



Before the Federal Communications Commission
Washington, DC 20554

In the Matter of:
Schools and Libraries Universal
Service Support Mechanism
CC Docket No. 02-6

COMMENTS SUBMITTED BY THE
IOWA DEPARTMENT OF EDUCATION
IN RESPONSE TO THE
RELEASED JANUARY 25, 2002
NOTICE OF PROPOSED RULEMAKING & ORDER

I. Introduction

1. The Iowa Department of Education respectfully submits its comments in the above referenced proceeding. The Iowa Department of Education serves the interests of 371 accredited public school districts and 210 accredited nonpublic schools representing 535,355 students.

2. The Iowa Department of Education ("Department") wishes to commend the Federal Communications Commission ("Commission") for its ongoing commitment to expand universal service of telecommunications services by supporting the Universal Service Program for Schools and Libraries, a program often referred to as the E-rate. The E-rate Program has assisted Iowa's public and nonpublic schools in obtaining discounts for critical areas such as local and long distance telephone service, Internet connectivity and distance learning.

3. In its Notice of Proposed Rulemaking and Order (NPRM), the Commission has requested comments on specific issues related to the E-Rate program. The Department appreciates the opportunity to comment on these important issues as well as to highlight some other areas that were not specifically requested in the NPRM.

II. Background

4. The passage and signing of the Telecommunications Act of 1996 handed the FCC with a new program and a new set of frontline "customers" that were far different than the

telecommunications and broadcast industry that the FCC has regulated for decades. Personnel in small rural schools and libraries wishing to participate in the E-rate program are a far cry from the knowledgeable law firms representing the telecommunications and broadcast industry.

5. We applaud the efforts of the FCC in recognizing the naivete that this new “customer” base brings in its dealings with the FCC. Most small districts and libraries do not have legal counsel to represent them in their E-rate activities. Often the E-rate “expert” (if such a term is appropriate) in a small school or library is the building principal or the half-time media specialist who must juggle many job duties in addition to the E-rate program. With high turnover of personnel in many of our smaller school districts, a working knowledge of the E-rate rules and regulations remains a challenge. We appreciate that the FCC recognizes this unique challenge and seeks to “fine tune our rules” to better meet the needs of the E-rate customers.

6. Since the program’s inception, the FCC has been receptive to making the program more “user friendly” for schools and libraries by aligning the program funding year to match with the school funding year and establishing a window for E-rate applications rather than a “first come, first served” basis. In light of the FCC’s receptivity to continuously improve the E-rate program, we offer the following comments and recommendations.

### III. General Comments

7. It is of particular interest that in the NPRM, the FCC seeks to further three goals. We find these goals to be both accountable to the telecommunications’ customers who pay for the program as well as just and fair to the schools and libraries served by the program.

- *We seek to streamline and improve the program.*
- *We seek to ensure fair and equitable distribution of funds.*
- *We seek to protect the schools and libraries mechanism against waste, fraud, and abuse consistent with our goals.*

8. In preparing these comments and focusing on these three goals, we asked ourselves these two questions: **“If we were going to start the E-rate program over again consistent with the three goals, would we set up the program in the same way? If not, what would we change?”**

9. Based upon our experiences with school and library applicants in our state, we assert that the program is needlessly cumbersome and confusing. We definitely concur that the program has room for improvement and deserves to be streamlined. In addition, we do not believe that currently there is a fair and equitable distribution of funds. Finally, given the structure of the current program, we believe that it will continue to be prone to “waste, fraud and abuse” despite the recent wave of audits.

10. We believe the largest areas of concern with the program are threefold: (a). The process for applying for E-rate funding is cumbersome, at best. (b). The E-rate disbursement structure leaves the program prone to waste and abuse, if not fraud. (c). The absence of E-rate funded state-level administrative support leaves some schools and libraries at a disadvantage.

**(a). E-Rate application process is cumbersome:**

11. The current E-rate program requires the applicant to complete at least three different forms with three different deadlines prior to receiving E-rate funding (depending upon the type of application, the school or library may have up to five different forms to complete in one funding year). It should be noted that each and every one of these forms and deadlines must be correctly completed and deadlines met in order for the applicant to be eligible to receive E-rate funding. We know of no other program for schools and libraries that requires so many different forms and so many different deadlines. Given that many of our state's schools and libraries are quite small but almost none are in the 90% and above discount category, the annual funding from E-rate is often in the range of \$2,000 to \$5,000. Completing at least three different forms and meeting three different deadlines in one year to only receive a few thousand dollars is not cost efficient. Given lack of knowledgeable staff and so many different forms, the very schools and libraries most in need of E-rate discounts often are those least able to wade through the application process.

**(b). The E-rate disbursement structure leaves the program prone to waste and abuse, if not fraud:**

12. Of even greater concern than the application process is the existing disbursement structure of the E-rate program. In this section we offer comments that may be considered a major overhaul of the program rather than a fine-tuning.

13. The E-rate program is structured on three categories of service: telecommunications, Internet and internal connections. The first two categories (telecommunications and Internet) are considered to be "priority one" services while internal connections are "priority two." Program rules state that priority one services are funded before granting funding for any priority two services.

