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USAC Appeals – Proof of Representation

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From: Peter Gutmann

The FCC's Wireless Competition Bureau has granted 13 appeals of decisions by the Universal Service Administrative Company (USAC) that had denied requests for E-rate program funding. Each appeal involved questions as to whether consortia had provided adequate proof that its application had been submitted on behalf of all consortium members.

The problem arose from a USAC requirement beginning for funding year 2005 that applicants obtain proof of representation from each consortium member prior to the certification date of their FCC Form 471. In earlier decisions, the Commission had reversed USAC dismissal of consortium applications where some members had not submitted acceptable letters of agency (LOA). There, the Commission held that processing of an application should proceed with respect to those consortium members who had met the LOA requirement.

The current group of appeals serves to extend the Commission's prior action in three sets of circumstances.

LOAs Dated After an FCC Form 471 Certification Date – Five of the petitioners were able to provide LOAs for consortium members, but only after the date their Form 471 had been certified. The Commission found that USAC had given inadequate notice of its strict FY 2005 procedure, since it had announced its revised requirement halfway through the window filing period and had posted notice on its website even later than that. Therefore, the Commission found that USAC should not have denied applications for failure to comply with the new USAC procedure for FY 2005. However, applicants for subsequent fiscal years are presumed to be aware of the new strict LOA requirement, and would be unlikely to obtain comparable relief.

Deficient LOAs Remedied by Evidence on Record – In four other cases, the Commission found that even though LOAs themselves may have been missing or deficient, evidence was submitted to prove that each consortium member knew it was represented and had consented to representation on the application. Thus, for example, one applicant had provided WAN service agreements that included all of the information that was to have been required in the LAN (that is: the name of the person filing the application; the name of the person authorizing the filing of the application; the specific time frame covered; the signature, date and title of an official who is an employee of the entity authorizing the filing of the application; and the type of service covered). Because the WAN service agreements contained all of the same information as an LOA would have provided, the Commission found that it was sufficient to serve as authorization. Another applicant in this group had held a meeting with all the superintendents of its member

school districts during which they agreed to apply for E-rate funding and sign their LOAs, which were then lost and replaced only after the Form 471 certification date.

LOAs Without Time Frame – Three petitioners signed LOAs late in the year in preparation for submitting a funding year application. Although their LOAs did not specify the relevant time frame, the Commission found this not to have been a fatal mistake because the members clearly knew that consortia would be applying for funding for the forthcoming year.

Although these appeals were successful, it is important that applicants strictly comply with the current criteria so as to avoid the delay and expense (and risk of failure) that appeals of this type entail.

If you would like any further information concerning these matters, or if you have other questions concerning the E-rate program, please be sure to let us know.

**The Communications Lawyers at
Womble Carlyle Sandridge & Rice, PLLC**

Peter Gutmann, (202) 857-4532, pgutmann@wcsr.com

Ross Buntrock, (202) 857-4479, rbuntrock@wcsr.com

Jonathan Canis, (202) 857-4454, jcanis@wcsr.com

John F. Garziglia, (202) 857-4455, jgarziglia@wcsr.com

Michael B. Hazzard, (202) 857-4540, mhazzard@wcsr.com

Jennifer M. Kashatus, (202) 857-4506, jkashatus@wcsr.com

Mark Palchick, (202) 857-4411, mpalchick@wcsr.com

Michael H. Shacter, (202) 857-4494, mshacter@wcsr.com

Gregg P. Skall, (202) 857-4441, gskall@wcsr.com