



# SCOTUS Will Soon Decide the Fate of E-Rate Program: Could Schools Lose Their Tech Funding?

Insights

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The U.S. Supreme Court recently heard argument on an important case that has the potential to upend a significant source of technology funding for school systems throughout the country. The *FCC v. Consumers' Research* case, set to be decided within the next few months, will decide the constitutionality of the Universal Service Fund (USF), a program established under the Telecommunications Act of 1996 to fund the E-rate program and promote universal access to telecommunications services. If SCOTUS decides to strike down the funding source, schools could lose out on \$4 billion that currently subsidizes internet, telephone, and related services in public and private schools – and tech companies offering support services could face a business crisis. What do you need to know about this case?

## The E-Rate Program, in a Nutshell

The E-rate program provides discounts to help schools and libraries afford telecommunications and internet services like broadband access, internal connections, and network maintenance. It ensures affordable access to modern communications networks by offering discounts of up to 90%, depending on factors like poverty levels and urban/rural status. It not only enables schools to maintain the kinds of tech needed to provide digital learning, but it helps economically disadvantaged areas where internet services might otherwise be unavailable.

## Quick Legal Backdrop

This case all centers around the fact that Congress delegated authority to the FCC to collect contributions from telecommunications carriers to fund the E-rate program. These funds were then administered by a private entity, the Universal Service Administrative Company (USAC). After a successful legal challenge, the 5th Circuit Court of Appeals held that the delegation of taxing authority from Congress to the FCC, and the FCC's sub-delegation of this authority to USAC, violated the Constitution under something known as the "non-delegation doctrine."

Under this holding, now on appeal to SCOTUS, the ongoing viability of the funding mechanism for several significant programs that are funded through the USF are now in jeopardy – including E-rate. If the Court rules that the FCC's delegation of taxing authority to USAC is unconstitutional, it will cast significant doubt on the long-term viability of the E-rate program as currently structured.

## What's at Stake?

If the Court upholds the 5th Circuit's decision, the E-rate program may face substantial uncertainty – unless the funding mechanism is restructured in a way that complies with the Constitution. This could impact ongoing and planned technology projects nationwide, with severe impacts on the schools and school systems that rely on the program. Also facing an existential threat: the businesses and vendors that provide services to those schools via the E-rate subsidies that make their work possible.

## What's Next?

The Supreme Court's term ends in June, and we expect a decision in this case by then. At the March 26 oral argument, several Justices seemed reticent to completely scrap the E-rate funding. Justice Alito, in fact, told the challengers' attorney that he was "quite concerned about the effects of a decision in your favor."

## Conclusion

We will closely monitor the case as we await the Supreme Court's decision. Be sure to subscribe to [Fisher Phillips' Insight System](#) to keep up with the most up-to-date information. In the meantime, if you have questions, reach out to your Fisher Phillips attorney, the author of this Insight, or any attorney in [our Education Team](#) or [Technology Industry Team](#).

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