

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Request for Review or Waiver of a
Decision of the
Universal Service Administrator by
REctec Technology and Communications
(Colcord Public Schools)
Colcord, Oklahoma
Schools and Libraries Universal Service
Support Mechanism
File No. SLD-375780
CC Docket No. 02-6

ORDER

Adopted: July 7, 2014

Released: July 7, 2014

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

1. Consistent with precedent,1 we deny the request from REctec Technology and Communications (REctec) on behalf of Colcord Public Schools (Colcord)2 seeking review of a decision of the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program) to rescind a portion of Colcord’s E-rate support for funding year 2003 (FY2003).3 We affirm USAC’s finding that both Colcord and its service provider, REctec, violated the Commission’s E-rate rules by seeking support for a wireless

1 See Schools and Libraries Universal Service Support Mechanism et al., CC Docket Nos. 96-45, 97-21, 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15255-57, paras. 10-15 (2004) (Schools and Libraries Fourth Report and Order) (directing USAC to pursue recovery actions against the party or parties that have violated the Commission’s rules); Request for Review of a Decision of the Universal Service Administrator by Sprint-Florida, Inc., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 27 FCC Rcd 14998 (Wireline Comp. Bur. 2012) (seeking recovery when a service provider received E-rate funding for services that had not been installed and had not reimbursed USAC); Request for Review of the Decision by the Universal Service Administrator by Bell South Telecommunications, Inc. and Union Parish School Board, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 27 FCC Rcd 11208 (Wireline Comp. Bur. 2012) (seeking recovery of funding from the party that violated the Commission’s rules).

2 Letter from Sheila Allgood, REctec Manager, Northeast Oklahoma Electric Cooperative, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Sept. 21, 2006) (Request for Review). REctec is a subsidiary of Northeast Oklahoma Electric Cooperative. See Northeast Oklahoma Electric Cooperative, Subsidiaries, http://www.neelectric.com/subsidiaries.html (last visited July 1, 2014).

3 Section 54.719(c) of the Commission’s rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c) (2003). For purposes of this Order, we cite to the rules that were in effect during the relevant time period.

network that Colcord did not, in fact, purchase from RECTec.⁴ We find no basis to grant a waiver of the Commission's rules in this matter.

2. *Background.* Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts on eligible services.⁵ In accordance with the Commission's competitive bidding rules, applicants must submit for posting on USAC's website an FCC Form 470 requesting bids for E-rate eligible services.⁶ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.⁷

3. After an applicant has entered into an agreement to purchase the services identified in its FCC Form 470, it must file an FCC Form 471 with USAC.⁸ The completed FCC Form 471 notifies USAC of the eligible services the applicant has ordered and provides an estimate of the amount of funds the applicant is requesting for those eligible services.⁹ After reviewing the completed FCC Form 471, USAC issues a funding commitment decision letter (FCDL) indicating the funding, if any, the applicant is approved to receive. E-rate rules for FY2003 allowed USAC to approve an applicant's request to substitute a new service for an approved service only when: (1) the service or product had the same functionality as the approved service or product; (2) the substitution did not violate any contract provisions or state or local procurement laws; (3) the substitution did not result in an increase in price; and (4) the applicant certified that the requested change was within the scope of the controlling FCC Form 470.¹⁰

4. Colcord filed an FCC Form 471 requesting E-rate support for, among other things, wireless switches and access points for a wireless network and attached pricing information from RECTec for those components to its FCC Form 471.¹¹ USAC approved Colcord's funding request.¹²

⁴ See Letter from USAC, Schools and Libraries Division, to Sheila Allgood, Northeast Oklahoma Electric Cooperative, Inc. (dated Dec. 29, 2005) (Notification of Improperly Disbursed Funds Letter).

⁵ See 47 C.F.R. § 54.504 (2003).

⁶ See 47 C.F.R. § 54.504(b) (2003). See also *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26429, para. 26 (2003) (*Ysleta Order*).

