

FCC Proposes Sweeping E-Rate Changes in Newest Broadband Plan Proposal

On May 20, 2010, the Federal Communications Commission published a Notice of Proposed Rulemaking (“NPRM”) to implement E-Rate changes envisioned in the National Broadband Plan which the Commission had sent to Congress in March. This NPRM is just one in a series of universal service rulemakings to further the goals of the National Broadband Plan. The proposed changes fall under four headings: (i) Streamlining the Application Process; (ii) Providing Greater Flexibility to Select Broadband Services; (iii) Expanding the Reach of Broadband to the Classroom; and (iv) Creating a Process for Disposal of Obsolete Equipment.

I. Streamlining the Application Process

The Commission offered several time-saving proposals, including a pitch to eliminate the technology plan requirements for schools that are also regulated by state or local technology plan requirements, when they apply for Priority I services. The Commission sought comment on the appropriateness of this measure, and whether “larger” telecommunications and Internet service users should still be subject to an E-Rate technology plan, as they might have a greater variety of options for broadband connectivity. Also proposed was the elimination of the requirement that applicants file a Form 470 and then wait 28 days after posting it before signing a contract for E-Rate services, but only for those applicants that are subject to other public procurement rules, and only when they apply for Priority I services. Finally, the Commission sought comment on proposed enhancements to the online application process and, in light of those potential enhancements, whether it should require all applicants to apply for E-Rate funding online. New competitive bidding rules were proposed for all applicants, codifying the requirements that applicants seek competitive bids for Priority I services (in accordance with state and local rules) and Priority II services. The Commission provided an illustrative list of conduct that would break the rules, including applicants:

- Turning over responsibility to competitively bid a contract to a service provider.
- Allowing employees or board members to serve on the board of any service provider that participates in the E-Rate program in the same state.
- Allowing employees to have an ownership interest in a vendor seeking to provide products or services.

Also proposed were new rules requiring applicants to describe requested products and services with specificity; identify the correct category of service on the Form 470; and remain in control of the 470 preparation and submission process, in part by appointing an authorized representative serving as contact person. The rules would prohibit service providers from inappropriate contact during preparation of the Form 470, bid evaluations, or vendor selection. The Commission sought comment on changes in discount calculation, as well, proposing to abandon the weighted average method for school buildings in favor of using the average discount rate for the entire district. Another key change would alter the definition of “rural” to conform it to the Education Department’s National Center for Education Statistics’ locale codes.

II. Providing Greater Flexibility to Select Broadband Services

In a departure from its precedent, the Commission included in the NPRM a proposal to support wireless Internet access service off of school property for certain students who live at school. The Commission limited its offer to students who live at their schools because of geographic challenges or in order to receive specialized instruction, and noted that CIPA requirements would still apply to E-Rate funded Internet usage, even if it was off-campus. The Commission requested comment on whether acceptable use policies should be required in such circumstances and whether residents of the households of students should be allowed to use the Internet access for educational purposes.

The Commission also sought comment on:

- Whether applicants should be permitted to receive support for the lease of unlit fiber from third parties that are not telecommunications carriers.
- Whether schools that serve unique populations should receive E-Rate funding for Priority I and Priority II services delivered to residential areas (such as dormitories).
- Methods to reallocate funding to better satisfy the educational needs of students. The Commission requested feedback on whether specific Priority I or Priority II services should receive a lower priority in order to target funding toward higher bandwidth connectivity.

III. Expanding the Reach of Broadband in the Classroom

Acknowledging that insufficient funding for Priority II services has been a problem since the E-Rate program's inception, the Commission sought comment on how to ensure that Internal Connections are provided to more schools and that a predictable amount of funding is available for Internal Connections to those schools each year. The Commission sought comment on a variety of methods for achieving these goals, including the elimination of funding for Basic Maintenance of Internal Connections. Other methods include:

- Establishment of a per-student cap on funding for Internal Connections, with the possibility of a minimum funding amount not tied to the number of students.
- A distinct sum to be set aside for Internal Connections before Priority I funding is allocated. The Commission also sought comment on what the discount threshold should be for any revised methodology for Internal Connections funding.
- A revised Priority II discount matrix designed to allow more schools to obtain funding for Internal Connections.
- Elimination of the 2-in-5 rule.
- Requiring school districts, instead of individual schools, to apply for Internal Connections.

The Commission also proposed to tie the E-Rate program funding cap to the rate of inflation going forward.

IV. Creating a Process for Disposal of Obsolete Equipment

Finally, the Commission proposed the creation of a process by which schools can dispose of obsolete equipment for payment. The proposal includes four possible conditions. The equipment must be at least 5 years old and must have “exhausted its useful life.” It must be formally declared to be “surplus” by the school. The school must inform USAC 90 days after it disposes of the equipment, and it must keep a record of the disposal for 5 years. Finally, the disposal process must comply with state and local rules. To help the Commission track the use of equipment, the Commission further proposed that FCC Form 500 be revised to require schools to report the disposal of all equipment purchased with an E-Rate discount, if it was sold or given for some other consideration.

Comments in this proceeding are due 30 days after publication of the Order and Notice of Proposed Rulemaking in the Federal Register; with all reply comments due 15 days later. All filings should refer to CC Docket No. 02-6 and GN Docket No. 09-51.

Please contact [Sarah Miller](#) or [Mark Palchick](#) or a member of the [Communications Practice Group](#) if you have any questions regarding this alert.

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