Text as published on gao.gov, https://www.gao.gov/products/b-131935, archived 2026-07-10. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-131935, Mar 17, 1986

Number: B-131935

Date: 1986-03-17

B-131935, MAR 17, 1986

APPROPRIATIONS - AUTHORIZATION - EXPIRATION - EXPENDITURES BEYOND DIGEST: 1. SUBSECTION 393(C) OF TITLE 47, U.S.C. WHICH PROVIDES THAT: "OF FUNDS APPROPRIATED PURSUANT TO SECTION 391 OF THIS TITLE FOR ANY FISCAL YEAR, NOT LESS THAN 75 PERCENT SHALL BE AVAILABLE TO EXTEND DELIVERY OF PUBLIC TELECOMMUNICATIONS SERVICES TO AREAS NOT RECEIVING SUCH SERVICES" REQUIRES THAT, IN THE ABSENCE OF ANYTHING IN THE APPROPRIATION ACT TO THE CONTRARY, 75 PERCENT OF THE APPROPRIATIONS FOR PLANNING AND CONSTRUCTION OF PUBLIC TELECOMMUNICATIONS FACILITIES MUST BE USED FOR EXTENDING DELIVERY OF PUBLIC TELECOMMUNICATIONS SERVICES TO AREAS NOT RECEIVED BY SUCH SERVICES. HOWEVER, SINCE APPROPRIATION AUTHORIZATION SET FORTH IN 47 U.S.C. SEC. 391 EXPIRED ON SEPTEMBER 30, 1984, FUNDS APPROPRIATED FOR PLANNING AND CONSTRUCTION OF TELECOMMUNICATIONS FACILITIES SINCE THAT TIME ARE NOT MADE PURSUANT TO 47 U.S.C. SEC. 391. SINCE THE 75 PERCENT AVAILABILITY REQUIREMENT SET FORTH IN 47 U.S.C. SEC. 393(C) IS TIED NECESSARILY TO THE AUTHORIZATION IN SECTION 391, THE EXPIRATION OF THE AUTHORIZATION MEANS THAT THE SECTION 393(C) REQUIREMENT HAS ALSO EXPIRED. THEREFORE, ANY SUBSEQUENT APPROPRIATIONS FOR THE PROGRAM ARE NOT SUBJECT TO THE SET-ASIDE, UNLESS IT IS REINSTATED BY A NEW ENACTMENT.

THE HONORABLE MICHAEL G. OXLEY:

HOUSE OF REPRESENTATIVES

THIS LETTER IS IN RESPONSE TO YOUR INQUIRY DATED FEBRUARY 25, 1986, ASKING WHETHER SECTION 393(C) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, 47 U.S.C. SEC. 393(C) (1982), REQUIRES THAT A MINIMUM OF 75 PERCENT OF FUNDS APPROPRIATED FOR THE PLANNING AND CONSTRUCTION OF PUBLIC TELECOMMUNICATIONS FACILITIES BE EXPENDED TO EXTEND SERVICE TO AREAS OF THE COUNTRY WITHOUT PUBLIC BROADCASTING SERVICES. ALTHOUGH WE AGREE WITH THE STAFF MEMORANDUM THAT YOU ENCLOSED WITH YOUR SUBMISSION THAT THE LANGUAGE OF 47 U.S.C. SEC. 393(C) ESTABLISHES A MINIMUM SET ASIDE, THAT SECTION EXPIRED BY OPERATION OF LAW AT THE END OF FISCAL YEAR 1984 AND NO LONGER HAS LEGAL FORCE AND EFFECT. THEREFORE, BEGINNING WITH FISCAL YEAR 1985 ANY FUNDS APPROPRIATED FOR THE PROGRAM MAY BE SPENT WITHOUT REGARD TO THE 75 PERCENT AVAILABILITY REQUIREMENT.

