

Overview
E-rate Notice of Proposed Rulemaking
Modernizing the E-rate Program for Schools and Libraries
FCC 13-100, Order released July 23, 2013
Initial Comments due September 16, 2013
Reply Comments due October 16, 2013

Overview of NPRM:

The Order mainly consists of ideas and questions on which the FCC seeks comment and data. There are 616 questions and 357 conceptual items on which the FCC seeks comment.

Commenting parties can address select areas and are not required to comment in response to every question or idea.

Comments should track the organization of the NPRM and include a table of contents no matter how brief the comments are.

The NPRM is divided into six major sections:

- I. Introduction
- II. Goals and Measures
- III. Ensuring schools and libraries have affordable access to 21st century broadband that supports digital learning
- IV. Maximizing the cost-effectiveness of E-rate funds
- V. Streamlining the administration of the program
- VI. Other outstanding issues

The following summary provides the highlights of each of the six sections and relies on the numbering in the NPRM. Paragraph references are in parentheses).

I. INTRODUCTION

II. GOALS AND MEASUREMENTS (¶¶13-55)

- A. Introduction
- B. Ensure schools and libraries have affordable access to 21st Century broadband that supports digital learning. Possible measurements of this goal include among others: measuring the educational impact of high capacity broadband in the classroom, SEDTA's proposal to have 100 mbps per 1000 users increasing to 1 gig per 1000 users, whether there should be wireless network connectivity bandwidth targets and what they should be; whether affordability should be measured by adoption rates; whether applicants should have to implement measures such as installing monitoring equipment to identify how much bandwidth they are actually using. (¶¶17-40)
- C. Maximize the cost-effectiveness of E-rate. Possible measurements of this goal include among others: tracking of prices and speed of broadband connections; cost per student and costs of products and services in comparison with other costs for products and services available in the marketplace. (¶¶41-44)

- D. Streamline the administration of the program. Possible measurements of this goal include among others: additional metrics for USAC to achieve (¶¶ in addition to reporting on application and invoice processing and resolution of appeals) such as time line or deadline for making Priority 1 funding commitments; commitments versus disbursements, administration costs; measure the number of students and patrons served with E-rate funding over a specified point in time and compare this number to other federal programs such as BTOP; should there be a third party review of the barriers of schools and libraries to participating in E-rate; should applicants' administrative costs of E-rate participation be reported. (¶¶45-51)
- E. Although not specifically a goal, the FCC asked for comments about what kind of data collection should be implemented of applicants and service providers to track these goals; and what kinds of revisions to forms should be made to collect useful data for measuring the goals and last, what definitions should be adopted for measuring the goals. (¶¶52-55)

III. HOW TO ENSURE SCHOOLS AND LIBRARIES HAVE AFFORDABLE ACCESS TO 21ST CENTURY BROADBAND THAT SUPPORTS DIGITAL LEARNING.

A. Background

B. Focusing E-rate Funds on Supporting Broadband to and within schools and libraries(¶¶67-89):

1. Funding for Broadband Connections

- FCC wants to know whether fiber generally is the most cost-effective and future proof way to delivery high capacity broadband to community anchor institutions like schools and libraries or are there other technologies that are also efficient and cost effective. (¶¶67-70)
- Propose to make dark fiber eligibility consistent with lit fiber so that special construction charges for DF build-out and for DF modulating electronics are eligible for Priority 1 support. (¶¶71-72)
- They ask about the terms for amortizing large construction charges. Should the requirement continue that these charges be spread out over three or more years? (¶73)
- Should support for fiber build-out spending be subject to any limits? (¶74)
- Should some E-rate support be dedicated to prioritizing special construction charges to deploy broadband to schools and libraries? (¶¶75-78)
- Should states/tribal governments be involved with determining priority for the broadband dedicated funds? (¶¶¶¶76)
- Should the *purchase/build-out of WANs* be funded through E-rate when it is more cost effective to build rather than to lease the service? (¶79)
- They want information about which schools and libraries do not have sufficient internal connections within buildings to provide high capacity broadband. (¶83)
- They want to know what the most efficient architecture is to provide broadband within buildings. Should it be wired or wireless connections? (¶84)
- Should the Eligible Services List be amended to include additional equipment that is needed for broadband connectivity within buildings? (¶85)
- Should filtering software necessary for CIPA compliance be made eligible? (¶86)
- How much are the monthly recurring costs for high capacity broadband services (¶88)
- Can the FCC do anything to reduce recurring costs over time by altering any of its policies such as funding a maximum per mbps price for service, changing the competitive bidding requirements, etc? (¶89)

