

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

|   |   |                     |
|---|---|---------------------|
| In the Matter of                          | ) |                     |
| Request for Review of a Decision of the   | ) |                     |
| Universal Service Administrator by        | ) |                     |
|   | ) |                     |
| Synergetics Diversified Computer Services | ) | File No. SLD-356863 |
| Starkville, MS                            | ) |                     |
|   | ) |                     |
| Schools and Libraries Universal Service   | ) | CC Docket No. 02-6  |
| Support Mechanism                         | ) |                     |

**ORDER**

**Adopted: May 14, 2013**

**Released: May 14, 2013**

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

1. Consistent with precedent,<sup>1</sup> we deny a request for review filed by Synergetics Diversified Computer Services (Synergetics) 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

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<sup>1</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26939, para. 66 (2003) (stating that a fair and open competitive bidding process is critical to preventing the waste, fraud, and abuse of program resources); *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.; Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033, para. 10 (2000) (finding that the FCC Form 470 contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested and, when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process); *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26434, para. 60 (2003) (stating "[w]e stress that direct involvement in an application process by a service provider would thwart the competitive bidding process"); *Requests for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 2784, 2791, para. 17 (Wireline Comp. Bur. 2008) (finding that a service provider's admission to assisting in filling out the FCC Form 470 is "a clear violation of the prohibition against service providers filling out forms that require an applicant's certification, as well as a violation of the mandate that the FCC Form 470 be completed by the entity that will negotiate with prospective bidders") (*Caldwell Parish Order*); *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18798-800, paras. 85-86 (2010) (codifying the existing requirement that the E-rate competitive bidding process be fair and open); 47 C.F.R. § 54.503.

program).<sup>2</sup> USAC found that Synergetics, a service provider selected to provide E-rate eligible products and services to Leflore County School District (Leflore County), improperly participated in the applicant's competitive bidding process. USAC therefore issued a commitment adjustment (COMAD) letter, seeking recovery of the improperly disbursed E-rate funds.<sup>3</sup>

2. Specifically, upon discovery that the internet protocol (IP) address from which Leflore County submitted its FCC Form 470 was the same IP address of the service provider, Synergetics, USAC contacted Leflore County seeking additional information concerning who completed Leflore County's FCC Form 470.<sup>4</sup> Mr. Les Elliott, Leflore County's representative, acknowledged that Rob Misener, a sales representative for Synergetics filed the FCC Form 470 from his office at Synergetics.<sup>5</sup> According to Mr. Elliott Mr. Misener's assistance was limited to making sure that Leflore's FCC Form 470 included all services and products that Mr. Elliott had determined that Leflore would need.<sup>6</sup> Based on Mr. Elliott's response, USAC determined that Leflore County violated the Commission's competitive bidding requirements.<sup>7</sup> Synergetics then filed the instant appeal with the Commission, conceding that Synergetics provided assistance to Leflore County, but arguing that the type of assistance provided to Leflore County by Synergetics does not constitute a violation of the Commission's competitive bidding rules.<sup>8</sup>

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<sup>2</sup> See Letter from David Palmer, Synergetics Diversified Computer Services, to Federal Communications Commission, CC Docket No. 02-6 (dated Sep. 14, 2006) (Synergetics 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 USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>3</sup> See Letter from USAC, Schools and Libraries Division, to Les Elliot, Leflore County School District (dated July 18, 2006) (Leflore County COMAD). In the *Commitment Adjustment Implementation Order*, the Commission established procedures to recover funds disbursed to parties that obtained the funds in violation of the Commission's E-rate program. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Order, 15 FCC Rcd 22975 (2001) (*Commitment Adjustment Implementation Order*). Subsequently, the Commission modified the rules governing COMAD recovery actions to allow USAC to pursue recovery actions against the party responsible for the violation, such as the school, library, or service provider. See *Federal-State Joint Board on Universal Service; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.; Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 97-21 and 02-6, Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15255-57, paras. 10-15 (2004). The Commission stated that the modified rules should apply to COMAD recovery actions that were under appeal to USAC or the Commission. See *id.* at 15255-56, para. 10.

<sup>4</sup> See Email from USAC, Schools and Libraries Division, to Les Elliott, Leflore County School District (dated June 23, 2006).

<sup>5</sup> See Email from Les Elliot, Leflore County School District, to USAC, Schools and Libraries Division (dated July 7, 2006).

<sup>6</sup> *Id.*

<sup>7</sup> See Leflore County COMAD.

<sup>8</sup> See Synergetics Request for Review at 4.

3. Based on the record before us, we affirm USAC's decision and find improper vendor involvement in the competitive bidding process. Specifically, we find that Synergetics assisted Leflore County with the preparation and filing of its FCC Form 470. We emphasize that any direct involvement by the service provider in the preparation and submission of the FCC Form 470, even clerical or data entry assistance, is a violation of the Commission's competitive bidding rules.<sup>9</sup> We find that Synergetics's actions were a clear violation of the prohibition against service providers filling out forms that require an applicant's certification, as well as a violation of the mandate that the FCC Form 470 be completed by the entity that will negotiate with prospective bidders.<sup>10</sup> USAC therefore was not under any obligation to seek additional information from Synergetics for the alleged rule violation. We therefore direct USAC to continue recovery actions against the party or parties responsible for the rule violation.<sup>11</sup>

4. 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 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 Synergetics Diversified Computer Services IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly A. Scardino  
Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>9</sup> *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Networks and More! Inc. et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 2564 (Wireline Comp. Bur. 2012).

<sup>10</sup> *See supra* n.1.

<sup>11</sup> *See supra* n.3.