

April 11, 2016

Matthew S. DelNero
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Mark Stephens
Managing Director
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Request for Extension of the 2016 E-rate Application Window and Request for Other Relief

CC Docket No. 02-6, Schools and Libraries Universal Service Support Mechanism
WC Docket No. 13-184, Modernizing the E-rate Program for Schools and Libraries

Dear Mr. DelNero and Mr. Stephens:

The Utah Education and Telehealth Network (UETN) is a state network applicant in the Commission's Universal Service Schools and Libraries program (E-rate). We are writing to outline issues specific to state network consortium and library applications that have developed with the implementation of the Commission's recent E-rate modernization orders – specifically the E-rate Productivity Center (EPC or the Portal). These issues effectively prevent state network consortia and many libraries and library systems from completing the work to submit E-rate applications on behalf of their members that they were able to perform prior to the development of EPC.

The system's lack of functionality has resulted in UETN's inability to file an E-rate application for its statewide broadband services for funding year 2016, despite diligently working to accomplish its submissions since the window opened in February.

As such, we respectfully request that the Wireline Competition Bureau (WCB) and the Office of the Managing Director (OMD), pursuant to their authority to oversee the administration of universal service programs, including E-rate,¹ direct USAC to take the

¹ See Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company, <https://www.fcc.gov/general/universal-service-fund-general-management-and-oversight>, as amended Nov. 4, 2014, at III.B.1 and III.B.3 (OMD provides guidance on management and administrative activities while WCB provides guidance on USF policy questions, including questions regarding the applicability of the Commission's USF rules, orders, and directives).

actions described below in this filing to resolve these issues for funding year 2016 before the application window closes. Because so much time has been lost during this filing window due to technical issues with EPC and to properly implement the resolution of these issues, we also request that the Commission direct USAC to extend the E-rate application window, currently scheduled to close on April 29, 2016. UETN believes that at least eight weeks is necessary to complete its approximately 300 funding requests for fund year 2016, but the technical issues identified below – as well as those identified by other parties² – need to be successfully addressed and tested and before the window closing date can be determined.

Furthermore, we ask that WCB consider issuing a blanket waiver to all parties, as necessary, related to any affected procedural or substantive requirements negatively affected by the system issues. Finally, we request that WCB and OMD closely oversee the improvements or changes to the system that need to be made in anticipation of the funding year 2017 filing window.

Without such immediate action from the Commission, it is extremely likely that these structural, administrative and technical issues will result in fewer students and library patrons having access to broadband. Such a result is obviously contrary to both Congressional intent and the Commission's goals.³

Below, we detail these issues and propose solutions to ensure that the new system operates in a way to further statutory and Commission goals. We hope to continue to work with the Commission and USAC to address these issues in funding year 2016 and beyond.

Background

Nationwide, consortia, library, and statewide applicants requested more than \$570 million in 2015, or roughly 15 percent of the annual program cap. In Utah, UETN is responsible for roughly 56 percent of all funding requests from the state as its funding requests total about \$24 million each year. The effect of consortia applicants on program demand, better pricing, and progress toward our national broadband goals far outweighs the number of applications they file. In Utah, this effect has been even greater due in large part to UETN's highly efficient use of program funds and technical prowess.

The Utah Education and Telehealth Network is a government entity of the State of Utah, created pursuant to statute, and charged, in part, with coordinating and supporting the telecommunications needs of Utah's schools and libraries.⁴ That statutory charge includes applying for state and federal funding on behalf of those entities, and assisting them with their individual E-rate applications.⁵ Accordingly, to fulfill its statutory obligation, UETN has, for

² See, e.g., Funds For Learning (E-rate consultant) blog of April 1, 2016, at <https://www.fundsforlearning.com/blog/2016/04/epc-frustrations-mount>.

³ 47 U.S.C. § 254(h)(2)(A); see also *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 at paras. 55-62 (2014) (*First Modernization Order*) (“We adopt as our third goal making the E-rate application process and other E-rate processes fast, simple, and efficient.”)

⁴ Utah Code § 53B-17-105.

⁵ *Id.*

years, participated in the E-rate program by acting as the state network consortium lead and state E-rate coordinator for Utah's schools and libraries.

UETN procures and contracts for all E-rate Category 1 broadband services for Utah schools and libraries, including public, private, charter, and tribal entities. UETN also manages E-rate application data for all of the consortium's schools and libraries, including gathering and inputting all the necessary data and submitting the required forms. Each year, UETN submits approximately 200 E-rate funding requests, so this is not a small effort. To further promote access to broadband, the State of Utah funds the non-discounted share for all public schools in UETN's consortium.

