



Bayonne Public Schools  
Administration Building  
669 Ave A  
Bayonne, NJ 07002

DOCKET FILE COPY ORIGINAL

Received & Inspected

FEB 24 2013

FCC Mail Room

Leo J. Smith Jr.  
Assistant Superintendent for Business/  
School Business Administrator

Tel 201-858-5560  
Fax 201-858-5599  
[lsmith@bboed.org](mailto:lsmith@bboed.org)

Received & Inspected

FEB 24 2013

FCC Mailroom

February 18, 2014

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Request for Review- CC Docket No. 02-6**

USAC Appeal Decision Date:	December 23, 2013
Form 471 Number:	825783
Billed Entity Name:	Bayonne School District
BEN:	122637
FRN:	2263698
Service Provider:	Cablevision Lightpath of NJ
SPIN:	14313604

**Contact Information:**

Contact Person Name:	Leo Smith
Contact Person Phone:	201.858.5560
Contact Person Fax:	201-858-5599
Contact Person E-mail:	<a href="mailto:lsmith@bboed.org">lsmith@bboed.org</a>

The Bayonne Board of Education (BBOED) is appealing the following decision:

USAC's Administrator's Decision of Appeal - Funding Year 2012-2013, dated December 23, 2013. This denial letter is attached and labeled Document A.

**Explanation from USAC denial letter:**

Funding Request Number's: 2263698

Decision on Appeal: Denied

Explanation:

No. of Copies rec'd 0  
List ABCDE

- The Item 21 Attachment you provided in support of your FCC Form 471 application, or documentation provided during review of your application, shows that you selected your vendor prior to the end of the 28 day posting period. In your Receipt Notification Letter, USAC notified you that the earliest date upon which you could sign a contract or enter into an agreement (Allowable Contract Date) was March 18, 2011. Consequently, USAC denies your appeal because your application did not comply with the competitive bidding requirement that your FCC Form 470, 806970000910131, be posted on the website for 28 days prior to signing a contract or entering into an agreement for new products and/or services.

- You selected your vendor for new products and/or services prior to the expiration of the 28 day posting period. FCC rules require that except under limited circumstances, all FCC Forms 470 received be posted on the USAC website for 28 days, and that applicants carefully consider all bids received before selecting a vendor, entering into an agreement or signing a contract, and signing and submitting an FCC Form 471. See 47 C.F.R. secs. 54.503(b) and (c), 54.511(a) and (c). FCC rules further require that the Administrator send the applicant a confirmation when the FCC Form 470 has been posted, and inform the applicant of the earliest date upon which they may sign a contract with the vendor it selects. See 47 C.F.R. sec. 54.503(c)(4). These competitive bidding requirements help to ensure that applicants receive the lowest pre-discount price from vendors. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, FCC 97-246 para. 9 (rel. Jul 10, 1997). New products and or services include tariff Telecommunications services that are not subject to an existing, binding, written contract.

**Bayonne Board of Education request for review:**

BBOED contracted with Cablevision of Lightpath of NJ in August of 2010 for a critical service upgrade that was needed to ensure the connectivity of the District's constituents. At the time of the "Agreement" (attached, Document B) BBOED's network was not capable of handling the demand of the students and their need to move forward with online testing initiatives. When it came time to file the District's 470 (806970000910131) for the 2011-12 funding year it was decided that we would post for this network service and review any bids submitted. There were no bids submitted for this service during this funding year. Since the District did not receive any competing proposal it was decided that there was no choice but to continue contracting with Lightpath. We believe that our re-bid of this service and subsequent choice to continue with our current provider meets the requirements laid forth in FCC Orders: SLD- 140683 (Cochrane-Fountain City School District) and SLD- 164612 (Kalamazoo Public Schools).

