



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE FOLLOWING SCHOOLS AND LIBRARIES UNIVERSAL SERVICE SUPPORT PROGRAM SIXTH REPORT AND ORDER

CC Docket No. 02-6, GN Docket No. 09-51

On September 28, 2010, the Commission released a *Sixth Report and Order* in the above-captioned proceeding.¹ To provide further guidance to E-rate program participants, we list effective dates for each of the adopted proposals below. In addition, attached is a list of frequently asked questions (FAQs) regarding rules adopted in the *Sixth Report and Order*.

Adopted Rule	Brief Description	Effective Date
Expanded Access to Low-Cost Fiber	Allows applicants to lease dark or lit fiber from the most cost-effective provider, including non-profit and for-profit entities, so that applicants can choose the services that best meet their needs from a broad set of competitive options and in the most cost-effective manner available in the marketplace.	Funding Year 2011
Community Use of Schools' E-rate Funded Facilities and Services	Changes the Commission's rules to permit schools to allow community use of E-rate funded services outside of school hours.	January 3, 2011
Revising FCC Forms 470 and 471 and their accompanying instructions	The revisions streamline FCC Forms 470 and 471 by eliminating questions that are no longer useful and limit data collection to information that is not already available elsewhere. Also, the FCC Form 471 now requires information about the current number of broadband connections and their speeds and requires that the Item 21 attachment be submitted with the form. The forms also gather specific information about the type of entity filling out the forms or applying for E-rate funding. Finally, the forms are updated to reflect changes in program rules and citations.	Funding Year 2011 Applicants must use the revised FCC Form 471 for Funding Year 2011. ² Old versions of the FCC Form 470 (dated November 2004) will be accepted for Funding Year 2011.

¹ See *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, FCC 10-175 (rel. Sept. 28, 2010) ("*Schools and Libraries Sixth Report and Order*").

² A public notice released Nov. 19, 2010 incorrectly stated that old versions of FCC Form 471 (dated November 2004) would be accepted for Funding Year 2011. *Wireline Competition Bureau Announces Implementation Date for Revised Forms 470 and 471 and Accompanying Instructions*, CC Docket No. 02-6, DA 10-2218 (Wireline Comp. Bur. rel. Nov. 19, 2010).

Expanding Access for Residential Schools that Serve Unique Populations	Supports eligible services to the residential portion of schools that serve students with special circumstances.	Funding Year 2011
Indexing the Annual Funding Cap to Inflation	Indexes E-rate's funding cap to inflation to preserve the purchasing power of a successful program.	Funding Year 2010
Limited Trial to Investigate Offsite Access	Seeks proposals for a limited pilot program to establish best practices to support off-campus wireless connectivity for portable learning devices outside of regular school or library operating hours.	Funding will be available in Funding Year 2011. Interested parties must submit applications by December 17, 2010.
Technology Plans	Removes the technology plan requirement for priority one (telecommunications services and Internet access) services.	Beginning with Forms 470 and 417 for Funding Year 2011 (including certifications made by entities on FCC Forms 470 and 471 filed for Funding Year 2011) .
Competitive Bidding Process	Codifies the requirement that competitive bidding processes be fair and open (including codification of the gift rules).	Fair and open competitive bidding rules remain unchanged; the order codifies the current procedure. More specific gift rules effective January 3, 2011.
Clarifying Process for Disposal of Obsolete Equipment	Authorizes schools and libraries to receive consideration for disposing and recycling obsolete E-rate supported equipment. E-rate supported equipment is considered (presumed?) obsolete five years after installation.	January 3, 2011
Service Provider Identification Number (SPIN) Changes	Provides clarification regarding permissible SPIN changes following a competitive bidding process.	Beginning with FCC Forms 471 for Funding Year 2011
Eligible Services List (ESL)	Releases the ESL for FY 2011.	Funding Year 2011
USAC's Proposed Changes to the ESL	Requires USAC to submit its proposed changes to the ESL by March 30 of each calendar year.	January 3, 2011
Ineligible and Eligible Services Included in ESL	Individual eligible and ineligible services are to be listed only in the ESL rather than in the Commission's rules.	January 3, 2011
Release of ESL	Provides the Commission with flexibility to release the ESL either by public notice or order.	January 3, 2011

Schools and Libraries Sixth Report and Order
Frequently Asked Questions

Community Use

Q: Are decisions regarding after hours access to the E-rate network at a school to be made by the school district or the school?

