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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

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| Federal-State Joint Board on Universal Service | ) | |
| | ) | CC Docket No. 96-45 |
| | ) | |
| Petition for Rule Making | ) | |
| | ) | |

## Petition for Consideration of Certain Changes in E-rate Regulations

Greg Weisiger, on behalf of myself, submit this petition asking the Federal Communication Commission (FCC) to consider certain changes in E-rate regulations for the benefit of schools and libraries that have applied, or are considering applying for, universal service E-rate discounts.

### Background

The universal service E-rate program, created by legislative Act in 1996, is on the brink of failure -- even as the first discount dollars are issued to vendors and subsequently passed on to schools and libraries. This failure has not come about because of critics of the program, but from frustrated beneficiaries -- Schools and libraries subjected to endless delays, rule changes, audits, and an exceptionally complicated application process.

The program itself, expressed in a few short paragraphs in the Telecommunications Act of 1996, called for the Federal Communications Commission (FCC) to establish rules providing schools and libraries with telecommunications services at rates less than those charged to other parties. The Act also required the FCC to establish rules to enhance access to advanced telecommunications and information services for schools and libraries.

From those few paragraphs the FCC issued some 30 pages of regulations, accompanied by hundreds of pages explaining the regulations, implementing the universal service portion of the Act. During their brief existence, these pages have been altered by FCC Order nine times. Interpretations of the regulations -- and succeeding Reconsiderations -- have changed countless times. This occurring while schools and libraries attempted to avail themselves of discounts promised in the Act.

Understandably, some school and library officials have tired of the process and are calling for an end to the program as it currently exists. I retain the faintest hope that the program can be salvaged, mainly to prevent further delays in bringing much

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needed advanced communications services to America's neediest students and citizens. Because of delays in the program, applicants with the highest discount rates (America's poorest and most rural communities) have, in many cases, not installed necessary equipment to serve their students and patrons -- unable to do so without the 70, 80 or 90 percent discounts promised two years ago.

I ask the Commission to take immediate action on this petition and its sister petition from the CCSSO (attachment A).

**Allow applicants to split Funding Request Numbers (FRN)**

During the initial application process, a number of applicants mistakenly combined services of two or more vendors on a single funding request line. This typically occurred for local and long distance telephone service where the applicant received only a single bill. There are, however, other instances of similar situations from applicants across the country.

I ask that the FCC allow the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) to establish a policy and procedure for applicants in this situation to amend their Form 471 adding additional service providers not listed in the original Form 471, but were legitimate service providers for the applicant when the Form 471 was filed. I ask that applicants be allowed to reduce the funding commitment from the single FRN by the amount requested for the new service provider(s).

Currently applicants are being asked by the SLD to "work it out" with the affected vendors. Some applicants may be able to "work it out" and some may not. For a program under as much scrutiny as E-rate, such advice is ill advised. Specific solutions should be established to ensure applicants receive discounts to which they are entitled in the Act.

**Clarify appeal regulations**

FCC regulation 54.725(a) concerning appeals of SLD decisions specify that no discount funding shall be issued while an appeal is pending "...for the provision of discounted services until a final decision has been issued either by the Administrator or by the Federal Communications Commission." As Commitment Decision Letters are being delivered, some applicants are finding that the SLD has changed applicants' discount rates without the applicants knowledge or permission. One interpretation of FCC regulations would lead one to believe the applicant appealing such a decision would not receive any funding until the appeal was concluded. Another would assume an applicant could receive discounts on the committed amount while appealing the disputed amount.

I ask the FCC to interpret 54.725(a) "...shall not reimburse a service provider for the provision of discounted services..." to allow committed discounts to be issued to service providers while applicants appeal discount percentage rates. I ask the FCC define "provision" to mean only the percentage of discounts in dispute.

This problem has surfaced because of the extraordinary amount of scrutiny applications receive. Even though the program calls for self-certification of discount levels by applicants, various oversight divisions of the SLD compare applicants' discount levels with other sources. In some cases, applicants discovered students eligible for the National School Lunch Program that were not listed in reports to the state department or U.S. DOE. Some applicants were asked to verify their discount; however, some discount rates were simply changed by the SLD. These discrepancies are only now coming to light as commitment letters are received.

**Engage the services of an actuary or accounting firm to estimate the amount of funding that will be committed but not spent during the initial funding year**

It is my understanding that the SLD plans to commit only the total amount of money collected during the 1998-99 contribution cycle. Because funding commitments were not made until a year or more into the program year, some applicants, particularly applicants with the highest discount rates, have not yet ordered services. Internal connection commitments can be used, if the funding year is extended through December 31, 1999, (attachment A, proposal I). However, broadband telecommunications and internet access services for many applicants have not yet begun -- even though the commitment letters will reflect funding as early as January 1, 1998.

In Virginia, with approximately 50 percent of funding commitment letters issued, I am aware of at least $300,000 that has been committed but will go unspent during the first funding year. I am confident the true number is much larger and will increase as more commitment letters are issued. Nationwide, the figure could approach 20 percent of the total collected amount. An actuary or accountant can best estimate the total amount.

