

the annual cost of high-speed Internet access services or raise the speed threshold of broadband services eligible for this competitive bidding exemption, based on a determination of what rates and speeds are commercially available prior to the start of the funding year.

[75 FR 75412, Dec. 3, 2010, as amended at 76 FR 56302, Sept. 13, 2011; 79 FR 49199, Aug. 19, 2014]

EFFECTIVE DATE NOTE: At 79 FR 49199, Aug. 19, 2014, § 54.503 was revised. However, paragraph (c) contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 54.504 Requests for services.

(a) *Filing of the FCC Form 471.* An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart shall, upon entering into a signed contract or other legally binding agreement for eligible services, submit a completed FCC Form 471 to the Administrator.

(1) The FCC Form 471 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium and shall include that person's certification under oath that:

(i) The schools meet the statutory definition of "elementary school" or "secondary school" as defined in § 54.500 of this subpart, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.

(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(iii) The entities listed on the FCC Form 471 application have secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make

effective use of the services purchased, as well as to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. The billed entity will pay the non-discount portion of the cost of the goods and services to the service provider(s).

(iv) The entities listed on the FCC Form 471 application have complied with all applicable state and local laws regarding procurement of services for which support is being sought.

(v) The services the school, library, or consortium purchases at discounts will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.513.

(vi) The entities listed in the application have complied with all program rules and acknowledge that failure to do so may result in denial of discount funding and/or recovery of funding.

(vii) The applicant understands that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.

(viii) The applicant recognizes that it may be audited pursuant to its application, that it will retain for ten years any and all worksheets and other records relied upon to fill out its application, and that, if audited, it will make such records available to the Administrator.

(ix) Except as exempted by § 54.503(e), all bids submitted to a school, library, or consortium seeking eligible services were carefully considered and the most cost-effective bid was selected in accordance with § 54.503 of this subpart, with price being the primary factor considered, and it is the most cost-effective means of meeting educational needs and technology goals.

(2) All pricing and technology infrastructure information submitted as part of an FCC Form 471 shall be treated as public and non-confidential by the Administrator unless the applicant specifies a statute, rule, or other restriction, such as a court order or an

existing contract limitation barring public release of the information.

(i) Contracts and other agreements executed after adoption of this rule may not prohibit disclosure of pricing or technology infrastructure information.

(ii) The exemption for existing contract limitations shall not apply to voluntary extensions or renewals of existing contracts.

(b) *Mixed eligibility requests.* If 30 percent or more of a request for discounts made in an FCC Form 471 is for ineligible services, the request shall be denied in its entirety.

(c) *Rate disputes.* Schools, libraries, and consortia including those entities, and service providers may have recourse to the Commission, regarding interstate rates, and to state commissions, regarding intrastate rates, if they reasonably believe that the lowest corresponding price is unfairly high or low.

(1) Schools, libraries, and consortia including those entities may request lower rates if the rate offered by the carrier does not represent the lowest corresponding price.

(2) Service providers may request higher rates if they can show that the lowest corresponding price is not compensatory, because the relevant school, library, or consortium including those entities is not similarly situated to and subscribing to a similar set of services to the customer paying the lowest corresponding price.

(d) *Service substitution.* (1) The Administrator shall grant a request by an applicant to substitute a service or product for one identified on its FCC Form 471 where:

(i) The service or product has the same functionality;

(ii) The substitution does not violate any contract provisions or state or local procurement laws;

(iii) The substitution does not result in an increase in the percentage of ineligible services or functions; and

(iv) The applicant certifies that the requested change is within the scope of the controlling FCC Form 470, including any associated Requests for Proposal, for the original services.

(2) In the event that a service substitution results in a change in the pre-

discount price for the supported service, support shall be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service.

(3) For purposes of this rule, the two categories of eligible services are not deemed to have the same functionality as one another.

(e) *Mixed eligibility services.* A request for discounts for a product or service that includes both eligible and ineligible components must allocate the cost of the contract to eligible and ineligible components.

(1) *Ineligible components.* If a product or service contains ineligible components, costs must be allocated to the extent that a clear delineation can be made between the eligible and ineligible components. The delineation must have a tangible basis, and the price for the eligible portion must be the most cost-effective means of receiving the eligible service.

(2) *Ancillary ineligible components.* If a product or service contains ineligible components that are ancillary to the eligible components, and the product or service is the most cost-effective means of receiving the eligible component functionality, without regard to the value of the ineligible component, costs need not be allocated between the eligible and ineligible components. Discounts shall be provided on the full cost of the product or service. An ineligible component is “ancillary” if a price for the ineligible component cannot be determined separately and independently from the price of the eligible components, and the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality.

(3) The Administrator shall utilize the cost allocation requirements of this paragraph in evaluating mixed eligibility requests under paragraph (e)(1) of this section.

(f) *Filing of FCC Form 473.* All service providers eligible to provide telecommunications and other supported services under this subpart shall submit annually a completed FCC Form 473 to the Administrator. The FCC

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Form 473 shall be signed by an authorized person and shall include that person's certification under oath that:

(1) The prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to those prices, the intention to submit an offer, or the methods or factors used to calculate the prices offered;

(2) The prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program will not be knowingly disclosed by this service provider, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt will be made by this service provider to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(4) The service provider listed on the FCC Form 473 certifies that the invoices that are submitted by this Service Provider to the Billed Entity for reimbursement pursuant to Billed Entity Applicant Reimbursement Forms (FCC Form 472) are accurate and represent payments from the Billed Entity to the Service Provider for equipment and services provided pursuant to E-rate program rules.

(5) The service provider listed on the FCC Form 473 certifies that the bills or invoices issued by this service provider to the billed entity are for equipment and services eligible for universal service support by the Administrator, and exclude any charges previously invoiced to the Administrator by the service provider.

[79 FR 49199, Aug. 19, 2014]

EFFECTIVE DATE NOTES: At 79 FR 49199, Aug. 19, 2014, §54.504 was revised. However, paragraphs (a) and (f) contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 49199, Aug. 19, 2014, §54.504 was revised, however paragraphs (f)(4) and (f)(5) will become effective July 1, 2016.

§ 54.505 Discounts.

(a) *Discount mechanism.* Discounts for eligible schools and libraries shall be set as a percentage discount from the pre-discount price.

(b) *Discount percentages.* The discounts available to eligible schools and libraries shall range from 20 percent to 90 percent of the pre-discount price for all eligible services provided by eligible providers, as defined in this subpart. The discounts available to a particular school, library, or consortium of only such entities shall be determined by indicators of poverty and high cost.

(1) For schools and school districts, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. School districts shall divide the total number of students eligible for the National School Lunch Program within the school district by the total number of students within the school district to arrive at a percentage of students eligible. This percentage rate shall then be applied to the discount matrix to set a discount rate for the supported services purchased by all schools within the school district. Independent charter schools, private schools, and other eligible educational facilities should calculate a single discount percentage rate based on the total number of students under the control of the central administrative agency.

(2) For libraries and library consortia, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism in the public school district in which they are located and should use that school district's discount rate when applying as a library system or on behalf of individual libraries within that system. Library systems that have branches or outlets in more than one public school district should use the address of the central outlet or main administrative