SUBSECTION 393(C) OF TITLE 47, U.S.C. PROVIDES THAT:

"OF THE FUNDS APPROPRIATED PURSUANT TO SECTION 391 OF THIS TITLE FOR ANY FISCAL YEAR, NOT LESS THAN 75 PERCENT SHALL BE AVAILABLE TO EXTEND DELIVERY OF PUBLIC TELECOMMUNICATIONS SERVICES TO AREAS NOT RECEIVING SUCH SERVICES THROUGH GRANTS FOR FACILITIES OF NEW AND EXISTING PUBLIC TELECOMMUNICATIONS ENTITIES, AND PREOPERATIONAL EXPENSES ASSOCIATED WITH SUCH FACILITIES. ***"

SECTION 391 OF TITLE 47 U.S.C., AS AMENDED, REFERRED TO IN THE QUOTED LANGUAGE AUTHORIZES APPROPRIATIONS OF $40 MILLION FOR FISCAL YEARS 1979 THROUGH 1981, $20 MILLION FOR FISCAL YEAR 1982, $15 MILLION FOR FISCAL YEAR 1983, AND $12 MILLION FOR FISCAL YEAR 1984 FOR USE BY THE SECRETARY OF COMMERCE TO ASSIST IN THE PLANNING AND CONSTRUCTION OF PUBLIC TELECOMMUNICATIONS FACILITIES. IN OUR VIEW, THE 75 PERCENT LIMITATION IN 47 U.S.C. SEC. 393(C) IS INEXTRICABLY TIED TO EXPENDITURES FROM APPROPRIATIONS AUTHORIZED BY 47 U.S.C. SEC. 391, AND WHEN THE AUTHORIZATION EXPIRED, THE LIMITATION LAPSED AS WELL.

THE CONGRESS ATTEMPTED TO EXTEND THE PROGRAM AUTHORIZATION BUT WITHOUT THE MANDATORY SET-ASIDE PROVISION IN OCTOBER 1984 BUT IT WAS POCKET VETOED BY THE PRESIDENT. A SIMILAR BILL WAS INCORPORATED INTO THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985, AS REPORTED BY THE SENATE, BUT NEGOTIATIONS WITH THE HOUSE OVER ITS TERMS ARE STILL PENDING. THUS THERE IS NO EXISTING AUTHORIZATION LEGISLATION NOW ON THE BOOKS.

THE ABSENCE OF AN AUTHORIZATION LAW DOES NOT NECESSARILY PRECLUDE THE CONGRESS FROM MAKING APPROPRIATIONS FOR AN IDENTIFIED PROGRAM, SHOULD IT CHOOSE TO FUND THE PROGRAM ANYWAY. THE CONGRESS HAS APPROPRIATED FUNDS FOR "PUBLIC TELECOMMUNICATIONS FACILITIES, PLANNING AND CONSTRUCTION" FOR FISCAL YEARS 1985 AND 1986 BUT WITHOUT INDICATING THAT THE 75 PERCENT LIMITATION WAS STILL TO APPLY. HOWEVER, IN VIEW OF THE MODEST LEVEL OF DECLINING FUNDING AUTHORIZED BY THE CONGRESS IN 47 U.S.C. SEC. 391, WE CAN NOT SAY, IN THE ABSENCE OF ANY EXPRESSION TO THE CONTRARY IN THE APPROPRIATION LANGUAGE, THAT THE CONGRESS INTENDED THAT THE FAIRLY HIGH 75 PERCENT SET-ASIDE SHOULD SURVIVE BEYOND THE 6 YEAR PERIOD SET FORTH IN 47 U.S.C. SEC. 391. IT IS POSSIBLE THAT THE CONGRESS INTENDED THE PROGRAM, AS IT ULTIMATELY MOVED TOWARDS COMPLETION OF ITS ORIGINAL OBJECTIVE, TO SHIFT ITS PRIORITIES AWAY FROM EXPANSION OF SERVICE INTO AREAS NOT PREVIOUSLY SERVED TOWARDS OTHER ASPECTS OF THE TELECOMMUNICATIONS FACILITIES PROGRAM.

AT ANY RATE, ALTHOUGH WE AGREE THAT THE LANGUAGE "NOT LESS THAN *** SHALL BE AVAILABLE" ESTABLISHES A MINIMUM SET-ASIDE REQUIREMENT (SEE 64 COMP.GEN. 389 (1985)), SINCE IT NO LONGER HAS LEGAL FORCE AND EFFECT, THE FUNDS APPROPRIATED FOR "PUBLIC TELECOMMUNICATIONS FACILITIES, PLANNING AND CONSTRUCTION" MAY BE EXPENDED WITHOUT REGARD TO THE OLD 75 PERCENT SET- ASIDE TO SUPPORT DELIVERY OF PUBLIC TELECOMMUNICATIONS SERVICES TO AREAS NOT RECEIVING SUCH SERVICES.