



# *The E-Rate Program*

## Gifts

### Fall 2011 Applicant Trainings

## Agenda

- E-rate Gift Rules
- Charitable Donations
- Conferences and Training Sessions
- Representation on Boards
- Timing
- Questions

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# E-rate Gift Rules

## Fair and Open Competitive Bidding

- Applicants have always been required to conduct fair and open competitive bidding process
- Applicants certify on the Form 471 Item 29 that they *“...have not received anything of value or a promise of anything of value, other than services and equipment sought by means of this form, from the service provider, or any representative or agent thereof or any consultant in connection with this request for services. “*

- **FCC Rules - 47 C.F.R. § 54.503(d)**
- **Federal Gift Rules - 5 C.F.R. § 2635.201-205**
- **FCC Sixth Report and Order - 25 FCC Rcd 18762 (2010)**
- **FCC Clarification Order - 25 FCC Rcd 17324 (2010)**

## FCC Gift Rules – 47 C.F.R. § 54.503(d)

- **(d)(1): General Rule**

“...an eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the schools and libraries universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth \$20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this rule, if the value of these items received by any individual does not exceed \$50 from any one service provider per funding year. The \$50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year...”

## FCC Gift Rules – 47 C.F.R. § 54.503(d) (cont'd)

- **(d)(2)(i): Defines who is covered as a school, library, or consortium**  
“... all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such school, library, or consortium with the Schools and Libraries Program of the Universal Service Fund (E-rate Program), including individuals who prepare, approve, sign or submit E-rate applications, technology plans, or other forms related to the E-rate Program, or who prepare bids, communicate or work with E-rate service providers, E-rate consultants, or with USAC, as well as any staff of such entities responsible for monitoring compliance with the E-rate Program...”
- **(d)(2)(ii): Defines who is covered as a service provider**  
“...all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.”

## FCC Gift Rules – 47 C.F.R. § 54.503(d) (cont'd)

- **(d)(3): Provides an exception to the general rule for family and personal friends**  
“... shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible school, library, or consortium that includes an eligible school or library, provided that such transactions (i) are motivated solely by a personal relationship, (ii) are not rooted in any service provider business activities or any other business relationship with any such eligible school, library, or consortium, and (iii) are provided using only the donor’s personal funds that will not be reimbursed through any employment or business relationship.”



## FCC Gift Rules – 47 C.F.R. § 54.503(d) (cont'd)

- **(d)(4): Allows for charitable donations**

“Any service provider may make charitable donations to an eligible school, library, or consortium that includes an eligible school or library in the support of its programs as long as such contributions are not directly or indirectly related to E-rate procurement activities or decisions and are not given by service providers to circumvent competitive bidding and other E-rate program rules, including those in section § 54.503(c)(2)(vi), requiring schools and libraries to pay their own non-discount share for the services they are purchasing.”

## Gift Rules

- Solicitation or receipt of gifts by applicants from service providers and potential service providers and vice versa is a competitive bidding violation.
- Rules apply to everyone participating in the E-rate whether public or private, and whether operating at the local, state or federal level.
- Must always follow FCC rules. May also need to comply with additional state/local requirements. If those provisions are more stringent than federal requirements, failure to comply with them will be a violation of FCC rules.

## Gift Prohibitions

- Gift prohibitions are applicable year-round, not just during the competitive bidding process
- Prohibition including soliciting and receiving any gift or thing of value from an applicant or a service provider participating in, or seeking to participate in the E-rate.
- Service providers may not offer or provide any gifts to applicant personnel involved in the E-rate or vice versa.

## Gift Rule Exceptions

- “Modest refreshments not offered as part of a meal, items with little intrinsic value intended for presentation, and items worth \$20 or less, including meals, may be offered or provided , and accepted by any individuals or entities subject to this rule, if the value of these items received by any individual does not exceed \$50 from one service provider per funding year.” See 47 C.F.R. § 54.503(d)(1).
- Single source = all employees, officers, representatives, agents, contractors, or directors of the service provider.

## Gift Rule Exceptions Examples

- A Service Provider has offered a school district employee lunch at a local sandwich shop three times during the course of the year. The value of the school district employee's meal is \$9 each time. The total value of the gifts is \$27. No other gifts are received by this employee from this provider. The meals fall in the \$20 per instance and \$50 per year exception and there is no rule violation.

