FCC Adopts Second E-rate Reform Order
1/9/2015

The FCC has released the full details of their E-rate 2.1 Order (available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1219/FCC-14-189A1.pdf) that was adopted on December 11, 2014. The Order provides a few clarifications to the 2.0 Order, adopts additional changes for FY 2015, and announces several additional Category 1 changes for FY 2016. All of the changes are outlined below.

FY 2015 Changes and Clarifications (listing at the top the information that has not been sent to the listserve):

1. 5 Year Category 2 Budget Approach: Managed internal broadband services, caching service and servers and maintenance of eligible equipment will now be eligible for the next 5 years. Previously, the FCC stated these services and the budget approach would be in effect only for two years subject to later review.

2. Mixed Voice/Data Circuits: The FCC clarified the cost allocations required when a circuit is used for both voice and data due to the voice services phase down of discounts. More specifically:

a) For circuits dedicated solely to voice service, including PRIs, SIP trunks, and VoIP provider circuits, the full cost of the dedicated circuit is subject to the voice services phase down.

b) For services that dedicate a portion of a data circuit to voice service, (e.g., voice channels on a T-1 circuit or dedicated bandwidth for VoIP traffic using a virtual local area network) the cost of the dedicated portion of the circuit must be cost allocated and subject to the voice services phase down.

c) For voice applications that run over a data circuit but do not require any dedicated circuit capacity, the applicant is not required to cost allocate any portion of the data circuit cost for voice services.

3. Category 2 Budgets/Part Time Students: The FCC clarified that part-time students can be included in the Category 2 budget count of students only when they increase the maximum number of students on school premises at the same time. Therefore, for CTCs that have half time students in the morning and half time students in the afternoon, they cannot count both sets of students.

4. One-time Construction Charges: From FY 2015 through FY 2018, applicants may seek E-rate funding on the total one-time special construction costs in a single year rather than having to follow the current policy of spreading these costs, when they are $500,000 or more, over three or more years. In other words, if your non-recurring costs are $600,000, you can request discounts on the full cost in a single year instead of having to amortize over three years.

5. DID Blocks and Other Ancillary Voice Services: The FCC did NOT adopt our request to make DID blocks and other ancillary voice services E-rate eligible during the phase out. Therefore, you will still need to be sure to deduct the cost of DID blocks from your Form 471 and BEAR invoices.

6. Clarification on Cost-Effectiveness of Wireless Data Plans: In addition to library bookmobiles, the FCC notes for the first time that there may be other circumstances such as small libraries **and small schools** with high connectivity costs, where individual data plans or air cards for mobile devices may be the most cost-effective solution.

a) Applicants must compare the cost of wireless data plans to all relevant costs of other options. This includes the costs of other options to obtain Internet and connectivity to the building in addition **to** the cost of deploying wireless infrastructure **inside** the building. The July 2014 Order stated that only the costs of deploying wireless networks inside buildings should be compared to the wireless data plan costs.

b) An applicant may not consider whether it is likely to receive Category 2 E-rate funding when analyzing the cost-effectiveness of data plans or air cards for mobile devices.

While this clarification is somewhat encouraging, I continue to urge you to proceed cautiously in this area, and if you decide to apply for wireless data plans, this request should be submitted on a stand-alone Form 471 application. You should be prepared for an arduous PIA cost-effectiveness review.

7. Annual E-rate Funding Cap Increase: The annual E-rate cap was increased by $1.5 billion to $3.9 billion. Any unused funding from prior years, now set at $1.575 billion, will be added to the annual cap. As I mentioned previously, this should be enough funding to cover all Category 1 and 2 requests, regardless of discount level.

8. Relief on the Rural Definition: The FCC changed their definition of urban so that schools and libraries located in "urban clusters" with 25,000 or more people and "urbanized areas" (areas with populations of 50,000 or more) as urban. All other areas will be rural. This is great news for more than 100 school districts in PA! To see your urban/rural status, use the USAC Urban/Rural Look-Up Tool at: https://sltools.universalservice.org/portal-external/urbanRuralLookup/.

9. Urban Library Category 2 Budget Increase: The per square foot allowance was increased to $5.00 per square foot for libraries located (1) in urbanized areas within principal cities with a population over 100,000; and, (2) in areas outside of a principal city, but within an urbanized area with a population of over 250,000. These libraries have a locale code of 11, 12 and 21 as assigned by the Institute of Museum and Library Services (IMLS). This change results in a net increase of $9.8 million to the Category 2 pre-discount cap for PA libraries. To see a list of affected PA libraries, go to: http://e-ratepa.org/?p=5321.

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FY 2016 Changes: The remaining changes, outlined below, do not take effect until FY 2016 (or later) in large part because they require procurement and/or contract provisions deemed too late to apply to FY 2015.

1. Amortization of Non-Discounted Installation Charges: Applicants will now be permitted to pay the non-discounted portion of installation charges over up to four years. To take advantage of this option, applicants must include this request in their bids on their Form 470s (and presumably in any associated RFPs). Similarly, service providers supporting this option — which they are not required to do — must specify all installment payment terms (including interest rates, if applicable) in their bids. (Note: finance charges are not E-rate eligible).

2. Equalizes the Eligibility of Leased Lit and Leased Dark Fiber: Currently, special construction charges for dark fiber — covering the cost of installing fiber from an applicant's property line to the carrier's existing distribution network — are not eligible. As of FY 2016, such special construction charges will become eligible. Additionally, to further equalize the two services, Category 1 support will be provided to cover the modulating electronics necessary to light leased dark fiber. To ensure that an applicant fairly compares dark fiber with other options, the new Order requires that proposals be solicited for lit fiber solutions as well.

3. Building and Owning Fiber: In probably the biggest change for FY 2016, the FCC is going to permit, under "limited circumstances," applicants to "self-construct" (i.e., build and own) their own fiber systems (or portions thereof). In order to ensure that such solutions are cost effective, the self-construction provision includes several "safeguards" including requirements for (a) including both requests for a services-based solution and a self-construction solution on the same Form 470 or posting a separate Form 470 for self-construction only after receiving no bids on a services-only posting, (b) building and use within the same funding year, and (c) securing "all of the resources necessary to make effective use of the services." More information likely will be coming on this issue in the coming months.

4. Additional Discounts for State Match: E-rate will provide an additional discount of up to 10% on installation charges if matched by the applicant's state. Since the extra matching discount applies only to installation charges, applications utilizing the match must include separate FRNs for the recurring and non-recurring portions. Apparently, this matching provision is available only to applicants in "rural, Tribal, and other unserved areas.” The additional discount is available only for broadband systems meeting the long-term bandwidth connectivity targets (which are very steep).