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The E-Rate Program: Universal Service Fund Telecommunications Discounts for Schools

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Summary

Under language enacted in the Telecommunications Act of 1996 (P.L. 104-104), a discount on telecommunications services was implemented for schools and libraries as part of the universal service framework. Universal service seeks to ensure the availability of telecommunications services for all consumers, including low-income consumers as well as those in rural and high-cost areas.

The universal service discount for schools and libraries, known as the E-rate program, is now in its sixth award cycle. The E-rate program has an annual budget cap of $2.25 billion — although the FCC has recently ruled that unused funds can be carried over for usage in subsequent years. Although the future of E-rate is not as questionable as in its earlier years, some Members of Congress continue to question the utility of the program, and instances of fraud and abuse in the program have been reported.

This report provides background information on the E-rate program, focusing specifically on its support of schools. It will be revised to reflect any substantive changes in the program. For legislative activity see CRS Issue Brief IB98040, *Telecommunications Discounts for Schools and Libraries: The "E-Rate" Program and Controversies.*

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The E-Rate Program: Universal Service Fund Telecommunications Discounts for Schools

Introduction

The universal service concept was created to ensure the availability of telecommunications services for all consumers, including low-income consumers as well as those in rural and high-cost areas. The Telecommunications Act of 1996 codified universal service principles in a new section (Section 254) added to the Communications Act of 1934. Within the broad framework of universal service, the Telecommunications Act newly included elementary and secondary schools and libraries as beneficiaries of universal service for telecommunications services. This specific support, in the form of discounts on telecommunications services provided to schools and libraries under the universal service program, has become known as the education rate or *E-rate* program. E-rate is available only to public and private, nonprofit elementary and secondary schools (having endowments of less than $50 million), public libraries, independent research libraries, elementary and secondary school libraries (by virtue of being part of a school), and certain private libraries.

This report provides an overview of E-rate including background information, current status of participation and funding levels. It also considers selected issues involving the program. The report focuses solely on the participation of schools in the E-rate program. It does not address the participation of libraries or universal service in general.[1]

E-Rate Provisions

Section 254 of the Communications Act of 1934 contains statutory provisions codifying universal service principles in general. As has been noted, under the provisions of Section 254, schools and libraries are designated as beneficiaries of the universal service program. Section 254 requires that, upon a legitimate request, any telecommunications carrier serving a geographic area is required to make any of its services that are within the definition of universal service available at reduced rates to elementary and secondary schools and libraries for educational purposes (Section 254(h)(1)(B)).

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[1] A significant amount of information for this report was obtained from CRS Report 98-604, *E-Rate for Schools: Background on Telecommunications Discounts Through the Universal Service Fund*, by James B. Stedman and Patricia Osorio-O'Dea.

Among seven principles for universal service, the legislation also provides that "[e]lementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services" (Section 254(b)(6)). In describing the telecommunications services that are to be provided, the legislation states that the Federal Communications Commission (FCC) is to establish competitively neutral rules "to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries" (Section 254(h)(2)(A)).

E-Rate and Schools

Program Administration

In its May 7, 1997 order addressing the universal service provisions enacted under the Communications Act, the FCC stated that up to $2.25 billion a year would be made available to support universal service discounts for schools and libraries.[2] The funds are to be used to subsidize discounts on services provided to schools and libraries. Although E-rate is a federal program, it is funded by providers of telecommunications services. All interstate telecommunications providers are required to contribute to the program. Funds for E-rate[3] come from contributions that are based on a percentage of the telecommunications providers' interstate and international revenues.[4] Many telecommunications service providers have elected to transfer the cost of their universal service contribution to their subscribers, thereby shifting the costs of the program to the consumer.

The E-rate program is administered by the Schools and Libraries Division (SLD),[5] of the Universal Service Administrative Company (USAC). The USAC is a non-profit corporation appointed by the Federal Communications Commission (FCC). The SLD provides discounts to assist schools and libraries in the U.S. with obtaining affordable telecommunications services and Internet access. The SLD provides discounts for connectivity-the means to communicate using telecommunications services and the Internet. Schools are expected to provide the requisite equipment and additional resources to support the connectivity.