As stated in SLD- 140683:

*"Although SLD indicated in its September 16, 1999 letter that Cochrane's request for discounts for Internet access was defective because Cochrane's contract must be re-bid, the record reflects that Cochrane fully complied with the Commission's competitive bidding requirement for year two. As noted, an applicant with an existing contract*

*that was not previously posted is obligated only to post its requests, carefully consider all bona fide bids submitted, and wait the requisite 28-day time period prior to renewing an existing contract for the funding year for which it is requesting discounts. Although Cochrane was operating under an existing agreement for Internet services, Cochrane correctly submitted its FCC Form 470 for posting on the SLD website and did not check Block 3, Item 10. As noted, the SLD posted Cochrane's FCC Form on March 1, 1999, as required by section 54.504(b)(3) of the Commission's rules. The posting of Cochrane's application on the SLD website gave all potential providers an opportunity to review and submit competing bids in response to Cochrane's request for Internet service, thereby meeting the objective behind the competitive bid requirement. Further, Cochrane's FCC Form 471 was not signed until March 31, 1999, two days after Cochrane's allowable contract date. In submitting its FCC Form 470 for posting on the SLD website, as well as complying with the 28-day waiting period, Cochrane adhered to all applicable requirements with respect to the Commission's competitive bidding policy"*

Restated in SLD- 164612:

*"Although applicants who, after a bidding process, choose to continue service under an existing contract need not formally enter into a new contract, we believe it would facilitate application processing for applicants to memorialize their decision to continue the service and enter the date of this memorialization as the contract award date of the renewed contract in their FCC Form 471. Such action will help SLD to determine whether the applicant has in fact properly complied with the Commission's competitive bidding requirements.<sup>24</sup> Such a memorialization is also in keeping with the certifications on the FCC Form 471, which require an applicant to certify, among other things, that "the entity(ies) I represent has complied with all program rules [including competitive bidding rules]" and that "I will retain for five years any and all worksheets and other records that I rely upon to fill out this application, and, if audited, will make available to the Administrator such records."<sup>25</sup> By noting an appropriate post-bidding contract award date that can be entered into the FCC Form 471, the memorialization will help SLD during application review to recognize instances where an applicant's reliance on an existing contract does not facially violate competitive bidding rules. It will also aid applicants by clarifying how they should enter requests for discounts on existing contracts in such situations."*

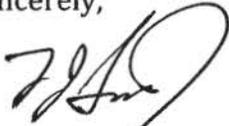
BBOED posted our 2011-12 470 (806970000910131) on 02/18/11 which provided us with an ACD of 03/18/11. The District did not confirm its choice to continue with Lightpath until our 471 posting, which took place on 3/24/2011. We do concede that an incorrect 470 # and contract award date was originally referenced for this FRN. However, while in SLD selective review we caught this error and asked for them to be corrected. As such FRN 2192937 should reference 470 # 806970000910131 with a contract award date of 3/24/2011. As stated earlier we believe that by posting this service for competitive bids and waiting the mandated 28 day period before deciding on which

provider we would procure service from we followed FCC guidelines as dictated on the referenced orders.

It should also be noted that this appeal is being submitted concurrently with our appeal for FRN 219237 for FY 2011-12, which was denied for the identical reason referenced in this letter.

We thank you for reviewing this information and look forward to your decision.

Sincerely,

A handwritten signature in black ink, appearing to read "LJS", written over a faint circular stamp or watermark.

Leo J. Smith  
Assistant Superintendent for Business/  
School Business Administrator

LJS/ea  
Enc.

Doc A

DOCUMENT A



**Universal Service Administrative Company**  
Schools & Libraries Division

**Administrator's Decision on Appeal – Funding Year 2012-2013**

December 23, 2013

Leo J. Smith Jr.  
Bayonne School District  
669 Ave A  
Bayonne, NJ 07002

Re: Applicant Name: BAYONNE SCHOOL DISTRICT  
Billed Entity Number: 122637  
Form 471 Application Number: 825783  
Funding Request Number(s): 2263698  
Your Correspondence Dated: October 25, 2013

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2012 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2263698  
Decision on Appeal: **Denied**  
Explanation:

- The Item 21 Attachment you provided in support of your FCC Form 471 application, or documentation provided during review of your application, shows that you selected your vendor prior to the end of the 28 day posting period. In your Receipt Notification Letter, USAC notified you that the earliest date upon which you could sign a contract or enter into an agreement (Allowable Contract Date) was March 18, 2011. Consequently, USAC denies your appeal because your application did not comply with the competitive bidding requirement that your FCC Form 470, 806970000910131, be posted on the website for 28 days prior to signing a contract or entering into an agreement for new products and/or services.

