

**Before the  
Federal Communications Commission  
Washington DC 20554**

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

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**Reply Comments from the  
Wisconsin Department of Public Instruction  
Regarding the  
E-rate Further Notice of Proposed Rulemaking**  
(Filed September 29, 2014)

**Introduction**

The Wisconsin Department of Public Instruction (WDPI, department) is the state’s education and library agency. The department has statutory oversight for 424 public school districts and 387 public libraries. We have provided E-rate support to our state’s schools and libraries since the program’s inception. At the national level, our staff are active in the State E-rate Coordinators’ Alliance (SECA) and the American Library Association’s E-rate Task Force.

Our department has commented on many E-rate rulemaking notices starting with our first comments submitted in 1996.<sup>1</sup> As the Commission continues its E-rate reform efforts we appreciate the opportunity to file reply comments on this Further Notice of Proposed Rulemaking (FNPRM). Our comments focus on several important issues that have been the subject of some discussion in the initial FNPRM filings.

These issues are:

- 1) Meeting Future Funding Needs
- 2) Ensuring That Multi-Year Contracts Are Efficient
- 3) Encouraging Consortium Participation
- 4) Ensuring Support for Libraries is Sufficient
- 5) Additional Improvements to the E-rate Program

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<sup>1</sup> Wisconsin Department of Public Instruction comments to the FCC, April 6, 1996. See [http://pld.dpi.wi.gov/pld\\_fcc\\_let](http://pld.dpi.wi.gov/pld_fcc_let).

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## 1) Meeting Future Funding Needs

We support the major reforms the Commission made in its July Order to focus funding on broadband connectivity and we recognize the need to phase-out or eliminate funding for certain services. But we share the concerns of many organizations, including the National Education Association (NEA) and EdLinc,<sup>2</sup> that even with all of the reforms there is still a high likelihood that additional E-rate funding will be needed. The NEA also highlights the fact that it will take several years to accumulate the funds saved by the phase-out of voice telephony. However, the need for more funding is now, not several years from now. Thus, we agree with the NEA that “The time is now for the Commission to address the long-overdue issue of adjusting E-rate funding.” At a minimum, the Commission should make a commitment that, if its reforms do not generate sufficient funds to meet the total E-rate applicant demand, it will take immediate action to address any funding shortfall.

In the Further Notice (¶269) the Commission asks about funding needs for broadband connectivity. We want to state our strong support for the comments submitted by the American Library Association (ALA)<sup>3</sup> that any program changes coming out of the Further Notice must focus on broadband connectivity to our schools and libraries. The July Order addressed broadband (i.e., wi-fi) needs within school and library buildings but there is a critical, longstanding need to address broadband connectivity from outside the building. For example, the Digital Public Library of America’s comments state that low bandwidth hinders library patrons from efficiently accessing digitized collections.<sup>4</sup> And ALA correctly notes that many libraries (and likely schools too) will not benefit fully from the July Order’s focus on wi-fi if they lack needed bandwidth coming into the building. ALA graphically illustrates in its comments (p. 8) that broadband speeds to our nation’s libraries are far behind the speed benchmarks set by the Commission in its July Order. For example, 30% of libraries report they were at the maximum broadband speed available to them (36% for rural libraries) and almost 60% report they cannot afford an increase in their bandwidth. As the association succinctly states on page 11 in its comments, “The time to act is now.” We absolutely agree! For schools, the EducationSuperHighway has documented that 63% of our schools lack the broadband connectivity they need.<sup>5</sup> Considering these figures, we question comments such as this from CenturyLink: “The vast majority of school and library sites nationwide likely have cost-

<sup>2</sup> See NEA comments at p. 4-5 (<http://apps.fcc.gov/ecfs/document/view?id=7522701491>) and EdLinc comments at p. 2-3 (<http://apps.fcc.gov/ecfs/document/view?id=7522674859>).

<sup>3</sup> See ALA comments at p. 7-14 (<http://apps.fcc.gov/ecfs/document/view?id=7522678477>) and SHLB Coalition comments at p. 7 (<http://apps.fcc.gov/ecfs/document/view?id=7522699878>).

<sup>4</sup> See Digital Public Library of America comments at p. 2 (<http://apps.fcc.gov/ecfs/document/view?id=7522671616>).

