

August 12, 2014

## HIGHLIGHTS OF THE E-RATE MODERNIZATION ORDER

The Federal Communications Commission (FCC) adopted the [E-rate Modernization Order](#) on July 11, 2014. The Order takes major steps to modernize and streamline the E-rate program and focuses on expanding funding for Wi-Fi networks in eligible elementary and secondary schools and libraries across America.

The rule changes identified below will become effective for funding year 2015 unless otherwise noted.

### Closing the Wi-Fi Gap

The Order sets a target of providing \$1 billion in annual support for eligible internal connections, which will be referred to as "category two" services. Services needed to support connectivity to schools and libraries will be referred to as "category one" services.

Support for the E-rate program remains capped at \$2.25 billion, adjusted for inflation annually since 2010. However, to help meet the target of \$1 billion for eligible internal connections in the short term, the Order states that the additional funding announced by the Wireline Competition Bureau (WCB) earlier in 2014 will allow the FCC to make an additional \$1 billion available annually in FY 2015 and 2016. If demand for category one services exceeds available funding, the Universal Service Administrative Company (USAC) will shift funds targeted for category two services to meet category one demand. Alternatively, once category one demand is met, the FCC may redirect remaining funds to support category two requests. Funds not committed for category one or category two services may be carried forward to be used in a subsequent funding year. The Order expresses confidence that there will be sufficient funding available for FY 2015 and 2016 to meet the \$1 billion annual target for internal connections.

The highest discount level for category one services remains 90 percent, except that the highest discount rate for voice services will be 70 percent in funding year 2015, and will decrease by an additional 20 percentage points each subsequent funding year.

The highest discount level for category two services is set at 85 percent.

Schools applying for category two funding can request discounts on purchases of up to \$150 (pre-discount) per student for category two services over a five-year period. Libraries applying for category two funding can request discounts on purchases of up to \$2.30 (pre-discount) per square foot over a five-year period. To ensure that category two budgets are sufficient to meet the demands of small schools and libraries, the Order establishes a funding floor of \$9,200 (pre-discount) in category two support available for each school or library over a five-year period. Applicants will calculate their funding eligibility using the adjusted discount matrix. The costs for services shared by multiple entities must be divided between the entities sharing the service.

The two-in-five year rule will not be in effect for applicants that receive support in FY 2015 and 2016.

The five year budget will apply only to those entities that receive support in FY 2015 and/or 2016, and the first year of the applicant's five year budget will be the first funding year in which the applicant receives support.

Applicants can seek support for category two eligible non-recurring services purchased on or after April 1, three months prior to the start of the funding year on July 1.

Funding for internal connections is available for routers, switches, wireless access points, internal

cabling, racks, wireless controller systems, firewall services, uninterruptible power supply, caching, and the software supporting each of these components used to distribute high-speed broadband throughout schools and libraries.

Basic maintenance services, managed Wi-Fi, and caching are eligible for category two support. Support for these services will be available only to those applicants that receive category two support in funding years 2015 and/or 2016.

Support is eliminated for circuit cards/components; interfaces, gateways, antennas; servers (except those WCB may find necessary for caching); software; storage devices; telephone components, video components, as well as voice over IP or video over IP components, and the components, such as virtual private networks, that are listed under Data Protection other than firewalls and uninterruptible power supply/battery backup.

The discount rate applicants receive for voice services will be reduced by 20 percentage points beginning in funding year 2015, and reduced by 20 additional percentage points in each subsequent funding year. This phase down will apply to all costs incurred for the provision of telephone services and circuit capacity dedicated to providing voice services, including: local phone service, long distance service, plain old telephone services, radio loop, 800 service, satellite telephone, shared telephone service, Centrex, wireless telephone service such as cellular, and interconnected VoIP. If the FCC takes no further action on this phase down by the opening of the funding year window for funding year 2018, the phase down will continue.

The following services are no longer eligible for any E-rate support: paging; telephone service components, including directory assistance charges, text messaging, custom calling services, direct inward dialing, 900/976 call blocking, and inside wire maintenance plans; e-mail; web hosting; and voicemail.

Data plans and air cards for mobile devices will remain eligible for support only if a school or library can demonstrate that individual data plans are the most cost-effective options for providing internal broadband access for portable mobile devices at its facility.

### **Maximizing the Cost Effectiveness of E-rate Spending**

USAC must make publicly available on its website information regarding services and equipment purchased by school and libraries. Applicants may opt out of this public disclosure requirement only if a specific law, rule, or other restriction bars publication of the purchasing price data. Vendor contracts executed after the effective date of the Order may not contain any restriction barring publication of this pricing data.

WCB may designate master contracts as "preferred master contracts" and (1) exempt a preferred master contract from the FCC Form 470 filing requirement, (2) require the preferred master contract to be included in the bid evaluation if an applicant chooses to file an FCC Form 470 for a service covered by a preferred master contract, or (3) both.

