
FCC Ruling Secures \$7M in Funding for Oakland Unified School District

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On February 23, WilmerHale earned an important victory on behalf of client Oakland Unified School District (OUSD) by securing a reversal of the Universal Service Administrative Company's (USAC) rescission of over \$7 million in federal funding. OUSD is a public education school district in Oakland, California, that serves students K-12 and is among the most economically disadvantaged public school districts in the nation.

USAC administers the E-Rate program, which provides discounts for telecommunications and Internet services and infrastructure to schools and libraries for educational purposes. In 2004, OUSD applied for, and USAC awarded, E-Rate discounts for two service provider contracts. FCC rules required that discount recipients, such as OUSD, comply with state and local competitive bidding requirements. Further, an applicant may submit an application only upon signing a contract for eligible services.

In 2008, USAC rescinded the entire funding for both contracts after it concluded that, in violation of California procurement law, neither service provider was properly licensed at the time the public works contracts were awarded.

On appeal to the FCC, WilmerHale argued that OUSD complied with FCC and state procurement laws. With each service provider, OUSD entered into two agreements—first, a preparatory agreement before the services providers were licensed (and upon which OUSD submitted its application for E-Rate discounts), then, months later, a Formal Contract and Statement of Work after the providers received their licenses. WilmerHale asserted that USAC erred when it concluded that OUSD entered into public works contracts under the preparatory agreements; they were not contracts to provide public works services but contracts to negotiate in good faith. OUSD did not enter into public works contracts with either service provider until it executed the Formal Contracts, well after each provider had been properly licensed.

The argument also included the fact that FCC precedent expressly provided that the requirement be waived in circumstances where the applicant had some form of binding agreement at the time it submitted its application. Here, the preparatory agreements to enter into a contract were sufficiently binding agreements.

The FCC agreed with both of our arguments, granted our appeal, and directed USAC to discontinue its recovery actions against OUSD, saving more than \$7 million in federal funding for the district.

The WilmerHale team on the matter was led by Partner Jay Urwitz and included Partner [Heather Zachary](#), Senior Associate Cyndra Crenshaw, and Associate Jimmy Doan.