



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

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Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Ex -Parte Presentation in Docket No. 96-45, Federal-State
Joint Board on Universal Service

Dear Mr. Caton:

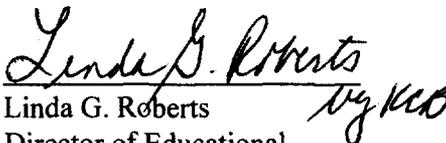
The National Telecommunications and Information Administration (NTIA) files herewith two copies of this letter pursuant to 47 C.F.R. § 1.1206(a)(2). On April 22, 1997, Kathryn Brown, Director of NTIA's Office of Policy Analysis and Development (OPAD), Linda Roberts, Director of the Department of Education's Office of Educational Technology, and two Department of Education staff members met with Federal Communications Commission (FCC) staff.

The purpose of the meeting was to discuss, in general terms, issues involved with implementing section 254(h)(1)(B) of the Communications Act of 1996, mandating that all telecommunications carriers offer discounts for schools and libraries with respect to telecommunications and information services.

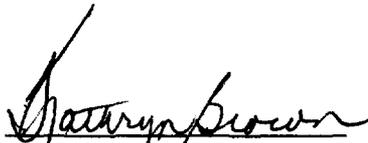
The following persons attended the meeting: Kathryn Brown, NTIA; Linda Roberts, Department of Education (ED); Emilio Gonzalez, ED; Donald Feuerstein, ED; Jackie Chorney, Senior Legal Advisor to the Chairman, FCC; Jamie Rubin, Special Counsel, FCC Office of General Counsel; Mark Nadel, FCC; and Irene Flannery, FCC. Jim McConnaughey, NTIA, subsequently discussed the above issues with FCC staff.

To amplify on our discussion we are submitting the following letter.

Sincerely,


Linda G. Roberts

Director of Educational
Technology
U.S. Department of Education


Kathryn Brown

Associate Administrator
Office of Policy Analysis
and Development
National Telecommunications
and Information Administration
U.S. Department of Commerce

CC: Jackie Chorney
Jamie Rubin
Mark Nadel

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I. INTRODUCTION

- **The Department of Education (ED) in partnership with the National Telecommunications and Information Administration (NTIA), will work with the education community to ensure that the President's four goals for technology literacy are met.**

With only 14 percent of classrooms connected nationally and wide disparities in the cost for accessing telecommunications services, Universal Service support for schools and libraries is vital to helping level the playing field for these institutions. The Clinton Administration, as articulated in the President's Technology Literacy Challenge, is deeply committed to ensuring that schools and libraries are prepared for the 21st century, and universal access fueled by affordable telecommunications rates is a significant part of that equation.

The Technology Literacy Challenge, as envisioned by President Clinton and Vice President Gore, is a comprehensive initiative to ensure that: (1) every K-12 classroom is connected by the year 2000; (2) teachers are trained and given the support they need to help students learn how to use technology; (3) teachers and students have modern multimedia computers; and (4) effective software and on-line resources are available for schools and libraries.

Universal Service support for schools and libraries will contribute importantly to achieving the goals of the Technology Literacy Challenge. Discounted telecommunication services, Internet access, and internal connections -- the "Education Rate," or "E-Rate" plan -- will increase the value of investments made in hardware, software, and teacher training, thereby accelerating the deployment of technology into classrooms where learning takes place.

The Department of Education (ED) and the National Telecommunications and Information Administration (NTIA) staff has met with state and local school education officials (including EdLinc, a coalition of representatives of the education community) as well as with representatives of the private sector. Meetings focused on a variety of implementation strategies with the American Library Association, Council of Chief State School Officers, National Education Association, National School Board Association, and several district administrators and technology officers from urban, suburban, and rural areas. ED and NTIA also met separately with the Regional Bell Operating Companies, cable television companies, long distance and wireless service providers, hardware manufacturers, and software developers.

ED and NTIA have searched for ways to accommodate the diverse needs and situations in which the E-Rate will operate. There are four elements in universal service administration that are critical and are addressed in this memorandum. These include: leadership, financial administration, application process, and monitoring the fund. Our recommendation for implementation follows.