⁷ See *Ysleta Order*, 18 FCC Rcd at 26419, para. 26.

⁸ See 47 C.F.R. § 54.504(c) (2003).

⁹ See *id.*; Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2001) (Funding Year 2003 FCC Form 471).

¹⁰ See *Request for Guidance by the Universal Service Administrator Concerning the Request of Los Angeles Unified School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, 02-6, Order, 16 FCC Rcd 3496, 3499, para. 9 (Common Carrier Bur. 2001). The Commission codified these requirements as rules but amended the "substitution does not result in an increase in price" requirement to "the substitution does not result in an increase in the percentage of ineligible services or functions." See *Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 97-21 and 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26930, para. 43 (2003) (*Schools and Libraries Third Report and Order*). Since 2011, these rules have been codified under 47 C.F.R. § 54.504(d).

¹¹ See Colcord Public Schools, FCC Form 471, Item 21 Attachment 5 – RECTec.net invoice (dated Feb. 5, 2003).

¹² See Letter from USAC, Schools and Libraries Division, to Northeast Oklahoma Electric Cooperative (dated July 14, 2003) (Funding Commitment Decision Letter).

5. A year later, RECtec filed an FCC Form 473 submitting invoices for payment to USAC for the wireless network for which Colcord had sought and received a funding commitment. As part of that FCC Form 473, RECtec certified that it had had installed the equipment for the wireless network and that Colcord's request complied with the E-rate rules.¹³ At the same time, Colcord filed an FCC Form 486 certifying that it had received its approved services.¹⁴ During a subsequent USAC site visit to one of Colcord's facilities, Colcord staff informed USAC that Colcord had not built the wireless network, and instead used the funds approved for the network's switches and access points for two servers and fiber-optic cabling that connected its elementary and secondary schools.¹⁵

6. In light of Colcord's admission that it spent E-rate funds to purchase equipment not covered by its funding request or USAC's funding commitment, USAC issued a Notification of Improperly Disbursed Funds Letter to RECtec.¹⁶ Both RECtec and Colcord concede that RECtec provided unapproved services to Colcord without notice to USAC.¹⁷ Nonetheless, both RECtec and Colcord appealed to USAC and requested a waiver of Commission rules. In their appeal, the petitioners explain that Colcord decided against installing a wireless network after USAC approved its request for funds because it determined that the wireless network would not provide the bandwidth it needed.¹⁸ USAC denied the appeal.¹⁹ RECtec then filed the instant appeal with the Commission seeking a waiver of Commission rules on the basis that it provided equipment that the school needed in lieu of the wireless networking equipment and that it was not engaged in any fraud.²⁰

¹³ See FCC Form 473, signed by Sheila Allgood, Supervisor, Northeast Oklahoma Electric Cooperative (signed Sept. 29, 2003); see also Universal Service for Schools and Libraries, Service Provider Annual Certification Form, OMB 3060-0856, at Block 2 (Oct. 1998) (2003 FCC Form 473) (certifying that the Service Provider Invoice Forms "are submitted by this service provider contain requests for universal service support for services which have been billed to the service provider's customers on behalf of schools, libraries, and consortia of those entities, as deemed eligible for universal service support by the fund administrator").

¹⁴ See FCC Form 486, signed by Darrell Hatfield, Technology Director, Colcord Public Schools (signed Oct. 3, 2003); see also Schools and Libraries Universal Service, Receipt of Service Confirmation Form, OMB 3060-0853, at Blocks 3 and 4 (Aug. 2003) (certifying that services had been provided on Aug. 4, 2003).

¹⁵ See Individual Site Visit Report, BearingPoint, Item 27 (dated June 15, 2005). See also Letter from Darrell Hatfield, Colcord Public Schools, to USAC (dated Feb. 21, 2006).

¹⁶ See Notification of Improperly Disbursed Funds Letter.

¹⁷ See Letter from Darrell Hatfield, Colcord Public Schools, to USAC, Schools and Libraries Division, at 1 (dated Feb. 13, 2006) (Colcord USAC Appeal) (stating that RECtec does not dispute the findings of USAC's investigation); Letter from Sheila Allgood, Northeast Oklahoma Electric Cooperative, Inc., to USAC, Schools and Libraries Division, at 1 (dated Feb. 14, 2006) (RECtec USAC Appeal) (also stating that RECtec does not dispute USAC's findings).

¹⁸ See Colcord USAC Appeal at 2 (stating that Colcord decided against obtaining a wireless network because there was not enough bandwidth available for the software it planned to use); RECtec USAC Appeal at 2 (stating that installing a wireless network would have been a waste of funding resources).

¹⁹ See Letter from USAC, Schools and Libraries Division, to Darrell Hatfield, Colcord Public Schools (dated Aug. 11, 2006).

²⁰ See Request for Review. RECtec also argues that it was unaware that it was a violation of E-rate rules for a service provider to provide unapproved services without permission. See *id.* For more information on service substitution requests, see *supra* para. 3 and *infra* para. 9.

7. *Discussion.* We find no basis in the record for granting the requested waiver.²¹ Rather, the record is clear that RECTec and Colcord violated the Commission's rules by seeking reimbursement from USAC for services that were not purchased.

8. The E-rate application process is vital to eliminating waste and assisting schools and libraries in receiving the best value for limited funds.²² Likewise, vendor certifications regarding the services for which E-rate support is being sought are vital to protect the integrity of the E-rate program. Providing E-rate support for services that were not initially sought by the applicant and not approved by USAC for support would promote waste, fraud and abuse.

9. We recognize that, under very limited circumstances, the Commission allows an applicant to substitute one service for another after it has received a funding commitment from USAC.²³ Here, Colcord did not submit a service substitution request for this change, and even if it had, such a request would have been denied.²⁴ The services that RECTec and Colcord substituted for the wireless network components did not have the "same functionality."

10. RECTec's plea that it not be penalized for its own lack of familiarity with the E-rate rules and Colcord's decision not to purchase a wireless network and instead use E-rate funds for other services is unavailing.²⁵ Applicants and service providers are required to know the relevant rules of the E-rate program and are ultimately responsible for compliance with them.²⁶

11. In this case, USAC sought recovery from both RECTec and Colcord because RECTec submitted deceptive invoices and Colcord falsely certified that services had been provided. In determining which party or parties to hold responsible for violations of E-rate rules, the Commission has directed USAC to consider which party was in the better position to have prevented the violation and which party committed the act or omission that forms the basis of the violation.²⁷ In this case, RECTec

²¹ Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

²² See *Requests for Review of Decision of the Universal Service Administrator by Marana Unified School District, Marana, CA, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1525, 1530, para. 9 (Wireline Comp. Bur. 2012); see also *Ysleta Order*, 18 FCC Rcd at 26417, para. 22.

²³ See *supra* para. 3.

²⁴ See Colcord USAC Appeal. Colcord claims to have been unaware that it was required to request a service substitution.

²⁵ See Request for Review at 2.

²⁶ See *Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-394, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684 (Wireline Comp. Bur. 2010) (denying appeals wherein the appellant claimed that E-rate violations resulted from the petitioner's lack of awareness of E-rate rules); *Requests for Waiver by Sacred Heart School, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 19 FCC Rcd 6367 (Wireline Comp. Bur. 2004) (denying appeals seeking a waiver of Commission rules because the petitioners misunderstood rules).

²⁷ See *Schools and Libraries Fourth Report and Order*, 19 FCC Rcd at 15257, para. 15.

and Colcord falsely certified that RECtec provided the services that Colcord requested on its FCC Form 471 and was approved for. Therefore, we direct USAC to continue recovery actions against both RECtec and Colcord.

12. ACCORDINGLY, IT IS ORDERED, 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, 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), the Request for Review filed by the petitioner IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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