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[2] Federal Communications Commission, *Report and Order*, FCC 97-157, May 7, 1997.

[3] The contributions from telecommunications providers are to support universal service goals in general not just the schools and libraries component of universal service.

[4] This percentage or "contribution factor" is calculated by the FCC's Common Carrier Bureau on a quarterly basis and varies depending on the anticipated funding needs for the program.

[5] In 1996, the FCC created a non-profit corporation, known as the Schools and Library Corporation (SLC) to manage E-rate. However, amid congressional criticisms and a General Accounting Office determination that the FCC exceeded its authority when it directed the creation of the SLC, on Jan. 1, 1999, the SLC was merged into the Universal Service Administrative Company, which currently administers other portions of the universal service system, and changed its name to the Schools and Libraries Division.

Discounts. The discounts for the services are divided into three categories: telecommunications services, Internet access, and internal connections. Telecommunications services are those recurring services that are used to communicate information between two parties, such as the telephone. The second area, Internet access, applies to basic access to the Internet, including e-mail. The final area, internal connections, consists of the wiring and other components that expand access throughout the school, such as wiring classrooms for computer and Internet access. Under FCC rules, requests for telecommunications services and Internet access are considered top priority (Priority 1) and are funded first. Any remaining funds are for schools seeking discounts for internal connections (Priority 2). Priority is given to schools that are the most economically disadvantaged-this applies to both priority areas.

The discounts for these services are to range from 20% to 90% depending upon the school's percentage of pupils from low-income families and the urban/rural location of the school (see **Table 1** for a breakdown of the discounts).[6] Schools and libraries are responsible for paying service providers the non-discount portions of eligible service costs; the remainder of the costs (discount amounts) are paid to service providers from E-rate funding.

Table 1. E-Rate Discount on Eligible Services

Income measured by % of students eligible for National School Lunch program	Urban location discount	Rural location discount
If the % of students in the school who qualify for free or reduced price lunch is ...*	...and you are in an URBAN area, your discount is ...	... and you are in an RURAL area, your discount is.
Less than 1%	20%	25%
1% to 19%	40%	50%
20% to 34%	50%	60%
35% to 49%	60%	70%
50% to 74%	80%	80%
75% to 100%	90%	90%

* The income threshold is 185% of the relevant poverty income level.

Application Process. To apply for E-rate, interested schools must submit a technology plan specifying how technology will be integrated into the curriculum and professional development to improve education. Although the technology plan should be long term, due to technology's rapidly changing status with new

[6] This matrix of discounts is also used for libraries. The discount for libraries is based on the percentages of students eligible for free or reduced price meals in the school district in which the library is located.

developments in software and hardware, the technology plan should not cover more than three years. The technology plan must contain the following components:

- Clear goals and a realistic strategy for utilizing technology to improve education;
- Professional development that indicate staff are able to use technology to improve education;
- An assessment of the telecommunications services, hardware, and software, that are necessary to improve education;
- A budget illustrating the school's ability to acquire the non-discounted components of the technology plan; and
- An evaluation that enables the school to monitor progress and achievement of specified goals.

Technology plans must be independently approved by a state agency overseeing schools or libraries or another SLD certified technology plan approver. Applicants who seek discounts only for basic local and/or long distance telephone services do not need to prepare a technology plan.

After the applicant has identified the requisite products and services necessary to support the technology plan, Form 470-*Description of Services Requested and Certification Form*-must be submitted either online or as a paper application. The SLD posts all Form 470s on their website to notify interested service providers of the needed products and services. Form 470 is posted on the SLD web site for a competitive bidding period of 28 days during which time potential service providers submit bids for the requested services to applicants. At the conclusion of this period, an applicant is required to select the most cost effective provider.

