



**E-Rate Funding—Guaranteed**

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# Recent Changes in the E-Rate Program

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## Less Distinction between Telecom and Internet

The latest Eligible Services List no longer has separate “Telecommunications Services” and “Internet Access” categories. Unfortunately, the forms have not yet changed. The FCC has said that Priority One services can be listed under either category on the Form 470. On the Form 471, applicants still have to differentiate on the Form 471: services requiring CIPA compliance go into Internet Access, others go into Telecommunications Service.

## Free Phones

The E-Rate program has traditionally allowed applicants to receive funding for cell phone plans that included a free phone. Normally, the value of free services must be deducted from the cost of the service before applying the E-Rate discount. The FCC is currently considering whether to allow service providers to provide free desktop phones as part of phone service. At present, such free phones are allowed if the service provider offers the plan to the public.

## Funding is Running Low

For Funding Year 2012, there was barely enough funding to cover Priority One requests. By taking unused funds from previous years, and funding that was anticipated to be unused in the future, the FCC was able to roll over enough funding to cover Priority One requests for all applicants and Priority Two requests for applicants with a 90% discount. However, the growth of Priority One funding requests is rising much faster than the size of the fund, so this problem will only get worse in the future.

## Federal Rules on Gifts Now Apply

The FCC reiterated many existing competitive bidding requirements, and added a new requirement: district personnel must comply with Federal regulations concerning gifts from vendors. Federal rules allow employees to receive single items worth \$20 or less (meals, pencils, pens, hats, t-shirts, etc.) as long as those items do not exceed \$50 per year per employee from any one source.

New Jersey's state laws are more restrictive, because no gifts are permitted, but the state law also deals with the motive of the gift; a gift is forbidden if it intended to influence an official in the discharge of his/her duties.

## **More Difficult to Change Service Providers**

It appears likely that districts who find a better deal on, for example, cell phone service will not be able to change providers until they have gone through a bid process and waited until the following school year. As the rule stands, districts will have to wait 5 – 16 months before they can switch service providers.

Until Funding Year 2011-2012, it was a simple matter to change service providers in mid-year. Now the FCC is looking to tighten up the process in two ways. First, the FCC is tightening up the reasons that a school district can change service providers. Applicants must now have a "legitimate reason to change providers." The only legitimate reasons given so far are bankruptcy and failure to deliver service. Second, when an applicant wants to change providers, they must select the provider that came in second in the original bid evaluation. If no other bids were received, you can select any service provider as allowed under state law.

## **Unbundled Warranties No Longer Eligible**

According to the order, "unbundled warranties," such as Cisco SmartNet and phone system service agreements, are no longer eligible for E-Rate funding, because applicants pay for the warranties, whether any service is actually required or not. Maintenance agreements which include a pool of hours (to be used as needed) are still eligible for those applicants which can receive Priority Two funding. Some annual support agreements (for example CiscoBase) are still eligible.

## **Dark Fiber is Eligible**

Districts can now get E-Rate funding for leased dark fiber. The E-Rate will not pay for the build-out of dark fiber, but will pay for the build-out of lit fiber. Fiber, whether lit or dark, can be leased from non-telecommunications providers.

## **Technology Plan Requirements Relaxed**

A technology plan is no longer required for Priority One funding requests. Since the vast majority of applicants are not able to receive Priority Two funding, few districts will need to have a tech plan in order to receive E-Rate funding.

## **Equipment Disposal Rules Changes**

Until this year, applicants were in a Catch-22: generally, state rules require schools to sell excess equipment rather than give it away, while E-Rate rules forbid the sale of equipment purchased with E-Rate funds, so schools were stuck with equipment they could not sell and could not give away. Now the rules allow schools to sell equipment after five years.

## **Community Use of School Internet Access Allowed**

Schools are now free to provide after-school Internet access to the community. The primary purpose of any Internet access must be K-12 education, and community use must not increase the cost of the Internet access. Schools cannot charge for Internet use, though they can charge for computer use.

## **Changes to the Forms**

There are a few changes to the forms in the program, which should make them a little easier to fill out. The changes to the forms are important because implementing the changes will likely delay the opening of the filing windows, perhaps until January.

## **Funding Cap Indexed to Inflation**

The E-Rate fund has been capped at \$2.25 billion since its inception, but will now be indexed to inflation. For the 2010-2011 school year, the fund has been increased to just over \$2.27 billion.

## **New CIPA Regulations**

This rule does not apply to libraries, but is included here just so you know you don't have to worry about the new CIPA rule. The FCC has now implemented the changes made to the Children's Internet Protection Act in 2008. The big change is that by July 2012, all schools need to update Internet safety policies to "provide for the education of minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response." Boards should be sure to update the district's Internet safety policy, which may mean an update to the district Technology Plan and the Acceptable Use Policy.