- You selected your vendor for new products and/or services prior to the expiration of the 28 day posting period. FCC rules require that except under limited circumstances, all FCC Forms 470 received be posted on the USAC website for 28 days, and that applicants carefully consider all bids received before selecting a vendor, entering into an agreement or signing a contract, and signing and submitting an FCC Form 471. See 47 C.F.R. secs. 54.503(b) and (c), 54.511(a) and (c). FCC rules further require that the Administrator send the applicant a confirmation when the FCC Form 470 has been posted, and inform the applicant of the earliest date upon which they may sign a contract with the vendor it selects. See 47 C.F.R. sec. 54.503(c)(4). These competitive bidding requirements help to ensure that applicants receive the lowest pre-discount price from vendors. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, FCC 97-246 para. 9 (rel. Jul. 10, 1997). New products and/or services include tariff Telecommunications services that are not subject to an existing, binding, written contract.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

Leo J. Smith Jr.  
Bayonne School District  
669 Ave A  
Bayonne, NJ 07002

Billed Entity Number: 122637  
Form 471 Application Number: 825783  
Form 486 Application Number:



## Service Agreement

Date: August 18, 2010

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**Customer Information**

Customer Status: <b>New Customer</b>	Order Type: <b>New Services (New Customer)</b>	Account: _____
Customer Name: <b>Bayonne Public Schools</b>		
Service Address: <b>687 Avenue A</b>	Bayonne, NJ 07002	City, State, Zip Code
Service Location Type: <b>New Build</b>	Service Location: <b>1st Floor Tele Room</b>	
Customer Install/On Contact Name: _____	Device ID: _____	Installation Contact Phone: <b>(201) 588-8395</b>
Billing Address: <b>687 Avenue A</b>	Bayonne, NJ 07002	City, State, Zip Code
Billing Contact Name: <b>Leo Smith, Jr.</b>	Contact Phone: <b>201-588-8395</b>	
Customer Email: <b>lsmith@bboe.org</b>	Alternate Phone: _____	
Lightpath Contact: <b>Kim Schuster</b>	Lightpath Phone: <b>201-844-9101</b>	Sales Code: <b>A081</b>

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**Optimum Lightpath Services**

The above customer agrees to the ordering of the following Optimum Lightpath Services:

Included Monthly Recurring Charge	Qty	Total Monthly Recurring Charge	Max Monthly Charge
1 Lightpath Web-Over Metro 15-60 Mbps	1	\$2,600.00	\$0.00
2 Private Fiber Network 100MB	11	\$16,698.00	\$0.00
3 Bayonne Optimum Lightpath Managed	7	\$0.00	\$4.00
4 -	0	\$0.00	\$0.00
5 -	0	\$0.00	\$0.00
6 -	0	\$0.00	\$0.00
7 -	0	\$0.00	\$0.00
8 -	0	\$0.00	\$0.00
9 -	0	\$0.00	\$0.00
10 -	0	\$0.00	\$0.00
11 -	0	\$0.00	\$0.00
12 Low Latency Route			

**Agreement Term:** **5 Year Term**

**Total Monthly Recurring Charge:** **\$19,000.00**

**Total One Time Installation Charge- All Services:** **\$0.00**

**For Office Use Only**

1002MAG - New Contract

1002MAG - Renewal

1002MAG - Pre-Main

1002MAG - BayOut

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**REMARKS**

Customer is eligible for 1 Free Month of Service (\$18,000 One-Time Credit on 1st Invoice)

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**Terms and Conditions**

Customer acknowledges receipt of and agrees to be bound by the Terms & Conditions of Cablevision Lightpath, Inc., on behalf of itself and its affiliate Cablevision Lightpath-OT, Inc., and Cablevision Lightpath- NJ, Inc., a Delaware Corporation, with offices at 200 Jersey Court, Jersey City, NJ 07310 ("Lightpath or Optimum Lightpath") attached hereto as set forth at [optimumlightpath.com](http://optimumlightpath.com). Customers purchasing Managed Value Service will be bound by Managed Terms and Conditions attached. Customer will be responsible for the rates listed on the Service Agreement form and all applicable local state and federal laws, charges and assessments along with any other applicable charges.

