

Changes in E-Rate Program Are Likely

*A Technology Monitoring and Information Service (TechMIS)
SPECIAL REPORT*

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For the very near future, opportunities continue to exist for instructional software, hardware, and professional development purchases by certain districts who are receiving E-Rate refunds on prediscount purchases as appeals have been found to be meritorious. During the last year, opposition to the E-Rate program, particularly among the House leadership, has been festering because of allegations of fraud and abuse, some of which were determined by the courts to be valid. The new Chairman of the House Energy and Commerce Committee (which has jurisdiction over the E-Rate program), Congressman Barton (R-TX), reportedly stated before the Federal Communication Bar Association in April (Education Daily, May 17), "If I have the votes to kill 'E-Rate' I am doing to do that." Last year the White House Office of Management Budget ruled that E-Rate fell under the Anti-Deficiency Act (ADA), which prevents certain agencies from committing funds until the funds are in their hands. This slowed down and almost halted for almost six months the flow of SLD funding commitment letters to districts whose E-Rate applications had been approved. At the very last moment in its last session, Congress exempted the E-Rate from the ADA for at least one year averting a short-term catastrophe. The problem will arise once again this year unless another exemption is made for a year or a permanent exemption is passed. And, in a continuing process, the Government Accountability Office has been releasing reports faulting the FCC and the SLD administration of the E-Rate program.

On the brighter side, the newly-appointed FCC commissioner, Kevin Martin, an E-Rate advocate, appears to be willing, according to e School News, to reform the program and address the fraud and abuse allegations up front. Proposed regulations are expected in the near future to improve the E-Rate auditing process. In the Senate, S 241 would provide a permanent exemption for E-Rate from the ADA. And, support appears to be growing in Congress to restore a large portion of the \$500 million cut proposed by the Bush Administration for the Title II D Enhancing Education Through Technology program. Many districts use E²T² funds to cover a large portion of the matching requirement in order to file an application for E-Rate discounts.

Enclosed is a list of districts receiving E-Rate funding commitment letters for prior years which might offer TechMIS subscribers opportunities for purchases of non-eligible E-Rate products and services such as software, staff development, and computers. The 2002 and 2003 year commitments might have been a result of appeals made over the last two years or even earlier which have been found to be "meritorious" by the SLD. In these

cases, the E-Rate applicants might have paid the pre-discount rate for eligible products and services and hence, could request a check in lieu of a credit for the discount refund amount, if it went through the Form 472 BEAR reimbursement process. If a potential customer is interested in purchasing a product but does not have adequate funding, these potential customers should be advised to contact the district E-Rate office to determine whether the Form 472 BEAR process has been used to request a check in lieu of a credit and, if so, to explore the possibility of such discount reimbursements to be used to purchase the product. We wish to emphasize that, in some cases, the district might have waited until the results of the appeal were known before purchasing the product and obviously would not have paid the prediscount price and be eligible to proceed with the BEAR process.

The attached list presents commitments of E-Rate funds to school districts and libraries that did not fall within the regular funding waves. Only commitments in excess of \$50,000 have been listed. The list represents commitments made in the first quarter of the School and Libraries Division's year (which corresponds to the calendar year) -- January through March 2005. These commitments cover funds from 2002 and 2003 and include E-Rate reimbursements that were not committed during the regular funding waves because of late applications, appeals, etc.

For more information go to www.sl.universalservice.org/whatsnew/2004/112004.asp.