<sup>5</sup> See EducationSuperHighway comments at p. 2 (<http://apps.fcc.gov/ecfs/document/view?id=7522686772>).

effective high-capacity commercial service available, even, surprisingly, in rural areas.”<sup>6</sup> The ALA and EducationSuperHighway data clearly show otherwise, as does Wisconsin-specific data collected by various state agencies, including WDPI.

ALA and the Schools, Health, and Libraries Broadband (SHLB) Coalition make several important comments on how the E-rate program can help support the broadband connectivity needs of our libraries and schools. For both market-based competition and prudent public investment reasons, we support these organizations’ positions that special construction charges for leased dark fiber and applicant ownership of fiber should be eligible for E-rate funds, when these options are the most cost-effective broadband solution. The SHLB comments also acknowledge the supporting language on this issue in our department’s initial comments on E-rate reform filed in September 2013.<sup>7</sup>

## **2) Ensuring That Multi-Year Contracts Are Efficient**

The Commission proposes that contracts not exceed five years (§271). Our position—and the position of many commenters—is clear: We oppose the FCC getting into issues of defining contract length or other contract requirements, especially for State Master Contracts (SMC). We agree with comments by the State E-rate Coordinators’ Alliance (SECA) that, “If the FCC were to prescribe a maximum contract term, this would be especially disruptive to those broadly used state contracts.”<sup>8</sup> SECA devotes several pages in its comments to the negative aspects of the FCC setting contract term limits and we encourage Commission staff to review these comments carefully. We disagree with comments by CenturyLink and the Concerned Mississippi Technology Coordinators that there should be a Commission-imposed five year contract limit.<sup>9</sup> We strongly oppose the Technology Coordinators’ proposal that contracts be limited to single item services only. Such a provision will greatly increase the work load of any agency issuing a bid for E-rate eligible services.

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<sup>6</sup> See CenturyLink comments at p. 13 (<http://apps.fcc.gov/ecfs/document/view?id=7522682249>)

<sup>7</sup> See Wisconsin Department of Public Instruction comments at p. 5 (<http://apps.fcc.gov/ecfs/document/view?id=7520943611>).

<sup>8</sup> See SECA comments at p. 6-8 (<http://apps.fcc.gov/ecfs/document/view?id=7522670212>).

<sup>9</sup> See CenturyLink comments at p. 9-13 and comments by the Concerned Mississippi Technology Coordinators, p. 3 (<http://apps.fcc.gov/ecfs/document/view?id=7522648874>).

### 3) Encouraging Consortium Participation

We oppose the Commission's proposal to require consortia applications to use a weighted average formula to determine consortium member discounts. This is proposed as a way to encourage more schools and libraries to join consortia. In our experience in Wisconsin, this is unlikely to provide any such incentive but instead it will complicate consortia applications and violate the E-rate's third goal on program simplicity. It will also make more work for the consortium lead entity. We believe the comments by many organizations including ALA, SECA, the State of Washington Office of Superintendent of Public Instruction, and the Utah Education Network (UEN) document the negative aspects of the weighted average proposal.<sup>10</sup> The UEN comments also document the added administrative burden of using the weighted average. In addition, from the library perspective we agree with ALA that the use of an arbitrary figure to compute the weighted average (i.e., where 50 square feet of building space equals one student) will almost certainly cause more confusion than clarity.

The Commission asks if applicants should be required to consider all master contracts available to them when they evaluate their bids (§293). We agree with ALA's comments and those filed by the Education Networks of America (ENA) which both oppose this requirement.<sup>11</sup> ENA's comments note that, "Requiring applicants to seek out whether state master contracts exist or risk E-Rate denial is an unfair burden on the applicant and/or additional cost on the E-Rate program to administer a list of such available contracts."

The department supports an additional 5% discount for consortium applications but we do not think there is a need for all the requirements as proposed by the Education Coalition.<sup>12</sup> There should only be two requirements: (1) A regional consortia must serve a minimum of twenty schools and/or libraries, and (2) a statewide consortium must include a minimum of one-hundred schools and/or libraries. Several Coalition requirements—like the need to have a governance structure and the need to perform large-scale procurements—just add needless hoops that consortia will have to jump through. The American Library Association's comments have noted these concerns. For example, how will a "governance structure" be defined? ALA is rightly concerned that this requirement opens a consortium to endless inquiries by the

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<sup>10</sup> See ALA comments at p. 17 and SECA comments at p. 12. See also the Washington Office of State Superintendent comments at p. 2-3 (<http://apps.fcc.gov/ecfs/document/view?id=7522297654>), and UEN comments at p. 3-5 (<http://apps.fcc.gov/ecfs/document/view?id=7522662790>).

