

## FCC Fifth Report and Order

***Schools and Libraries Universal Service Support Mechanism***  
**CC Docket No. 02-6, Fifth Report and Order, FCC 04-190 (rel. August 13, 2004)**

### Introduction

The Fifth Report and Order addresses several matters pertinent to the administration of the E-rate program. This report was adopted August 4, 2004 and was released August 13, 2004.

### Discussion and Results

#### *Recovery of Funds*

The report defines the circumstances for recovering funds, the extent the recovery is applicable, and the timeliness in which audits and investigations will occur. The report revokes the offset options previously available to service providers for the recovery of funds and sets forth how applicants subject to recovery actions will be treated.

- If procedural violation is inadvertently overlooked during the application phase and funds are disbursed, the Commission will not require that they be recovered except to the extent that such rules are essential to the financial integrity of the program.
- Scenarios that suggest waste, fraud, or abuse will be assessed on a case-by-case basis.
- When a legitimate disbursement receives an erroneous amount of funds, the difference between the two will be recovered. (recovery amount = erroneous amount – legitimate amount)
- USAC must report administrative costs of seeking recovery of improperly disbursed funds to the Wireline Competition Bureau and the Office of Managing Director in order to determine a *de minimis* amount; USAC will not seek to recover *de minimis* amounts.
- Any entities that exhibit systematic noncompliance with the rules and regulations may be subject to more rigorous scrutiny in the subsequent funding years.
- The following situations may result in a full or partial recovery:
  - Failure to meet the competitive bidding requirements.
  - Lack of necessary resources to properly use the supported services.
  - Failure to pay the non-discounted amount within 90 days after delivery of services.
  - Failure to complete services within the funding year (FY)
    - Payees may seek an extension to install non-recurring services consistent with the guidelines
  - In the case of duplicative services, the more expensive of the two services is recovered except in cases with indications of fraud, where the full amount of funding may be recovered.
  - If the request and bill for services encompasses a full funding year but services were not rendered that entire year, services will be pro-rated and the excess will be recovered.
- USAC and the Commission will carry out any audit or investigation within five years of the final delivery of service for a specific funding year. Offset options have been eliminated for service providers due to timeliness of recovery.
- Rule 47 C.F.R. §§ 1.8002 and 1.8003 (requiring all entities that participate in the program to obtain an FCC Registration Number) now applies to all applications and recovery actions pending at that time.
- Pursuant to previously adopted rule, section 1.1910, the Commission shall withhold action on any application or request for benefits made by an entity that is delinquent in its non-tax debts owed to the Commission and shall dismiss such applications or requests if the delinquent debt is not resolved.
- Applications will not be dismissed if applicant has filed a challenge through administrative appeal or a contested judicial proceeding to either the existence or amount of the debt owed.

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### Document Retention

Both applicants and service providers are now required to retain documentation to support compliance with program rules and regulations for a five (5) year period. This will aid audits and investigations.

- Applicants and service providers must retain all records related to the application for, receipt and delivery of discounted services for 5 years after the last day of service delivered for a particular funding year. (Effective FY2004)
- Program participants must retain all documents necessary to demonstrate compliance with the statute and Commission rules. Participants are subject to random audits and investigations to ensure compliance.

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### Technology Plans

This report outlines requirements for schools seeking approval through Enhancing Education Through Technology (EETT) and defines the essential elements of technology plans for non-public schools that seek approval through one of the USAC certified entities.

- Applicants must certify on Form 486 that the technology plan has been approved by its state, the Administrator, or an independent entity approved by the FCC, or will have it approved by the commencement of services.
- Applicants are still expected to have developed a tech plan prior to requesting bids; only the approval of the tech plan is deferred.
- EETT approved plans must be supplemented by an analysis that indicates the applicant is aware of and will be able to secure the financial resources needed to achieve its technology goals.
- Applicants lacking an EETT technology plan must show their plan contains the following elements:
  - (1) Establish clear goals and a realistic strategy for using telecommunications and information technology to improve education or library services;
  - (2) Have a professional development strategy to ensure that the staff understands how to use these new technologies to improve education or library services;
  - (3) Include an assessment of the telecommunication services, hardware, software, and other services that will be needed to improve education or library services;
  - (4) Provide for a sufficient budget to acquire and support the non-discounted elements of the plan: the hardware, software, professional development, and other services that will be needed to implement the strategy; and
  - (5) Include an evaluation process that enables the school or library to monitor progress toward the specified goals and make mid-course corrections in response to new developments and opportunities as they arise.
- Only if an applicant desires to seek services beyond the scope of its existing tech plan does it need to prepare and seek a timely review of an appropriately revised plan.
- Tech plans are subject to the document retention rule.
- Amended rules and codified practices allowing non-public schools that are not eligible to secure approval by their states are permitted to obtain approval from entities certified by USAC to do so.

### Certifications

Lastly, the order addresses the change in certifications on various forms including the Form 470 and Form 471. These amendments help ensure compliance with the program rules and regulations, creating visibility and ensuring integrity during the program's process.

- Form 470: Applicant must certify that the bids being sought are the most cost effective means for meeting their needs and technology plan goals. Form 471: Applicant must certify that the bid selected was the most cost-effective, with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology plan goals.
- Form 473: service providers must certify the following:
  - (1) I certify that the prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program have been arrived at independently, without, for the purpose of restricting competition, consultation, communication, or agreement with any other offer or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;
  - (2) I certify that the prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program will not be knowingly disclosed by this service provider, directly or indirectly, to any other offer or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
  - (3) I certify that no attempt will be made by this service provider to induce any other concern to submit or not submit an offer for the purpose of restricting competition.