

FCC Rejects Applicants' Attempts to Modify Funding Requests Months After Funding Window Had Closed

In a recent order, the Federal Communications Commission ("Commission") affirmed five decisions by the Universal Service Administrative Company ("USAC") to deny funding to applicants that had submitted substantive changes to their funding requests months after the window had closed. The applicants had attempted to amend their FCC Forms 471 up to eight months after the deadline to either (i) modify which entities were covered on their Forms 471 in order to raise their applicable discount levels or (ii) request additional services. The Commission found that, in both instances, allowing substantive changes months after the funding window closed would be contrary to the public interest.

The Commission found that three applicants modified their applications to increase their discount levels. Two applicants admitted this goal. The third entity attempted to modify its application months after the funding window closed but just one day before USAC was to set the priority 2 threshold. The Commission inferred from the date of its request that the entity was attempting to increase its discount level. USAC sets the priority 2 threshold annually based on information it gleans from that year's Forms 471s, and the Commission found that all three applicants had attempted to modify their requests so that their applications would qualify for priority 2 funding. Had the applicants' requests to remove schools with lower discount percentages from their Forms 471 been successful, they would have, under the FCC's formula for averaging discount levels, increased the poverty level of the remaining schools to a level eligible for priority 2 funding. In denying these requests, the Commission found that allowing applicants to modify their requests to increase their discount levels would not only incentivize applicants to manipulate the application process, but would also create an administrative burden for USAC and delays for applicants.

The remaining two applicants attempted to modify their Forms 471 to include additional services long after termination of the funding window. The Commission found that the adoption of a policy allowing continued corrections to applications would render the filing deadline meaningless. If permitted, applicants could file Forms 471 on time as "mere placeholders" and then determine what services they actually need after the deadline lapses. The Commission noted that, under the *Bishop Perry Order*, which was cited by both groups of appellants, applicants can revise their applications to correct ministerial or clerical errors within 20 days of issuance of FCC Form 471 Receipt Acknowledgment Letters, but substantive changes are beyond the scope of *Bishop Perry*. Applicants may make certain substantive changes (including changes in service provider or requested services, or cancellation or reduction of funding requests) in limited circumstances within this time period. There is, however, no precedent for allowing applicants to make changes with the goal of increasing their discount percentage. The Commission also explained that applicants cannot make substantive changes regarding requested services long after the funding window has closed but instead must file new applications.

This decision continues the Commission's continued policy of differentiating between clerical errors, which often garner a lenient response, and substantive amendments to applications, of which the Commission has proved increasingly intolerant.

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

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