Federal Communications Commission
Washington, D.C. 20554

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Small Entity Compliance Guide

Schools and Libraries Universal Service Support Mechanism

Sixth Report and Order
FCC 10-175
CC Docket No. 02-6
GN Docket No. 09-51
Released: September 28, 2010

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I.   BACKGROUND

The E-rate program provides discounts to assist schools and libraries to obtain affordable telecommunications services, Internet access and internal connections. The E-rate program generally supports connectivity – the conduit or pipeline for communications using telecommunications services and/or the Internet – as opposed to technology-related content. Discounts for support depend on the level of poverty and the urban/rural status of the population served, and range from 20 percent to 90 percent of the costs of eligible services. E-rate program funding is based on demand up to an annual Commission-established cap of $2.25 billion, indexed to inflation.

Schools and libraries undergo a competitive bidding process to solicit bids on E-rate eligible services by filling out a form describing the services being sought. These forms are then posted on a website, allowing review by all potential competing service providers.

II.   OBJECTIVES OF THE PROCEEDING

The revisions adopted by the Commission in the *E-rate Sixth Report and Order* (the *Order*) enable schools and libraries to better serve their communities by providing more flexibility to select and make available the most cost-effective services. Specifically, the Commission allows applicants to lease fiber, whether dark or lit, from the most cost-effective provider in an effort to allow applicants to choose the services that best meet their needs. The *Order* also changes the rules to permit schools to allow community use of E-rate funded services outside of school hours and supports broadband connections to residential buildings of schools that serve students with special circumstances.

The *Order* also streamlines the application processes by eliminating the technology plan requirement for priority one services (telecommunications services, telecommunications, and Internet access requests). The *Order* also facilitates the disposal and recycling of obsolete equipment supported by the E-rate program. The Commission also improves safeguards against waste, fraud and abuse by codifying the requirement that competitive bidding process be fair and open.

The changes to the program, while beneficial to schools and libraries, will also provide more opportunities for service providers and other entities that provide E-rate eligible services to participate in the E-rate program.

More information about eligible services can be found on the Eligible Services List for Funding Year 2011: http://www.usac.org/_res/documents/sl/pdf/ESL_archive/ EligibleServicesList_110910.pdf. An overview of the E-rate program can be found on the website of the program's administrator, the Universal Service Administrative Company (USAC), at http://www.usac.org/sl/about/overview-process.aspx.

III. COMPLIANCE REQUIREMENTS

A. Dark Fiber Now Eligible for E-rate Funding

The Commission now includes dark fiber on its Eligible Services List (ESL, found at http://www.usac.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList_110910.pdf). Schools and libraries may now receive support for the lease of fiber, whether lit or dark, as a priority one service from any entity. E-rate supported telecommunications may be provided via fiber, in whole or in part, by these entities. This includes, but is not limited to, the following:

- Traditional telecommunications carriers
- Research and educational institutions
- Regional, state, and local government entities
- Non-profit and for profit providers
- Utility companies
- NOTE: all telecommunications services other than fiber must still be provided by a traditional telecommunications carrier.

These entities will now be able to participate in the competitive bidding process to provide priority one services to schools and libraries.

Application Process and Eligibility

- Schools and libraries are encouraged to submit a Form 470 indicating the desired service in both the telecommunications service and Internet access categories. Since the Commission has yet to classify dark fiber as telecommunications service or Internet access, it will be included in a separate telecommunications section for funding year 2011. Entities that own fiber networks will now be able to participate in the competitive bidding process.
- Once a service provider is selected through the competitive bidding process, an applicant should check the appropriate category of service on Form 471 based on the type of provider they select.
- If the provider is an eligible provider, the applicant can select "Telecommunications Services" if they are purchasing telecommunications services and other services, including Internet access.
- If the same provider is providing *only* Internet access, then the applicant must select "Internet Access."
- Applicants that choose dark fiber must light it immediately.
- In cases where the infrastructure for fiber may not yet be in place on an applicant's campus, applicants must file two separate funding requests: one for the pre-existing service or other eligible service to maintain connectivity while construction is taking place, and one for the dark fiber service.
- Applicants will not receive funding for dark fiber until it is lit. Once the dark fiber is lit and the applicant begins to use that service, E-rate funding for the pre-existing service will be terminated and only the dark fiber service will be funded. If there are unforeseen construction delays, USAC will work with the applicant to adjust the end date of the pre-existing service and the start date for the dark fiber service.

- Applicants may not use E-rate discounts to acquire unneeded capacity or stockpile dark fiber for future use.

CIPA Compliance

- Schools and libraries will not be required to comply with the Children's Internet Protection Act (CIPA) when telecommunications, VoIP, or fiber services are requested, even in the Internet access category, if used only for telecommunications transmission purposes. However, if any other Internet access services such as basic Internet access, web hosting or e-mail service are included or bundled with the telecommunications, VoIP or fiber services, CIPA compliance is required.

Additional Costs to Schools and Libraries

- Since using dark fiber may involve additional costs beyond lease payments, these additional costs, whether eligible or ineligible, should be factored in to cost comparisons between bids from all service providers.
- Maintenance costs and installation charges associated with dark fiber service will now be included as an eligible service.
- Special construction (i.e. installation) charges for infrastructure from an eligible entity's buildings to the property line for dark fiber is a priority one service, but the same charges for leased dark fiber from the property line to the fiber network outside of the applicant's property are not eligible for any E-rate funding.
- For leased lit fiber, all special construction charges are eligible.

B.   Community Use of E-rate Funded Services

Schools will now be allowed to open their facilities to the general public to utilize services and facilities supported by E-rate Funding. However, schools must ensure that students always get first priority over E-rate funded services.