## Gift Rule Exceptions Examples

- A library employee and his spouse are invited by a service provider to attend a play, tickets to which have a face value of \$30 each. The aggregate market value of the gifts offered on this single occasion is \$60, \$40 more than the \$20 amounts that may be accepted for a single event or presentation. The employee may not accept the gift of the evening of entertainment. He and his spouse may attend the play only if he pays the full \$60 value of the two tickets.

## Gift Rule Exceptions

- Gifts to family and friends when those gifts are made using personal funds of the donor (without reimbursement from the employer) and are not related to a business transaction or business relationship are exempt. See 47 C.F.R. § 54.503(d)(3).
- Gift rules are not intended to discourage companies from making charitable contributions, as long as those contributions are not directly or indirectly related to an E-rate procurement. See 47 C.F.R. § 54.503(d)(4).

## Gift Rule Exceptions Examples

- A service provider's spouse is the town librarian. The service provider employee may give the librarian a birthday gift exceeding \$20, as long as it is not reimbursed by the company, and is being given based on their personal relationship.
- Three service provider employees invite a tech director to join them at a golf tournament at their company's expense. The entry fee is \$500 per foursome. The tech director cannot accept the gift even though he has an amicable relationship with the service provider employees. Since the fees are paid by the company, it is the business relationship, not the personal relationship that is the motivation behind the gift.



## Curing Violations

- Promptly return any tangible item to the donor, or pay the donor its market value, or, if perishable, the item may be given to an appropriate charity or shared within the office or destroyed. See CFR 2635.205(a).
  - To avoid public embarrassment to the seminar sponsor and E-rate service provider, the Superintendent did not decline a barometer worth \$200 given at the conclusion of her speech on the district's education initiatives. The Superintendent must either return the barometer or promptly reimburse the provider \$200 to cure the violation.

## Curing Violations Examples

- With approval from the recipient's supervisor, a floral arrangement sent by a service provider may be placed in the office's reception area.
- A district employee wishes to attend a charitable event to which he has been offered a \$300 ticket by a service provider. Although his attendance is not in the interest of the district, he may attend if he promptly reimburses the donor the \$300 face value of the ticket.

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# Charitable Donations

## Charitable Contributions

- Gift rules are not intended to discourage charitable donations as long as the donations:
  - Are not directly or indirectly related to E-rate procurement activities or decisions, and
  - Are not given with the intention of circumventing competitive bidding or other FCC rules

## Allowable Charitable Contributions

- Paid-for-exchange services at market rates, such as the purchase of advertising space, is neither a gift nor a charitable donation as long as it is not intended to influence the competitive bidding process.
  - For example, service providers purchasing advertising space on the high school football score board, for which they pay market rates, would not cause any violations.

## Potentially Allowable Charitable Contributions

- Equipment, including laptops and cell phones, *may* be permissible if it benefits the school or library as a whole and broadly serves an educational purpose.
  - Gifts of equipment that increase demand for a donor's services, and thus cause the applicant to purchase more of a provider's services, are prohibited.
    - Example: Service provider donates computers, causing a need for more Internet Access, which the provider sells to the library

## Potentially Allowable Charitable Contributions

- Cash, equipment, including sporting, musical or playground equipment, *may* be permissible if they benefit the school or library as a whole and broadly serve an educational purpose.
  - For example, a donation of books for a literacy campaign, given to a school by an E-rate service provider, would be acceptable donation that benefits the school and broadly serves an educational purpose.

## Unallowable Charitable Contributions

- Donations given for the purpose of influencing the competitive bidding process are rule violations.
  - Donations could either be directly from the service provider or solicited or accepted indirectly through a non-profit organization.



## Gifts solicited or accepted indirectly

- “A gift which is solicited or accepted indirectly includes a gift:  
(1) Given with the employee’s knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person’s relationship to the employee, or (2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee except as permitted for the disposition of perishable items or payments made to charitable organizations in lieu of honoraria.” See 5 C.F.R. § 2635.203(f).

## Gifts solicited or accepted indirectly

- Donations made indirectly through a third party, such as a non-profit, would be prohibited if the organization is used as a shell to disguise a directed gift.
  - A service provider directing its foundation to provide a cash donation equal to the value of the applicant's non-discount share is a prohibited donation.
- Service provider cannot direct the donation and must relinquish control of the gift once provided to a non-profit.

