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MEMORANDUM

DATE: November 21, 2016
TO: TechMIS Subscribers
FROM: Charles Blaschke, Dr. Suzanne Thouvenelle, Blair Curry
SUBJ: E-Rate Refund Alert

Earlier this month, we received and analyzed the most recent USAC/SLC quarterly report on Funding Commitment Letters (FCL) that were sent to district applicants. The actual E-Rate refunds will be sent directly to the district, not providers, if requested by the district. The Funding Commitment Letters received most recently by districts were from applications submitted in 2011-15 and for the most part, included appeals that were found to be “meritorious,” as the district had paid the full pre-discount price when the item was initially purchased, and then “turned down” by the Schools and Libraries Division (SLD).

The refunds following the Funding Commitment Letters can be used by the district in accordance with its own desires and procurement policies as described in the attached report, which also suggests several “cautions” on how to approach the district official which is interested in purchasing a firm’s product so that he/she can contact the district E-Rate office to see if any refunds are available to purchase the firm’s product.

**Special E-Rate Refund Alert:
Funding Commitment Letters (FCL) for the 2016 July-September
Quarter for Selected Districts Which Are or Will Be Receiving “E-Rate
Refunds;” E-Rate Refunds Can Be Used to Purchase Instructional
Software, Professional Development, and Other Products**

A Technology Monitoring and Information Service (TechMIS)

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Since 2000, we have been reporting on potential opportunities for districts to purchase non-eligible E-Rate products using E-rate refunds through the so-called BEAR process. These districts pay the full price for eligible products and then request an E-Rate discount refund, which can be used to pay for non-eligible products such as instructional software and professional development and for other purposes. Some districts paid the full (before discount) price after they were “turned down;” then they filed an appeal, which was found to be meritorious a year or so later. Others wanted to leverage the E-rate for more flexible funds by paying full price, and then requesting the discount as a refund. Districts offering the best prospects among those receiving Funding Commitment Letters (FCL) of \$50,000 or more between July-September 2016 have been identified in this TechMIS alert.

Although this process may seem a bit complicated, it has been re-confirmed as working per the presentation by John Harrington, President of Funds for Learning (FFL) during the April 2015 SIIA-sponsored Webinar on member’s opportunities to participate in the E-Rate program. He reaffirmed the nature of such opportunities for districts by stating that his group recommends eligible districts/clients actually pay the full price for eligible products and then request, through the BEAR process, the E-Rate discount refund or “savings,” which can be used to purchase non-eligible E-Rate products. The recently published “Guide to E-Rate 2.0” by the Education Technology Industry Network of SIIA, states that the “savings” can be used for non-eligible technology-related software products and services: “In some instances, technology directors have worked out arrangements whereby they direct the BEAR (discount reimbursement) payments to special accounts for technology purchases, but that is by no means guaranteed. In other cases where the technology directors expect to make future purchases from a vendor of eligible E-Rate products, they may ask that BEAR payments be credited to the district’s account in part to keep the “savings out of the hands of school budget officers.”

To further confirm what we have noted in earlier TechMIS reports, the Guide states, “Beginning in funding year 2016, applicants which use the BEAR method will be directly reimbursed for E-Rate discounts by USAC. This creates an anticipation of a faster reimbursement for applicants,

which could, in turn, allow schools and libraries to deploy projects and use new software quicker than what has previously been the case -- an advantage for companies with non-eligible products and services that schools may pay for using their E-Rate reimbursements.”

In addition to districts, which pay the “full price” on eligible E-Rate products in order to receive BEAR refunds or “savings” that can be spent on “anything,” some districts receive “refunds” as a result of some appeals that were filed by districts when they were notified that certain technology purchase requests in their applications were denied. In many cases, these districts went ahead and purchased the product in question, paying the entire pre-discount price. Because the Schools and Libraries Division (SLD) eventually found many of these appeals to be meritorious and sent the district a FCL, these districts have requested “checks/cash” for the refund through the so-called BEAR process.

In the above cases districts can use the discount refund to purchase non-eligible E-Rate products and services such as instructional software and professional development.