II. IMPLEMENTATION STRATEGY

A. Leadership and Technical Assistance

- **ED and NTIA will provide technical assistance to 22,000 economically disadvantaged schools and libraries.**

ED and NTIA will disseminate information to schools and libraries to build a greater understanding of the E-Rate. We will target our efforts to reach those most in need of information and technical assistance. ED, NTIA, FCC, educational organizations, and states will coordinate efforts on technology planning, technological options, and best practices.

To maximize impact and manage resources efficiently, ED and NTIA will target the most economically disadvantaged schools, school districts, and libraries for outreach and technical assistance. There are approximately 22,000 schools that have 50 percent or more of their students eligible for Title I funds.

In cases where public and private schools, school districts, or libraries need additional expertise or resources to prepare a technology plan, there are several options for providing outreach and technical assistance. Support could come from State Education Agencies (SEAs), regional education service centers, and/or Federal entities. For example, ED's Regional Technology Education Consortia (RTECs) can help schools and school districts understand the range of technologies available and assist school districts in developing technology plans to make effective use of the E-Rate. ED's National Clearinghouse on Infrastructure as well as private and non-profit sector efforts can also assist private schools, school districts, and libraries.

- **In addition, the Fund Administrator in consultation with ED will facilitate additional technical assistance to schools and libraries in need.**

The FCC implementation order should require that the Fund Administrator select entities to provide technical assistance and evaluation. These entities should be selected with the help of ED. This assistance is needed to complete and extend the resources needed for outreach, capacity-building, and technical assistance to public and private schools, school districts, other higher-level educational agencies and libraries. Leadership is crucial, because users of the E-Rate will need information and technical assistance in order to fully benefit from available discounts.

- **Information and media outreach will be critically important elements of the implementation.**

Efforts are underway for conducting outreach and disseminating information. For example, the ED Clearinghouse for School Construction will include information on technology infrastructure, including networking and connecting schools and classrooms. If needed, an additional Technology Clearinghouse could be developed to address universal service and technology issues in a more comprehensive manner. Other outreach efforts underway include:

- May 21-23, Technology Conference at ED with all the States.
- June 3, 1997, PBS Teleconference on universal service for schools and libraries.
- Regional Workshops with NTIA, Dept of Agriculture, RTECs, and others.
- Evaluation of Challenge Grants to develop regional clusters of "best practices."
- Promote Best Practices: ED in partnership with Federal, State, and local entities can identify and publish information about "best practices."
- Provide information through Federal agency home pages.

B. Administration

- **The Fund Administrator is responsible for assessing telecommunications service providers for their share of the funding, collecting monies, and paying reimbursements.**

The Fund Administrator should be responsible for efficiently collecting assessments for the Fund, prudently investing the amounts collected, and paying discount reimbursements to telecommunications and other service providers. The FCC should provide the Fund Administrator with the formula by which individual assessments are to be determined.

- **ED will provide the Fund Administrator with consultation in the selection of a contractor that will design and operate the National Bidding Bulletin Board.**

To assist the Fund Administrator in the selection of a contractor to design and operate a National Bidding Bulletin Board, ED will consult with the Administrator. ED already has engaged in the development of the School Construction Clearinghouse and can provide the Fund Administrator with information about the School Construction Clearinghouse, its content, and its management. ED can provide the Fund Administrator with selection criteria for use in competing and selecting a contractor.

C. Application Process

The reimbursement process should be structured to allow schools and libraries to acquire telecommunications services, Internet access, and/or internal connections in the most expeditious manner consistent with the integrity of the Fund.

- **The optimally flexible approach would be self-certification by the applicant with no pre-approval as recommended by the Joint Board. However, if self-certification is not acceptable to the FCC, we strongly urge it not to impose an inflexible pre-approval requirement that would disrupt existing State and local governance structures. Instead, we would recommend a flexible pre-review process in which the customer would have its RFP reviewed by its own SEA or by some other qualified third party designated by the FCC with the advice of ED in consultation with interested education and library groups. Endorsement of the customer's plans by**

the third party reviewer would be included in the RFP.