## Gifts solicited or accepted indirectly

- Example:
  - An employee who must decline a gift of a personal computer pursuant to this rule may not suggest that the gift be given instead to one of five charitable organizations, whose names are provided by the employee.
  - A service provider cannot donate computers to raffle with the caveat that they go to E-rate recipients, or specific individuals or schools, or a subset of schools and libraries.

## Unallowable Charitable Contributions

- 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.
  - Free phone/tablet with purchase of service contract must be available to non-E-rate customers as well
- Donations to cover the applicant's non-discount share

## Unallowable Charitable Contributions

- Travel expenses such as airfare, meals, lodging, etc. unless the meal falls below the \$20/\$50 thresholds.
- Example:
  - A service provider offers to pick up the travel and lodging costs for an applicant to attend a customer appreciation event in another state. This gift is not allowable under the gift rules.

## Unallowable Charitable Contributions

- Equipment for a specific individual or group of individuals associated with or employed by an E-rate participant.
  - Service provider may not give a gift to a teacher who helps draft a district's technology plan, even if that teacher does not ultimately help select the E-rate service provider.

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# **Conferences and Training Sessions**

# Conferences and Training Sessions

## Prizes

- Raffle tickets, prizes, or door prizes that have a retail value of over \$20 violate the gift rules unless the event is open to the public.
  - “Open to the Public” means the event is free of charge and that members of the public at large typically attend such a gathering.
    - State Fair would qualify
    - State District IT Directors meeting would not qualify



## Widely Attended Gatherings

- “Widely attended gatherings” allow for free attendance and meals or refreshments at that event. See 5 C.F.R. § 2635.203(g)
  - Gathering is widely attended if:
    - Employee’s attendance must be in the interest of the agency (i.e. school or library) and further its programs and operations, and
    - It is expected that a large number of persons will attend, and
    - Persons with a diversity of views or interests will be present.

## Conferences – Permissible Actions

- Food, refreshments, instruction and documents given to all attendees at Widely Attended Gatherings are permissible.
- Trainings offered by state, regional or local government bodies or non-profits or trade associations that include those bodies are not considered vendor promotional training
  - Vendor promotional training means training provided by any person for the purpose of promoting its products or services.  
See 5 C.F.R. § 2635.203(g)

## Conferences – Permissible Actions

- Service providers can host, sponsor, or conduct E-rate training, as long as they do not provide any gift that exceeds the gift exceptions
  - Service providers cannot help with preparation or completion of forms, or determining the services listed on the FCC Form 470 and/or RFP.

## Conferences – Impermissible Actions

- Training or conference regarding one or few vendors services would not meet the definition of a Widely Attended Event even if many people attended.
  - Travel expenses, lodging, meals, and entertainment associated with the event would be considered gifts and therefore violations.
  - Free attendance when it would otherwise cost to attend is also a violation.
- Meals at a Widely Attended Gatherings not provided to all attendees would be subject to gift limits

## Conferences – Registration Fees

- Service providers can offer an “educational discount” on the attendance fee to a Widely Attended Event as long as it is available to **all** employees of schools and libraries.
- Applicants cannot accept free attendance, paid by a service provider, even if the school or library has assigned the employee to attend the event.
- A Service provider cannot pay for or reimburse expenses for an applicant to speak at a conference on behalf of that service provider, or in any other setting, e.g. newspaper or magazine.

## Board Membership

- Employees who are required by law to sit on the governing board of a governmental agency that acts as a service provider do not violate the gift rules when they accept meals or travel expenses required to execute their official position and duties on that board.
- Service providers may sit on a school's fundraising board, as long as that does not unduly influence the competitive bidding process or provide them with inside information.

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# Timing

## Timelines for Compliance

- Requirement for fair and open competitive bidding has always been in effect.
- Rules from 6<sup>th</sup> Report and Order went into effect January 3, 2011.
- New applicants, or applicants that are applying for the first time for a category of service, must be in compliance with rules six months prior to the posting of their first FCC Form 470.
- Dollar limits of \$20/\$50 are calculated per funding year



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# Questions?

**Thank you!**