



Summary of Key Changes to the E-rate Program in the Sixth Report and Order

January 21, 2011

Background and ALA Activities to Date

The E-rate program provides discounts to assist public libraries and schools in the United States with obtaining affordable telecommunications, Internet access, internal connections and basic maintenance of internal connections. As designated by the Federal Communications Commission (FCC), the E-rate program is funded by the federal Universal Service Fund which is administered by the Universal Service Administrative Company (USAC), an independent, not-for-profit corporation.

The E-rate program has played a pivotal role in helping libraries connect their users to the Internet. Today, nearly all of our nation's public libraries offer Internet access to the public. This compares to 1996, when 28 percent of library systems offered public access to the Internet. The E-rate program has helped change the public library's information technology landscape.

The E-rate program continues to be a critical program for supporting library connectivity and information service needs and therefore American Library Association (ALA) remains involved in activities at the FCC related to the E-rate program. ALA routinely submits comments to the FCC on proposed program changes and reforms.¹ ALA activities are supported by the ALA E-rate Task Force, staff in the Office for Information Technology Policy (OITP), and an expert E-rate consultant. Additionally, ALA works closely with library state E-rate coordinators – who are the primary channel for disseminating information to the field. The state coordinators work in various ways in their respective states to educate local libraries about the benefits of participating in the E-rate program and to help them understand the rules that govern the program. State coordinators often provide direct assistance to applicants throughout the application process. Contact information for state coordinators is available through respective state library agencies.²

FCC Sixth Report and Order

The Federal Communications Commission (FCC) released the Sixth Report and Order to update and modernize the E-rate program on September 28, 2010. The Order includes some of the most fundamental changes to the program since its inception in 1997.³ Since release of the Order, ALA has worked diligently to review the rule changes, compare these changes to the previous program rules, and inform the library community of the resulting impact on the eligibility of various services and the application process.

ALA has made every effort to provide accurate information in this article. However, given the ongoing updates being provided about program changes, ALA recommends that applicants consult the official source for information about the E-rate program provided by the program Administrator – the Schools and Libraries

¹ See past comments here: <http://www.ala.org/ala/aboutala/offices/oitp/publications/officialfilings/officialfilings.cfm#erate>

² State library agency contact information may be found at www.cosla.org.

³ The FCC press release on the Order is at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0923/DOC-301649A1.pdf.
The full text of the Order is at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1001/FCC-10-175A1.pdf.

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Division (SLD) of USAC on their website at www.usac.org/sl.⁴ Additionally, ALA encourages applicants to consult with their State Library E-rate coordinator to address situations particular to individual libraries.

Issues Addressed in the Sixth Report and Order

The Sixth Report and Order instituted rule changes that will impact Funding Year 2011 and released the Eligible Services List. The Order addressed many of the recommendations that were made in the National Broadband Plan (NBP). Additional issues are expected to be addressed in a future Notice of Proposed Rulemaking (NPRM) that will likely be released by the FCC late in the first quarter or second quarter of 2011. The next NPRM and the resulting Order will likely impact Funding Year 2012.⁵

The intent of the FCC in the Sixth Report and Order was to upgrade the E-rate program for the 21st century. To do so, the FCC focused on areas in the program that would:

1. Improve broadband access for more schools and libraries,
2. Streamline and simplify administrative requirements, and
3. Improve safeguards against waste, fraud, and abuse.

The FCC identified existing program activities and rules that were then modified to address the three areas stated above including the following:

- technology Plans
- application Process Streamlining
- wireless Services Outside of School
- expanding Access to Low-Cost Fiber
- expanding Access for Residential Schools that Serve Unique Populations
- targeting Supported Services for Broadband
- indexing the Annual Funding Cap to Inflation
- creating a Process for Disposal of Obsolete Equipment

Within these broad categories there are specific current program components that have been changed or modified. These are summarized below:

⁴ The FCC released further clarifications and guidance related to specific concerns raised after the release of the Sixth Report and Order in September. Additionally the FCC released an erratum to amend issues in the original Order. These FCC documents are referenced at the end of the article.