14. Due to high demand for priority one services, rarely have the majority of our schools and libraries been able to tap into any of the priority two funds. (Only in year two of the program were applicants in the "less needy" discount bands funded for internal connections). We note a growing trend that concerns us greatly:

- Applicants are increasingly trying to "work the system" to make priority two services into priority one services so they can receive additional E-rate funding.
- Applicants in the 90% and above discount level are becoming easy prey for questionable "consultants" who try to convince the unsuspecting school or library to apply for large sums of funding, regardless of whether the school/library needs the service or equipment.

- A very few applicants are receiving large sums from the E-rate fund, far beyond what might be considered true “need.”

15. We contend that the growing trend of “waste and abuse” is due to the disbursement structure of the program rather than to lack of enforcement of program rules. Increasing the number of audits will not significantly curtail such trends. In other words, these three trends are perfectly legal given the existing structure of the program. We contend that the only way to correct these trends is by a major change to the program.

16. Because there is no limit or “cap” on the amount of funding that may be requested and received by any applicant under either priority one or priority two, there is no incentive for the applicant to be judicious in its funding request. Further, schools and libraries requesting inordinately large amounts from the E-rate fund do not perceive they are harming their neighboring schools and libraries by their actions. In order to correct the deficiencies of the program, **we favor establishing an E-rate funding allocation or “cap” for each state and disbursing funds through a “block grant” program.**

17. Here is how we envision this restructured E-rate program might operate:

- (a). The FCC would establish the overall parameters of the E-rate program. This would include general areas that the program would fund.
- (b). Each state would be allocated a maximum funding allocation or “cap” based upon the level of student poverty in the state. (e.g. Title I). High cost might also be included as a factor in establishing the state “cap.”
- (c). Each state would submit an implementation plan (“block grant” application) to the SLD program administrator that would specify how the state would ensure “fair and equitable distribution of funds” to the applicants within its state.
- (d). The SLD program administrator would approve each state’s implementation plan and approve the allocation of funding to the state. This would include a small administrative fee to the state to assist applicants. Upon approval of the state’s implementation plan, funds would be disbursed to the state agency administering the program.
- (e). Applicants would apply for funding from the state program administrator based upon that state’s allocation. The state agency would disburse the funds to applicants based upon acceptance of the school/library application.

18. We believe this approach has several advantages over the current structure:

- Each state’s pot of E-rate funding is only open to applicants in that state. Perceived gouging of the funding pot is less likely when you are taking from your neighbor and not some school thousands of miles away.
- Each state’s application process can more closely match other educational technology and telecommunications initiatives in the state. For example, if the state currently funds internal connections for each school, a given state could put more funding emphasis upon telecommunications services and less on internal connections.
- Questionable practices by so-called E-rate “consultants” will be curtailed. By allowing each state a relatively small administrative support fee (generally limited to

5% by agencies such as the U.S. Department of Education), each school and library in each and every state will have assistance in applying for and receiving E-rate funding.

- More applicants would receive funds rather than a few applicants receiving excessively large amounts of funding.

19. We do recognize that any alteration in the disbursement structure of the E-rate program will be very controversial. Therefore, we recommend that the FCC consider releasing a Notice of Proposed Rule Making and Order specifically seeking input on establishing funding allocation “caps” and/or block grants to states.

**(c). The absence of E-rate funded state-level administrative support leaves some schools and libraries at a disadvantage.**

20. It should be noted that the current E-rate program does not offer consistent nationwide assistance to schools and libraries in applying for E-rate funds, thereby threatening the goal of “fair and equitable distribution of funds.” While the NPRM boasts of the low administrative costs to the program (NPRM, footnote 32), we contend that the true administrative costs that states and applicants must bear are grossly underestimated. So while the E-rate program is not directly paying support costs at the state and local level, those costs are real and are being borne by the states and/or the applicants. Worse yet, we believe that the absence of E-rate funded state-level support is unduly disadvantaging applicants in states that cannot afford to provide E-rate assistance to its schools and libraries.

21. The E-rate program does not fund any costs for E-rate consultation at the state level, even though the program has come to heavily rely upon volunteer help from the states. While some states have been able to afford to hire E-rate coordinators to help their schools and libraries apply for funding, budget shortfalls in our state prohibit the hiring of such personnel. We contend that our schools and libraries do not have an equitable shot at the E-rate funding compared to applicants in many other states.

**IV. Comments in response to the NPRM**

22. Following paragraph 12, the NPRM poses a series of questions in several comment categories. While we find the three goals in paragraph 12 of the NPRM to be broad and far-reaching, the comment areas in the remainder of the NPRM are very narrow. We have chosen to respond to selected categories of the NPRM.

23. Our earlier comments (section III above) focused on a complete overhaul of the E-rate structure. Given that a major revamping will require an additional NPRM, the comments that follow are designed to enhance the existing structure of the program.

## **A. Application process, in general**

24. Comments: To streamline and improve the program, the application process must be streamlined. The current E-rate application process is needlessly complicated for schools and libraries. Simplify the application process.

