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E-Rate: FCC Upholds Audit Letter Procedures Followed by USAC

In a recent Order, the Commission upheld a Wireline Competition Bureau Order denying review of an audit letter issued by USAC. The Commission found that USAC had followed established procedures in issuing the audit letter, requiring a service provider to provide a plan to ensure future E-rate compliance, suspending pending funding requests involving the service provider pending review and approval of the plan, and sending a copy of the audit letter to applicants using the service provider.

USAC issued the audit letter to the service provider in 2007, after finding that the service provider had violated the E-rate rules in connection with the billing of a school district that had specifically indicated in its request for proposals (“RFP”) that progress and/or advance payments were prohibited under the contract. USAC found that while the school had only paid a lump sum payment on the final invoice submitted by the service provider, the service provider had requested payment from USAC for five invoices pre-dating the final invoice paid by the school. USAC sent the service provider an audit letter indicating that it had violated the Commission’s E-rate rules by billing USAC prior to completion of the project in violation of the terms of the district’s RFP. The audit letter required the service provider to file a plan within six months of the date of the letter ensuring that for any future reimbursements from USAC all services will have been completed and that any progress or advance payments made by the district would be valid under the contract. In addition to requiring the plan, USAC stopped all pending funding requests involving the service provider pending review and approval of the plan and sent a copy of the audit letter to all applicants using the service provider.

Instead of filing the plan with USAC, the service provider challenged the validity of USAC requiring the plan and later sought review of USAC’s decision by the Wireline Competition Bureau. Ultimately, the service provider submitted the plan to USAC 18 months after it was first requested. The Bureau upheld USAC’s finding and found that the plan submitted by the service provider was not sufficient to overcome USAC’s concerns. The Bureau found that USAC’s suspension of payments on funding requests and its decision to send an audit letter to involved applicants were consistent with USAC’s existing procedures in its 2004 Proposed Audit Resolution Plan for Schools and Libraries Support Mechanism Auditees. The Bureau later denied a petition for reconsideration filed by the service provider.

On appeal of the decision to the Commission, the service provider argued that USAC’s actions were not in line with its audit procedures, that USAC had violated the service provider’s Due Process rights by suspending funding and notifying applicants of the audit letter before allowing the service provider to respond to the audit letter and that the Bureau should have required USAC to process pending invoices and funding requests within a certain time after finding that the provider had submitted a compliant plan. The Commission denied all of the provider’s claims and upheld the decision of the Bureau finding that: (1) USAC’s actions were compliant with its existing procedures; (2) the provider did not have a valid Due Process claim; and (3) the Bureau properly recognized that USAC needed sufficient time to review pending funding requests and did not err by not giving USAC a specific timeframe within which to complete the review.

If you have any questions, contact [Mark Palchick](#), [Rebecca Jacobs](#) or any member of the firm's [Communications Law Group](#).

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