnecessarily waste applicant and administrative resources, and we find it is in the public interest to allow applicants a greater amount of time to correct ministerial and clerical errors."⁴

Lewis & Clark believed that the Item 21 Attachment for FRN 2348185 had been submitted within window – in fact, the Administrator told them that it had. When applicants submit and certify an FCC form online, an automated email is generated with a confirmation number showing that the application has successfully been submitted and certified. An applicant submitting an Item 21 Attachment has no way of confirming receipt of specific Item 21 Attachments for each FRN because the Administrator considers the burden of proof to be solely on the applicant. Lewis & Clark respectfully requests the FCC to consider this as a correctible error under the Corrections Order and asks the FCC to allow FRN 234815 to complete the Administrator's review process. If the Commission agrees with the Administrator that the burden of proof is indeed solely on the applicant, Lewis & Clark requests a waiver of the deadline for submitting an Item 21 Attachment for FRN 2348185.

In an ex parte filing on April 30, 2012, SECA expressed concern about the process applicants should use to verify if Item 21 attachments have been submitted. Please consider the denial of FRN 2348185 to be an example that illustrates why the concern that SECA expressed is one shared by all applicants who use mail or e-mail as methods of submitting Item 21 Attachments.

Conclusion:

In closing, Lewis & Clark thanks the Commission for its consideration of their appeal. We respectfully request that the FCC allow Lewis & Clark to correct an error under the Corrections order (FCC-11-60) of April 14, 2011. Or, if the Commission determines that Lewis & Clark submitted the Item 21 Attachment out of window, we respectfully request a waiver of the Item 21 Attachment deadline for FRN 234815 and request that the FRN be allowed to complete the review process.

Respectfully submitted:



Judith E. Hart, Director

⁴ FCC 11-60, 5.