

E-Rate Update

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Changes to the Forms

There are a few changes to the forms in the program. The changes to the forms are currently awaiting final approval. The timing is important because:

- The filing window will almost certainly not open until the Form 471 is approved.
- When the change is approved, the online Form 470 will probably be unavailable for a few days, and there is a risk that any Forms 470 created but not completed at that time will have to be recreated.

The changes themselves are not significant. The change on the Form 470 that will be most obvious is that the sections where applicants list Telecommunications and Internet Access will be combined into a single block. On the Form 471, Block 2 will disappear, but the information that was in that block will now be collected in Block 5.

Less Distinction between Telecom and Internet

The latest Eligible Services List no longer has separate “Telecommunications Services” and “Internet Access” categories. The FCC has said that Priority One services can be listed under either category on the old Form 470, and the upcoming Form 470 will combine the categories. 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, on a case-by-case basis, if certain conditions are met, allowing service providers to provide free desktop phones as part of phone service. However, these rules are temporary, and the final rules may be different. So if you sign a 3-year contract with free phones, you may find yourself paying for the lease of phone sets in the future.

Demand Growing Faster than the Fund

For the past couple of years, the fund has grown by less than 2%, while demand has grown by 20%. For Funding Year 2013-2014, the Commission had to use rollover funding to cover Priority One requests. It is still not clear whether any Priority Two applications will be funded for 2013-2014.

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 is 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.

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.

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.

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.

Changes on the Horizon

Comprehensive Overhaul Possible

The FCC released a 175-page Notice of Proposed Rulemaking, with a huge catalog of possible rule changes. The changes include reforms to improve the program, and changes to align the program with President Obama's ConnectED initiative. The FCC is currently reviewing hundreds of comments from the public, and the rumor is we may have the new rules by next summer. Some of the most significant changes on the list:

- Changes in eligible services: The FCC will probably refocus the fund on broadband Internet connections. Voice services (or perhaps just POTS lines) may be dropped from the

program. It seems very likely that outmoded technologies like paging will no longer be eligible for funding.

- Increasing the size of the fund.
- Changing the discount matrix: The FCC seems ready to lower the top discounts from 90% to perhaps as low as 65%.
- Setting budgets: One proposal which is getting lots of attention is creating a per-student or per-building budget for the program. The idea is to give applicants a set dollar amount (based on size), and give them more freedom in how the money is spent.
- Allowing the purchase of fiber wide area networks (WANs).
- Changing or eliminating competitive bidding requirements.
- Increased transparency in the application review process and of pricing.
- Streamlining the application process.
- Requiring electronic filing of all forms.
- Changing CIPA rules: The FCC will clarify whether CIPA requirements should apply to patron devices using a library's Internet access, and library-owned devices used off library property.
- Changing the definition of "rural."
- Fund wireless hotspots which schools and libraries place in the community (not on school/library property).

Not all of the above changes will happen, but certainly some will.

Lowest Corresponding Price

In the E-Rate regulations, there is a requirement that service providers give applicants the "Lowest Corresponding Price" (LCP) on all services provided under the E-Rate. The LCP requirement has not been enforced by USAC or the FCC, but some service providers have been successfully sued over their failure to comply. Over the last year, LCP has been getting increased attention from USAC and the FCC, but there still has not been any obvious enforcement.

New IT system coming at USAC

USAC has released a request for comment on an upgrade to their IT systems. To see what comments have been requested, search the Internet for SLITM. It is way too early to see what the new online tools will look like.