As we noted in the February TechMIS Washington Update, the most recent Funds for Learning report on problems which districts are having in implementing the new E-Rate Modernization initiative found that the application process which began in 2015 took longer and was more complex than in previous years. Also, there was confusion about many of the changes. Given this increased degree of confusion and complexity, as we have predicted in the March 2016 TechMIS Special Report, one can expect an increase in 2016-17 in the number of Funding Commitment Letters due to appeals found to be meritorious.

Based upon the relatively large increase in the number of 2015 E-Rate refunds commitments which were sent to districts through March 2016, it would appear that the number of districts that paid the full (before discount) price for E-Rate eligible products in order to receive directly for the first time E-Rate refund checks increased significantly. In the 2015 TechMIS reports, the number of districts receiving Funding Commitment Letters was 100-200; in our June 6, 2016, TechMIS report, the number of districts receiving E-Rate refunds of \$50,000 or more increased to over 575. One can infer that many E-Rate coordinators took John Harrington’s and our advice, noted above, to use the refunds to purchase products and services, which might not have been eligible to be purchased with the funds used to pay the full price for E-Rate eligible products and infrastructure. For example, if a district used bond issue funds earmarked only for purchasing infrastructure-type products, then by paying the full price initially and then receiving a refund these funds could likely now be used for professional development, instructional materials, and other non-eligible E-Rate products and services.

Based upon the information provided on the E-Rate refunds included in the most recent Funding Commitment Letters, one cannot determine whether the refunds were the result of an appeal that was found to be meritorious through an “expedited USAC E-Rate office process” or whether the refunds resulted from districts intentionally paying the full price initially and then using the refund in a more flexible manner. We are now analyzing E-Rate data to get a better answer to this question. Stay tuned!

Suggested Sales Approach

It is important to note that some of the districts receiving Funding Commitment Letters during the most recent quarter also received Funding Commitment Letters for significant amounts of refunds during the first two or three quarters of last year. For example, these include Robstown, Texas, which received \$404,000 last quarter and \$1.38 million, \$156,000, and \$208,000 in previous quarters. Montebello, California received a total of \$13.2 million for 2013-15 years. Also, some of the districts/states/entities receiving relatively large refunds in this quarter could have been lead agents for a consortium of districts and received the Funding Commitment Letters as a fiscal agent in which the “refunds” could be prorated to the member districts of the consortia (e.g., ECM BOCES, Syracuse, NY -- \$2.8 million). In any event, the districts identified in the attached exhibit represent good opportunities even though the context for the entities may differ and the procedures for using such funds may also differ.

One strategy would be to identify districts in the exhibit which are existing customers, who might desire to expand purchases of a firm’s products and/or professional development, possibly under an existing sales/contractual arrangement over multiple years. If the firm’s district staff contact person is interested in seeking funds to purchase a non-E-Rate eligible product or service, then the district contact person should contact the district E-Rate office to determine whether a check was requested for the refund amount through the BEAR process; and, if so, whether some of that refund can be used to purchase the desired product or service. We suggest the firm’s sales person NOT “cold-call” the district E-Rate office directly!!

TechMIS clients are reminded that E-Rate funds are not Federal funds (i.e., they are not appropriated by Congress), and as a result are not subject to the recent OMB procurement requirement which often requires competitive bidding. Thus, if local district policies allow, non-competitive, sole-source purchasing can be used when E-Rate refunds are used to purchase products and/or services.

In our February 20, 2014, TechMIS Special E-rate Report on the new Modernization Initiative we noted that beginning in 2016, the BEAR process is likely to be expedited as districts can receive refunds directly rather than refunds going through a service provider to the district. Under the first two years of the new Modernization Initiative, the number of districts receiving “refunds” through the BEAR process is very likely to increase compared to 2015.

The exhibit on the next page includes 70 plus districts/schools/libraries, which received Funding Commitment Letters on refunds greater than \$50,000, by the end of September 2016. These districts offer good prospects.

Please call Charles directly (703-362-4689) if you have any questions about this Special Funding Alert.