Form 471-*Services Ordered and Certification Form*-enables the applicant to request funding for what was submitted in the technology plan. Because funding for E-rate is capped each year at $2.25 billion, and the actual requests for funding have annually exceeded the cap, FCC rules allow all form 471s to be submitted during a *window* period, whereby all applications are treated as though they were received simultaneously.

SLD informs applicants of its decisions through "waves." The waves are actually groups of Funding Commitment Decision Letters (FCDL)-notifying applicants of SLD's decision-which are sent to applicants as decisions are made, rather than waiting for all applications to be processed. Waves are based on the FCC rules of priority (as detailed above).

Funding and Participation

The year 2003 marked the fifth year of E-rate's existence (January 1998 through June 30, 2003). Since its inception, $10.4 billion has been committed to the program. In its inaugural year, which was 18 months (January 1998 to June 1999),[7] the Commission supported approximately 25,000 programs and provided close to $1.7 billion in funding discounts. In the second grant cycle, the program experienced a significant increase, providing more than $2.1 billion to applicants. Years 3 and 4 have witnessed similar numbers of applicants and each year funding has been provided up to the program's maximum cap of $2.25 billion.

During the fifth funding cycle, E-rate provided funding discounts to nearly 30,000 applicants. The total committed as of June 23, 2003, is $2.21 billion, with an average discount of $75,000. More than half of the applicants awarded were school districts, and 44% of the discounts were provided to entities where at least half of the students qualify for free or reduced prices lunches (thereby qualifying for discounts between 80% and 90%). The sixth cycle is in progress, however as of July 9, 2003, approximately $707 million has been committed to more than 25,000 applicants. Of the funded applications thus far, approximately 29% were from schools, 53% from school districts, 17% from libraries or library consortia, and 2% from school/library consortia. The percentage distribution of the dollar value of the discounts awarded was 13% for schools, 76% for school districts, 5% for libraries and library consortia, and 7% for school/library consortia. Of all discounts committed, 55% were for entities in urban areas, 28% for rural entities, and the remaining 17% of the applications were submitted on behalf of an entity for which urban/rural status information is not available.

Selected Issues

Fraud and Abuse. There has been much written lately about fraud and abuse within the E-rate program. The Center for Public Integrity authored a report entitled *Phone Fund for Schools, Libraries Riddled with Fraud*, in which E-rate was described as being "... honeycombed with fraud and financial shenanigans.[8]" The Inspector General (IG) for the FCC conducted an investigation in which they noted errors ranging from regulatory non-compliance to computational errors, all of which resulted in approximately $8 million being erroneously disbursed (Federal Communications Commission, Office of Inspector General, Semiannual Report, October 31, 2002).

In 2002, federal prosecutors filed criminal charges against Connect2 Internet Networks, Inc. alleging that the owner of the company and three employees conspired to defraud the program of several million dollars. The complaint states that the

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[7] The FCC issued an order in June 1998 (CC docket No. 96-45) making several modifications to the program, one of which revised the funding year from a calendar year to a fiscal year cycle. The first year was extended by 6 months to allow subsequent grant cycles to correspond to the fiscal year, thereby synchronizing the program with the budgetary cycles of schools and libraries.

[8] [http://www.publicintegrity.org].

defendants persuaded administrators from schools with the highest need (those that qualify for a 90% telecommunications services discount) to purchase expensive equipment and told them that a foundation would pay the remaining 10% — the school's required percentage. As a result, several administrators reportedly purchased equipment that was significantly more expensive than what they would have purchased if they had to pay a portion of the bill. By doing this, it was charged that Connect2 was able to sell large quantities of equipment and services to schools with little to no restriction on the amount they charged .[9]

The SLD has created both a Task Force and a *Whistle Blower* hotline to deal with waste and abuse. To date, the task force has met two times to discuss the issues that are affecting the program. During the second meeting, which was held in May 2003, several potential solutions were drafted to deal with some of the problems. For example, the task force believes that the structure of the E-rate program and the ambiguity of certain policies and procedures permits wasteful program management. In response, they have recommended that the SLD develop and publicize a list of products and services and reasonable prices for the products and services (See [www.sl.universalservice.org/taskforce/] for the full report). It is expected that the list will provide program participants with an outline to help determine what is reasonable for certain products and services, thereby limiting the ambiguity and wasteful practices. Additionally, the *whistle blower* hotline allows interested persons to report waste, fraud or abuse, and to remain anonymous if they so choose. Each call received is referred to USAC's General Counsel for assessment and investigation. Both of these measures are expected to reduce the occurrence of fraud and waste in the program.