<sup>11</sup> See ALA comments at p. 18 and ENA comments at p. 4 (<http://apps.fcc.gov/ecfs/document/view?id=7522640480>).

<sup>12</sup> See Education Coalition comments at p. 9 (<http://apps.fcc.gov/ecfs/document/view?id=7522680441>).

School and Libraries Division's Program Integrity Assurance (PIA) unit.<sup>13</sup> In considering the 5% added discount we ask the Commission to allow a 1% (or a maximum of \$150,000) allocation to the entity that files the application and oversees all the needed follow-up processes. Larger consortia often have at least a 1.0 full-time equivalent staff member to manage all the work needed for a successful E-rate consortium application and we think this modest amount is certainly justified.

Rather than moving to a weighted average discount, we believe a better way to encourage more consortia to apply is to streamline the application review process. We acknowledge that the Commission has addressed this in its July Order (¶169) but we remain concerned that large consortium applications will still be among the last to be funded. We stated our concerns on this issue on page 10 in comments the department filed on September 15, 2013. For example, as of the date of this filing our state's 2014 consortium application for \$13.3 million, which covers the broadband needs for over 900 Wisconsin schools and libraries, is still under PIA review.

#### **4) Ensuring Support for Libraries is Sufficient**

Our department believes there is a better way to base C2 funding than on the size of the library building. We suggest the Commission consider the number of Internet connected workstations or other devices a library has—then double this number to account for patron-owned devices. This metric would then be used to determine a Category 2 funding formula. (Data on a library's connected devices are available from the Institute of Museums and Library Services). We believe using connected devices is a better C2 funding factor because it more accurately equates with costs, like wiring, and capacity of the library's wi-fi footprint.

#### **5) Additional Improvements to the E-rate Program**

In paragraph 267 of the FNPRM the Commission invites other comments on how it can improve the E-rate program, especially in relation to the actions taken in its July Order. In accepting this invitation, we offer an additional comment on implementing the July Order's Category 2 funding changes.

Wisconsin's average statewide E-rate discount for 2014 is 62%. Because it is significantly less than the 80% minimal discount often needed to get P2/C2 funds, the great majority of our schools and libraries

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<sup>13</sup> See ALA comments at p. 19.

have *never received any Priority 2 (now Category 2) funding*. For over ten years<sup>14</sup> our department has commented to the Commission on the need to reform the funding of internal connections to ensure that all schools and libraries are assured of both a predictable amount of funding and that such funding be awarded in a predictable timeframe. The July Order's C2 reforms do offer a predictable amount of funding for 2015 and 2016 but unfortunately do not address the awarding of this funding in a predictable timeframe. And with the Commission's decision to continue past practices—that is, still fund the higher discount applicants first—we are very much concerned that once more Wisconsin's schools and libraries will see no C2 funding. Comments from Funds for Learning (FFL) have highlighted these C2 funding issues.<sup>15</sup> Added to the funding issue is the uncertainty on what C2 regulations will be in place after 2016. As SECA has stated: "Applicants simply do not understand how the new framework will lead to more predictable Category 2 funding..."<sup>16</sup> We agree and request that the Commission address this C2 funding predictability issue in its next Order.

### **In Summary**

The Wisconsin Department of Public Instruction supports the Commission's continued efforts to reform the E-rate program. We hope the Commission views our above reply comments on this Further Notice as constructive. Please do not hesitate to contact me if you have any questions. Thank you.

Sincerely,



Kurt J. Kiefer  
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Wisconsin Department of Public Instruction

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<sup>14</sup> See our department's March 10, 2004, comments at p. 2. "Those applicants in the 90% discount band have now had seven years in which to upgrade their internal networking infrastructure. It is time to allow applicants in the lower discount ranges a chance to get internal connection discounts."

(<http://apps.fcc.gov/ecfs/document/view?id=6516082304>).

<sup>15</sup> See FFL comments on p. 2-5 (<http://apps.fcc.gov/ecfs/document/view?id=7522648925>).

<sup>16</sup> See SECA comments on p. 2.