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FCC Makes Changes to USAC Procedures for Considering Certain Technical Support Contracts

The Federal Communications Commission has issued an Order that modifies its prior rule requiring that a contract including both eligible and ineligible services be deemed ineligible in its entirety for e-rate discounts.

Mixed Purpose Basic Maintenance Service Contracts

Of greatest general importance, the FCC now will require USAC to give consideration to discounts for those technical support contracts that provide for more than basic maintenance services (that is, those that include both eligible and ineligible services) – but only if the eligible services and their costs are accurately identified. This ruling applies beginning with the funding year 2011 for new applications and immediately for all pending appeals.

Previously, technical support contracts providing for more than basic maintenance services were deemed ineligible for any discount at all. In this context, basic maintenance includes repair and upkeep of previously purchased eligible hardware and wire, plus basic technical support including configuration changes. It does not include maintenance of equipment that is not supported, or services that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information (including 24-hour network monitoring and management).

Until now, the FCC had felt that it was administratively infeasible for USAC reviewers to distinguish between eligible and ineligible elements when both were included in a single contract for basic maintenance services. Now, the FCC has concluded that it indeed is possible for USAC staff to make such distinctions – provided that the applicant must accurately identify the cost of eligible services as part of its request. An applicant's failure to do so still will result in rejection of the entire contract. Examples of how to distinguish between eligible and ineligible technical maintenance services may be found on the USAC website,

<http://www.universalservice.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx#ex4>.

On-Site versus Off-Site Technical Support

The Commission generally considers on-site technical support as not necessary to the operation of an internal connection network when off-site technical support can provide basic maintenance on an as-needed basis. However, the FCC's rules also require that the technical support provided be the most cost-effective. The FCC now has granted several appeals, directing USAC to provide the applicants an opportunity to demonstrate that their on-site basic service requests are the most cost-effective option. The FCC has recognized that off-site technical support is not always the most cost effective (*e.g.*, when distance is a factor and the cost of travel is an additional charge); thus, the FCC believes applicants should be allowed to justify their need for on-site support. In one of the appeals, the applicant had argued that off-site maintenance entailed a 3½ hour travel time each way, preventing recovery from network outages until at least half a

school day had been lost, and that in some instances it could not be fit into the vendor's schedule for a week. Note, though, that in order to justify discounts for on-site basic maintenance, the burden falls upon applicants to provide sufficient evidence to show that on-site technical service is more cost-effective than using off-site support.

The Need for Specificity

The FCC remanded for further consideration an application that had sought support for "consulting services," which generally are ineligible. The Commission found that the applicant had used the term broadly to include eligible and ineligible basic maintenance services. The FCC directed the applicant to allocate the costs between eligible basic maintenance and ineligible "consulting services" and to seek support for only the eligible portion of the services. Here, too, the FCC reminded applicants of the need to be specific in their requests since USAC can only grant funding for eligible items.

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

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