UETN also manages the technical side of the state broadband network for its consortium members. UETN's state network primarily comprises leased services from multiple carriers. Additionally, UETN owns and operates some portions of its network. Regardless of which entity owns the facilities, UETN manages and oversees the entire network. It has its own network operations center and has dedicated UETN-technical advocates assigned to work with every region of the state, ensuring that local schools and libraries broadband needs are addressed.

As a state network consortium, UETN was pleased to see the role of consortia highlighted in the Commission's recent orders. Specifically, as you know, the Commission directed USAC to prioritize state and regional consortia applications.⁶ In addition, the Commission took measures to encourage the formation of consortia, adopted rules to allow applicants to more easily take advantage of consortia bidding processes, and clarified misconceptions regarding consortia applications.⁷ In addition to these specific directives regarding consortia, the Commission adopted as one of its three goals for the program "making the E-rate application process and other E-rate processes fast, simple, and efficient."⁸

Unfortunately, these Commission's mandates do not appear to have permeated all aspects of the program's modernization. The state of Utah, like other E-rate stakeholders, was gratified to see the Commission's acknowledgement that the program's information technology systems needed significant enhancements.⁹ In anticipation of the preparatory work involved with each new funding year, UETN began to familiarize itself with USAC's newly introduced portal for E-rate stakeholders in October 2015. And although UETN understands that EPC is a work in progress, UETN was disappointed to learn that EPC lacks the functionality (1) that USAC provided in recent previous funding years; and (2) that is necessary for UETN, as the state network consortium lead, to access and use the Portal in a manner commensurate with its longstanding statutory authority.

USAC's failure to contemplate state network consortia applications when developing the Portal has resulted in significant burdens on UETN and other state network consortia, increased burdens on individual applicants, and created ongoing questions regarding proper authorization. There is no reason that the new system could not have been designed to

⁶ *First Modernization Order* at para. 169.

⁷ *Id.* at paras. 176-181.

⁸ *Id.* at paras. 55-62.

⁹ *Id.* at para. 256.

facilitate state consortium activities; it appears that USAC either did not contemplate such a need or failed to understand the ramifications of its decisions. This action undermined UETN's efforts to prepare, manage, and build its network consortium applications. This has effectively preempted UETN's statutory authority and thwarts its public stewardship of E-rate program participation of all E-rate eligible entities (schools, school districts, libraries, and library systems) in the State of Utah.

We have worked with USAC during the past several months to attempt to resolve these structural (and then technical) issues. UETN released its first 2016 procurement in August 2015, and identified at that time that its consortium membership was incomplete. UETN's ability to correctly associate consortium members in EPC was not available until February 2016. In October, UETN discovered that data ported to the new system was not accurate. USAC staff has been working very hard since the first of the year to address these issues, and we appreciate the efforts Chris Henderson, Mel Blackwell, Catriona Ayer and all of the other Schools and Library Division managers who working so hard to implement the new system. However, we are concerned that, without receiving clarification directly from WCB and OMD on these issues and without further directives to USAC regarding long-term solutions, the UETN, as well as many other state consortia and libraries and library systems, could be vulnerable to delays in processing of its applications and reimbursements, and, more seriously, open to allegations of rule violations during audits or payment quality assurance assessments in the future.

Structural and Design Issues

It appears that USAC's new EPC Portal – the gateway to the program for applicants – has been structured upon the premise that there are only three types of end users that require access: (1) applicants; (2) consultants; and (3) service providers.¹⁰ The profile type of “applicant” presumes a single entity, (i.e., the Little Red School House or ABC School District) submitting information on its own behalf. The profile type of “consultant” presumes that an entity is submitting information on behalf of others “for a fee.”¹¹ Finally, the profile type of “service provider” presumes that the entity logging in provides eligible telecommunications services under the E-rate program. The Commission's rules, in contrast, clearly list three types of applicants throughout – (1) schools, (2) libraries; and (3) consortia.¹²

UETN does not fall into any of USAC's EPC categories for purposes of the work it needs to complete under its statutory mandate as consortium leader.¹³ While it is an applicant,

¹⁰ USAC Schools and Libraries E-rate Productivity Center: <https://usac.org/sl/tools/e-rate-productivity-center/default.aspx> (last accessed on Jan. 20, 2016).

¹¹ See *USAC News Brief*, Jan. 22, 2016 (“You can authorize a consultant – a non-employee of the entity applying for funding that assists in filling out the application materials for a fee – to assist you with the competitive bidding process.”).

¹² See, e.g., 47 C.F.R. § 54.503(c) (detailing competitive bidding requirements for “[a]n eligible school, library or consortium that includes an eligible school or library seeking bids”).

¹³ The Commission has defined a “consortium” as “any local, statewide, regional or interstate cooperative association of schools and/or libraries eligible for E-rate support that seeks competitive bids for eligible services or funding for eligible services on behalf of some or all of its members.” 47 C.F.R. § 54.500(c).

and it has created an EPC applicant profile account for the consortium, it has been able to complete only a very few of its required tasks in its role as state consortium. UETN's role of a state network consortium applicant, however, brings a host of many additional responsibilities for all of the schools within the dozens of school districts, hundreds of charter schools, libraries, and other consortium members/applicants in the state.

Specifically, this oversight in the development of the Portal has led to several issues for UETN and other similar state network consortia:

- Inability to include all Utah entities in the state Consortium. UETN cannot apply for funding for all the entities that it had previously included in its consortium. Previous to the 2016 EPC filing portal, UETN would include every school, including public, charter, tribal and some private schools, and participating libraries in the state on its broadband funding requests. Now, within the confines of EPC, before UETN can include these schools and libraries on its application, each and every school and library in Utah must create its own account in the EPC portal and then seek to join UETN's consortium. This has created significant additional work for UETN to reach out to each of its schools and libraries and additional work for each school and library that previously did not have to file its own applications, or interface with USAC's complex and problem-ridden new system. More importantly, UETN has been tasked and has exercised statutory authority, since the inception of the E-rate program, in filing applications on behalf of Utah's public schools and libraries. Utah's public schools and libraries look to UETN to perform all duties related to E-rate for broadband services within the UETN state network.
- Increased burdens on individual applicants. The State of Utah strongly supports broadband access for its schools and libraries and has therefore tasked and funded UETN to both (1) file for E-rate discounts for state network broadband services serving the schools and libraries, and (2) assist these entities with their own applications for other eligible E-rate services. UETN staff inputs data for the applications, performs annual entity audits and keeps addresses and consortium member E-rate data up-to-date, collects and ensures the accuracy of National School Lunch Program (NSLP) data, serves as a contact point for USAC inquiries, Program Integrity Assurance review, audits, and much more. This work, including annual audits on some of this data, helps to ensure applicants in Utah are in compliance with Commission E-rate rules. In addition, schools and libraries in Utah do not have to hire a consultant to help with their applications, thereby reducing the costs for individual schools and libraries to access USF resources.

If UETN cannot complete the work for the applicants, as it has done in previous years, the structure of the Portal has created additional burdens and more importantly, real barriers to access for applicants instead of reducing them. We fully understand that a new system will have upfront "costs," in terms of time and effort, to get the data input. The State of Utah is willing and able to undertake this work. What should not happen, however, is that USAC's system design limits the ability of the state to perform this work and instead dictates to

the state that individual schools and libraries – subdivisions of the state¹⁴ – are required themselves to perform this work without the state’s assistance. The Ute Indian Tribe Head Start, run by the Ute nation, is just one example of an entity that simply does not have the resources to undertake any E-rate administrative tasks on its own. This result thwarts Congress’s directive for the Commission to promote universal service¹⁵ and the Commission’s own goal of streamlining the application process.¹⁶

- UETN cannot fulfill its statutory mandate to coordinate and support the telecommunications needs of schools and libraries in the state of Utah. The decision to base the structure of EPC upon individual schools, and school districts ignores the State of Utah’s authority over its political subdivisions. Local governments have no inherent sovereign powers and instead are merely creatures of the state and are subject to the state’s control.¹⁷

Under Utah law, UETN must:

- (a) coordinate and support the telecommunications needs of public and higher education, public libraries, and entities affiliated with the state systems of public and higher education as approved by the Utah Education and Telehealth Network Board, including the statewide development and implementation of a network for education, which utilizes satellite, microwave, fiber-optic, broadcast, and other transmission media;
- (b) coordinate the various telecommunications technology initiatives of public and higher education;
- (c) provide high-quality, cost-effective Internet access and appropriate interface equipment for schools and school systems;
- (d) procure, install and maintain telecommunications services and equipment on behalf of public and higher education;
- (e) develop or implement other programs or services for the delivery of distance learning and telehealth

¹⁴ See *infra*, n. 17.

¹⁵ 47 U.S.C. § 254(h)(2)(A).

¹⁶ See *First Modernization Order* at paras. 55-62.

¹⁷ See *Community Communications Co., Inc. v. City of Boulder*, 455 U.S. 40 (1982) (finding that even home-rule cities lack sovereignty given federalism concerns); 2 McQuillin Mun. Corp. § 4:5 (3d ed. 2015) (noting the “well settled doctrine that municipal corporations of all kinds are politically subordinate subdivisions of the state government”); See also *State v. Hutchinson*, 624 P.2d 1116, 1121 (Utah 1980) (“Local governments, as subdivisions of the State, exercise those powers granted to them by the State Legislature, *Ritholz v. City of Salt Lake*, 3 Utah 2d 385, 284 P.2d 702 (1955), and the exercise of a delegated power is subject to the limitations imposed by state statutes and state and federal constitutions.”).

- services as directed by law;
- (f) apply for state and federal funding on behalf of:
- (i) public and higher education; and
 - (ii) telehealth services.¹⁸

Without the ability to complete state network broadband applications on behalf of the schools and libraries in Utah, UETN cannot satisfy this directive and achieve its mission under the law. Even if it conducts extensive outreach to try to persuade a school or library to jump through the various hoops to establish an account in EPC, the fact is UETN is not allowed to open an account for a school or library even though UETN has been authorized to procure and apply for funding by state statute. In addition to its statutory authority, UETN receives letters of agency from these entities to include them as members on UETN's E-rate applications. Therefore, there should be no question the UETN has the legal authority to act within E-rate on behalf of its member entities.

- Inability to provide even minimal assistance to some Consortium members. USAC has added a functionality for individual state E-rate coordinators to at least view their applicants' accounts and run reports to determine status. However, in Utah, only public schools were visible because technically UETN is the public school E-rate coordinator, even though the consortium membership includes libraries and other eligible school entities as well. In its newly constrained role as a state consortium applicant within EPC, UETN can only add or delete consortium members, instead of performing the "heavy lifting" of inputting accurate entity information and data for each of our consortium members.
- Competitive bidding concerns. Because of the new EPC requirement that each district, charter school, private school, libraries and library system entity create its own account and proactively join the consortium in USAC's system, UETN did not have every applicant in the system linked to the consortium when it issued requests for proposals for E-rate eligible services. To obtain the best price possible, UETN seeks bids for high-speed broadband and Internet access every year. To comply with state procurement laws and regulations, UETN needed to start the procurement processes for funding year 2016 in August 2015, which is the typical timeline. While UETN collects letters of authorization from its constituents as required by Commission rules, UETN is concerned that the fact that not all of its entities were linked in the EPC system prior to the initiation of the procurement will cause USAC to question whether UETN had obtained the proper authorization to seek bids on behalf of those entities. Even if the system simply flags the issue for further USAC investigation, such a request will create administrative burdens for UETN that otherwise would not exist, absent the new Portal structure.

¹⁸ Utah Code § 53B-17-105.

Technical Issues and As-of-yet Unsuccessful Workarounds

In addition to the structural design issues that preclude UETN from completing its work in the system, the Portal has been riddled with errors since its rollout. It is unclear whether these issues are the result of flaws in the software application itself or in its conformance to E-rate program requirements, and whether they can ever be adequately addressed within the current software application.

One significant challenge has been correcting the data ported from the old system into EPC. Data ported from last year's applications into EPC is not complete or accurate, which leads to consortia application error messages. In its design of EPC, USAC removed state consortia's rights and ability to access and correct their *own* consortium member data. The state consortia cannot prepare or file their applications when there is even a single error on one attribute of a single member. And worse, daily "updates" and "corrections" by USAC, the Client Services Bureau (CSB), and individual schools, districts and libraries can throw a consortium application – even one that was working just an hour or day earlier – into an error state, where the consortium is blocked from even working on the application, without a clue as to the origin of the error.

In December 2015, state consortia asked USAC to restore state consortia with full administrator rights so that they can complete and revise consortium member entity data as necessary to complete their consortia applications. To date, consortia have been given no technical reason why this cannot be accomplished. At the end of January, USAC first suggested that it might be able to add a classification for state consortia into EPC that would provide greater administrative rights. To date, UETN has not seen such a classification. Instead, USAC has proposed a manual solution that consists of USAC-generated state entity data files, requiring download, review, annotation, and returning to USAC for manual entry of corrections and changes.

Managing recipients of service in the Form 471 is extraordinarily burdensome, requiring search, selection, or entry of every single billed entity number in the entire state for each and every single FRN line item which is shared statewide. As a statewide network, this results in an estimated 36,000 clicks of the mouse, or choices in multiple upload templates for shared service FRNs. The latest FRN upload templates for Category 1 are intended to provide a greater efficiency in entering the voluminous data regarding services for individual school or library sites. However, the templates are instead generating multiple error messages. The stakeholders had requested a checkbox that would allow selection of all recipients of the service at one time instead of the current building level entry of data. We think the latter approach would significantly diminish the 36,000 clicks required.

