

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of a Decision of the Universal Service Administrator by)	
)	
Coordinated Construction, Inc. Los Angeles, California)	File No. SLD-152078
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

ORDER

Adopted: October 14, 2011

Released: October 14, 2011

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

1. In this order, we grant the request for review filed by Coordinated Construction, Inc. (Coordinated Construction) seeking review of a decision by the Universal Service Administrative Company (USAC) to recover funding for violating the USAC requirement that funding disbursed for services be used within the funding year in which the funds were approved.¹ For the reason discussed below, we grant Coordinated Construction's appeal and direct USAC to discontinue its recovery efforts.

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.² Once the school or library has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify USAC of the services that have been ordered, the service providers with whom the applicant has entered into an agreement, and the requested funding needed to cover the discounts to be given for eligible services.³ Also on the FCC Form 471, applicants must list the "service start date" on which services will start in the funding year for which applicants are applying.⁴ USAC then issues a funding commitment decision letter (FCDL) indicating the discounts, if any, that the applicant may receive. After the funding year begins and the service provider begins providing discounted services, the school or library must submit to USAC an FCC Form 486,

¹ Letter from Don Hegarty, Jr., Coordinated Construction, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed June 14, 2004) (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company may seek review from the Commission. 47 C.F.R. § 54.719(c). The E-rate program is more formally known as the schools and libraries universal service support program.

² 47 C.F.R. §§ 54.501-54.503.

³ 47 C.F.R. § 54.504(c); Instructions for Completing the Universal Service Schools and Libraries Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 2002) (FCC Form 471 Instructions).

⁴ FCC Form 471 Instructions at 25.

which indicates that the service is being provided and demonstrates approval of the technology plan, if required.⁵ Applicants must list the actual service start date on the FCC Form 486.⁶

3. In October 1999, USAC approved Los Angeles Unified School District's (LAUSD) application for E-rate support for funding year 1999, which included \$224,550 of eligible services from Coordinated Construction.⁷ On its FCC Form 471 and its FCC Form 486, LAUSD indicated that the start date for service was July 1, 1999,⁸ which is the first day of the funding year and the earliest date of service for reimbursement from USAC.⁹ USAC conducted an audit of that funding decision in the summer of 2001 and concluded that LAUSD had received the \$224,550 in services from Coordinated Construction before the funding year began, in violation of program rules.¹⁰ USAC then sent a recovery letter to reclaim the disbursed funds.¹¹ An appeal subsequently filed by Coordinated Construction was denied by USAC in April 2004, with USAC noting that all costs associated with the funding request were for services provided prior to the beginning of the 1999 funding year.¹² On June 14, 2004, Coordinated Construction filed the instant request for review with the Commission.¹³

4. We grant Coordinated Construction's request for review. While Coordinated Construction completed the services before the 1999 funding year began, this violation occurred during the second year of the E-rate program when applicants had less familiarity with program rules. Notably, the previous funding year started in January while the 1999 funding year started in July.¹⁴ We also find that there is no evidence of waste, fraud or abuse. Based on the record before us and the particular circumstances of this appeal, we conclude that the complete rejection of this application is not warranted, and that strict adherence with USAC's procedures and the Commission's rules in this instance would be inconsistent with the public interest and we grant Coordinated Construction a waiver of section 54.507(b) of the Commission's rules.¹⁵

⁵ Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (August 2003) at 2 (FCC Form 486 Instructions).

⁶ FCC Form 486 Instructions at 12-13.

⁷ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Jim Konantz, Los Angeles Unified School District, dated Oct. 19, 1999 (Funding Commitment Decision Letter)

⁸ FCC Form 471, LAUSD, filed April 6, 1999; FCC Form 486, LAUSD, filed November 8, 1999.

⁹ Funding Commitment Decision Letter at 4.

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Don Hegarty, Coordinated Construction, Inc., dated October 9, 2003 (Recovery of Erroneously Disbursed Funds).

¹¹ *Id.*

¹² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Don Hegarty, Coordinated Construction, Inc., dated April 16, 2004 (Administrator's Decision on Appeal).

¹³ Request for Review at 1.

¹⁴ In the *Fifth Order on Reconsideration*, released on June 22, 1998, the Commission changed the funding year from the calendar year to a fiscal year running from July 1 to June 30. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915, para. 8 (1998) (*Fifth Order on Reconsideration*).

¹⁵ See 47 C.F.R. § 54.507(b) (establishing the funding year as the period July 1 through June 30).

5. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated in sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that the request for review filed by Coordinated Construction, Inc., Los Angeles, California on June 14, 2004 IS GRANTED.

6. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3 of the Commission's rules, section 54.507(b) of the Commission's rules, 47 C.F.R. § 54.507(b), IS WAIVED for Coordinated Construction, Inc., Los Angeles, California.

7. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority in sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), USAC SHALL DISCONTINUE its recovery action against Coordinated Construction, Inc., Los Angeles, California.

8. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau