

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	<b>Billed Entity No. 143776</b>
<b>Request for Review of Decision of the</b>	)	
<b>Universal Service Administrative Company,</b>	)	<b>Form 471 No. 509780</b>
<b>Schools and Libraries Division by</b>	)	
	)	<b>CC Docket No. 02-6</b>
<b>Saddleback Valley Unified School District</b>	)	
	)	<b>CC Docket 96-45</b>
<b>Request for Waiver of Section 54.404(c)</b>	)	
<b>Of the Commission's Rules</b>	)	

**REQUEST FOR REVIEW OF DECISION OF THE UNIVERSAL SERVICE  
ADMINISTRATION COMPANY, SCHOOLS AND LIBRARIES DIVISION BY  
SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT, OR IN  
THE ALTERNATIVE, REQUEST FOR A WAIVER OF SECTION 54.404(c) OF  
THE COMMISSION'S RULES**

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**Counsel for Saddleback Valley Unified School  
District**

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THE COMMISSION’S RULES**

**I. INTRODUCTION AND SUMMARY**

Saddleback Valley Unified School District (“SVUSD” or the “District”), and in accordance with Sections 54.719(c) and 54.722 of the Commission’s Rules,<sup>1</sup> appeals a decision of the Universal Service Administrative Company (“USAC”), Schools and Libraries Division (the “SLD”). Specifically, SVUSD appeals a letter decision issued August 26, 2009, by the SLD in which it affirmed a previous determination that SVUSD’s Form 471 filed with respect to its procurement of telecommunications services did not comply with California’s Education Code and, therefore, should not have been funded.

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<sup>1</sup> 47 C.F.R. §§ 54.719(c), 54.722 (2005).

The SLD based this determination on its interpretation of 47 C.F.R § 54.504(c) as well as California Education Code § 17604. For the reasons outlined below, SVUSD complied with its obligations pursuant to both 47 C.F.R. § 54.504(c) and Cal. Educ. Code § 17604. 47 C.F.R. § 54.504(c) merely provides that the District “shall, ***upon signing a contract for eligible services***, submit a completed FCC Form 471 to the Administrator” and certify that it has “complied with all applicable state and local laws ***regarding procurement of services*** for which support is being sought.” (Emphasis added.) There is no dispute that SVUSD had a signed contract in place at the time it submitted its Form 471. There is also no dispute that SVUSD complied with all competitive bidding/procurement procedures prior to submitting its Form 471. 47 C.F.R. § 54.504(c) does not require the District to certify that it has obtained approval from the Board pursuant to state law ***prior*** to filing a Form 471 -- it merely requires a certification that the District has not violated any law regarding the ***procurement*** of these services.

The SLD’s incorrect application of the law in this case would cause SVUSD to be required to reimburse USAC for over \$70,000 and would set a precedent that would affect nearly every district in California and likely a significant number of other districts throughout the country. Such a result is clearly contrary to the intent of the Telecommunications Act and is a wholly inequitable result. As such, the SLD’s determination of August 26, 2009 should be reversed by the Commission.

In the alternative, SVUSD seeks a waiver of the Commission’s rules to allow SVUSD to retain the funding it received pursuant to this contract.<sup>2</sup> In this case, granting a waiver would avoid the inequitable result of forcing the District to reimburse the SLD

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<sup>2</sup> The Commission is specifically authorized to grant waivers of its rules when such a waiver would be equitable. 47 C.F.R. § 1.3 (2005).

despite the fact that SVUSD's Board approved the contract at issue a few months after the Form 471 was filed and *before* the USAC sent its Funding Commitment Letter.

## **II. SUMMARY OF FACTS**

SVUSD is an eligible District which seeks discounts for eligible services pursuant to 47 C.F.R. § 54.504. Pursuant to this regulation, SVUSD filed Form 470 for data services on December 20, 2005. After waiting more than 28 days, as required by 47 C.F.R. § 54.504 "before making [a] commitment" with the selected providers of services," SVUSD's Assistant Superintendent, Business Services signed a contract with Cox Business Services ("Cox") on February 14, 2006. On February 16, 2006, SVUSD filed Form 471 pursuant to 47 C.F.R. § 54.504(c) certifying that it had a signed contract and that it had complied with all state and local laws regarding the "procurement" of these services.

In June 2006, Cox began installing circuits and began invoicing SVUSD as of July 20, 2006. On September 18, 2006, the District created a purchase order ("PO") for these services which was approved by the Board on October 10, 2006. On October 30, 2006, USAC sent its Funding Commitment Letter regarding these services.

In April 2008, Thompson, Cobb, Bazilio & Associates ("TCBA") began an "Attestation Examination" of SVUSD. As a result of the examination, on May 29, 2009, a COMAD was issued requesting that the \$70,060.79 paid to the District for services rendered by Cox be returned based upon the argument that the "contract was not approved or ratified by the School Board, as required by board policy." That COMAD is attached as *Exhibit 1*. SVUSD, under the mistaken belief, based upon the COMAD, that it was required to again "ratify" the Cox contract, did so on July 14, 2009.

On July 22, 2009, SVUSD filed an appeal to the SLD arguing that the Cox contract had, in fact, been approved on October 10, 2006 and then subsequently ratified on July 14, 2009 and that, therefore, it had complied with the requirements of Cal. Educ. Code § 17604.

The SLD denied the appeal asserting, for the first time, that the approval or ratification of the contract with Cox was required to occur prior to SVUSD's filing of Form 471. The SLD's decision was based upon the argument that SVUSD was required to comply with all of the provisions of Cal. Educ. Code § 17604 by having the Board approve or ratify the signed contract *prior* to submitting its Form 471. The SLD acknowledged that the District's Assistant Superintendent, Business Services had signed the contract on February 14, 2006 but argued that it was not valid and enforceable against the District until July 14, 2009 (notwithstanding the prior approval on October 10, 2006). *See Administrators' Decision on Appeal attached as Exhibit 2.*

As discussed in more detail below, the SLD's analysis of 47 C.F.R. § 54.504 and California law is legally flawed.

### **III. APPEAL OF DECISION OF THE UNIVERSAL SERVICE ADMINISTRATOR**

The C.F.R requires that all eligible schools seek competitive bids pursuant to 47 C.F.R. § 54.404 for all services eligible for support under §§ 54.502 and 54.503, which include telecommunications services and internet access. According to the C.F.R., “[t]hese competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.” *Id.*, § 54.404(a). The eligible school is required to post a Form 470 to the USAC

Administrator (the “Administrator”) which is then posted by USAC on its website seeking bids for the services at issue. *Id.*, § 54.404(b). Among other requirements, the District is required to review and evaluate the bids and accept the bid that is the most cost-effective but only after the bid has been posted for at least 28 days. *Id.*

Subsequently, an eligible school “shall, *upon signing a contract for eligible services*, submit a completed FCC Form 471 to the Administrator.” 47 C.F.R. § 54.404(c) (emphasis added). The “Form 471 shall be signed by the person authorized to order telecommunications and other supported services for the eligible school, library, or consortium and shall include that person’s certification under oath” that, among other things, “[t]he entities listed on the FCC Form 471 application have complied with all applicable state and local laws *regarding procurement of services* for which support is being sought.” 47 C.F.R. § 54.404(c)(vi) (emphasis added). The certification corresponds with 47 C.F.R. § 54.404(a) statement that the competitive bid requirements apply in addition to state and local competitive bid requirements.

The Commission has published instructions on filling out Form 471 which are published on its website. With respect to the certification identified above, it states: “Check this box to certify that the entity responsible for selecting the service provider(s) has reviewed all applicable *FCC, state, and local procurement/competitive bidding requirements* and that the entities named on this Form 471 have complied with them.” FCC form 471 Instructions merely require that the contract be *signed*: “**Signed contracts**: You MUST sign a contract for all services you order on your Form 471 except . . . .” See page 23 of FCC form 471 Instructions (emphasis in original).

Here, SVUSD did precisely what was required pursuant to 47 C.F.R. § 54.404(c). The Assistant Superintendent signed the contract with Cox more than 28 days after its Form 470 was posted on USAC's website and before it filed its Form 471. The District complied with all of the provisions of the C.F.R. as well as state and local procurement/competitive bidding requirements. In fact, the SLD has not alleged that the District failed to follow any procurement requirements nor has the SLD alleged that the District violated a single law when it filed its Form 471. Instead, the SLD argues that the District was required to have Board approval of the contract with Cox prior to filing its Form 471.

The SLD argues that its position is based on Cal. Educ. Code § 17604 which provides that when “the *power to contract* is invested in the governing board of the school district” the power may be “delegated to its district superintendent, or to any persons that he or she may designate, or if there be no district superintendent then to any other officer or employee of the district that the board may designate.” (Emphasis added.) In this case, there is no dispute that the Board delegated its “power to contract” telecommunications services to the Assistant Superintendent, Business Services pursuant to the Education Code. This code section also provides that “no contract made pursuant to the delegation and authorization shall be valid or constitute an enforceable obligation against the district unless and until the same shall have been approved or ratified by the governing board. . . .” *Id.* There is no question that the District complied with this provision: it delegated the “power to contract” to its assistant superintendent and subsequently approved the contract on October 10, 2006. The SLD's sole basis for rescinding funding for this contract is that the Board approval was not obtained until after

the Form 471 was filed (although it was accomplished before the SLD issued its Funding Notification Letter).

The SLD's position is without merit because the District was not obligated to obtain Board approval prior to filing its Form 471. The FCC regulation at issue, 47 C.F.R. § 54.404(c), merely requires that the District have a *signed* contract before filing a Form 471 and certify that it complied with state and local *procurement procedures* at the time it filed the Form 471. There is clearly no dispute that the contract was signed at the time the Form 471 was filed. There is also no allegation that the District violated any procurement procedures or competitive bidding requirements. The SLD's attempt to rewrite the language of the C.F.R. and California law is unavailing. Education Code § 17604 is not a procurement procedure or competitive bidding requirement. It merely requires that a contract must, in order to be enforceable against the District, be approved by the Board (in the event it was signed by the superintendent or another individual to whom such authority was delegated by the Board). When the Form 471 was filed, the District had complied with all state and local procurement procedures and had a signed contract in place. The Board then subsequently approved the signed contract on October 10, 2006 -- prior to the SLD's issuance of its Funding Commitment Letter. Therefore, the District complied with the C.F.R.'s requirements for the filing of its Form 471 and should not have had its funding rescinded.

#### **IV. REQUEST FOR A WAIVER**

In the event that the Commission does not grant SVUSD's appeal, the District, requests, in the alternative, pursuant to Section 1.3 of the Commission's Rules, that the Commission grant a waiver of its rules to permit SVUSD to qualify under the

Telecommunications Act. 47 C.F.R § 1.3. For the reasons detailed below, SVUSD believes such a waiver is equitable and consistent with the Act as well as prior Commission waivers relating to the filing of Forms 470 and 471.

Section 1.3 provides that the Commission may waive its rules “if good cause therefore is shown.” 47 C.F.R § 1.3. Generally, a waiver is appropriate if “special circumstances warrant deviation from the general rule and such deviation will serve the public interest.” *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

A waiver is appropriate here because SVUSD complied with the requirements of the Telecommunications Act and with California law. The only reason funding has been rescinded is that the SLD contends that the contract at issue had to be approved by the Board before the Form 471 was filed despite the fact that it had already been signed by the Assistant Superintendent. The contract was, however, approved by the Board after the filing of the Form 471 but before USAC issued its funding letter. In the event the Commission does not agree with the District that it complied with the letter and intent of 47 C.F.R. § 54.404(c), it should waive these rules and reverse the SLD’s determination of August 26, 2009.

There is no evidence in the record that SVUSD engaged in activity intended to defraud or abuse the E-rate program. Denying its requests for funding would create undue hardship and prevent it from receiving E-rate funding for work already performed by Cox. Accordingly, good cause exists to grant SVUSD a waiver of section 54.504(c) of the Commission’s rules.

## V. CONCLUSION

SVUSD respectfully requests that the Commission reverse the SLD's determination of August 26, 2009 in which it affirmed a previous determination that SVUSD's Form 471 filed with respect to its procurement of telecommunications services did not comply with California's Education Code and, therefore, should not have been funded. In the alternative, SVUSD seeks a waiver as described herein, to allow SVUSD to retain the funding it received pursuant to the Funding Commitment Letter issued by the SLD on October 30, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DK Smith', written over a horizontal line.

Donald K. Smith, Esq.

Exhibit 1



Notification of Commitment Adjustment Letter

Funding Year 2006: July 1, 2006 - June 30, 2007

May 29, 2009

Frank Manzo  
SADDLEBACK VALLEY UNIF DIST  
25631 PETER A. HARTMAN WAY  
MISSION VIEJO, CA 92691 3142

Re: Form 471 Application Number: 509780  
Funding Year: 2006  
Applicant's Form Identifier: SVUSD471Y9  
Billed Entity Number: 143776  
FCC Registration Number: 0001523786  
SPIN: 143000014  
Service Provider Name: Cox California Telcom, LLC  
Service Provider Contact Person: Tanisha Reed

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
  - Billed Entity Name,
  - Form 471 Application Number,
  - Billed Entity Number, and
  - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 S. Jefferson Rd.  
P. O. Box 902  
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. 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.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc: Tanisha Reed  
Cox California Telcom, LLC

Funding Commitment Adjustment Report for  
Form 471 Application Number: 509780

Funding Request Number: 1423613  
Services Ordered: TELCOMM SERVICES  
SPIN: 143000014  
Service Provider Name: Cox California Telcom, LLC  
Contract Number: N/A  
Billing Account Number:  
Site Identifier: 143776  
Original Funding Commitment: \$81,686.00  
Commitment Adjustment Amount: \$81,686.00  
Adjusted Funding Commitment: \$0.00  
Funds Disbursed to Date: \$70,060.79  
Funds to be Recovered from Applicant: \$70,060.79  
Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY 2006 FCC Form 470 you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During the course of an audit it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements. This was determined based on applicant confirmation that due to an oversight the Cox Business Services contract was not approved or ratified by the School Board, as required by board policy. The FCC rules require that the applicant submits a "bona fide" request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to comply with local and state procurement laws you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Exhibit 2



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

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**Administrator's Decision on Appeal – Funding Year 2006-2007**

August 26, 2009

Steven L. Fish, Ed.D.  
Saddleback Valley Unified School District  
25631 Peter A. Hartman Way  
Mission Viejo, CA 92691

Re: Applicant Name: SADDLEBACK VALLEY UNIF DIST  
Billed Entity Number: 143776  
Form 471 Application Number: 509780  
Funding Request Number(s): 1423613  
Your Correspondence Dated: July 22, 2009

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 2006 Commitment Adjustment 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): 1423613  
Decision on Appeal: **Denied**  
Explanation:

- In general, a contract is a binding agreement, enforceable by law, between two or more parties that creates an obligation to do, or not do, something. Contract definitions and requirements are contained in each state's or territory's contract law. Except for services to be delivered under non-contracted tariffed or month-to-month arrangements, FCC rules require that an applicant sign a contract with the service provider before signing and submitting a completed Services Ordered and Certification Form (Form 471). Applicants must be able to demonstrate that they had a signed and dated contract in place at the time they submitted a completed Form 471. Applicants must also comply with state and/or local contract law. The record shows that during the course of an audit, it was

determined that Saddleback Valley Unified School District (the district) did not have a legally binding contract in place at the time of submission of the Form 471. Although, the District's Assistant Superintendent, Business Services had signed the contract on February 14, 2006, according to state procurement requirements contained in the California Education Law, a contract is not valid until it has been approved and/or ratified by the Board of Education. During the additional review, the District informed the auditors that it was an oversight that Board approval or ratification of the Cox California Telecom, LLC contract for telecommunication services was not obtained. On appeal, you provided a document signed by the District Superintendent, Steven Fish, indicating that the Board did not ratify the aforementioned contract until July 14, 2009. Since Saddleback Valley Unified School District did not comply with state and/or local contract law, USAC rescinded the funds committed.

USAC has determined that, at the time you submitted your FCC Form 471 application, you did not have a contract with your service provider(s), which meets your state and local or the FCC's definition of a contract. Additionally, the services you requested are not tariffed or month-to-month services. FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." See 47 C.F.R. sec. 54.504(c). In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. 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 in the "Appeals Procedure" posted in the Reference Area 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