- Public use of a school's E-rate supported services must be limited to times when the school is not in operation, such as after school hours, holidays, weekends, and summer break (if a school runs a summer program for its students, schools may not open their facilities to community access during class time).
- Schools may also open non-instructional facilities (NIFs), such as administrative offices, to the community. NIFs generally do not service students directly and are open for business longer than the school. A school may open NIFs to community use during operating hours so long as it does not impede students and teachers from utilizing the available services.
- Schools may not request funding for services beyond what is necessary to serve their current student population. Any community use of the services must be incidental and may not increase the overall costs to the E-rate program.
- Schools may not charge for the use of services supported by E-rate funds. However, schools may charge fees to cover additional costs associated with allowing community access not supported by E-rate funds. This might include additional computers, training, electricity, security, and heating costs.

- Schools are not required to open their facilities to the general public or set up detailed guidelines for community use policies. Each individual school is in the best position to decide whether to open their facilities to the public and how to implement community use policies.
- The Commission will include a box on Form 471 in the next revision of the form that applicants will simply need to check to indicate whether they will allow community use.

C. Expanding Access for Residential Schools that Serve Unique Populations

In the past, the Commission has only granted funding for internal connections that transmit information to classrooms. Funding has routinely been denied for internal connections into non-instructional buildings unless these connections were absolutely necessary to transmit information into instructional buildings. The Commission now allows universal service support for residential schools that serve populations facing unique challenges for both priority one and priority two services. Schools that qualify include:

- Schools on Tribal lands
- Schools designed to serve students with medical needs and cognitive or behavioral disabilities
- Schools where 35 percent or more of their students are eligible for the national school lunch program
- Juvenile justice facilities

At this time, the Commission declines to expand this proposal to all schools with residential facilities. This proposal applies only to residential schools that serve unique populations as described above.

D. Streamlining and Simplifying Administrative Requirements

Technology Plans

- Schools and libraries will no longer be required to submit technology plans for priority one applications (telecommunications services, telecommunications, and Internet access requests).
- Applicants will still be required to submit technology plans for all priority two services (internal connections and basic maintenance of internal connections).

Disposal of Obsolete Equipment

- Schools and libraries will now be able to sell equipment funded by E-rate. However, schools and libraries may not sell any equipment until five years after it was installed. The Commission recognizes that applicants must keep up with technological innovations in order to provide viable networks to students and library patrons and believes that five years is a reasonable time restriction.
- The new rule does not require schools and libraries to continue using equipment for five years or to dispose of equipment after five years. It only prohibits resale before five years

have passed. Schools and libraries will be expected to comply with federal, state, and local laws regarding disposal of obsolete equipment.

- Though applicants will now be able to sell obsolete equipment, the Commission encourages schools and libraries to use purchased equipment so long as it remains a viable and effective solution, even after five years.
- This new rule is not meant to create profit-making opportunities for E-rate participants. Schools and libraries should donate and recycle equipment whenever possible. To assist in that goal, USAC will maintain an updated list of donation and recycling locations for such equipment on its website.

E.   Ensuring a Fair and Open Competitive Bidding Process

Codifying the Competitive Bidding Process

- In an effort to promote a fair an open competitive bidding process, the Commission has codified the existing E-rate bidding process requirements.
- The rules can be found at 47 C.F.R. § 54.503, which were included as Appendix A to the *Order*.

Receipt of Gifts

- To clarify rules regarding receipt of gifts under the E-rate program, we have adopted rules comparable to the gift rules governing federal employees. The rules prohibit all gifts except certain de minimis gifts:

    1. modest refreshments that are not offered as part of a meal (*e.g.*, coffee and donuts provided at a meeting) and items with little intrinsic value intended solely for presentation (*e.g.*, certificates and plaques);
    2. items that are worth $20 or less (*e.g.*, pencils, pens, hats, t-shirts, and other items worth less than $20, including meals), as long as those items do not exceed $50 per employee from any one source per calendar year; and
    3. charitable donations to E-rate eligible entities are permissible as long as those donations are not directly or indirectly related to E-rate procurement activities or decisions and provided the donation is not given with the intention of circumventing the competitive bidding or other E-rate program rules.

- These rules will apply at all times, during and outside of the bidding period. Similar to the general federal gift rules, there is an exception for gifts to family and personal friends when those gifts are made using personal funds of the donor, without reimbursement from the employer, and are not related to a business transaction or relationship.

Permissible SPIN Changes

- Once a contract for products or services has been signed by the applicant and service provider, the applicant may not change to a different service provider unless:

1. there is a legitimate reason to change providers (*e.g.*, breach of contract, the service provider has gone out of business, or is otherwise unable to perform); and
2. the newly selected service provider received the next highest point value in the original bid evaluation, assuming there was more than one bidder.

- These requirements apply to contracted services, month to month services, and tariffed services.
- If the applicant received no other bids, they will not be required to submit a new Form 470 and initiate a new competitive bidding process. These applicants should fill out a Form 472 Billed Entity Applicant Reimbursement and USAC will assist in finding a "Good Samaritan" service provider.
- The Commission recognizes that transitioning from one provider to another is not an instant process. Applicants may switch back to a previous provider, even if it was not the second highest bidder. However, the amount of funding that the service provider receives cannot exceed the amount that was initially requested on the applicant's Form 471.

IV. Weblinks and Citations

Schools and Libraries Universal Service Support Mechanism, *A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762 (2010) (*E-rate Sixth Report and Oder*), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-175A1.pdf.

Funding Year 2011 Eligible Services List, *available at* http://www.usac.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList_110910.pdf.

An overview of the E-rate program can be found on the website of the program's administrator, the Universal Service Administrative Company (USAC), at http://www.usac.org/sl/about/overview-process.aspx.