



Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Modernizing the E-rate Program) WC Docket No. 13-184
For Schools and Libraries)

**Initial Comments of the Pennsylvania Department of Education
In Response to FCC Public Notice DA 17-921
Seeking Comments on the E-rate Category 2 Initiative**

On behalf of the schools and libraries in the Commonwealth of Pennsylvania, we would like to thank the Commission for this opportunity to provide comments on various aspects of the E-rate Category 2 initiative.

Pennsylvania has 1.77 million public school students in 760 public school districts, vocational technical schools and charter schools; 229,000 nonpublic private school students in 1900 nonpublic schools; and more than 600 public libraries. While we have several large urban districts like Philadelphia and Pittsburgh, most of our applicants are small to medium sized, suburban and rural schools and libraries.

Prior to E-rate Modernization, only a small handful of schools in Pennsylvania qualified and received Priority 2 funding for internal connections equipment due to both the lack of available E-rate funding in certain years and the fact that most of our schools had discounts of less than 90%. Since FY 2015, Pennsylvania’s schools and libraries have received \$80 million

in Category 2 funding, with nearly all of it being used for Internal Connections equipment and installation. Not only is E-rate the single largest source of technology funding available to our schools, it is the only source of internal connections funding available to our applicants, and thus, E-rate is not just a luxury for our schools and libraries – it is vitally essential to the delivery of not only high-quality education but also almost all school and library administrative functions.

While the Pennsylvania Department of Education believes that the first three years of the Category 2 initiative have been a resounding success, we also believe that certain changes are needed to improve the program for applicants and the E-rate Administrator, alike. Therefore, we respectfully submit comments related to the following issues:

1. Utilization of Category 2 Budgets
2. Simplifying the Category 2 Initiative for School/Libraries and the Administrator
 - a) Shift from District-Wide C2 Budgets vs School-Based Budgets
 - b) Eliminate Building-to-Building Equipment Transfer Limitations
 - c) Eliminate Building-by-Building Allocation of C2 Equipment/Services on Form 471
 - d) Eliminate School Building-Level Discount Data in EPC
 - e) Align All Category 2, 5-Year Budgets
 - f) Adjust Category 2 Budgets for Inflation Every 5-Years
3. Continue the Current Category 2 Funding Mechanism and Do Not Revert to the 2/5 Rule
4. Eliminate Queen of Peace “Equivalent” Bidding Requirements for Schools that Have Standardized on a Manufacturer
5. Place Form 486 CIPA Certifications on the Form 471 and Eliminate Form 486 Entirely
6. Allow Upfront Funding of Manufacturer Warranties

1. Utilization of Category 2 Budgets

The Commission asked for comments related to the reasons why some applicants have not yet taken advantage of their Category 2 budgets. In Pennsylvania, we are confident that schools are aware that this funding mechanism exists as we provide continuous outreach via webinars, in-person trainings, conference workshops, and through a very active, dedicated E-rate listserv. In fact, 82% of our public school districts have utilized some of their Category 2 funding in the first three funding years, with 23% of public school districts having spent every dollar of their five-year budget. These figures are a testament to the fact that applicants are aware that this funding is available.

For the schools that either have not taken advantage of any Category 2 funding, or have not fully utilized their C2 budgets, we believe there are two contributing factors. First, many schools had already invested in the Wi-Fi and networking equipment in the years immediately prior to FY 2015 and thus did not need to procure new equipment from 2015-2017. Those schools have indicated they are waiting until FY 2018 or FY 2019 to begin their five-year rolling Category 2 budget cycle.

Unfortunately, recent state budget situations have resulted in schools taking a more conservative approach to expenditures, including delaying technology upgrades, as they consider how to cover essential services with local and reserve funds. Even with E-rate discounts, it has been difficult for many districts to consider Category 2 expenditures because of the often-sizeable non-discounted match requirement.

2. Simplifying the Category 2 Initiative for School/Libraries and the Administrator

Although one goal of E-rate Modernization was program simplification, at that time we did not have the benefit of experience with the current C2 structure to fully understand and be able to recommend meaningful ways that the initiative could be improved. We believe the following recommendations balance the Commission's need to protect the fund from waste, fraud and abuse, with the need to remove much of the red tape that is driving applicants to consultants out of fear there's no way for them to possibly keep track of the myriad of rules, deadlines and forms required to utilize the C2 funding.

a) Shift from District-Wide C2 Budgets vs School-Based Budgets

The current rules provide for a pre-discount budget of \$150 per student, per building, over a five-year span, adjusted for inflation. We strongly recommend, based on feedback from our school officials, that this funding formula be flatted so that C2 budgets are based on district-wide enrollments, not building enrollments. When the Commission changed the manner in which school districts calculate their discounts to be district-wide instead of a weighted discount, it acknowledged that it was more in line with how districts budgets are administered. We believe that changing the C2 funding formula is in keeping with this framework of local control from which district officials can best decide how funding should be allocated in their district. One of the most common questions we receive from district officials is whether they can use C2 funding from one school where it is not needed to another school where the C2 budget is not sufficient. We are certain that with this change, there will be a higher utilization of C2 budgets.

