

*Via Electronic Mail*

August 5, 2011

Sharon Gillett  
Chief, Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: Request for Guidance on Rules Governing Gifts in the E-rate Program

Dear Ms. Gillett:

Pursuant to the Memorandum of Understanding between the Federal Communications Commission (Commission) and the Universal Service Administrative Company (USAC) dated September 9, 2008, USAC requests Commission guidance on matters related to the Schools and Libraries Universal Service Support Mechanism (commonly known as the “E-rate” program) policy concerning the Commission’s gift rules, which were codified following the release of the Schools and Libraries *Sixth Report and Order*.<sup>1</sup> This letter seeks guidance on how to resolve the issues outlined below, which USAC has been presented with since establishment of the gift rules.

#### Charitable Donations and Free Equipment

The *Clarification Order* states that “service providers cannot offer special equipment discounts or equipment with service arrangements to E-rate recipients that are not currently available to some other class of subscribers or segment of the public.”<sup>2</sup> The footnote further provides that, for example, “[t]herefore, a service provider may not offer free iPads to a school with the purchase of telecommunications or Internet access services eligible under E-rate, if such an arrangement is not currently available to the public or a designated class of subscribers.”<sup>3</sup> Accordingly, USAC seeks guidance on the associated issues, as follows:

1. USAC seeks guidance on what can be considered a “class of subscribers” and what constitutes “available to the public” for the purposes of the E-rate gift rules. For example, are all libraries and elementary and secondary schools considered a “class

---

<sup>1</sup> *In the Matter of Schools & Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-06, GN Docket No. 09-95, Sixth Rep. & Order, 25 FCC Rcd. 18762 (2010) (*Sixth Report & Order*). See also *In the Matter of Schools and Libraries Universal Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-06, GN Docket No. 09-95, Order, 25 FCC Rcd. 17324 (2010) (*Clarification Order*).

<sup>2</sup> *Clarification Order* at ¶ 11.

<sup>3</sup> *Id* at n. 25.

- of subscribers” such that a special equipment discount or free equipment offered only to libraries and elementary and secondary schools would allow a school or library participating in the E-rate program to accept free or discounted equipment from a service provider?
2. USAC seeks guidance on when equipment (for example, netbooks, cell phones or distance learning equipment) received by a school or library participating in the E-rate program is considered an acceptable charitable donation and when it is considered free equipment in violation of the E-rate gift rules. Specifically, USAC seeks guidance on when the free equipment is subject to the Free Services Advisory requiring cost allocation.<sup>4</sup> Alternatively, when might free equipment be considered an acceptable charitable donation versus when the free equipment is not allowed because it leads to an increase in the demand for service from the service provider?

#### Widely Attended Gatherings and Speaking and Writing Engagements

3. USAC seeks further guidance on gifts or prizes received at conferences.
  - a. USAC seeks guidance on whether an E-rate service provider can provide raffled gifts at a conference event or conference booth if the item’s market value exceeds \$20. If so, must the service provider prohibit entrance into the raffle by E-rate schools or library representatives?
  - b. USAC seeks guidance on whether an individual can receive a raffled gift at a conference on behalf of the participating E-rate school or library they represent if the item’s market value is over \$20 but the item is not for the personal use of the individual attending the conference but rather for the participating E-rate school or library as a whole (e.g., a SMART Board). Would this gift be considered a charitable donation from the service provider?
4. USAC seeks guidance on what type of conference events and entertainment are considered “collateral events.”<sup>5</sup> Is any event not listed on an official conference schedule a collateral event? Alternatively, can an event that is listed on an official conference schedule ever be a collateral event or entertainment? Does an E-rate participant who pays to attend a collateral event avoid violating the E-rate gift rules?
5. USAC seeks guidance on whether a school, library, or an employee of a school or library can provide testimonials on a service provider’s performance in industry publications or at industry events.<sup>6</sup> If so, are there restrictions on which publications or industry events the testimonials can be provided? Can the school, library or employee receive payment for a testimonial? For example, can a school librarian

---

<sup>4</sup> See USAC Website, Schools and Library Applicants, Free Services Advisory at <http://www.usac.org/sl/applicants/step06/free-services-advisory.aspx> (last visited July 1, 2010).

<sup>5</sup> Clarification Order at ¶ 13, n. 38.

<sup>6</sup> See, Clarification Order at ¶ 14. See also 5 C.F.R. § 2635.204(g)(1) (Speaking and similar engagements).

receive payment from a service provider to write a flattering testimonial in the service provider's monthly newsletter? Can the librarian write this testimonial for free?

#### Tracking and Curing Gift Violations

6. USAC seeks guidance on whether an E-rate participant can avoid violating the E-rate gift rules by returning an unsolicited gift that was received. Additionally, USAC seeks guidance on whether an E-rate participant who has received a gift can avoid violating the E-rate gift rules by paying for the item. Further, if such a violation can be cured, USAC seeks guidance on whether there is any deadline (e.g., six months) for such a cure to occur.
7. USAC seeks guidance on the recordkeeping requirements for gifts. Specifically, USAC seeks guidance on whether the responsibility to maintain gifts records is that of the schools and libraries and/or the service providers. Further, what documentation or records are required to be kept regarding gifts? Should records be kept regarding gifts that were refused or otherwise cured?

#### Timing and Applicability

8. USAC seeks guidance on which funding year(s) a gift violation affects, particularly if the violation occurs in the year leading up to the competitive bidding process or occurs during a multiyear contract. Does a gift violation invalidate the entire contract or only some portion of the contract?
9. USAC seeks guidance on when the obligation to comply with the gift rules begins. For example, if a service provider has not previously participated in the E-rate program, but has provided a gift to a school district, is this a violation of the gift rules? If a service provider has participated in the E-rate program, but does not provide service to this school, is this a violation of the gift rules?

We are available to discuss this matter with you at your convenience.

Sincerely,

//s// Mel Blackwell

Vice President, Schools and Libraries Division

cc: Trent Harkrader, Chief, Telecommunications Access Policy Division