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## MISTAKEN RESPONSES TO USAC INQUIRIES

The FCC has overturned yet another decision by the Universal Service Administrative Company, this time reversing a denial of funding for equipment which USAC had classified as “internal connections” (for which the Savannah, Missouri school district had not posted a request for discounted services) rather than “Internet access.”

In its 1999 *Tennessee* Order the Commission presumed that equipment located on school premises was not part of an end-to-end Internet access service but rather was intended to transport information internally among campus buildings. The Commission further provided that its presumption could be rebutted by evidence that the school system did not own or have exclusive use of the facilities in question.

The problem here arose when USAC asked a series of questions intended to determine whether the *Tennessee* presumption applied. Specifically, it asked whether the ownership of the equipment would be transferred to the school in the future and whether the lease included an option for the school to purchase the equipment. The school system answered “yes” to both questions. USAC then concluded that the equipment (a satellite dish, modem and cables) should be deemed part of internal connections (for which the school system had not submitted a claim) and thus ineligible for funding.

In four appeals of the USAC decision, the school system asserted that it had answered the USAC questions incorrectly, and provided documentation to back up its claims that the equipment in fact was owned by the service provider and would be removed at the end of the three-year agreement. The Commission agreed on the ground that a mistake in answering USAC inquiry questions (when supported by credible evidence) should not result in a denial of funding. Even so, the FCC remanded the matter to USAC for further fact-finding as to whether the services are indeed eligible for funding.

Perhaps the lesson to be learned from this episode is that inquiries from the FCC or USAC must be handled with utmost care and all questions answered accurately the first time. Note that the services in question were for Funding Years 2003-05, and a that final decision, even if favorable, lies well in the future.

If we can provide specific guidance in this area, please contact [Peter Gutmann](mailto:Peter.Gutmann@wcsr.com) at (202) 857-4532 or [pgutmann@wcsr.com](mailto:pgutmann@wcsr.com), or one of our other Womble Carlyle [Telecommunications](#) professionals.

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