It is likely that data reported to FCC is or will be highly inaccurate. Connectivity is provided and program funding is requested by UETN but EPC requires individual districts and schools to answer connectivity questions, often with no clue to actual connection speeds. The forms require procurement details (number of bids received) for every FRN that are extraordinarily burdensome and nearly impossible to answer accurately since UETN often conducts large procurements where vendors pick and choose which line items to bid. A single vendor contract may in fact incorporate awards from several different formal bids.

We also refer the Commission to errors identified by Funds for Learning,¹⁹ the Wisconsin Department of Administration,²⁰ and the American Library Association.²¹ UETN supports the filings by the State of Wisconsin and the ALA to extend the window.

Proposed Remedies

To address the issues outlined above, UETN respectfully requests that the Commission take the actions described herein as soon as practicably possible.

First, WCB and OMD should direct USAC to extend the application window for at least eight weeks. Such an action would give USAC the opportunity to develop solutions for the existing system problems and test those solutions before releasing them for use by applicants. While understandable given the time pressures created by the impending window close, it is not a good use of applicant time to serve as “beta” testers for the system. USAC should develop a better process to ensure that systems fixes are successful before allowing applicants to move forward with their applications.

Second, WCB and OMD should direct USAC to add a classification for “state consortium” in the Portal. USAC should be able to simply use the functionalities it has developed for “consultants,” provide a different classification name, identify those entities who are state consortia, and provide ready access for state consortia, including UETN, to their member portal accounts, without the additional administrative burdens on the consortia leads or on their members that EPC has presented.²² This would eliminate any confusion regarding UETN’s role and would correctly acknowledge its relationship with its members. It would help UETN to ensure accurate data is being entered into the system.

Third, WCB and OMD should direct USAC to provide additional time for the completion of applications for state consortia – as well as libraries and library systems – if system changes cannot ensure accurate and successful applications during the application window. As noted above, a significant issue is that the data entered into the Portal has disappeared or been changed, which has precluded UETN from filing its applications. As proposed by other stakeholders,²³ it is likely, absent some significant system change in the meantime, that state consortia and library applicants or their consultants will need time after the official close of the window to complete their applications while no other entity is allowed to change the data.

¹⁹ See blog of April 1, 2016, at <https://www.fundsforlearning.com/blog/2016/04/epc-frustrations-mount>.

²⁰ Letter to Chris Henderson, CEO, USAC, and Mel Blackwell, VP, Schools and Libraries Division, USAC, from David Cagigal, CIO/Division Administrator, Wisconsin Department of Administration (April 7, 2016).

²¹ Letter to Lisa Hone, Associate Bureau Chief, Wireline Competition Bureau, FCC, from Marijke Visser, Executive Director, ALA Washington Office (April 4, 2016).

²² For example, UETN Consortia members should not have to establish Portal accounts to be included in the UETN Consortium.

²³ Letter to Lisa Hone, Associate Bureau Chief, Wireline Competition Bureau, FCC, from Kellogg & Sovereign Consulting, LLC (April 8, 2016).

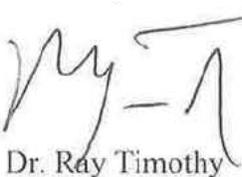
Fourth, WCB should issue a blanket waiver of the relevant rules, as necessary, for all affected parties, waiving any affected procedural or substantive requirements affected by the system issues.

Finally, WCB and OMD should direct USAC to continue to improve upon EPC to restore the functionalities that state consortia had before to complete applications on behalf of its members. WCB and OMD should oversee these improvements to ensure their compatibility with Commission rules and program goals. If the necessary revisions for state consortium – and the resulting functionalities that allow the consortium applicant to complete the data for its members and its applications – cannot be accomplished by the close of the FY 2016 window, WCB and OMD should direct USAC to do so in FY 2017. Specifically, these enhancements should include the ability for state consortia to create accounts for their individual members, even if those entities have not themselves done so. If it is determined that EPC system functionalities are not compatible with E-rate consortia and library system applications, another system should be developed.

In conclusion, we thank the Commission and USAC for their work to this point. We understand the enormity of the task before the Commission and USAC to develop an entirely new IT system for thousands of users. We look forward to continuing to provide feedback on the system and the process.

Please let us know if you have any questions. We are available to meet with Commission and USAC staff at your convenience.

Sincerely,



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