

FCC Reaches \$3 Million Settlement with New York City Department of Education in E-Rate Investigation

December 28, 2015

On December 22, 2015, the Federal Communications Commission's (FCC's) Enforcement Bureau adopted a [consent decree](#) resolving the Enforcement Bureau's investigation into whether the NYC DOE violated the competitive bidding rules of the FCC's E-rate program. The competitive bidding rules ensure that schools and libraries that seek E-rate eligible goods and services treat price as the primary factor when choosing their service provider.

The consent decree is significant in several respects. First, this marks the first significant action handled by the USF "Strike Force" established by Chairman Wheeler in 2014. It also marks the largest e-rate settlement to date, and includes many compliance plan requirements that could become *de facto* standards for future E-rate enforcement actions. Further, to the best we can determine, this is the first E-rate enforcement action the Commission has taken against a school or library applicant under the program.

Under the terms of the consent decree, NYC DOE agreed to pay \$3 million to resolve the dispute and to relinquish claims to much of its e-rate funding since 2002. Specifically, NYC DOE will withdraw and cancel all E-rate funding requests from 2011-2013, which were frozen by the FCC in June 2011, and will withdraw claims to any unreimbursed E-rate funding for services it purchased from 2002-2010. Moreover, the consent decree leaves open the possibility that USAC will seek to recover funding already paid to some service providers as well.

The Enforcement Bureau's investigation stemmed from an [April 2011 report](#) issued by the Special Commissioner of Investigation for the New York City School District (SCI). The SCI's report concluded that Willard "Ross" Lanham, a consultant who was the project manager for NYC's Project Connect, overbilled the school district from 2002-2008. According to the SCI's report, Lanham created a subcontracting scheme using two primary vendors associated with Project Connect to misappropriate money from the NYC DOE, without the NYC DOE's knowledge or agreement. A portion of the funds that Lanham misappropriated came from the Universal Service Fund. (Lanham has since been convicted on theft and fraud charges and [debarred](#) from the e-rate program.)

The NYC DOE initially entered into an Interim Compliance Plan in 2011, which contained terms aimed at ensuring NYC DOE's compliance with the Commission's E-rate rules. Per the Interim Compliance Plan, the NYC DOE established the Office of Federal and State Regulatory Compliance (a department within NYC DOE) that oversees the district's administration of the E-rate program.

Under the Final Compliance Plan, NYC DOE agrees to a number of additional measures which are described as "required going forward before future e-rate funding can be committed or disbursed." The Final Compliance Plan measures include:

- Appointment of an E-rate Compliance Officer, an Independent Compliance Officer and an Independent Compliance Monitor. Notably, in a provision not found in other consent decrees, NYC DOE must inform the FCC prior to appointment of each of these officers, and the FCC has an opportunity to object to the appointment.
- The filing of various compliance and progress reports (some as often as monthly) throughout the term of the Compliance Plan.
- Establishment of an E-rate Compliance Plan and Training Program (including provisions requiring the DOE Chancellor to receive training).
- Retention of all E-rate related documents for ten years (twice the otherwise applicable record retention requirement).
- Certification by NYC DOE that no person or entity with any affiliation with Lanham is currently serving, or will serve, as E-rate Program Personnel and by NYC DOE's vendors, consultants, contractors and service providers that no employee or contractor has any affiliation with Lanham.
- Annual independent audits of NYC DOE E-rate compliance.

The Final Compliance Plan will remain in effect for two years, but can be extended by one year upon a finding by the FCC of substantial and material non-compliance. Finally, the Compliance Plan also includes a waiver of the citation requirements for enforcement actions against non-licensees (such as the NYC DOE), which would permit the FCC to proceed more expeditiously against the NYC DOE in the event of future e-rate violations.

The FCC's action signals a new chapter in E-rate enforcement. Service providers and applicants should review their E-rate policies and procedures carefully in order to ensure full compliance with applicable FCC rules.