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FCC Proposes Expansive E-Rate Program Review

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The Federal Communications Commission (FCC) adopted a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking on June 25 on how it can ensure E-Rate-funded services are advancing educational outcomes. The FCC proposes to narrow the scope of services and equipment eligible for E-Rate support and to adopt new rules aimed at protecting children online and providing oversight of third-party consultants.

Evaluating E-Rate Program success

The FCC seeks input from interested parties on whether and to what extent the E-Rate Program has fulfilled its mission to ensure that schools and libraries in the United States "have access to advanced telecommunications services." Citing the increase in broadband connectivity across schools nationwide, the FCC seeks comment on whether continued support for special construction of networks and managed internal broadband services is necessary. The FCC is also considering reducing support for internet access.

The FCC uses the National School Lunch Program eligibility and urban/rural status to determine an applicant's discount rate. The FCC seeks comment on whether this is still an appropriate method for calculating support and whether it should limit E-Rate support to areas where applicants face the highest costs for E-Rate-supported services. In practical terms, such a change likely would reduce funding to suburban and urban areas and could direct more funding to rural areas. It also seeks comment on whether continued support for self-provisioned network construction and dark fiber is necessary, given private investment and other federal infrastructure funding programs, such as the Broadband Equity, Access, and Deployment (BEAD) program.

Children's safe use of E-Rate-funded services

Under E-Rate Program rules, applicants must certify that the services requested through the program will be used primarily for educational purposes. The FCC seeks comment on how it can ensure that E-Rate-funded networks and services are being utilized for these purposes, and also requests input on the measures schools and libraries are taking to limit screen time.

Reexamining CIPA

The FCC currently interprets the Children's Internet Protection Act (CIPA) restrictions to apply only to the use of devices owned by schools or libraries receiving E-Rate support for internet access, internet service or internal connections. The FCC seeks comment on this interpretation. The FCC also seeks comment on whether social networking sites are "harmful to minors" under CIPA and whether the FCC can impose additional protections to limit screen time.

Strengthening oversight of consultants and consulting firms

Consultants and consulting firms support E-Rate Program applicants across all phases of the program, including assisting with the submission of FCC Form 471 applications, responses to program integrity assurance review and audit inquiries. The FCC seeks to prevent the potential for fraud due to consultants' influence on the competitive bidding process and lack of direct oversight by the Universal Service Administrative Company or the FCC.

Defining 'consultant'

The FCC proposes defining a “consultant” as “any non-employee working on behalf of a school, library, consortium that includes an eligible school or library, or service provider that participates in or is seeking to participate in the E-Rate program and who assists the school, library, consortium that includes an eligible school or library, or service provider, whether or not for a fee, with any aspect of participating in the E-Rate program, including, but not limited to, the application, competitive bidding, or disbursement processes.”

The FCC seeks comment on whether the proposed definition should exclude certain individuals, such as certain nonemployees working on behalf of service providers in the ordinary course of their commercial relationship (e.g., channel partners, resellers, agents, authorized dealers). It also asks for comment on whether there is anything unique about the service provider-channel partner relationship and how channel partners are compensated that warrants excluding them from the definition.

Consultant certification and registration

The FCC proposes requiring service providers to submit an annual consultant certification and disclosure form and establishing a consultant registration database for individual consultants. The certification would require consultants to certify compliance with E-Rate Program rules.

Prohibiting percentage-based fee arrangements

The FCC is concerned that fees based on a percentage of money received under E-Rate may be contrary to the efficient use of limited funding and create incentives for consultants to encourage applicants to request more E-Rate funding than needed. The FCC proposes, and seeks comment on, strict prohibition on applicants and service providers from entering into any fee arrangement based on a percentage of the E-Rate contracts with and/or disbursements to the applicant or service provider the consultant represents.

Lowest corresponding price (LCP)

The LCP rule requires service providers to offer equipment and services to E-Rate eligible schools and libraries at prices less than or no higher than the lowest price the service provider charges similarly situated nonresidential customers for the same or similar equipment or services. The FCC seeks to clarify the scope and meaning of the rule and invites comment on whether it should modify the E-Rate rules to deter violations of the LCP rule.

For more information on the proposed rules and the potential impact, please reach out to one of the Cooley lawyers listed below.

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