

August 22, 2011

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Clarification of Gift Rules
Schools and Libraries Universal Service Support Mechanism
CC Docket No. 02-6

Dear Ms. Dortch:

On August 5, 2011, USAC sent the FCC a [Request for Guidance on Rules Governing Gifts in the E-rate Program](#). The request was an attempt by USAC to obtain clarification on a number of issues affecting both applicants and service providers since the FCC instituted strict gift rules in its 6th Report and Order last September. Four specific gray areas were covered in USAC's request, namely:

1. Charitable donations and free equipment
2. Widely attended gatherings and speaking and writing engagements
3. Tracking and curing gift violations
4. Timing and applicability

E-Rate Central acknowledges that the FCC already provided additional guidance on its gift rules last December ([DA 10-2355](#)), but agrees with USAC that still more guidance is required. We believe that the E-rate gift rules raise particularly important and thorny issues¹ in large part because:

1. They represent an attempt to extend federal gift rules, applying to multi-billion dollar government procurement activities to much smaller public and private entities, many of whom are dependent upon the technical expertise of their suppliers; and
2. COMAD procedures subject E-rate applicants to potentially serious financial penalties (equivalent to large fines) for even minor, non-fraudulent, violations of these rules.

Although USAC's request for guidance includes questions on charitable donations, the focus was on differentiating between acceptable charitable donations and equipment subject to the [Free Services Advisory](#) requiring cost allocation. E-Rate Central believes that charitable donation issues are much broader.

¹ See [E-Rate Central News of the Week for January 31, 2011](#).

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In concept, the FCC addressed the underlying issues in its original 6th Report & Order. Paragraph 90 states the following:

The rule we articulate today does not discourage companies from making charitable donations to E-rate eligible entities in the support of schools – including, for example, literacy programs, scholarships, and capital improvements – as long as such contributions are not directly or indirectly related to E-rate procurement activities or decisions. If contributions have no relationship to the procurement of E-rate eligible services and are not given by service providers to circumvent our rules, including rules that require schools and libraries to pay their own non-discount share for the services they are purchasing, such contributions will not violate the prohibition against gift giving. If applicants or service providers are unclear about a particular anticipated gift, they should seek guidance from USAC or the FCC.

In practice, the last sentence of this paragraph is problematic. Neither USAC nor the FCC appears to be well-positioned to provide guidance on any specific gift proposal. As a result, E-Rate Central believes that it is critical for the FCC to provide more explicit guidelines for distinguishing between acceptable charitable donations and unacceptable gifts.

One practical suggestion might be to require public disclosure of any donation(s) by one or more service providers. The premise is that “sunshine” is the best preventative medicine. In particular:

1. Any donation should be formally accepted by the school or library board, and publicly disclosed. Formal acceptance should include a clear statement that there is no explicit or implicit advantage to be gained by the donor as to future business.
2. A donor should be asked to formally certify that the donation: (a) is being made without any explicit or implicit expectations of being awarded business; and (b) is consistent with a company-sponsored program of donations to educational institutions independent of customer status.

E-Rate Central encourages the FCC to provide additional guidance on its gift rules, not only to respond to the specific issues raised in USAC’s request, but to address the broader issues raised in this ex parte filing.

Sincerely,



Winston E. Himsworth
Executive Director