

Community Use of School Internet Facilities

At its open meeting of February 18th, the FCC approved an Order and Notice of Proposed Rulemaking ("NPRM) enabling schools that receive funding from the E-Rate program to allow the general public to use the schools' Internet access during non-operating hours..." Until now, E-rate funding was provided only for strictly defined "educational purposes." To the extent such services were used for other purposes, E-rate rules required that an appropriate percentage of the charges be cost-allocated out of the funding requests. This is no longer the case.

In its new Order ([FCC 10-33](#)), the FCC waived its rules on this matter for the remainder of FY 2009 and for all of FY 2010 (i.e., through June 30, 2011). The NPRM portion of the FCC action solicits comments on the FCC's tentative decision to make this waiver permanent.

The primary rationale, for both the Order and the NPRM, is related to the FCC's forthcoming National Broadband Plan. The Plan is expected to include several provisions for an expanded role for the E-rate program to serve as "a vehicle to stimulate the adoption of broadband more widely in communities."

The FCC established the following three key conditions for community use of school facilities:

1. Usage is permitted only during a school's "non-operating" hours, meaning after a school's normal closing hour, on weekends and school holidays, and during summer months when the school is not in session. Importantly, a school is not required to open its facilities for community use. The Order leaves a school free to establish their own policies (e.g., hours of use), but does note that a school must remain CIPA compliant.
2. A school may not request E-rate funding for a higher level of service than would be required for educational purposes. In other words, any additional community use of E-rate funded services must be "incidental." Most specifically, since applicants have already filed their E-rate applications for FY 2009, but can still make changes during the RAL process (see above), the FCC directs USAC to ensure that any subsequent changes to Form 471 applications not be made to add additional capacity to service community needs.
3. Consistent with other E-rate rules, these services may not be "sold, resold, or transferred by such user in consideration for money or anything of value." Notwithstanding this provision, a school may charge "reasonable fees to cover overhead costs for using school services and facilities. Additionally, organizations using schools services during non-operating hours are permitted to recover related costs (e.g., "curriculum development and presentation costs") from participants.

H.R. 4619, the E-Rate 2.0 Act, directs the FCC to implement three pilot programs:

- The first pilot program narrows the digital divide through the distribution of vouchers to enable low-income students to purchase residential broadband service.
- The second utilizes a competitive grant program to extend funding for broadband equipment and services to selected community colleges and head start facilities that best demonstrate need and incorporation of broadband use in their educational mission
- The third enables certain E-Rate applicants serving particularly low-income students to apply for significantly discounted services and technologies for the use of e-books

The bill also would provide for an inflation adjustment to the current \$2.25 billion cap on the E-Rate program, so funding would increase with inflation. The bill also calls for the streamlining of the application process.