When the Joint Board rejected the Administration's recommendation for free access by schools and libraries, it noted that discounts require schools and libraries to make investments from their own funds, and that the requirement of self-investment was important to insure that services were not acquired unnecessarily. Moreover, there is already an existing structure for technology planning and procurement in every school district and State, as well as in the case of libraries. These structures vary from State to State in the extent to which the required approvals take place at the State and/or local levels. The expenditure of the non-discounted portion of the cost of the service must be approved under a process required by applicable State and local law.

This existing approval process and the possibility of having to pay the full contractual price as the result of a post-reimbursement audit should be sufficient to keep schools and libraries from acquiring services that they are not ready to use. Whatever those arrangements are at the State and local level, the E-Rate implementation rules should, to the greatest extent possible, seek to leverage these arrangements and not disrupt planning and procurement practices at the State/district level. If a school, school district, or library were not specifically directed by State law to have its technology plan and telecommunications expenditures approved by the State Educational Agency or State library agency, it could choose among pre-qualified third parties to conduct the review or provide a letter of endorsement.

The important question left open by the above description of the application process is whether the Fund Administrator would simply accept, subject to post-reimbursement audit, the self-certification of the service purchaser as to compliance with these requirements or require some additional evidence of compliance.

- **An independent working group would, for example, develop criteria to be used with respect to RFPs and applications for discounted services.**

The process should be initiated when the service purchaser (school, library, school district, State, etc.) files with the Fund Administrator a Request for Proposals for the services that it wishes to acquire. The form of that RFP should be simple, reasonable, and developed by a public-private sector working group.

- **Criteria should include at a minimum a technology plan that features professional development and support for teachers; integration of technology with curriculum; technology capacity that matches need; network maintenance; and linkage to a state technology plan.**

This form should include a short list of "criteria" that causes applicants to think through their long-term educational objectives and how the services they are applying for will meet those ends. Criteria should include areas such as professional development (such as training) and support for teachers and librarians; integration of technology with curriculum goals; technology capacity that matches needs; adequate maintenance of the network(s), and linkage to an overall state technology

plan. These criteria should be periodically revisited and updated.

- **RFPs for telecommunication services should be user friendly as well as competitively and technologically neutral.**

In addition, many schools and libraries are not familiar with the complexities of telecommunications laws and FCC regulations. Therefore, it is important that the RFP form be easily understood. In the RFP the service purchaser should certify the discount for which it is eligible. Moreover, it should aver that the acquisition of the services and expenditure of funds has been approved in accordance with existing State and local laws. The RFP should be competitively neutral among different forms of telecommunications services.

- **The Fund Administrator will maintain a database of schools and libraries.**

The Fund Administrator should maintain a database so that it can verify the status of the service purchaser and the discount level as expeditiously as possible. ED has a national database, Common Core of Data, which contains information about every public school and school district in the nation and should be useful for this purpose. State Education Agencies and the Department of Agriculture also have significant databases that could be used in this regard. In turn, the National Commission on Libraries and Information Science (NCLIS) and ED's National Center for Education Statistics (NCES) collect a variety of profile data relating to libraries.

After verifying at least these certifications, the Fund Administrator should post the entire RFP or some summary of it in a manner in which it would be readily accessible to potential service providers which could then submit bids. Once the RFP has been publicly available for the period of time specified by the Commission, the service purchaser should be free to contract for the services specified in the RFP without further contact with the Fund Administrator.

- **Reimbursements to providers are provided after the customer certifies that it has satisfactorily received the services for which it has contracted.**

After the services have been acceptably rendered (on a recurring basis in the case of telephone service and Internet access charges; non-recurring for inside connections), the service provider should be entitled to apply to the Fund Administrator for reimbursement of the discount that has been granted for that service. In that application, the service provider would certify that the services had in fact been provided in accordance with the contractual terms, and that the contract price complied with the "similarly situated customers" provision recommended by the Joint Board and the level of discount granted.

As a cross-check, the FCC might also want to require that the service purchaser independently confirm the contract price, the level of discount received, and the services actually received relative to the contractual terms. The Fund Administrator would then cross-check the application against the RFP previously filed by the service purchaser. The recommendation of the Joint Board would require that the service purchaser have a technology plan, and that the services acquired be

consistent with that plan. The technology plan would describe how telecommunications and other services subject to E-Rate discounts will be used to deliver educational services and support educational objectives.

