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FCC Confirms Method of Calculating E-Rate Discount Level for Shared Services and Need for Implementation Extension Requests

The FCC has denied an e-rate appeal brought by the Barberton, Ohio School District. Barberton contended that it was eligible for the maximum 90% discount rate, thus virtually assuring that its request would be fully funded. The Universal Service Administration Company (USAC) had ruled that Barberton had failed to document its claimed discount level.

Barberton had applied at the 90% discount level for services used in five schools. USAC analyzed surveys Barberton had submitted in support of its claim and found that only a 79% overall level was appropriate.

In reviewing Barberton's challenge to USAC, the Commission affirmed that the proper survey methodology is to calculate a weighted average based on the applicable discounts of all member schools sharing a portion of the services. The weighting is done on the basis of each school's student enrollment. In this case, the Commission found that three of the five schools qualified for an 80% discount rate and another qualified for only 60%. In proportion to their student populations, this yielded a weighted average of 79%. Since funding for internal connections in the relevant year was awarded only down to the 86% level, the Commission affirmed USAC's denial of Barberton's funding request.

The Commission further cited with approval USAC's standards for student surveys to support discount rates, which must include the grade level of each child and the address, size and parents' income level of each family. The Commission noted that alternative means are available to establish discount rate eligibility, including participation in other income-assistance programs, such as subsidized school lunches.

In concurrent decisions, the FCC continued its practice of leniency toward waiving deadlines and procedural lapses caused by e-rate applicants' good faith oversight. Thus, in five cases the Commission granted appeals of USAC funding denials where applicants had been unable to implement non-recurring services before a required deadline but had failed to request an extension. In each case, rather than file the required separate extension request with USAC, they had filed an FCC Form 500 to extend the service provider's contract expiration date, in the mistaken belief that the form also served to extend the implementation deadline. The Commission found that this action evidenced a good-faith attempt to comply with its rules in a timely manner and that good cause existed to waive its rule.

In three more appeals, the FCC afforded applicants a further opportunity to provide USAC with relevant documentation to demonstrate that they had the resources necessary to make effective use of the services they had requested. One lapse was attributed to the medical condition of the e-rate staff person; the reasons behind the others were not disclosed. It is also notable that the FCC attached a fairly rapid time-frame to USAC's further processing, ordering that it issue its award or denial no later than 90 days after release of the FCC's order.

Despite the favorable outcome of all but the Barberton appeal, it is essential to note that the recent actions involved funding years extending back to 2001. Thus the delay in obtaining relief serves to emphasize the need for strict compliance with USAC requirements. In particular, it is important to bear in mind that FCC Form 500 only serves to extend the contract expiration date of a service provider and that if service cannot be implemented by a delivery deadline (September 30 following the close of a funding year), then e-rate applicants must file separate extension requests for implementation.

If you have any questions or would like us to assist you with the required notification or application, contact Mark Palchick or any member of the firm's Communications Law Group.