

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review of
Decision of the
Universal Service Administrator by
Nuestros Valores Charter School
Albuquerque, New Mexico
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-383807
CC Docket No. 02-6

ORDER

Adopted: April 16, 2012

Released: April 16, 2012

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

1. Consistent with Commission rules, we deny Nuestros Valores Charter School's (Nuestros Valores) request seeking review of a decision made by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program). In its decision, USAC issued a commitment adjustment seeking reimbursement from Nuestros Valores's service provider, Innovative Technology Partnerships, LLC, of E-rate funds disbursed for services that were delivered after the end of funding year 2003. Recipients of

1 47 C.F.R. § 54.507(d) (requiring that the implementation of non-recurring services occur by September 30 following the close of the funding year).

2 See Letter from Patricia Matthews, Counsel for Nuestros Valores Charter School, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 02-6, 96-45 (filed Jan. 29, 2007) (Request for Review). USAC also sought reimbursement of \$98,749.19 from Nuestros Valores for failure to have an approved technology plan but the Wireline Competition Bureau granted Nuestros Valores' appeal on this issue. See Requests for Review and Waiver of Decisions of the Universal Service Administrator by Al-Ishan Academy, et al, Order, CC Docket No. 02-6, 25 FCC Rcd 17744, 17745 and 17748 (Wireline Comp. Bur. 2010). USAC should not enforce the COMAD related to that part of Nuestros Valores' appeal.

3 Through an investigation, USAC learned that Nuestros Valores received equipment that was funded with support from E-rate funds but was not installed. Letter from Schools and Libraries Division, Universal Service Administrative Company, to Kirk Hartom, Nuestros Valores Charter School, Notification of Commitment Adjustment Letter, dated Apr. 28, 2006 (stating that the Schools and Libraries division of USAC is seeking recovery of the improperly disbursed funds for products delivered outside of the funding year from the service provider, Innovative Technology Partnerships LLC) (Nuestros Valores COMAD). See also Letter from Schools and Libraries Division, Universal Service Administrative Company, to Xenophon James, Innovative Technology Partnerships, LLC, Demand Payment Letter, Second Request (dated Jan. 11, 2007). When USAC determines that funds were committed or disbursed in error, it will adjust those funding commitments or recover such disbursements to ensure that no funds are used in violation of program rules. See USAC website, Commitment Adjustment (COMAD), http://www.universalservice.org/sl/about/commitments-adjustments.aspx (last visited Mar. 2, 2012).

E-rate support must implement funded equipment by September 30 following the close of the relevant funding year.⁴ The record demonstrates that Nuestros Valores sought funding for equipment when it did not have a location within which to install the equipment,⁵ and that it did not install the equipment until five years after the funding year in which it sought funding.⁶ Based on our review of the record, we affirm USAC's decision to seek reimbursement from Innovative Technology Partnerships, LLC and deny Nuestros Valores's request. We also find that Nuestros Valores has not demonstrated good cause justifying a waiver of the Commission's rules.⁷

2. 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, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the request for review filed by Nuestros Valores Charter School regarding equipment that was not installed in funding year 2003, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

⁴ 47 C.F.R. § 54.507(d) (providing that the deadline for implementation of non-recurring services is September 30 following the close of the funding year); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 13510, 13512, para. 7 (2001) (finding that schools and libraries should have additional time, until September 30, following the close of the funding year, to implement non-recurring services (services with one-time costs) because schools and libraries must install many of these services during the summer months). Also, recipients of E-rate support are expected to use all equipment purchased with universal service discounts at the particular location, for the specified purpose for a reasonable amount of time. *Schools and Libraries Universal Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 26912, 26923, para. 26 (2003)(*Schools and Libraries Third Report and Order*).

⁵ In its appeal letter to the Commission, Nuestros Valores stated that at the time of its application, it had entered into a search for permanent facilities and believed it was going to move to new location. Request for Review at 7. It stated that it had purchased the equipment "in anticipation of the new facilities" but was unable to secure funding and the move was indefinitely postponed. *Id.* It requested an extension of time to June 30, 2008 to secure a new building and stated it, or its service provider, would repay the disbursed amount if facilities were not located by this time. *Id.*

⁶ In response to a subsequent inquiry from Commission staff, Nuestros Valores reported that the equipment was installed in July 2008, and has been used since that time or replaced because it has become outdated or is no longer working. Letter from Susan B. Fox, Attorney for Nuestros Valores Charter School, to Cara Voth, Federal Communications Commission (dated Sept. 6, 2011).

⁷ Although an applicant may request and receive an extension of the implementation deadline for non-recurring services if it satisfies certain criteria, there is nothing in the record indicating Nuestro Valores sought an extension in a timely fashion. September 30, 2004 was its implementation deadline, yet Nuestros Valores did not request an extension until it filed its Request for Review on January 29, 2007, well after the relevant funding year and in response to USAC's request for reimbursement of funds.