



COMMISSION ISSUES SEPARATE DECISIONS GRANTING ONE HUNDRED AND EIGHTY TWO APPEALS FROM FUNDING DENIALS

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The Commission recently issued three separate decisions considering 182 appeals from funding denial decisions made by the Universal Service Administrative Company (“USAC”). A common theme among the cases is the Commission’s refusal to adhere to form over substance where doing so would fail to promote the goals of the universal service program, i.e., ensuring access to discounted telecommunications and information services to schools and libraries. Following is a summary of these decisions.

Funding Denials for Failure to Timely Respond are Overturned

In the *Alpaugh Unified School District* decision, the Commission granted 78 appeals. USAC had denied or reduced funding on the grounds that the applicants failed to respond to its requests for information in a timely fashion.

Several different grounds of appeal had been asserted, including claims that the USAC information requests had not been received, that the requested information had been submitted to USAC, that a deferral had been requested or that a staffing problem prevented submission of the requested information. The Commission focused largely on the procedural nature of the failures as distinguished from “a failure to adhere to a core program requirement or a misuse of funds” and found good cause to grant the appeals. The Commission said “given that any violations that occurred were procedural, not substantive, we find that complete rejection of these applications is not warranted.”

In addition to granting the appeals and remanding the applications to USAC for further action, the Commission directed USAC to develop outreach procedures designed to better

inform applicants of the additional information that may be need and to provide applicants with a fifteen day period from the date of receipt within which to respond.

Technology Plan Waivers are Granted

In the *Brownsville Independent School District* decision, the Commission considered 32 appeals seeking review of USAC decisions to reduce or deny funding because the applicants’ applications were not supported by approved technology plans. Under the rules, unless schools are seeking discounts on “basic local, cellular, PCS, and/or long distance telephone service and/or voicemail only,” a request for discounts must be based on an approved technology plan developed prior to requesting bids on services and approved by a state agency or other specified entity.¹ The Commission granted the appeals and waived, in part, its technology plan rules.

In some cases, the applicants had committed clerical or ministerial errors, e.g., providing the wrong technology plan documentation or missing deadlines for developing or obtaining approval. Based upon the procedural nature of these deficiencies, the Commission held that complete rejection of these applications was unwarranted.

In others, applicants had failed to submit technology plans based upon a misunderstanding of which telecommunications services are considered non-basic. In

¹ Applicants whose technology plans have not been approved upon submission of the Form 470 must certify that they understand their technology plans must be approved prior to the commencement of service and must confirm, in Form 486, that their plan was approved prior to the receipt of services.

considering the appeals, the Commission noted that the principal purpose of the technology plan requirement is to guard against the waste of program funds. Here though, it found no evidence that the applicants – whose applications were by and large prepared by individuals whose primary role is unrelated to applying for universal service funds -- sought to defraud or abuse the E-rate program. The Commission granted these appeals finding that, based upon the circumstances, rigid compliance with its rules did not serve the public interest.

The Commission adopted additional directives here as well, applicable to all pending applications and appeals for Funding Year 2007. Where an applicant responds to a request to provide technology plan documentation and the requested documentation is deficient (*e.g.*, is outdated or will expire before the end of the relevant funding year), USAC must: (1) inform the applicant promptly in writing of any and all deficiencies, along with a clear and specific explanation of how the applicant can remedy those deficiencies; and (2) permit the applicant to submit correct documentation, if any, within 15 calendar days from the date of receipt of notice.

Complete Rejection Unwarranted in Cases of Missed Deadlines for Evidencing a Signed Contract Where Legally Binding Commitments Were in Place

In a third decision, *Adams County School District 14*, the Commission granted relief to 72 Petitioners seeking a reversal of USAC funding denials. In 66 of the cases, the requests had been denied because the applicants did not have a legally binding agreement in place at the time of the FCC Form 471 submission. In the remaining 6 cases, the funding commitments had been reduced because the contract expired before the end of the funding year.

The appeals rested on one of three claims:

- conflicting local or state procurement requirements prevented compliance;

- employee error or misunderstanding of the rules; or
- technical compliance with the rules despite USAC's decision to the contrary.

Where compliance was prevented due to a need to adhere to local or state procurement laws, because of a need to have service provider commitments approved by a governing board or where the service provider agreements were contingent upon obtaining USAC approval of funding, the Commission found that rigid adherence to the rule did not serve the public interest. It likewise found that denial of funding for ministerial mistakes, such as one applicant's mistaken notation on its FCC Form 471 that its contract ended nine months before the end of the funding year, thus securing funding for only three months instead of the 12 as intended, did not serve the public interest. More important than the missed deadline was the fact that the applicants had legally binding contracts in place during the relevant funding years and that all of the petitioners had some form of an agreement with their service providers before submitting their FCC Forms 471.

The Commission also granted requests for review where USAC had denied funding solely because the execution date of the contract did not accompany the signature lines of both the applicant and the service provider. It found that funding had been denied only because the effective date of the contract was separate from the signature lines but that the applicants were in compliance with the rules since they had signed and dated contracts in place before the submission of their FCC Forms 471.

As mentioned above, these decisions share in common an apparent policy decision to excuse good-faith lapses in strict compliance. Nevertheless, in each case the Commission emphasized the limited nature of its decision and that its actions do not eliminate or modify the rules at issue. Applicants are encouraged to be careful in their adherence to the Commission's rules and policies so as to avoid delays in approval and/or denial of funding.

**Please contact Mark Palchick (202/857-4411)
or Howard Barr (202/857-4506) if you have
any questions regarding this advisory.**

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