

Hard vs. Soft FCDL's

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It is expected that the SLD will begin issuing new Funding Commitment Decision Letters ("FCDLs") within the next week or two. This will represent the first FCDLs since the funding freeze began August 4th. Resumption of funding, however, does not mean that the E-rate accounting problem has disappeared. The SLD is still limited to making new commitments only when new cash becomes available. As a result, we expect that the first batch of new FCDLs will cover recently approved funding for FY 2003 and earlier, but only a small portion of applications for FY 2004 that are ready to be funded.

One approach to solving the E-rate funding problem is to legislatively exempt the fund from the Anti-Deficiency Improvement Act. By permitting the SLD to issue formal — or "hard" — commitments without additional unobligated cash on hand, the SLD could return to its previous funding policies. Draft language to exempt the E-rate fund is being circulated, but is running into opposition from the Office of Management and Budget ("OMB").

Another approach the FCC had supported earlier, is a legislative solution, which is now seriously considering a "soft" commitment approach. A Tentative Funding Qualification Letter ("TFQL") is being discussed. As drafted, the TFQL would be sent to an applicant whose application had been reviewed. Instead of formally committing dollars to each FRN, however, the letter would simply advise the applicant that based on the SLD's "preliminary review," a certain dollar amount of discounts appears to be "Qualified" for funding (and, possibly, that other dollar amounts appear to be "Not Qualified" or "Under Review").

The key paragraph in the draft TFQL, which makes it a "soft" commitment, reads:

This Tentative Funding Qualification Letter does not constitute a contract or binding commitment to provide discounts to the applicant or funds to its service provider. The purpose of this letter is to inform you that, based on our preliminary review of your application, your application is complete and it appears that you may be eligible to receive the discounts listed above as "Qualified". This tentative determination could change as your application is subject to continuing review and a decision approving or denying discounts will not be made until we issue a Funding Commitment Decision Letter (FCDL). An FCDL will not be issued until we determine that the Universal Service Fund has received adequate funds that are available for obligation. If we receive adequate funds that are available for obligation and we make a final determination that your requests meet all program qualifications, we may be able to fund up to the dollar amounts listed as "Qualified" above. You should not assume that funding for your discounts has been reserved or approved until you receive an FCDL. SLD is not liable for any program-related costs you incur prior to your receipt of an FCDL and you incur such costs at your own risk. Your receipt of an FCDL is also contingent on successful completion of our review and your compliance with all statutory and regulatory requirements of the Schools and Libraries Universal Service Support Mechanism.

In other words, the TFQL is the first step in a two-step review and commitment process. The TFQL would merely advise an applicant that its application had passed review and that, most likely, sometime in the future, the applicant would receive a "hard" commitment. As currently drafted, the TFQL does not even provide information on the status of individual FRNs, nor does it contain enough information on "soft" denials to permit the filing of appeals.

A number of applicants and vendors are telling the FCC that a "soft" commitment letter would not be sufficient to permit them to proceed with any E-rate dependent projects. Without solving the basic accounting problem, the TFQL can be seen only as courtesy advisory on the status of an applicant's application. That would be better than nothing under the current environment, but it is hardly a solution.

And so the problem remains. Stay tuned.