A: This is a decision to be made by the appropriate local administrative authority since there is no requirement that schools open up their E-rate funded facilities to the public. The decision must be made by the appropriate local administrative authority (which may not necessarily be the same in each state, county or school district).

Q: Can schools open up their facilities to the community during the summer months?

A: Yes, but services supported by E-rate funds must, in the first instance, be used for educational purposes; students, educators, and other school personnel shall always get priority in the use of these resources. Thus, schools may only open up their facilities to the community during non-operating hours. If a school offers a summer session or program for its students over the summer months, schools may not open their facilities to community access during class time of the summer session.

Q: Can a college use a school's network during the daytime or evenings if a college is only charging for the cost of the instructor and not the Internet?

A: Schools may not charge for the use of services and facilities purchased using E-rate funds. Schools or other organizations that are using the schools' E-rate supported facilities may charge fees for services that are not subject to a universal service discount. Therefore, in this example, a college may charge for the cost of the instructor and the college's other expenses, but specifically not for the Internet access. However, colleges may not use the school's network or its services and facilities when the school is in session. Any use of the school's facilities and services may not interfere with children's use of the services during the school day or any afterschool/after hours classes offered for the school children.

Q: Do school hours for community use also pertain to non-instructional facilities (NIFs)?

A: Yes. Non-instructional facilities (NIFs) on a school or library property, such as administrative offices, are eligible to receive discounts on telecommunications and Internet access services, and the school or library may also open up the NIFs for community access as well. Any use of the school's facilities and services – whether instructional facility or NIF – may not interfere with children's use of the services during the school day or any afterschool/after hours classes offered for the school children. NIFs typically do not serve students and teachers directly and may be open for school business longer than a school. A school district may allow community use during the NIF's operating hours as long as it does not interfere with the ability of students or teachers to access the network or the services available on the network

Dark Fiber

Q: If construction (on district property) is needed, and the leased dark fiber needs to be lit immediately, how can a district ensure uninterrupted connectivity for the classroom? Can the district concurrently have lit fiber service to maintain connectivity while infrastructure construction (on school property) is going on?

A: In situations when the dark fiber is not going to be lit by the start of the funding year, applicants must file two funding requests (FRNs) when applying for funding: one for the existing service and one for the dark fiber service. An applicant can submit an FRN for the pre-existing service or other eligible service to maintain connectivity while the construction of dark fiber to be leased is occurring within the school's property lines.

The Commission's rules, however, prohibit the funding of duplicative services, defined as services that provide the same functionality to the same population in the same location during the same period of time. An applicant cannot receive E-rate funding for the dark fiber until it is lit. Once the dark fiber is lit and the applicant starts using that service, the applicant can receive E-rate funding for the receive funding only for the newly lit dark fiber instead of the existing service.

If there is a delay in the installation of the dark fiber, USAC will work with applicants to adjust the service end date of the pre-existing service and the service start date of the dark fiber FRN.

Q: Should applicants submit an FCC Form 470 for lit fiber under both the telecommunications and Internet access categories?

A: Yes. Any entity can provide supported telecommunications in whole or in part via fiber (whether lit or dark). Applicants are encouraged to submit an FCC Form 470 indicating the desired service in both the telecommunications service and Internet access categories. Once a provider is selected, an applicant should check the appropriate category of service on the FCC Form 471 application based on the type of provider they select to provide the fiber. If the provider is an eligible telecommunications carrier, the applicant can select Telecommunications Services if they are purchasing telecommunications services and other services, such as Internet access. If an eligible telecommunications carrier is providing only Internet access, and not telecommunications services, then the applicant must select Internet access. All other providers should be listed under Internet Access.

Q: If an applicant selects a non-telecommunications provider to provide VoIP or telecommunications (not telecommunications services), but is not applying for discounts on Internet access, does the applicant still need to comply with CIPA?

A: No. The Children's Internet Protection Act (CIPA) applies when a school or library under the E-rate program uses universal service funding to obtain discounted Internet access service, internal connections or basic maintenance of internal connections. CIPA compliance is not required when telecommunications, VoIP or fiber services are requested, even in the Internet access category, for telecommunications transmission purposes. However, if any other Internet access services such as basic Internet access, web hosting or e-mail service are included or bundled with the telecommunications, VoIP or fiber services, CIPA compliance is required.