2. Phasing down support for certain services (¶¶90-114)
 - Should paging and/or directory assistance be phased out of E-rate support? (¶¶92-94)
 - FCC proposes to phase out support of components of voice services such as custom calling features, inside wiring maintenance plans, call blocking, 800 # services and text messaging. (¶95)
 - Should FCC not fund any service that “rides over” the network, such as email and web hosting? (¶¶96-98)
 - Should “educational purpose” definition be narrowed so that services only qualify for E-rate if they are used for the core purpose of educating students and serving library patrons, and services used for administrative purposes would not qualify? (¶¶99-100)
 - Should the FCC phase out support for basic maintenance of internal connections? (¶101)
 - Should support be phased out for cellular data plans and air cards and/or deprioritize support for these services, since they are more expensive than a LAN based service? (¶102)
 - Should other items on the Eligible Services List that are not directly related to high-capacity broadband be ineligible? (¶¶103-104)
 - Should all voice communications services be phased out of support, and if so when and how, or should voice communications services continue to be funded but at a lower priority or lower discount? (¶¶105-114)

- C. Ensuring Equitable Access to Limited E-rate Funds (¶¶115-162)
 1. Modify discount matrix (¶¶117-125): Several different ideas were floated, including a flat discount of 65% for all applicants (like the Rural Health Care program); reduce maximum Priority 2 discount to either 70% or 75%, or use the applicant’s NSLP percentage and add 20% for urban applicants and 25% for rural applicants.
 2. Support based district-wide eligibility and application by school district (¶¶126-132): Instead of using a weighted average by school building, the district’s discount would be calculated as the number of NSLP eligible students divided by the number of enrolled students. This percentage would then be correlated to the E-rate discount matrix and the E-rate discount would be applicable to all buildings in the district. This would greatly reduce the amount of information that applicants would have to report on Block 4 of form 471. Also should districts apply for Priority 1 and Priority 2 services and equipment for all buildings in a district rather than by individual school? (which is often how Priority 2 funding is requested at the present time)
 3. More equitable funding for rural schools and libraries (¶¶133-134): The definition of rural would be revised based on the NCES rural definition. Should the differential between the urban and rural discount be higher, so as to increase the rural discount?
 4. Setting budgets or limits (¶¶135-142): Should there be a funding cap for each applicant computed on a per-student or per-building basis? If so how much should those limits be?
 5. More equitable funding for internal broadband connections (¶¶143-148): Should the priority 1 and 2 system be eliminated, or should there be a cycle for applying for Priority 2 funding so that all applicants regardless of discount level can obtain periodic Priority 2 funding, or should some other system replace the current process?
 6. Simplified allocation of funds to all schools and libraries (¶¶149-162): Should the entire process be modified to eliminate discounts and competitive bidding and each applicant would receive a fixed budget at the beginning of the funding year and could spend the money on any eligible services. If so, how should the budget be computed for each applicant, and how would consortia applicants be affected? How would forms be revised and what reporting requirements should be established?

- D. Lowering net build out costs and identifying additional funding to support broadband to schools and libraries (¶¶163-176): The FCC asked how they can encourage private-public partnerships to facilitate fiber availability to E-rate applicants. Also should E-rate allocations be coordinated with other universal service programs so that perhaps those programs would pay for infrastructure build-out costs? Also should the funding cap be increased temporarily or permanently to achieve the FCC's goals announced in the order?

IV. MAXIMIZING COST EFFECTIVENESS OF E-RATE FUNDS (¶¶177-223)

- A. Background (¶¶177-178)
- B. Increasing consortium purchasing (¶¶179-185): Do consortia reduce costs and how should the FCC encourage more consortia?
- C. Encouraging other types of bulk buying opportunities (¶¶186-190): Should applicants be required to buy from state or regional master contracts or should the FCC or USAC establish a bulk buying program?
- D. Increasing transparency (¶¶191-201): Should more information about bids and prices be publicly available in an effort to drive down prices and aid with E-rate program oversight? Should technical assistance be offered by USAC to help applicants figure out cost effective pricing options and/or planning and procuring cost effective networks.
- E. Improving competitive bidding process (¶¶202-210): How can the FCC ensure prices are cost effective when an applicant does not receive any bids in response to a Form 470? Does the current system provide enough information to vendors to formulate bids? Should there be an exemption from the E-rate competitive bidding requirements if the applicant is compliant with state and local competitive bidding requirements? Should all state master contracts automatically be deemed E-rate eligible even if they were not procured under the E-rate competitive bidding system? Should the deadline for signing contracts with vendors be revised to make it easier to comply with E-rate deadlines? Does the lowest corresponding price requirement work?
- F. Efficient use of funding (¶¶211-216): How can the FCC ensure that applicants are not receiving support for expensive services that provide functionality that they do not need and will not use and that applicants are not selecting expensive Priority 1 services simply because they are supported services when less expensive services would fill the same need. Should there be bright line tests, benchmarks or formulas for determining the most cost-effective means of meeting applicants' technology needs? If so what should they be? How should the FCC monitor whether applicants are using all of the services for which funding was requested?
- G. Broadband planning and use (¶¶217-219): Should there be a formal assessment and review of broadband needs undertaken before submitting a funding application? Are there lessons learned from eliminating the technology plan requirement for Priority 1 services?
- H. Innovative approaches to encourage maximum efficiency (¶¶220-223): Should the FCC fund or establish pilot programs to develop best practices for cost effective procurements?