⁵ The NBP was released by the FCC in March of 2010. For information about the NBP and the specific recommendations made pertaining to the E-rate program see <http://www.broadband.gov/>. The FCC created an Action Agenda (<http://www.broadband.gov/plan/broadband-action-agenda.html>) that provides a timeline of activities related to the E-rate and other FCC programs.

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Technology Plans

Priority One Services

For the purpose of the E-rate program, technology plans are no longer required to receive discounts on Priority One services. Applicants may still be required to have a technology plan for other federal, state and/or local purposes.

Priority Two Services

Technology plans are still required for Priority Two services (internal connections and basic maintenance of internal connections). However, there have been some changes to the technology plan requirements:

1. There is no longer a requirement to address the budget element in the technology plan although applicants must still have the necessary resources to make effective use of E-rate discounts, and they must have the funds necessary to pay for the non-discounted portion of the cost for eligible products and services. This requirement will be addressed through the certification process on the E-rate forms rather than in the technology plan.
2. The FCC has codified the requirement to document the “creation” or “preparation” date of the technology plan.
3. Applicants with an approved technology plan that covers at least part of the upcoming funding year at the time of the Form 470 submission (and which will later be renewed for the remainder of the funding year) will be considered compliant with the FCC rules for the purpose of having a “created” technology plan prior to the Form 470 submission if the approved technology plan includes the services which are being procured. However, if there are new services being procured, then a technology plan covering all 12 months of the funding year must be “created” or “prepared” prior to the Form 470 submission.

Eligible Services List

The Sixth Report and Order adopted the FY 2011 Eligible Services List (ESL) and also addressed some administrative changes to the ESL process:

Administrative Changes

USAC is now required to submit any ESL proposed changes to the FCC by March 30, fifteen months prior to the start of the funding year. By setting this deadline much earlier than before, the FCC will be able to release the ESL earlier thereby enabling applicants to have certainty about eligible services as they enter the procurement process. The public will continue to be able to provide comment on future ESLs. The FCC also took steps to ensure that a complete list of eligible products and services will now only be listed in the ESL rather than in a variety of places, such as in FCC Rules or on the SLD website.

Eligible Services Changes

There were significant comments on the eligibility of Web hosting that led the FCC to leave Web hosting on the ESL as an eligible Priority One service.

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Dark and Lit Fiber Optics and Providers of Products/Services

The FCC made several significant changes in the Order related to the use of fiber optic technology. These changes fall into two major categories:

1. The type of services that can now be supported by E-rate, and
2. The types of providers who can offer these products/services.

Depending on the choices made by applicants after evaluating bid responses, these changes may also impact the way in which E-rate discounts are requested.

Types of Fiber Optic Solutions Supported by E-rate

The use of fiber optic technology to provide services (lit fiber) has always been eligible under the E-rate program when those services are provided by an eligible telecommunications services provider. In this Order, the FCC has also determined that leased dark fiber will also be eligible if that fiber is lit immediately. The E-rate program rules remain regarding the selection of the most cost-effective solution.

Providers of Products/Services

In an effort to further expand opportunities to obtain access to the benefits of fiber optic technology, the FCC revised the program to allow both telecommunications services providers and non-telecommunications services providers to provide both lit and dark fiber. Non-telecommunications services providers may include such entities as research and education networks, regional, state, or local government entities or networks, non-profit or for-profit providers and utility companies.

Impact on Application Preparation

For the reasons identified below, applicants may wish to check both the “Telecommunications Services” category of service and the “Internet Access” category of service when filing FCC Form 470 to begin the competitive bidding process.

After completing a fair and open competitive bidding process and evaluating responses for the most cost effective solution, applicants will file for discounts based on the *type of provider* providing the product/service.

- For those applicants seeking leased dark or lit fiber solutions from an eligible telecommunications services provider, they must check the “telecommunications services” category of service on the Form 471.
- At least for Funding Year 2011, for those applicants seeking dark or lit fiber solutions from a non-telecommunications services provider, they must check the “Internet access” category of service (even if those services do not include Internet access).

Caution!

Because of the many nuances involved in applying for these new opportunities, both new and experienced applicants should carefully review the FCC guidance provided in the documents referenced at the end of this article before completing their application processes. Applicants should also carefully review the Form 470 and Form 471 and the corresponding instructions before filing since both the forms and instructions have changed.