A consortium lead may seek bids on behalf of the schools, school districts, and libraries for which it has authority to seek competitive bids for E-rate eligible services, even if it does not have authority to purchase services for the consortium members.

The Order directs USAC to prioritize review of E-rate applications from state and regional consortia applicants.

### **Maximizing the E-rate Administration and Application Processes Fast, Simple, and Efficient**

Applicants entering into new qualifying multi-year contracts will be permitted to use a streamlined application process in subsequent funding years if they submit a complete FCC Form 471 for the first funding year of the contract. Applicants in existing multi-year contracts must submit a complete FCC Form 471 for funding year 2015, to qualify for the simplified process in subsequent funding years. This simplified application process will be available to any applicant, beginning in funding year 2015, as long as: (1) the multi-year contract is five years or less, and (2) to the extent applicable, any changes in the requested services are within the scope of the original FCC Form 470 and multi-year contract.

The technology plan requirements for category two services are eliminated. Technology plan requirements were eliminated for category one (then priority one) services in 2010.

An applicant is exempt from the requirement to file an FCC Form 470 for an Internet access service if:



(a) the service offers bandwidth speeds of at least 100 Mbps downstream and 10 Mbps upstream for a pre-discount price of \$3,600 or less annually, including any one-time installation and equipment charges, and (b) the service and price are commercially available. Each school or library must receive the eligible service at a cost of less than \$3,600 annually and applicants may not average the cost of services across a number of buildings to qualify for this exemption.

Applicants must have a signed contract or **other legally binding agreement** in place prior to submitting their FCC Forms 471 to USAC. This ensures support for those applicants that have negotiated and agreed to contractual terms, but have difficulty obtaining signatures prior to the submission of their FCC Forms 471.

Applicants and service providers will be required to file all documents with USAC electronically. USAC will be required to provide all notifications electronically. USAC will phase in this requirement over the next three funding years.

Applicants are encouraged to file waiver requests with the FCC seeking E-rate support for establishing direct connections between eligible schools and libraries.

Each school district must calculate and use a single district-wide discount rate rather than calculating and using building-by-building discount rates.

- Independent charter schools, private schools, and other eligible educational facilities must calculate their discounts separately if not affiliated financially or operationally with a school district. Those independent charter schools, private schools, and other eligible educational facilities that are seeking support for more than one school building should factor all students in facilities under the control of their central administrative agency into the discount calculation.
- Consortia applications will continue to use a simple average of all members' discounts to calculate the overall consortium discount, but will now be required to use each member's district-wide discount.

Library systems should apply using the discount rate of the school district in which the central outlet or main administrative office to determine within which public school district the library system lies. However, a library system with a majority of branches or outlets in rural areas can qualify for the rural increase even if the school system it uses to calculate its discount does not qualify for a rural increase. All library branches or outlets within a library system will receive the same discount rate.

Schools and libraries located in rural areas, as defined by the U.S. Census, will be considered rural for the purposes of the E-rate program. School districts and library systems with a majority of schools or library outlets that are in rural areas can qualify for an increased rural discount rate. USAC will post a tool on its website that will allow schools and libraries to obtain urban/rural status.

Schools utilizing the Community Eligibility Provision (CEP) of the National School Lunch Program shall calculate their student eligibility for free or reduced priced lunches by multiplying the percentage of directly certified students by the CEP national multiplier. Schools and school districts should then use the resulting number for that school when calculating the district-wide calculation in the same manner as schools using NSLP data.

Schools that use surveys to determine their E-rate discount must calculate their discount using only the surveys they actually collect. Previously, schools using a school-wide income survey could project a percentage of eligibility for the entire school population if they had a 50 percent return rate.

An applicant that pays the full cost of the E-rate supported services to a service provider will be able to receive direct reimbursement from USAC beginning in funding year 2016.

USAC's existing invoice filing deadline – the latter of 120 days after the last day to receive service or the date of the FCC Form 486 notification letter – will be codified as part of the FCC's rules for the E-rate program. This filing deadline rule also allows applicants to request and automatically receive a single one-time 120-day extension of the invoicing deadline. This filing deadline rule will be effective upon announcement in the Federal Register of approval by the Office of Management and Budget.

The document retention period will be extended from five to 10 years after the latter of the last day of the applicable funding year, or the service delivery deadline for the funding request. This revised document retention period rule is subject to the Paperwork Reduction Act and will become effective upon announcement in the Federal Register of approval by the Office of Management and Budget.

E-rate applicants and service providers must permit auditors, investigators, attorneys, and other appointed personnel to enter their premises to conduct E-rate compliance inspections.

USAC will work with the FCC and the Office of Native Affairs and Policy beginning in FY 2014 to develop and provide Tribal-specific E-rate training targeted to Tribal schools and libraries and to create a formal Tribal liaison at USAC to assist with Tribal-specific outreach, training, and assistance.

When the Order becomes effective 30 days after publication in the Federal Register, parties must file appeals of USAC decisions with USAC first before appealing to the FCC. Parties seeking a waiver of the FCC's rules must request the waiver directly from the FCC.

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