Customer Requested Due Date: **January 31, 2011**

**PLEASE READ** Lightpath will make all commercially reasonable efforts to meet Customer's requested due date for receiving services. By installing above, Customer acknowledges that Lightpath's standard installable are 14 business days for a 10-day installation, 31-40 business days for a 15-day requiring additional network modifications & 91 business days for New Build (excluding out of business). Customer understands that this is not a guaranteed service will be delivered by the requested due date. A service delivery proposal will contact you to discuss you of your actual targeted installation date.

The Customer agrees to allow Optimum Lightpath to represent its fiber as available on marketing and sales materials including Optimum Lightpath websites.

Key Contact Name: <b>Leo J. Smith</b>	Contact Phone: <b>201-918-4560</b>	Accept: <input checked="" type="checkbox"/>
Contact Email: <b>L.S.MITH@BBOE.ORG</b>	Alternate Phone: <b>201-588-8395</b>	Do not accept: <input type="checkbox"/>

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Agreed by: <b>[Signature]</b> Authorized Signature: Print Name: <b>L. Smith</b> Date: <b>8/18/10</b> Email & Phone: <b>L.S.MITH@BBOE.ORG</b>	Cablevision Lightpath, Inc. Authorized Signature: <b>[Signature]</b> Print Name: Date: <b>8/18/10</b>
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Leo J. Smith Jr.  
Assistant Superintendent for Business/  
School Business Administrator

Tel 201-858-5560  
Fax 201-858-5599  
[lsmith@bboed.org](mailto:lsmith@bboed.org)

February 18, 2014

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Received & Inspected

FEB 24 2014

FCC Mailroom

**Re: Request for Review- CC Docket No. 02-6**

USAC Appeal Decision Date:	December 23, 2013
Form 471 Number:	791759
Billed Entity Name:	Bayonne School District
BEN:	122637
FRN:	2192937
Service Provider:	Cablevision Lightpath of NJ
SPIN:	14313604

**Contact Information:**

Contact Person Name:	Leo J. Smith Jr.
Contact Person Phone:	201-858-5560
Contact Person Fax:	201-858-5599
Contact Person E-mail:	<a href="mailto:lsmith@bboed.org">lsmith@bboed.org</a>

The Bayonne Board of Education (BBOED) is appealing the following decision:

USAC's Administrator's Decision of Appeal – Funding Year 2011-2012, dated December 23, 2013. This denial letter is attached and labeled Document A.

**Explanation from USAC denial letter:**

Funding Request Number's: 2192937  
Decision on Appeal: Denied  
Explanation:

- The Item 21 Attachment you provided in support of your FCC Form 471 application, or documentation provided during review of your application, shows that you selected your vendor prior to the end of the 28 day posting period. In your Receipt Notification Letter, USAC notified you that that the earliest date upon which you could sign a contract or enter into an agreement

No. of Copies rec'd 0  
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(Allowable Contract Date) was March 18, 2011. Consequently, USAC denies your appeal because your application did not comply with the competitive bidding requirement that your FCC Form 470, 806970000910131, be posted on the website for 28 days prior to signing a contract or entering into an agreement for new products and/or services.

- You selected your vendor for new products and/or services prior to the expiration of the 28 day posting period. FCC rules require that except under limited circumstances, all FCC Forms 470 received be posted on the USAC website for 28 days, and that applicants carefully consider all bids received before selecting a vendor, entering into an agreement or signing a contract, and signing and submitting an FCC Form 471. See 47 C.F.R. secs. 54.503(b) and (c), 54.511(a) and (c). FCC rules further require that the Administrator send the applicant a confirmation when the FCC Form 470 has been posted, and inform the applicant of the earliest date upon which they may sign a contract with the vendor it selects. See 47 C.F.R. sec. 54.503(c)(4). These competitive bidding requirements help to ensure that applicants receive the lowest pre-discount price from vendors. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, FCC 97-246 para. 9 (rel. Jul 10, 1997). New products and or services include tariff Telecommunications services that are not subject to an existing, binding, written contract.