Further, while the current method of calculating the initial five-year C2 school budgets is not overly complicated, it has become unwieldy to determine the amount of funding *remaining* in each school's budget after a portion of the budget has been utilized. There is no single

repository on USAC's website for a school to determine their remaining C2 balance by school. The Category 2 Budget Tracker Tool on the USAC website only shows FY 2015 and FY 2016 commitments, and the terminology used is confusing. It doesn't reflect FY 2017 commitments or pending requests, or instantly reflect Form 500 reductions. Further, the current interface has no mechanism to download this data into a spreadsheet, which is how most districts visualize and interpret data, and how state officials create outreach materials for their applicants. We should not make busy administrators embark on a cut and paste journey simply to keep track of their remaining C2 funds.

By making this single change - district-wide budgets in lieu of school building budgets - a cascade of other reforms is possible as outlined below.

b) Eliminate Building-to-Building Equipment Transfer Limitations

Currently, schools are not permitted to transfer equipment from school to school within three years from the date of purchase, with a limited exemption for school closures. By moving to a district-wide C2 budget formula, we suggest that the 3-year Equipment Transfer Rule could and should be eliminated because there is no longer a strict limitation on C2 funding by school. Such a policy shift would be consistent with the Commission's desire for program simplification and acknowledgement that local officials are best suited to determine what equipment is needed for what school at any given time.

Last week we received an inquiry from a district that was closing a modular wing of their school and was seeking to move the equipment to a different school in the district that needed the WAPs. We explained that the current rules did not allow such a move and they had no choice but to install the WAPs somewhere else in the original school building that was cited on their

Form 471. Similarly, we've received inquiries from districts that were conducting population shifts to alleviate overcrowding in a school, and needed to move equipment to the 'receiving' schools. The answer was the same – it was not permissible under current E-rate rules.

With this change, so, too, would the Equipment Transfer Notification requirement be eliminated for *closed* schools where applicants must submit a Form 500 to notify USAC where each piece of equipment was located and where and when it was moved to a different location. Not only would the elimination of this requirement benefit the applicants, but also USAC as they would no longer be required to process the submitted Form 500s.

Applicants would still be required to maintain a Fixed Asset Register (FAR) of where the E-rate eligible equipment is located, so that in the event of an audit, the applicant could easily demonstrate the existence and location of the equipment. One of the most often cited audit findings is that equipment was not located in the schools for which was specified on the Form 471. This change would greatly reduce this common audit finding.

c) Eliminate Building-by-Building Allocation of C2 Equipment/Services on Form 471

The current Form 471 requires a large amount of very granular data related to every separate component of eligible equipment being requested, and, although it can be a heavy lift for applicants to data-enter this amount of information, we understand the need to capture this data so USAC can ensure that only eligible equipment is being funded. However, the Form 471 also requires that applicants identify which building's C2 budget should be used for each piece of equipment. This task can become particularly burdensome for applicants trying to allocate the costs of shared equipment among multiple schools' budgets as the system does not have the

functionality to perform these calculations, leaving schools to conduct these calculations off-line and then cut and paste what can be dozens or hundreds of items.

If the Commission adopted district-wide C2 budgets, the Form 471 could be modified to only collect the make, model, quantity and unit price of the equipment, eliminating entirely the “Recipients of Service” pages/requirements of the form.

This change would also greatly benefit USAC because it would reduce most PIA exceptions where applicants had exceeded their C2 budgets, thus leading to faster application processing and quicker funding decisions.

Finally, it would eliminate the arduous process of returning committed, but undisbursed funds to individual building’s C2 budgets for use in subsequent funding years. Currently, C2 budgets are reduced at the time of commitment, not disbursement, so if an applicant purchases less equipment than originally intended, or if costs come in lower than expected (which is common on large wiring equipment installation projects), they must submit a Form 500 to notify USAC of the exact FRN line item that should be reduced and which school’s C2 budget should be restored. To return C2 commitments for shared equipment, the Form 500 completion is difficult, and often is not fully possible because the EPC functionality that does not permit the revised dollar amount to be listed as \$0.00 due to system limitations.

d) Eliminate School Building-Level Discount Data in EPC

With the current district-wide discount calculation rules, the system only needs to collect total district enrollment and total NSLP eligibility to determine the district’s discount. However, it is only for the purpose of calculating Category 2 building budgets that the Administrator must collect the enrollment of each school. By moving to a district-wide C2 budget formula, the

