

FCC Initiates Proceeding to Upgrade E-Rate Program

Legal Alert
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The FCC has released a Notice of Proposed Rulemaking (NRPM) in order to upgrade the E-rate program (more formally known as the schools and libraries universal service support mechanism), the second largest component of the Universal Service Fund (USF). See *In the Matter of Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, FCC 10-83, Notice of Proposed Rulemaking (rel. May 20, 2010).

In the NPRM, the FCC seeks comment on several potential reforms that would cut red tape by eliminating rules that have not effectively served their intended purposes, while continuing to protect against waste, fraud, and abuse. The reforms proposed in the NPRM fall into three conceptual categories: streamlining the E-rate application process, providing greater flexibility to choose the most cost-effective and educationally useful broadband services, and expanding the reach of broadband to the classroom.

In particular, the FCC seeks comment on a package of potential reforms to the E-rate program that could be implemented in funding year 2011 (July 1, 2011 – June 30, 2012). These proposed reforms include:

- streamlining the application and competitive bidding processes for telecommunications and internet access in an effort to further reduce the administrative burden on applicants, while at the same time maintaining appropriate safeguards to mitigate potential waste, fraud, and abuse;

- codifying the requirement developed in FCC precedent that competitive bidding processes be “fair and open” to enhance the FCC’s ability to enforce its rules in cases involving waste, fraud and abuse;

- simplifying the way schools calculate their discounts and conforming the E-rate definition of “rural” to the Department of Education’s definition;

- supporting 24/7 online learning by eliminating the current rule that requires schools to allocate the cost of wireless Internet access service between funded, in-school use and non-funded uses away from school premises;

- providing greater flexibility to recipients to choose the most cost-effective bandwidth solutions for their connectivity needs by allowing the leasing of low-cost fiber from municipalities and other entities that are not telecommunications carriers;

expanding the reach of broadband in residential schools that serve populations facing unique challenges, such as Tribal schools or schools for children with physical, cognitive, or behavioral disabilities;

creating a new, predictable funding mechanism for internal connections so that more schools and libraries have the ability to use the most technologically advanced applications, including video streaming to the classroom, to provide superior learning opportunities;

indexing the current \$2.25 billion cap on E-rate disbursements to inflation to maintain the purchasing power of the current program and enable continued support for high speed broadband and internal connections in the future; and

creating a process for schools and libraries to dispose of obsolete equipment without running afoul of the prohibition on reselling equipment and services purchased using E-rate funds.

Comments in this proceeding are due 30 days from publication in the Federal Register. Reply comments are due 45 days from the publication in the Federal Register.