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COUNCIL OF CHIEF STATE SCHOOL OFFICERS

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February 14, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: COMMENT ON NOTICE OF PROPOSED RULE MAKING - CC Docket No. 96-45

Dear Ms. Roman Salas:

These comments respond to the Federal Communication Commission's Notice of Proposed Rules regarding the implementation of the Children's Internet Protection Act ("CHIP Act") that were adopted on January 22, 2001. In this response, the Council of Chief State School Officers (CCSSO) would like to share several of the concerns that have been identified by state officials who are deeply involved in coordinating the efforts of thousands of [E-Rate Program] applications. Efforts on the part of many of the states' officials involve the distribution of web-based information services about the program, ongoing reviews and approvals of educational technology plans, technical assistance, and/or the actual preparation of applications -- for local school districts and consortia of school districts that are deemed eligible for discounted telecommunications services under Section 254 (h) of the Telecommunications Act of 1996.

We recognize that the Commission is having to implement an unprecedented legislative mandate that goes well beyond the normal regulatory requirements on state and local agencies that participate in federal programs or are entitled to receive public services. Nevertheless, we expect that our comments, along with those originating from state and local educational agencies, will at least reduce the level of anxiety and confusion which the CHIP Act is creating. In particular, we would like to suggest that the Commission ultimately adopts a set of flexible rules and procedures that take into account the differing capacities of public and private schools and libraries to effectively respond to the intent of this new federal mandate.

On the basis of the amount of preparation and public involvement associated with the proposed rule making, we urge the Commission to require all recipients of discounted (E-Rate) services to be in full compliance with the Act no earlier than the beginning of the funding year

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beginning on July 1, 2001. During that funding year, we accept the view expressed in the NPRM that the FCC Form 486, the Receipt of Service Confirmation Form, should serve as the appropriate means of certification. In subsequent years, we understand that the Commission would consider requiring school and library applicants to provide the certification up-front on the FCC Form 471, a submission which merely describes the services expected from the service provider. With regard to the latter, we are concerned that a significant number of applicants will be asked to go through all of the certification requirements while having no assurance that they will qualify for and actually receive funding for discounted services. Therefore, we would not subscribe to a ruling that applicants - in any program funding year - would be forced to make decisions associated with the proposed rules until they actually receive full support for their requested services. We do agree with the FCC's assertion that filtering should only apply to applications which have Internet service and internal connections. Applications that solely involve telecommunication services should have to certify compliance with the CHIP Act's provisions.

Year four applicants, we assume, would merely have to certify that they are "undertaking actions for compliance." Subsequent certification on the Form 486 would effectuate the certification of actual compliance. Our concern is that the Form 471 for program year five would presumably have to be filed by mid-January 2002, right in the middle of program year four. Thus, would wonder if the applicants would be required -- during year four - to certify that they already had policies and measures in place? Alternatively, would applicants still be able to certify only that actions were being undertaken? Or, as a final but potentially confusing alternative, would they be asked to certify that they were in compliance with the Act - whatever that would mean at that time on a year five form?

Compliance obligations for schools and libraries with regard to the provisions of the CHIP Act, therefore, should begin in the fifth funding year of the E-Rate program. Initiating the certification requirement at the outset of year five would recognize that most states and school systems have completed planning processes and program budgeting plans that include the resources and technical assistance needed to comply with the Act. The imposition of regulatory requirements could be disruptive, especially for many of the smaller and independent schools that are already challenged by the complex application and review processes associated with this program.

As the NPRM indicates, school and library applications for universal service discounts often involve entire districts, comprising many schools and consortia, or even an entire statewide application. With respect to applications that involve large numbers of schools, we urge the Commission to allow the agency or organizational entity representing consortia to assume the responsibility for certifying compliance for all of its member institutions. States and lead agencies, for example, that assume the responsibility for the Internet protection measures which offer applicants a cost-effective group filtering service and which meets the requirements of the CHIP Act should be allowed to certify for its consortium members. In such instances, however, we would not expect that the lead agency or all members of the consortium to be held legally or fiscally accountable when one or more of the consortium entities are found to be noncompliant. Moreover, if a member of a consortium should be found to be noncompliant, we would not expect the

Commission to impose punitive damages on other members of the consortium.

On matters that concern states: While some state education agencies are prepared or are willing to take on additional responsibilities to support the administration of the E-rate Program, including certification statements that local schools under their jurisdiction are in compliance with the program's requirements, most are not now in the position to assume compliance obligations relating to the CHIP Act. Moreover, most state would not favor having the state's ed/tech plan approval in any way linked to the filtering certification. We realize ed/tech plans must be approved by the state (or the state's designee), but we are recommending that any certification for installing filtering technologies should be left at the local district/school/library level.

Respectfully submitted,

Gordon M. Ambach
Executive Director