These committed but unspent funds must be identified as soon as possible and used to either fund telecommunications and internet contracts expiring before December 31, 1998, (attachment A, proposal IV) or increase the number of applicants funded for discounts on internal connections or both. It would be a disservice not to operate the program as efficiently as possible. It would also be unfortunate to report a significant amount of E-rate funds went unspent during the first funding year when many applicants did not receive funding for internal connections because of insufficient funds.

**Conclusion**

Access to affordable telecommunications service has been a priority for the United States Congress and the FCC for years. The universal service program has served the needs of America's poor and rural citizens well. With the Telecommunications Act of 1996, the executive and legislative branches of government recognize the importance of expanding the scope of universal service beyond simple telephone service to include advanced telecommunications services -- such as internet. The Act also recognized that such services are unaffordable to a great many citizens, but that access for schools and libraries is imperative. Indeed, in the three years since the Telecommunications Act was signed into law, we have witnessed an unprecedented explosion in the use of telecommunications technology in American business. To compete in this new "information age" students and citizens in every corner of this country must have affordable access to technology.

Expansion of the original universal service program to include schools and libraries was a logical solution. The reality of the initial funding year, however, has left many applicants discouraged and frustrated. The suggestions contained in this Petition and the Petition of the SEA representatives primarily address urgent issues and concerns for the current funding cycle. A broader review of the program with the goal of creating definitive and understandable rules, well-defined responsibilities and authority for the SLD, and better lines of communication between the FCC and SLD are necessary.

Respectfully submitted,

Greg Weisiger

19 Tallwood Trail
Palmyra, Virginia 22963

February 18, 1999

Attachment A

On January 19, 1999, at the offices of the Council of Chief State School Officers (CCSSO), One Massachusetts Ave. N.W. Washington DC, a meeting was held between state education agency (SEA) E-rate representatives of Utah, Kentucky, Texas, Tennessee, West Virginia, New York, Illinois, Virginia, Iowa, Florida, Mississippi, New Jersey, South Carolina and Michigan and representatives of the Federal Communications Commission (FCC), including Kathryn Brown, Irene Flannery, and Melissa Waksman. Jack MacDonald and Arthur Sheekey of the CCSSO were also in attendance.

The meeting was held to present a number of proposals for changes and reconsiderations of universal service E-rate regulations to the FCC. The SEA representatives formulated and unanimously agreed on the proposals. The SEA representatives also agreed that immediate FCC action on proposals number 1 and 2 were necessary for successful implementation of the E-rate program.

The proposals as presented are as follows:

Proposal I

Provide a six month "overlap" grace period to complete implementation of 1998 funding through December 31, 1999, i.e, allow another six months for one-time non-recurring expenditures to insure that funding commitments can be used. This also allows time for corrections. These unspent funds would not be used to reduce collections in 1999.

Proposal II

Priority and high level resources are needed to complete all 1998 applications, specifically the large complex applications, including the appeals and corrections processes, because of the sizeable impact on large numbers of students. Complete these by February 1, 1999 even to allow filing much less "consideration" in '99.
Question:
Even if commitment letters can be issued by 2/1/99, do applicants have sufficient time in the 1999 window to respond to commitment letters? we realize the dilemma in extending the window.

Proposal III a

Reaffirm and rely on state and local procurement rules for establishing and changing contracts, once a contract has been categorized as "pre-existing" or "bid" according to E-rate rules. Policies for "equal" or "better" or "cheaper" should be dependent on the state and local rules, not a promulgation of FCC procurement rules. Consider pre-certification process similar to tech plans.

Proposal III b

The states are in fact accomplishing competitive bidding within the telecom industry, separate from school bidding. Allow state master contracts, and subsequent extensions, to be eligible for E-rate service whether or not they have been bid within the window, without a process that

requires a second bidding with the Form 470.

Proposal IV

Reconsider the 5th Order that created a 12/31/98 contract expiration issue. Change the ruling with regard to contract expiration without prejudice to the expiration date to reduce the economic impact to the schools and libraries.

Proposal V

Because the FCC has already reduced the program to $1.925 Billion for 18 months, committed, but unspent dollars, need to be spent on resolving 1998 program year appeals and corrections.

Proposal VI

(a) Expedite a hearing process to be able to announce funding and collection levels priorities prior to February 8, 1999. (b) Assure that collections match funding requests up to the cap of $2.25 Billion. (c) Assure that '99 funding commitment letters are issued by July 1 '99.

Proposal VII

Institute a collaborative procedure to (c)onvene a series of sessions to streamline the program and increase the efficiency and effectiveness of the 2000 program year.

(as presented to the FCC January 19, 1999)

Service List

*The Honorable William Kennard, Chairman
Federal Communications Commission
1919 M. Street, N.W.
Washington, DC 20554

*The Honorable Susan Ness, Commissioner
Federal Communications Commission
1919 M. Street, N.W.
Washington, DC 20554

*The Honorable Harold Furchtgott-Roth, Commissioner
Federal Communications Commission
1919 M. Street, N.W.
Washington, DC 20554

*The Honorable Gloria Tristani, Commissioner
Federal Communications Commission
1919 M. Street, N.W.
Washington, DC 20554

*The Honorable Michael Powell, Commissioner
Federal Communications Commission
1919 M. Street, N.W.
Washington, DC 20554

*Via Hand Delivery