Oversight. The E-rate program has very few resources dedicated to oversight of the program. In the referenced report by the FCC's IG, it was noted that lack of funds was a significant problem for program oversight. Specifically, the report states that the FCC is unclear whether it possesses the authority to utilize funds from the Universal Service Fund for oversight. At present, the funds are solely dedicated to discounts and administrative costs. Although additional funds have been requested for oversight for FY2004, the IG predicted that absent additional funding for FY2003, the only service that office could render would be investigative support. In the report, the IG states that the Universal Service Fund is "subject to unacceptable high risks of malfeasance through noncompliance and program weaknesses." Furthermore, the report maintains that without additional resources the IG cannot guarantee "any level of assurance that the program is protected from fraud, waste and abuse."

In addition to the lack of oversight, the program does not have suspension or debarment authority. The current rules do not authorize the USAC to suspend or debar entities (beneficiaries or service providers) for noncompliance or other program related abuses. FCC is currently considering rules that would enable chronic abusers to be suspended or disbarred from the program.

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[9] See David McGuire, *Fraud Issue Could Undermine E-Rate Program*, [http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A4333-2003Jul17&notFound=true].

Committed but Unused Funds. The General Accounting Office (GAO) issued a report, *Schools and Libraries Program: Application and Invoice Review Procedures Need Strengthening* (December 2000), that indicates several million dollars remain to be spent from earlier funding cycles. Specifically, as of August 2000, $1.3 billion of committed funds still had not been used. The GAO report alludes to the reliance on deadline extensions as part of the reason the funds have not been used. During the first two funding cycles — because of late notification of funding commitments — SLD extended the deadline on more than one occasion for applicants to use the funds committed to them. In addition to the extensions, SLD does not authorize payments for services and equipment until the applicant certifies that they have in fact received the E-rate supported services, and the provider submits an invoice for the services. At the time of the audit, several applicants had not certified receipt of services and/or the provider had not submitted an invoice to the SLD.

In June 2002, the FCC issued an order that allows funds that have been previously authorized to schools and libraries for discounted services and equipment, but have not been allocated or claimed, to be carried over for disbursement in subsequent years. The order eliminates the problem of unused funds, and it increases the amount of money available for additional discounts.

Children's Internet Protection Act. The U.S. Supreme court recently ruled in *United States v. American Library Association* (Docket No.02-361) that the FCC's rules for implementing the Children's Internet Protection Act (CIPA)[10] for the E-Rate program are constitutional. However, neither this decision nor the previous case (*American Library Association v. United States*) directly apply to schools. In both of these cases, the First Amendment rights of library patrons and the use of Internet filtration devices for libraries was in question. Schools that receive the E-Rate discount, and that have Internet access, have always been required to certify that they have an Internet safety policy and technology protection measures including Internet filtration devices.

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[10] CIPA requires that schools must use technology protection measures on computers that can access the Internet to filter or block access to material that is considered unsuitable. Specifically, for children under 17 years of age, the technology protection measures must protect against access to visual depictions that are obscene, contain child pornography, or harmful to minors. For adults, the measures must protect against access to visual depictions that are obscene or contain child pornography. The technology protection measure may be disabled by authorized persons to enable access for bona fide research or other lawful purposes. For a discussion of federal legislation regarding child Internet protection see CRS Report RS20036, *Internet-Protecting Children from Unsuitable Material and Sexual Predators: Overview and Pending Legislation*, by Marcia S. Smith.