V. STREAMLINING E-RATE ADMINISTRATION (¶¶224-269)

- A. Electronic filing of forms (¶¶227-231): Should all forms and correspondence be processed and submitted electronically and available for stakeholders to access online?
- B. Increasing transparency of USAC's processes (¶232): Should USAC provide more status and other processing information about forms that are under review?
- C. Speeding review of applications, commitment decisions and funding disbursement (¶¶233-247): FCC proposes that USAC undertake a risk assessment to ascertain business practice and

internal control revisions to appropriately address risks and better align program resources to risks. Should deadlines be established for USAC? How should the application process be expedited? Should there be limited opportunities for applicants to interact with and respond to questions from USAC in order to speed up processing time? Are there cost allocation processes that are time consuming and complex and that could be removed? Multi-year contracts of three years or less could be applied for in a single year form 471 application. Should there be multi-year commitments for multi-year contracts? Should there be contract term limits and if so should any services be exempt from those term limits?

- D. Simplifying the Eligible Services List (¶¶248-251): Create list of services without regard for regulatory classification of telecommunications and Internet access service.
- E. Funding recovery considerations (¶¶252-253): Are there situations where a program infraction does not warrant full recovery of funding and some other less punitive measure would be warranted?
- F. Effective disbursement of unused funding (¶¶254-258): What changes can be made to reduce the amount of committed but unused funding?
- G. Invoicing and disbursement process (¶¶259-265): Should applicants be able to receive direct BEAR payments and should Form 473 be eliminated and its purpose incorporated into Form 472. Should invoice deadlines and extension procedures be codified in rules?
- H. Streamlining E-rate appeal process (¶¶266-269): What changes can be made to improve the processing of appeals. Should there be less opportunities for appeals (¶¶first at USAC, then at the FCC WCB level and then to full Commission?

VI. OTHER OUTSTANDING ISSUES (¶¶270-329)

- A. CIPA (¶¶271-275): Are laptops, netbooks with Internet access, smartphones, and Internet enabled e-readers considered computers that must comply with CIPA? Are devices that are not owned by schools and libraries required to be CIPA compliant? Are devices used off campus and used with outside networks required to be CIPA compliant?
- B. Identifying rural applicants (¶¶276-281): Should the FCC use the NCES definitions of “town-distant,” “town-remote,” “rural-distant,” or “rural-remote” be used for the rural definition?
- C. NSLP Changes (¶¶282-293): How should NSLP be computed for schools participating in the Community Eligibility Option? Are there other ways besides NSLP to measure student poverty level?
- D. Additional measures to prevent waste, fraud and abuse (¶¶294-318): extend document retention requirements from five to ten years either as a blanket rule or when an applicant is told to (¶¶when subject to an audit or investigation); should all competitive bidding documents be submitted to USAC routinely; should service provider officers be required to certify E-rate forms and should the rules be revised to require comparable individuals in applicant organizations to certify applicant forms; should all certifications on forms be codified in FCC rules; should there be a LCP certification, a state and local competitive procurement law compliance certification by service providers; should there be a requirement for a third party audit to be conducted of applicants and service providers that participate in the E-rate program; should the debarment procedure be made more stringent?
- E. Wireless community hotspots (¶¶319-323): Should schools be allowed to provide wireless hotspots to surrounding communities using E-rate supported services? Should students and the general public be able to use E-rate supported hotspot services offsite?
- F. Procedures for national emergencies (¶¶324-329): Should there be procedures established for ensuring that when there is a natural disaster or other emergency, the program will be able to assist applicants in their recover? What specific procedures should be implemented?