Commission could eliminate the requirement that districts must update individual building-level enrollment and NSLP data and instead just have a single entry for the entire district. Not only would this simplify PIA discount calculation review by building, but it would eliminate the need to perform “9 clicks per school” when they annually update this data in EPC.

e) Align All Category 2, 5-Year Budgets

Although we understand the original intent of providing a five-year, rolling Category 2 budget, we believe the program would benefit overall by aligning all applicants’ Category 2, five-year budgets to start and end with the same funding years. By stating resetting all budgets in FY 2020, the FCC will have the flexibility to make changes to the C2 program moving forward without grandfathering applicants that have or have not utilized their C2 funding. Further, USAC will not be burdened with attempting to maintain a database to identify which year a certain applicant’s C2 budget has been restored to full funding and certainly new school officials coming into the district won’t have to research where they are in their funding cycle. By restarting all applicants’ C2 budgets in 2020, regardless of the first year they were committed funding, it will remove yet one more source of confusion.

f) Adjust Category 2 Budgets for Inflation Every 5-Years

Although we do not expect this recommendation to be popular among all stakeholders, for the sake of simplification, budget tracking, application processing and systems development, we encourage the Commission to consider adjusting the inflation factor for Category 2 budgets every five years instead of every year. As with FY 2017, we expect the annual inflation factor to be announced after the FY 2018 filing window has closed, and therefore most applicants will

again miss out on utilizing those extra few dollars in the funding year in which the inflation factor is announced. But more importantly, we need to make E-rate as simple as possible, and making sure applicants fully understand their C2 budgets only fluctuate by one measure per year – that of their current student enrollment -- is important.

We are not seeking to advocate that applicants sustain a net loss of E-rate funding by any measure. Instead, we are seeking to make the Category 2 pre-discount budget calculation and application process as simple as feasibly possible for both applicants and the Administrator. Further, we expect that the record of comments submitted by individual applicants in response to this Public Notice will show evidence that the current \$150 per pupil budget should be increased to more adequately meet the needs of schools. With that increase, the small annual inflation adjustment will likely become less consequential.

3. Continue the Current Category 2 Funding Mechanism and Do Not Revert to the 2/5 Rule

In the Second Report and Order, issued December 2014, the Commission adopted rules under §54.502 (c) stating that in FY 2020, the Category 2 funding mechanism would revert to the previous “2/5 Rule” for applicants that had either exhausted their C2 budgets or who had not utilized any of their C2 budgets within their five-year period.¹ The “2/5 Rule” was inconsistent with the needs of schools and libraries as the Modernization record demonstrated, and was appropriately disbanded by the Commission when the current Category 2 initiative was adopted. We implore the Commission to reconsider this rule and instead continue the highly successful

¹ “Absent further action from the Commission, each eligible library or school in a school district that either (1) did not receive funding for category two services in funding years 2015 through 2019 or (2) has completed its five-year funding cycle, shall be eligible for support for category two services, except basic maintenance services, no more than twice every five funding years. For the purpose of determining eligibility, the five-year period begins in any funding year in which the school or library receives discounted category two services other than basic maintenance services.

Category 2 initiative for all applicants, regardless of whether they have previously utilized any or all of their Category 2 budgets. To do otherwise will be injecting an entirely new level of complexity on both the applicant and the E-rate Administrator.

4. Eliminate Queen of Peace “Equivalent” Bidding Requirements for Schools that Have Standardized on a Manufacturer

For schools and libraries that have standardized on a certain internal connections manufacturer, we request the Commission adopt a limited exception to the 2011 Queen of Peace Decision that requires applicants to bid “equivalent” products.²

We understand the original intent of the decision, which was to ensure that applicants were not specifying they would only seek services from one particular service provider over another. The Queen of Peace Decision specifically stated that applicants needed to consider the equivalent bids, with price being the primary factor, but that the rules did not require applicants to select the least expensive option as applicants could consider other factors in the competitive bidding process.³ We believe that for applicants in most states, the E-rate bid evaluation options provide the needed flexibility for applicants that have standardized in a certain manufacturer.

However, in certain states, including Pennsylvania, public schools have been put in a difficult position, as they are not permitted to consider additional bid evaluation factors during a formal sealed procurement. Pennsylvania state law permits establishing that the vendor is a responsible bidder and has met the minimum qualifications in the RFP in order to be considered;

² “For Form 470s or RFPs posted for Funding Year 2013 or thereafter, applicants must not include the manufacturer’s name or brand on their FCC Form 470 or in their RFPs unless they also use the words “or equivalent” to describe the requested product or service. Such a description (“or equivalent”) will prevent the Form 470 or RFPs from being construed as requiring only a specific product or service provider, which could undermine the competitive bidding process by eliminating the opportunity for the applicant to purchase an equivalent or better product that may be less expensive or to choose a less expensive service provider.”