Q: Can state entities serve as both a vendor and applicant?

A: Yes. State entities have always been able to receive funding as a vendor and also an applicant, but they cannot seek discounts on services that they are reselling to applicants. A state can receive funding as a consortium leader for schools and/or libraries and also serve as a vendor as long as the services are different.

Q: Is maintenance of leased dark fiber outside the school property line eligible? Is the rerouting of fiber considered maintenance?

A: Maintenance of leased dark fiber outside the school property line is eligible as a priority 1 service. Maintenance and technical support appropriate to maintain reliable operation is eligible for discount when provided as a component of the telecommunications service or as a component of the

telecommunications. Rerouting fiber would not fall under maintenance, but is considered construction. Finally, if the leased dark fiber serves multiple customers, the cost of the maintenance should be shared among the all of the recipients that use the leased dark fiber.

Q: Because some of the charges for dark fiber installation are ineligible, how can I account for those costs in my competitive bidding process?

A: Under the Commission's rules, in determining which eligible service offering is the most cost-effective, the price of the eligible products and services must be the primary factor. The ineligible, off-campus construction costs for dark fiber may be considered as a separate factor, but that factor must be weighed less than the price of the eligible goods and services. The costs of the off-premise construction for the leased dark fiber remain ineligible and are the applicant's responsibility.

Q: In the *Sixth Report and Order*, the Commission states that “[w]e also emphasize, in this context, the importance of applicants making “apples-to-apples comparisons when evaluating competing bids to meet their needs. Providing services using dark fiber may involve a number of additional costs beyond lease payments for fiber connectivity, and those costs should be factored in to a total-cost comparison across bids.” How can a true apples-to-apples comparison be done if components of one technological solution are not eligible and therefore under current program rules cannot be included in the main factor of price?

A: The Commission did not adopt a new cost-analysis requirement for our competitive bidding process specifically for dark fiber. As always, the ineligible costs of a service may be considered as a separate factor but that factor must be weighed less heavily than the cost of the eligible goods and services. The Commission merely intended to remind applicants, when considering a dark fiber solution, to take into account all of the costs associated with choosing this solution.

Q: Is on-premise leased fiber between or within school or library buildings a priority 1 service?

A: No. On-premise fiber between school buildings is considered priority 2 internal connections. The fiber must cross a public right of way in order for it to be considered a priority 1 service. The Commission's addition of dark fiber to the eligible services list did not change the eligibility of services that were priority 2 services.

Q: Are costs for leased fiber between buildings on a school's or library's campus eligible as priority 2 services?

A: Yes. Costs for leased fiber between buildings on a school's or library's campus are considered priority 2 internal connections.

Q: Is the installation of fiber between buildings considered a priority 1 service as a “leased service”?

A: No. Installation and construction charges for leased fiber on the same property between two eligible entities that share a campus are only eligible as a priority 2 service.

Q: Must telecommunications services other than fiber (such as basic telephone service) be provided by a telecommunications provider?

A: Yes. All telecommunications services other than fiber must be provided by a telecommunications provider.

Q: Please clarify what fiber and construction charges are eligible.

A: Applicants may lease existing dark and lit fiber from any provider. Additionally, special construction (installation) charges for leased dark fiber from an eligible school or library to the property line is eligible as a priority 1 service. Special construction (installation) charges for leased dark fiber from the school's or library's property line to the fiber network outside of the applicant's property are not eligible. For leased lit fiber, all special construction charges are eligible.

Q: The *Sixth Report and Order* states that excess capacity cannot be purchased/leased via dark fiber. How does an applicant comply with this requirement when the procurement of dark fiber in any realm would act as a purchase/lease of excess capacity?

A: The Commission's intent was to provide applicants more flexibility when considering fiber as a solution to meet their needs; it was not to allow applicants to use E-rate discounts to acquire dark fiber for future use. Upfront installation charges that are not related to how much fiber is lit are eligible; recurring charges for leased dark fiber are eligible only for dark fiber that has been lit within the funding year.

Q: Is modulating equipment used for lighting dark fiber eligible for purchase as internal connections?