**Bayonne Board of Education request for review:**

BBOED contracted with Cablevision of Lightpath of NJ in August of 2010 for a critical service upgrade that was needed to ensure the connectivity of the District's constituents. At the time of the "Agreement" (attached, Document B) BBOED's network was not capable of handling the demand of the students and their need to move forward with online testing initiatives. When it came time to file the District's 470 (806970000910131) for the 2011-12 funding year it was decided that we would post for this network service and review any bids submitted. There were no bids submitted for this service for this funding year. Since the District did not receive any competing proposal it was decided that there was no choice but to continue contracting with Lightpath. We believe that our re-bid of this service and subsequent choice to continue with our current provider meets the requirements laid forth in FCC Orders: SLD- 140683 (Cochrane-Fountain City School District) and SLD- 164612 (Kalamazoo Public Schools).

As stated in SLD- 140683:

*"Although SLD indicated in its September 16, 1999 letter that Cochrane's request for discounts for Internet access was defective because Cochrane's contract must be re-bid, the record reflects that Cochrane fully complied with the Commission's competitive bidding requirement for year two. As noted, an applicant with an existing contract that was not previously posted is obligated only to post its requests, carefully consider all bona fide bids submitted, and wait the requisite 28-day time period prior to renewing an existing contract for the funding year for which it is requesting discounts. Although Cochrane was operating under an existing agreement for Internet services, Cochrane correctly submitted its FCC Form 470 for posting on the SLD website and did not check Block 3, Item 10. As noted, the SLD posted Cochrane's FCC Form on March 1, 1999, as required by section 54.504(b)(3) of the Commission's rules. The posting of Cochrane's application on the SLD website gave all potential providers an opportunity to review and submit competing bids in response to Cochrane's request for Internet service, thereby meeting the objective behind the competitive bid requirement.*

Further, Cochrane's FCC Form 471 was not signed until March 31, 1999, two days after Cochrane's allowable contract date. In submitting its FCC Form 470 for posting on the SLD website, as well as complying with the 28-day waiting period, Cochrane adhered to all applicable requirements with respect to the Commission's competitive bidding policy"

Restated in SLD- 164612:

*"Although applicants who, after a bidding process, choose to continue service under an existing contract need not formally enter into a new contract, we believe it would facilitate application processing for applicants to memorialize their decision to continue the service and enter the date of this memorialization as the contract award date of the renewed contract in their FCC Form 471. Such action will help SLD to determine whether the applicant has in fact properly complied with the Commission's competitive bidding requirements.<sup>24</sup> Such a memorialization is also in keeping with the certifications on the FCC Form 471, which require an applicant to certify, among other things, that "the entity(ies) I represent has complied with all program rules [including competitive bidding rules]" and that "I will retain for five years any and all worksheets and other records that I rely upon to fill out this application, and, if audited, will make available to the Administrator such records."<sup>25</sup> By noting an appropriate post-bidding contract award date that can be entered into the FCC Form 471, the memorialization will help SLD during application review to recognize instances where an applicant's reliance on an existing contract does not facially violate competitive bidding rules. It will also aid applicants by clarifying how they should enter requests for discounts on existing contracts in such situations."*

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We thank you for reviewing this information and look forward to your decision.

Sincerely,



Leo J. Smith Jr.  
Assistant Superintendent for Business/  
School Business Administrator

LJS/ea  
Enc.



**Universal Service Administrative Company**  
Schools & Libraries Division

---

**Administrator's Decision on Appeal – Funding Year 2011-2012**

December 23, 2013

Leo J. Smith  
Bayonne Public Schools  
669 Avenue A  
Bayonne, NJ 07002

Re: Applicant Name: BAYONNE SCHOOL DISTRICT  
Billed Entity Number: 122637  
Form 471 Application Number: 791759  
Funding Request Number(s): 2192937  
Your Correspondence Dated: October 25, 2013

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2011 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2192937  
**Decision on Appeal:** **Denied**  
**Explanation:**

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Doc A

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Schools and Libraries Division  
Universal Service Administrative Company

Leo J. Smith  
Bayonne Public Schools  
669 Avenue A  
Bayonne, NJ 07002

Billed Entity Number: 122637  
Form 471 Application Number: 791759  
Form 486 Application Number:

