

A Summary of Major Changes to the E-rate Program from the December 11 FCC Report and Order



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Background

In July 2013 the Federal Communications Commission (FCC) initiated the most comprehensive review and reform of the E-rate program since its inception in 1997. As a result, the Commission adopted two major E-rate Orders—in July and December 2014.¹ The challenge ahead for all E-rate stakeholders is to ensure that the Orders' many reforms and changes ultimately benefit our libraries and schools and the people they serve.

As part of its review the FCC issued several public notices seeking comments from E-rate participants, providers, and other interested parties. The American Library Association (ALA) submitted formal comments to the FCC,² and staff in ALA's Washington Office had numerous contacts with FCC commissioners and staff over the past 18 months advocating for E-rate improvements. ALA also collaborated with other library and non-library groups seeking common ground on program changes.

Summary of the FCC's December 2014 E-rate Order

This summary provides a high-level overview of the 76-page Order, focusing on four key changes in the E-rate program:

- 1) Ensuring all libraries and schools have access to high-speed broadband connectivity.
- 2) Increasing the E-rate fund by \$1.5 billion annually.
- 3) Taking actions to be reasonably certain all applications will be funded.
- 4) Correcting language in the July Order that defined many rural libraries and schools as "urban," thus reducing their discounts.

1) *Ensuring all libraries and schools have access to high-speed broadband connectivity*

The July Order focused on changes to help ensure sufficient funding for *internal* broadband connectivity inside library and school buildings (i.e., E-rate Category 2).³ The December Order focused on ensuring adequate and affordable *external* high-speed broadband connectivity to library and school buildings (i.e., E-rate Category 1). Over the past 18 months the FCC collected considerable broadband data from various sources,

ALA supports the E-rate's increased focus on high-capacity broadband availability and affordability. —ALA comments to the FCC, September 2013.

including ALA. For example: "ALA's data underscores the gulf between where libraries are today and the [FCC's] gigabit goal; half of all of America's public libraries report connection speeds less than 10 Mbps—which is just one percent of the goal!"⁴ Considering this well documented need, the FCC's December Order made several important changes in the E-rate rules to facilitate and encourage broadband build-out and more affordable costs for ongoing broadband connectivity. These changes include:

- **Removing the multi-year amortization requirement for broadband build-out (§17).**⁵ During the past 15 years the E-rate program has required applicants requesting non-recurring charges for broadband build-out (e.g., trenching of fiber) of more than \$500,000 to amortize those costs over at least three years. This was done because of concerns that if large requests were wholly funded in a single year they could

¹ See the [FCC E-rate website](#) for links to the Orders and other information on the E-rate reform process.

² These comments are linked on the ALA's [Office for Information Technology Policy \(OITP\) website](#). The FCC received over 2,800 comments on the E-rate reform process.

³ An ALA summary of the July Order is linked on the ALA Dispatch site at <http://www.districtdispatch.org/2014/07/176-pages-many-hours-distilled-summary-july-11-e-rate-order/>.

⁴ See page 7 of ALA's comments filed with the FCC in September 2014 available at, <http://apps.fcc.gov/ecfs/document/view?id=7522678477>.

⁵ References in parentheses refer to specific paragraphs in the Order where more information can be found.

use a significant amount of the E-rate fund. However, the additional \$1.5 billion in funding (see below) alleviates much of this concern. Also, ALA and other commenters indicated that the amortization requirement may deter some applicants from committing to large-scale broadband build-out projects. Considering these factors the Commission suspended the need to amortize large broadband build-out requests for funding years 2015 through 2018. It will review the impact of this rule change on the E-rate fund after 2018.

- **Allowing multi-year payment of capital costs for broadband build-out (§22).** Since the program’s inception participants were required to pay their non-discounted share of an E-rate eligible service within 90 days of delivery of service. Starting in 2016 applicants can pay their non-discounted share over a four-year period instead. This change only applies to “special construction charges”⁶ associated with bringing high-speed broadband connections to the library or school building. Applicants considering this multi-year option must include this request in any bid documents and on their Form 470s. Service providers do not have to accept this multi-year payment arrangement (§24).
- **Equalizing the treatment of lit and dark fiber (§29).** E-rate regulations have given preference to lit fiber over dark fiber. However, the FCC now acknowledges that dark fiber can be a viable option for some applicants, and it cites data showing that dark fiber can also cost significantly less than lit fiber (§30). Thus, beginning in the 2016 funding year, the FCC will place “dark fiber on an equal footing with lit fiber” and will allow E-rate to fund special construction charges for leased dark fiber. The E-rate’s competitive bidding rules still apply. That is, the price of a dark fiber service must be the primary factor in selecting a winning bid. Also, if an applicant is seeking E-rate funding for dark fiber services it must also solicit proposals seeking such funding for lit fiber services (§39).
- **Allowing construction of applicant-owned fiber (§43).** Current E-rate regulations do not allow applicants to receive E-rate funding for special construction costs to install fiber that the library or school will own. In other words, the fiber—whether lit or dark—must be provided by a third party. However, beginning in 2016, the FCC will remove this prohibition and allow E-rate funding to be used for self-construction, but only when this is demonstrated to be the most cost-effective option after competitive bidding (§47). The FCC assumes that providers who offer fiber-based services to a library or school will likely have the most cost-effective pricing, but this may not always be true (§53). Cost-effectiveness can be evaluated based on the total cost of ownership over the useful life of the facility. Using this criterion, the self-construction option may be the most cost effective option over the long-term vs. broadband services leased from a third party provider via a long-term contract.
- **Providing greater discounts if states offer matching funds for broadband build-out (§55).** In recognizing that many state governments have an important role in stimulating broadband connectivity, the Commission’s Order includes an increase in an applicant’s E-rate discount of up to 10% to pay for special construction charges for high-speed broadband. This increase, to start in the 2016 funding year, is based on a matching contribution from the state.⁷ For example, a library with a 60% discount will receive an additional 10% from the E-rate fund if the state also contributes 10%. (This increases the library’s discount to 80%.) States may contribute more than 10%, but the E-rate program’s limit will be 10% of the cost. To ensure this increased funding will promote sufficient connectivity, only projects that meet the broadband capacity goals⁸ the FCC adopted in July 2014 will be eligible for matching funds (§59).

⁶ The FCC’s Order often references “special construction charges.” This refers to costs incurred to build out fiber connections from a library or school building to an off-premises fiber network interconnection point. These costs can include: design and engineering costs, project management costs, fiber costs, and the trenching or aerial installation of the fiber itself.

⁷ For libraries and schools under tribal jurisdiction, tribes can use their own funds or funds from other federal agencies for the matching contribution.

⁸ Libraries that serve fewer than 50,000 people must have broadband speeds of at least 100Mbps, and libraries that serve over 50,000 must have speeds of at least 1Gbps. The broadband capacity goals for schools are at least 100Mbps per

- **Ensuring affordable broadband in rural, high-cost areas (§60).** The *Connect America Fund* is another federal universal service program, which offers subsidies to providers who offer telecommunications services in rural, “high-cost” areas of the country.⁹ The December E-rate Order includes a requirement that by 2016 providers who receive this subsidy must also respond to an E-rate applicant’s Form 470 request for broadband or Internet services. The Order also requires providers to offer rates to rural libraries and schools that are “reasonably comparable” to rates charged in urban areas (§66). To help ensure this requirement is met, the FCC will develop national price benchmarks for library and school broadband services. Providers must also meet the bandwidth speed goals established in the July Order (see footnote #8); although in some instances they are given several years to do so.

Virtually all rural libraries do not come close to meeting the FCC’s high-capacity broadband goals. –ALA comments to the FCC, September 2014.

2) Increasing the E-rate fund by \$1.5 billion annually

- **Increasing the E-Rate fund (§77).** One of the most significant changes in the December Order was to increase the fund by \$1.5 billion annually starting in 2015. This means the current \$2.4 billion will increase to \$3.9 billion, plus annual inflationary adjustments.¹⁰ Except for inflationary increases the past four years, the E-rate fund has not been increased since the program started in 1997. And yet each year libraries and schools request about \$2 billion more in funding than is available. Thus this funding change is needed and justified. Also, while the FCC expects to save over \$800 million annually by eliminating and phasing out various services it acknowledges that library and school bandwidth demands will outpace program savings.

3) Taking actions to be reasonably certain all applications will be funded

For the past two program years no Category 2 applications have been approved because of insufficient funds. And for the first time in 2014, demand for Category 1 services exceeded the \$2.4 billion funding cap. The practical effect of this was considerable uncertainty among applicants on whether their applications would be funded. To address this issue, the December Order both increased the fund by \$1.5 billion and took the following actions:

- **Ensuring certainty for applicants seeking Category 2 services (§82).** In the July Order the Commission implemented major changes in how Category 2 requests are funded, but the changes were only for 2015 and 2016. Based on many comments it received the Commission acknowledged that this created some doubt about program funding beyond 2016. Thus the Commission extended the C2 changes through the 2019 funding year. As part of this extension the FCC also set a \$1 billion annual target amount for C2 applications through 2019. Based on its research it believes that this amount of funding should be sufficient to meet library and school demand over the next five years. The December Order also increased the C2 funding formula for urban libraries from \$2.30 per square foot of the library building to \$5 per square foot. Approximately half the library outlets nationwide will benefit from this change.¹¹ In another action to create more program certainty the FCC said that basic maintenance, managed wi-fi, and caching will be C2 eligible services through 2019.

1,000 students and staff in the short term and 1Gbps Internet access per 1,000 users in the long term. For more detailed information see paragraphs 22-62 in the [FCC’s July E-rate Order](#).

⁹ More information is available at <http://www.fcc.gov/encyclopedia/connecting-america>.

¹⁰ The added \$1.5 billion is separate from the \$1 billion the FCC has targeted for C2 funding in 2015 and another \$1 billion for C2 in 2016.

¹¹ The FCC determined that libraries in IMLS library locale codes #11, 12 and 21 will qualify for this increase. See footnote 212 in the Order for a definition of these codes or see pages 15-16 in the IMLS document [Data File Documentation Public Libraries Survey Fiscal Year 2012](#).

- **Meeting applicants’ needs for Category 1 support (§101).** Based on the FCC’s own research and the research of other organizations there is a clear recognition that demand for Category 1 funds—primarily for broadband connectivity—will continue to increase. As stated above, this was a primary reason for increasing the fund. The Order states that this fund demand will be driven by two key factors: (1) requests to support non-recurring infrastructure upgrades (e.g., trenching of fiber); and (2) requests to support the ongoing, recurring costs for ever higher bandwidths.¹² In trying to determine the scope of this increased demand the FCC reviewed broadband speed and cost data collected from states and other sources, and research reports sponsored by various organizations.¹³ The FCC summarized much of this broadband data in a [November 2014 E-rate Update report](#). At the risk of oversimplification, the FCC believes that by eliminating and phasing out support for some services (e.g., voice telephony) and imposing “budget discipline” on Category 2 services, that the increased funding cap of \$3.9 billion will be sufficient to fund all Category 1 (and C2) demand through the 2019 funding year.¹⁴

4) *Correcting language in the July Order that defined many rural libraries and schools as “urban,” thus reducing their discounts*

- **Urban and rural designations (§136).** In some instances the E-rate program provides a 10% discount increase for libraries and schools in rural areas vs. those in urban areas. But in its July Order the FCC changed the definition of what constitutes “rural” and “urban.” The result was that many communities over 2,500 population, which were previously “rural,” were now considered “urban.” Thus thousands of libraries and schools in these communities lost their 10% discount increase. Through the concerted efforts of many organizations, including ALA, the December Order addresses this issue and now the urban designation only applies to libraries and schools in communities over 25,000 population. The net result is that most libraries and schools will not see any change in their rural/urban designation.

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As FCC Chairman Tom Wheeler stated at the Commission’s December 11, 2014, meeting:

“Today is just the end of the beginning of our effort to get true high-speed broadband to all of the nation’s schools and libraries. In the months ahead, there will be a lot of heavy lifting to implement these changes by Commission staff, by our friends at USAC, education and library organizations, and by schools and libraries across the country.”¹⁵

The ALA accepts the Chairman’s challenge. Working with its E-rate Task Force and other library stakeholders, the association remains committed to helping our nation’s public libraries take full advantage of these significant E-rate reforms. For more information, please visit <http://www.ala.org/advocacy/telecom/erate>.

¹² Non-recurring infrastructure upgrades are capital expenditures often referred to as CAPEX. Ongoing, recurring costs for bandwidth are operating expenditures, often referred to as OPEX.

¹³ For example, see the broadband reports filed with the FCC by the [Education SuperHighway](#) (ESH) and the [Schools, Health, and Libraries Broadband](#) (SHLB) coalition.

¹⁴ Every year there are also some E-rate funds requested that are not used. For example, a library may decide not to implement a local network upgrade that had been approved for E-rate funding. These funds are then classified as “rollover” funds that can be used in subsequent years.

¹⁵ See the Chairman’s comments on page 93 of the December Order at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1219/FCC-14-189A1.pdf.