

Further Distinctions Between Clerical and Substantive Errors

The FCC's Wireless Competition Bureau has released an omnibus ruling addressing 22 appeals of E-rate decisions by the Universal Service Administrative Company (USAC). The disposition of these appeals affirms the distinction between clerical or administrative applicant errors, which Commission staff routinely forgives, and more substantive omissions, which generally defeat an otherwise worthy claim of entitlement.

The FCC forgave the following attempts to correct applications and Item 21 attachments because they were deemed to be clerical and administrative errors: mischaracterization of non-recurring services as recurring services, or *vice-versa*; misidentification of service providers; use of the wrong filing request number on the FCC Form 471 block 4 worksheet; submission of a corrected Form 471 (and its Item 21 attachment) after the applicable deadline; and accidentally transposing the amounts for eligible and ineligible services from the Item 21 attachment onto the Form 471. In each case, the staff found no evidence of waste, fraud or abuse and remanded the cases to USAC for further consideration. Even so, the staff declined to make a determination as to ultimate eligibility.

The staff denied other appeals by applicants that had sought to retroactively supplement their funding requests based on revised claims recognized only after the original forms had been filed. As in the past, the staff held that such changes were substantive and would undermine the deadline requirement, and thus would disserve the public interest by impairing the integrity of the E-rate program. The staff further noted that such changes require the filing of new funding requests (although that would be of little use now that the annual deadline has passed).

A further caution – the staff dismissed one appeal outright for failure to have specified the relief it sought, even though the substance of the appeal (use of an outdated version of Form 470) otherwise would have qualified as a clerical error and thus would have received favorable consideration. Although the staff granted the applicant leave to refile its appeal, doing so would require starting the process all over again and would incur considerable added delay. (The appeal in question had been filed over four years ago and was for the 2006 funding year.) Thus, it is essential to note that if an appeal is taken, it must be prepared carefully in order to ensure timely consideration.

If you have questions concerning any of these matters, please contact [Peter Gutmann](#) at (202) 857-4532 or pgutmann@wcsr.com, or one of our other Womble Carlyle [Communications Law](#) professionals.

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