A: Modulating equipment used for lighting applicant-owned priority 2 dark fiber is eligible as priority 2 internal connections if it meets the definition of an internal connection. Modulating equipment on applicant-leased dark fiber that is leaving the school premise is not eligible as a priority 2 internal connection. When lit fiber is leased as a priority 1 service, modulating equipment included as part of that service is eligible as part of the priority 1 service.

Q: Leased dark fiber must be lit immediately. What is meant by "immediately?"

A: Immediately means the fiber must be lit during the funding year in which you request services in order to receive E-rate discounts. We will not pay for recurring or non-recurring charges until the fiber is lit. For example, if the installation starts July 1, but the service isn't turned on until September 1, we will pay for the recurring leased dark fiber charges starting September 1, because, at that point, the service is lit.

Q: Has the definition of a wide area network (WAN) changed to include "wiring" or circuits between two points on the same campus?

A: No. The definition of a WAN has not changed. A WAN is a voice, data, and/or video network that provides connections from within an eligible school or library to other locations beyond the property line of the school or library.

Service Provider Identification Number (SPIN) Change Procedures

Q: When is the clarification regarding SPIN changes adopted in the *Sixth Report and Order* effective?

A: It is effective beginning with funding year 2011 FCC Form 471 applications.

Q: In the *Sixth Report and Order*, the Commission clarified that an applicant may not change to a different service provider for a particular funding year after a service provider has been selected through the competitive bidding process unless (1) there is a legitimate reason to change providers (e.g., breach of contract or the service provider is unable to perform); and (2) the newly selected service provider received the next highest point value in the original bid evaluation, assuming there

was more than one bidder. What happens if a service provider is unable to provide the services and there was no other service provider that responded to the bid request?

A: If no other bids were received in the original competitive bidding process, an applicant may select a substitute service provider that satisfies its needs most effectively and efficiently. For example, an applicant may select a substitute provider from a state master contract that has been competitively bid, if one is available. The substitute provider may not receive more funding than the amount originally requested on the applicant's FCC Form 471 for those services. Applicants must always comply with state and local competitive bidding rules, which may also provide guidance on how they will select an alternate provider.

Q: If no other bids are received, will an applicant be required to initiate another competitive bidding process by posting another FCC Form 470?

A: No. An applicant will not be required to initiate another competitive bidding process by submitting a new FCC Form 470. Applicants must always comply with state and local competitive bidding rules, which may also provide guidance on how they will select an alternate provider.

Q: As noted above, the Commission clarified that applicants may not change to a different service provider unless there is a legitimate reason to change providers and the new service provider selected received the next highest point value in the original bid evaluation. Does this requirement apply to contracted services, month-to-month services, and tariffed services?

A: Yes, the SPIN change clarification announced in the *Sixth Report and Order* applies to contracted services, month-to-month services and tariffed services.

Q: When an applicant is transitioning from one provider to another, there may be a delay in the transition. Given the SPIN change clarification discussed above, may applicants continue to split the FRN and switch back to their previous service provider until the new provider is able to provide service, even if the previous provider was not the second highest bidder?

A: Yes. An applicant may switch back to the previous service provider; however, the amount of funding that the service provider receives cannot exceed the amount that was initially requested on the applicant's FCC Form 471.

Technology Plans

Q: The Commission eliminated the requirement that applicants demonstrate they have a budget sufficient to acquire and support the non-discounted elements of the plan. Does this mean that applicants do not have to show that they can pay their non-discounted share?

A: No. Applicants must still be able to demonstrate that (1) they are paying for their non-discounted share of services and (2) have the necessary resources to utilize E-rate services.

Q: Will the Commission enforce state technology plan requirements?

A: No, the Commission will not enforce state technology plan requirements, but encourages applicants to meet all local requirements associated the technology planning process to ensure the best use of E-rate funds.

Q: The Order states that the technology plan rules are effective 30 days after publication in the Federal Register. Will this create two different set of rules (one for applicants that submit FCC Form 470s now and one for applicants submit FCC Form 470s after the effective date)?

A. No. There is no FCC technology plan requirement for any applicant seeking priority one funding in funding year 2011, regardless of which FCC Form 470 is filed.

For further information, contact Regina Brown or James Bachtell, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400, TTY (202) 418-0484.

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