³ 24 See 47 C.F.R. §§ 54.504(b)(vii)

however, among all bidders that have been deemed responsible and met the minimum specifications, they must select the low bid for equipment. Outside of E-rate, this is not a concern or barrier for local public-school officials as state procurement rules permit schools to specify a certain manufacturer. Because of this allowance to name a manufacturer, and because no Priority 2 funding was awarded between the FY 2013 effective date of the Queen of Peace Decision and FY 2014, schools were not faced with this situation until FY 2015.

We should note that many Pennsylvania public schools utilize the PA State Master PEPPM Contract and conduct an E-rate compliant mini-bid procurement, as the state “low bid” requirement does not apply to state cooperative purchasing contracts. Nevertheless, we seek relief so that all Pennsylvania applicants can utilize the Form 470 bidding process without fear that they must accept a low bid from a manufacturer that is different from which they have adopted standards in their district.

In cases where applicants have not standardized in a specific manufacturer’s platform (starting from “Greenfield”) whereby the new equipment would not be limited in any way by previously purchased equipment or established platforms, such a requirement to evaluate “equivalent” products would continue to be required. Further, applicants should not be permitted to request services from only certain vendors, such as “Comcast” or “Verizon,” on their Form 470s.

5. Place Form 486 CIPA Certifications on the Form 471 and Eliminate Form 486

Since the E-rate Modernization Order eliminated the technology plan certification requirement, the Form 486 has two remaining functions – to certify CIPA compliance for Internet Access and Internal Connections funding requests, and to instruct USAC that services

have started or will begin on or before July 31 of the funding year, or that equipment has been ordered, and that the applicant is providing the approval for invoices to be paid.

We suggest that the functions of the current Form 486 can be performed in other ways, thus allowing for the total elimination of this form. For the CIPA requirements, the required certifications can be added to the Form 471 to ensure that schools are in compliance with the federal law, or will be in compliance before the start of services. For the start of services acknowledgement, the main purpose of this Form 486 function is to serve as a check and balance so that service providers cannot invoice USAC for services/equipment that have not yet been delivered. Although rare, we do understand there is a need for this function and therefore we suggest that applicants in these limited situations should contact CSB to request an “invoice check” be applied to the affected FRN(s) whereby USAC will reach out to the Billed Entity to ensure that they approve of the SPI submission or funding disbursement.

Although the main benefit of this recommendation would be that fewer Category 1 funding requests would be partially reduced or fully rescinded due to late-filed Form 486s, it would also benefit Category 2 applicants because one form would be eliminated entirely. Further, in the last 18 months, applicants have experienced significant delays in Form 486 approvals/processing due to EPC system issues. The result of these delays for Category 2 applicants seeking discounted bills is that most service providers will not perform services or order equipment until the Form 486 has been approved because they know that no Form 474 Service Provider Invoices (SPIs) can be submitted to USAC until the Form 486 has been approved in the USAC system. This is unfortunate considering the form does not need to exist at all.

By eliminating the form and transferring its two remaining functions to other mechanisms, not only will every applicant benefit, but so, too, will the E-rate Administrator because they no longer will have to process Form 486s and provide outreach to applicants who inadvertently check a wrong certification or list a wrong service start date. Further, no Alaska Gateway Form 486s reminders would be required to be sent, or Revised Funding Commitment Decision Letters (RFCDLs) need to be issued, informing applicants that their funding has been reduced due to late-filed Form 486s.

6. Allow Upfront Funding of Manufacturer Warranties

Currently, multi-year manufacturer warranty contracts are required to be amortized and applied for on an annual basis. We recommend the Commission permit the cost of these contracts to be funded upfront, in a single year as is currently permitted for multi-year equipment license contracts. Similar to the equipment licenses, it is presumed that the multi-year warranty contract would be paid in full in the first year of the contract. Certainly, schools and libraries have a finite amount of Category 2 funding available, whether it is used in Year 1, or spread out over multiple years. By allowing a single FRN for these multi-year contracts, it will reduce the burden on applicants to remember to submit for these amortized amounts in the out-years of the contract, and will reduce the number of FRNs which will reduce PIA workload and speed processing of other applications.

The Pennsylvania Department of Education appreciates the opportunity to submit comments in this proceeding and looks forward to working with the Commission to enact meaningful Category 2 and other reforms to simplify the E-rate program.

Respectfully submitted,

/s/ David W. Volkman

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October 23, 2017