

# E-rate Gift Rules Continue to Confuse

August 22, 2011

Last September, the FCC adopted [new rules governing gifts](#) received by applicants for disbursements under the FCC's Schools and Libraries program of the Universal Service Fund (known as the "e-rate" program). Although the FCC [clarified its rules once already](#), application of the new rules is proving to be very difficult. For the second time, the Universal Service Fund administrator (USAC) is seeking guidance from the FCC regarding how to apply the rules.

The guidance request appears to result from USAC's review of Funding Year 2011 e-rate applications. Judging from the scope of the questions asked, a large number of e-rate applications may be affected by the guidance request. In addition, although the FCC clarified that the e-rate [gift rules did not apply before January 3, 2011](#), several requests implicate issues that are raised in pending appeals of prior funding year decisions. The FCC's decision, therefore, likely will have broad implications for e-rate applications, past and future.

The FCC did not seek comment on the guidance request back in December, and it is not clear whether it will seek public comment in this instance. Given that funding decisions typically are issued around this time, it is likely the FCC will act quickly on the request.

The latest development comes in the form of a [guidance request](#) from USAC to the Chief of the FCC's Wireline Competition Bureau. In the guidance request, USAC poses nine questions to the Bureau which "USAC has been presented with" since the new rules were established.

**Charitable Donations/Free Equipment.** The first set of questions seek further clarification of an issue the Bureau previously [clarified in December](#). Specifically, the Bureau had ruled that service providers could not offer "special equipment discounts" or "equipment with service arrangements" to e-rate recipients if such discounts or arrangements "are not currently available to some other class of subscribers or segment of the public." In the guidance request, USAC asks whether the "class of subscribers" could be limited to schools and libraries generally (that is, both e-rate recipients and non-e-rate recipients). USAC also seeks clarification whether netbooks, cell phones and distance learning equipment are permissible types of charitable donations to an e-rate recipient.

**Conferences and "Widely Attended Gatherings".** Application of the rules at educational conferences has been a common source of uncertainty since the new rules came out. (And many of the pending appeals concerned alleged gifts or improper activities alleged to occur at industry conferences). USAC's questions here concern how to handle raffles commonly conducted at trade shows and what constitutes a "collateral event" at the conference or show. Further, USAC asks for clarification whether a school or library employee may provide a testimonial for a service provider's product, and asks whether paid or non-paid testimonials are permitted.

**Recordkeeping and Timing.** In the area that also may affect pending appeals, USAC asked several questions about how violations of the gift rules are to be determined. For example, USAC asked whether an unlawful gift can be cured by, for example, the e-rate recipient returning the gift or

paying for the item. Noting that multi-year contracts are common in the industry, USAC further asks which funding year or years are affected by a violation that is found. For example, does a violation that occurs during a multi-year contract invalidate all or only a portion of the contract? Finally, USAC asks how to apply the gift rules to (a) gifts provided before the recipient participated in the e-rate program and (b) gifts received by an e-rate recipient from a provider that does not currently provide service to the recipient.