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Indexing the Funding Cap to Inflation

The FCC recognized the funding cap (\$2.25 billion) on the E-rate program inadequately addressed the demand of applicants on the fund. Beginning in FY 2010 the funding cap will be indexed for inflation based on the Domestic Product chain-type price index that the FCC already uses for other purposes. During times of zero inflation or deflation, the funding cap will remain the same as the previous year. Beginning with Funding Year 2010, the cap will be raised to \$2,270,250,000 or an increase of over \$20 million.

The FCC will announce in the Federal Register the percentage increase from the previous year to the nearest 0.1 percent within 60 days of the annual Gross Domestic Product-Consumer Price Index (GDP-CPI) (Any rollover funds are in addition to any increase due to inflation adjustments).

Codifying Fair and Open Competitive Bidding Process

In an effort to reduce instances of waste, fraud, and abuse, the FCC codified the current fair and open competitive bidding requirements. All potential bidders must have access to the same information and be treated in the same manner throughout the procurement process. The FCC provided examples of rule violations in the Sixth Report and Order. These include but are not limited to:

- Applicant has relationship with the service provider that unfairly influences the outcome of the competition or provides them with “inside” information,
- Service provider is listed as the contact on the Form 470 and the provider is allowed to bid,
- Service provider prepares applicants’ Form 470 or participates in the bid evaluation or vendor selection process in any way,
- Applicant turns over the competitive bidding process to a service provider, or
- Applicant does not describe the desired products and services with sufficient specificity to enable interested parties to bid.

The FCC also addressed potential rule violations related to the receipt of gifts by applicants from service providers or potential service providers. The Sixth Report and Order makes clear that applicants must follow the rules that are the stricter whether they are the local, state, or FCC gift rules. There are exceptions such as:

- Modest refreshments not part of a meal, and
- Items of little or no intrinsic value.

Items that are worth \$20 or less as long as those items do not exceed \$50 per funding year per employee from any one service provider will not be considered rule violations.

Pilot Program EDU2011

The FCC released a Public Notice describing a limited pilot program (E-rate Deployed Ubiquitously or EDU2011) for off-site connectivity and soliciting applicants on November 8, 2010. The deadline for applications was December 17, 2010. The FCC will select winners and notify USAC. The selected applicants will then be required to go through the normal E-rate discount application process to obtain discounts on these services. These applicants will not be required to cost-allocate Internet access provided off-premise but applicants will still be required to pay the non-discounted portion of the services requested.

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Disposal of Equipment

The Sixth Report and Order, for the first time, addressed the disposal of equipment for payment or “other consideration,” but no sooner than five years after the equipment is installed. The FCC regards the five-year term as being the useful life for any equipment subsidized with E-rate funds for the purpose of disposal. Schools and libraries do not have to notify the SLD of the equipment resale or disposal and applicants are not required to keep a record of the disposal for a period of five years following the disposal but recommends updates to the entity’s asset register. Entities are encouraged to donate or recycle their obsolete equipment when feasible. To that end, the FCC directed SLD to make available on its website a current list of donation and recycling locations for telecommunications equipment. This information has not yet been made available.

Community Use

“Non-instructional facilities” is a term that generally impacts schools but also includes library administrative buildings that might otherwise be eligible for Priority One services. These facilities may be opened up for community use in the same way that schools open up their facilities for after-hours community access. E-rate eligible services do not need to be cost allocated out for such use at these types of facilities. However, after-hours use may not use additional connectivity or other additional E-rate services over and above what is required for educational purposes.

Additional Information and Guidance from the FCC

Erratum on the Sixth Report and Order can be found here:

http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1108/DOC-302690A1.pdf .

The Order discussing basic maintenance and newly codified program gift rules are available here:

http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1215/DA-10-2355A1.pdf.

A list of effective dates and frequently asked questions is available here:

http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1215/DA-10-2356A1.pdf.

Remember, for the most accurate and up-to-date information regarding program rules and guidance see the SLD website:

<http://www.usac.org/sl/>.