D. Monitoring the Fund

1. Auditing

- **Financial and management audits should be undertaken to ensure integrity.**

It is essential to ensure that waste, fraud, and abuse in the operation of the Fund be prevented. The Fund Administrator should conduct periodic audits of service purchasers and providers to determine whether they have complied with all rules and regulations promulgated by the FCC. The current Universal Service Fund Administrator has seven regional offices that perform audits and spot-checks to ensure compliance. A similar network of regional offices could undertake auditing and spot check responsibilities, periodically reporting back to the Fund Administrator.

Audits should be conducted on a sampling basis, supplemented by a set of "red flag" tests specified by the FCC. Audits should concentrate on the accuracy of the various certifications provided by the service purchasers and providers.

In the case of purchasers, these should include the existence of a technology plan properly approved under applicable State and local law, the reasonable relation of the services acquired to that plan (for example, that the provider had not "gold-plated" the services), and the proper approval of the service acquisition under applicable State and local law.

In the case of the service provider, they should include the furnishing of the services in accordance with contractual terms and the compliance of the undiscounted contractual rate with the requirement proposed by the Joint Board that such rates be no higher than the "lowest corresponding price" charged by that service provider to "similarly situated non-residential customers." In auditing the certification as to the contractual rate, the Fund Administrator should work closely with the applicable State Public Utilities Commission.

2. Penalties

- **The FCC should establish and enforce meaningful penalties for misuse or misrepresentation.**

There are already heavy penalties in the law for false certifications, and the FCC should use all of its existing powers in this regard to vigorously punish offenders and to help deter future violations. The FCC should also specify the contractual consequences between the parties for a false

certification. If a discount reimbursement were recovered by the Fund as a result of a false certification by the service provider, the latter should not be allowed to go back to the service purchasers to recover the balance of the contract price. If, on the other hand, the discount were lost because of a false certification by the service purchaser, it should be responsible to the service provider for the full contract price.

3. Fact Finding

- **Fact-finding activities should be undertaken to aid in monitoring the performance of the E-Rate process. Such activities should include at minimum: 1) Fund Administrator reports on the deployment of funds; 2) Department of Education annual report spotlighting use of E-Rate, inefficiencies, and success stories; 3) Evaluation of libraries by appropriate governmental and private entities; and 4) An on-going assessment.**

In addition to the audit function to ensure that the Fund is being operated and disbursed in accordance with all applicable laws and regulations, continual monitoring is necessary to ensure that the E-Rate is, in fact, achieving its educational goals. This should be the responsibility of the Department of Education.

The Fund Administrator would provide to the FCC a report on a regular basis describing how the fund is being used. ED and NTIA would also receive copies of the report. The reports would cover such subjects as the distribution of disbursements by type of service purchaser, geographical distribution, discount rate, and type of service.

ED and other involved governmental and private organizations should use these reports to target their outreach and assistance efforts to segments of the school and library population that do not seem to be utilizing the E-Rate effectively.

ED will track schools' access to telecommunications through its own survey and research capabilities. It expects to continue to produce annual reports of progress, including data from the National Center for Educational Statistics, the evaluation of the Technology Literacy Challenge Fund, and other sources.

ED would also issue an annual report to "spotlight" effective use of E-rate funds, inefficiencies, and progress in achieving educational quality.

Various government and private sector entities could contribute to an evaluation of the impact of the E-Rate on libraries. These entities could include NCLIS, NCES, State library agencies, and national library organizations. A promising development along these lines is a collaborative effort between NCLIS and the American Library Association (ALA) to develop a new survey of Internet usage by public libraries that would better inform the FCC's universal service implementation process, e.g., through close scrutiny of rural deployment and per-line costs.

On the basis of these evaluations, the FCC, assisted by the other governmental organizations, could then consider whether changes in Fund regulations are appropriate.

In short, we are proposing a four-step strategy for the prevention of waste, fraud and abuse in addition to ensuring educational quality.

- **Application process with criteria and consultation**
- **Auditing functions**
- **Penalties for misusing funds**
- **Fact finding**

If the extensive review and auditing steps that we have proposed do not appear to be effective after a reasonable period of time (e.g., after three years of operation or upon filing of a petition for appeal by a party before the FCC), the pre-approval question should be revisited by the FCC.