

November 8, 2010

FCC Finds Consortia Were Authorized to File FCC Form 471 for their Members

The Commission has granted appeals by consortia that previously had been denied funding on the ground that they had not provided sufficient evidence of their authority to represent the consortia members.

In each case, the Commission found that the consortia leaders had adequately demonstrated that they were authorized to submit FCC Forms 471 on behalf of their consortia members, despite having failed to submit Letters of Agency (“LOAs”), which the rules generally require. LOAs should provide (i) the name of the person filing the application; (ii) the name of the person authorizing the application; (iii) the relevant funding year; (iv) the signature, date and title of an employee authorizing the filing of the application; and (v) services covered. However, in the absence of a valid, complete LOA, the Commission may accept other documentation proving authorization. Here, the Commission found that the petitioners either had remedied the deficiencies of their LOAs or had submitted other evidence that demonstrated the requisite authority.

In the first set of cases, the Commission found that some consortia initially had submitted deficient LOAs but then subsequently cured the deficiencies on appeal. The cases included instances in which submission of a revised LOA authorizing the request of “eligible services” or “E-Rate services” was held to be sufficiently specific to grant authority; in which consortia had failed to specify the funding year for which support was being requested but later presented documentation – dated before the date of submission – identifying the funding year; and in which a consortium had merged with another consortium late in the application process, and the schools joining the consortium had granted authorization to the consortium at the time of the merger.

In other cases, the Commission found that the following submissions provided sufficient evidence to prove authorization of the consortia, even in the absence of a relevant LOA:

- A copy of an LOA for a different member, accompanied by a power of attorney showing authorization for the consortium to submit a Form 471 for a school for which no LOA was submitted;
- Two letters sent to USAC in 2000 and 2005 which, read together, provide the information required to be in an effective LOA.
- Consulting agreements for each consortium member indicating authorization to submit Form 471 along with a copy of a memorandum sent to consortia members detailing their Form 471 applications and explaining the filing process;
- A packet of documents including a draft budget with a line item dedicated to funds allocated to the E-Rate program; board minutes of a meeting attended by all consortium members in which the proposed budget was discussed; information about the superintendents of each consortium member; a copy of bylaws stating that the consortium members own the consortium; and executed FCC Forms 479 from each superintendent certifying that he or she is the administrative authority for the member; and

The underlying applications of each of the 11 petitioners were remanded to USAC for action consistent with the Commission’s order.

Despite the Commission's leniency in these cases, submission of a valid LOA would have avoided the delay and expense of pursuing these appeals.

If you have any questions, please contact [Mark Palchick](#), [Sarah Miller](#), or one of our other Womble Carlyle Telecommunications professionals.

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