

The Federal E-Rate Program was created by 47 U.S.C. § 254 (the Act), in which Congress directed the Federal Communications Commission (“FCC”) to implement regulations designed for the preservation and advancement of “universal service.” Those regulations are published at 47 C.F.R., Part 54 (§§ 54.1 to 54.904). The Universal Service program is administered by the Universal Service Administrative Company, with the Schools and Libraries Division administering the schools and libraries portion. 47 CFR §54.701.

The Goal of Universal Service

The Act describes two levels of “universal service.” First, there is the basic level of universal service, which is “an evolving level of telecommunications services that the Commission shall establish periodically under this section, ...[considering] the extent to which such telecommunication services (A) are essential to education, public health or public safety; (B) have ... been subscribed to by a substantial majority of residential customers; (C) are being deployed in public telecommunications networks; and (D) are consistent with the public interest, convenience and necessity.” 47 U.S.C. § 254(c)(1). Currently, this includes only a fairly basic level of telephone service – a single party telephone line, access to 911, operator services, access to interexchange (long distance) services , access to directory assistance, and toll limitation (the ability to block outgoing toll calls) for qualifying low income customers. 47 C.F.R. § 54.101(a).

Next are “special services,” which are “additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h) of this section.” 47 U.S.C. 254(c)(3). For schools and libraries, this includes “all commercially available telecommunications services in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes.” 47 CFR § 54.502. This specifically includes “Internet access, and installation and maintenance of internal connections,” 47 CFR § 54.503, and, effective July 1, 2004, voice mail (47 CFR §54.503 (amended)).

Funding

Universal support is funded by contributions from telecommunications carriers. 47 USC § 254(d) provides:

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.

\$2.25 billion per funding year (July 1 to June 30) is allocated to provide support for school and library services. 47 CFR §54.507(a). Amounts not used in one funding year are carried over to the next year. 47 CFR §54.507(a).

Eligible Services – Schools and Libraries

The Act requires that:

all telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3) of this section, provide such services to elementary schools, secondary schools, and libraries *for educational purposes* at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission ... determines is appropriate and necessary to ensure affordable access to and use of such services by such entities.

47 USC § 254(h)(1)(B) (emphasis added). “Educational purposes” means activities that are “integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate and proximate to the provision of library services to library patrons... Activities that occur on library or school property are presumed to be integral, immediate, and proximate to the education of students or the provision of library services.” 47 CFR § 54.500(b).

“Internal connections” qualify only if they are “necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch.” 47 CFR §54.506. Internal connections in non-instructional buildings of a school or school district, or administrative buildings of a library, do not qualify *unless* they are “essential for the effective transport of information to an instructional building of a school or to a non-administrative building of a library.” 47 CFR §54.506.

The Procurement Process

Schools and libraries are required to seek competitive bids for all services eligible for federal support under the e-rate program. 47 CFR §54.504(a). They do this by submitting a form FCC 470 to the Schools and Libraries Division, which posts it on its website. 47 CFR §54.504(b). They must “carefully consider all bids submitted” and must “select the most cost-effective service offering. 54 CFR §54.511(a). While they may consider non-price factors, “price should be the primary factor considered.” 54 CFR § 54.511(a).

Service providers are prohibited from charging a price above the “lowest corresponding price,” which is the lowest price a service provider charges to non-residential customers who are similarly situated to the particular school or library. 47 CFR §§ 54.511(b), 54.500(f). Schools, libraries, and service providers can appeal to the Commission if they believe the “lowest corresponding price” is too high or too low. 47 CFR §54.504(e).

Once a school or library has signed a contract for eligible services, it submits a form FCC 471 to the Schools and Libraries Division. ***This form, submitted by the school or library, is the request for federal money.*** 47 CFR §54.504(c). If 30 percent or more of the requests made in a FCC 471 are for ineligible services, the request will be denied in its entirety. 47 CFR 54.504(d).

The school or library is eligible for a discount of between 20 and 90 percent of the price offered by the service provider. The discount amount is based on two criteria: whether the school or library is urban or rural, and the percentage of students eligible for a free or reduced price lunch under the national school lunch program (which the e-rate program uses as a proxy for the poverty level of the school or library). 47 CFR §54.505.