25. While we recognize the importance of goal three in the NPRM, “preventing waste, fraud and abuse,” we believe there are more effective ways to minimize waste, fraud and abuse than through a myriad of complicated forms and rules governing those forms and deadlines. Below we offer a few suggestions of “fine tuning” the program to simplify the application process. The suggestions are not intended to be exhaustive of ways to streamline the application process but rather should serve as beginning steps to encourage more participation in the program.

### **1. Eliminate form 470**

26. First of all, we support the elimination of Form 470 and its related deadlines. For the majority of our schools and libraries, filing of the form 470 is a frustrating experience that serves little purpose. While the form 470 is ostensibly designed to solicit bids from various providers of eligible services, rarely do our smaller schools and libraries receive ANY bids. In most cases, our schools and libraries must take the initiative and make contact with prospective providers for their bids rather than have providers contact them. Instead of the existing form 470, we propose that the applicant self-certify on the application form (currently form 471) that they have followed state and local laws/rules for bidding and procurement.

### **2. Consolidate the forms 471 and 486; pare down information requested**

27. To further fine-tune the program and the application process, consolidate some of the functions of forms 471 and 486 while paring down the information requested on the forms. This single form would then constitute the single “application” for E-rate. For example, on the current version of form 471, block 3, requests information that does not appear to provide any necessary information to either the service provider, to the Schools and Library Division (“SLD”) or to the Commission. In our work with applicants, they have found this section confusing and seemingly unrelated to the rest of the application process. Form 486 information such as the Children’s Internet Protection Act certification could be included on the newly reconstituted “application” form.

28. In order for the applicant to notify SLD that services have started (or will start) and that funds should begin to flow (a primary purpose of the existing form 486), a simple check box could be created in the funding notification letter. Once the applicant is notified that their funding request is approved, the applicant can check a box on the funding notification letter and return it to SLD to indicate services are desired and that funding should begin.

### **3. Combine the telecommunications and Internet service into one Priority 1 category**

29. Applicants are confused by the distinction between telecommunications services and Internet service as they appear on the current forms (block 2, form 470 and block 5, form

471). For example, when applying for a data circuit that is used for Internet access, the school principal who is new to the E-rate process (and even those individuals who are not new) cannot easily distinguish between the two categories of service. (When is a circuit categorized as Internet? When is a circuit categorized as telecommunications? Why should the applicant need to know the difference? If you lease a circuit as an Internet service and use it for telecommunications purposes, have you knowingly violated the rules of the program?). While we realize that services defined as “telecommunications” are to be provided solely by common carriers, this level of minutiae is beyond the knowledge base of school and library applicants.

### **A.1. Eligible Services**

*We seek comment on whether we need to reconsider or modify the current selection of products and services eligible for support.*

30. Comments: In order to streamline and improve the application process, revamp the Eligible Services List. The existing Eligible Services List is confusing to applicants.

31. While the FCC has made strides in refining the Eligible Services List to match changes in telecommunications and technology, our applicants find the current list of eligible services to be confusing, at best. Especially confusing to applicants are those items that are “conditionally eligible” since the applicant often does not understand what the distinctions are that make the service eligible vs. ineligible. Our experience has shown that because the majority of our schools do not understand the “conditions,” they often fail to apply for services for which they might be eligible.

#### **A.1.1. Needed Modifications to the Eligible Services List**

*We seek comment on whether the mechanism could be improved by changes in our current eligibility policies regarding (a) Wide Area Networks, (b) wireless services, and (c) voice mail.*

32. Comments: Policy changes are needed in the eligible services. Eliminate the distinction between telecommunications and Internet as separate categories in the Eligible Services List and the E-rate application forms. Update the eligible services list to reflect the changes in technology and applicants’ needs.

33. To be consistent with Telecommunications Act of 1996, the E-rate program needs to better adapt to the general principles of “...evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services” (1996 Act, Section 254(c)(1)). Further, the program needs to support telecommunications services that are “essential to education, public health or public safety” (1996 Act, Section 254(c)(1)(A))

34. In addition to our recommendation of combining the separate categories of telecommunications services and Internet into a single category (see above), we assert that the eligible services should be redefined to include the following:

- Allow discounts for services (whether wired or wireless) to serve all facilities in a school district/school/library. Currently facilities deemed to be non-instructional are not eligible for e-rate discounts. Given the growing concerns for “public safety” in our schools, we contend that not allowing e-rate discounts for the bus barn or the concession stand at the football field is in direct conflict with the components of the 1996 Act (“essential to education, public health or public safety”). We contend that permitting such uses will not contribute to waste, fraud and abuse and will, in fact, reduce the administrative burden on the SLD to break apart bills for such services.
- Allow discounts for voicemail and E911. In the interest of public safety at schools and libraries, we believe these are now essential basic services and should be eligible for discounts.
- Eliminate the distinction between wired and wireless services, in general. In the spirit of competitive neutrality, we agree that wired and wireless services should be equally eligible for discounts.
- Recognize that Internet Protocol (IP) is routinely used for voice and video transmission. By combining the categories of telecommunications and Internet service, the existing prohibition against using Internet for voice and video (including distance learning applications) will be eliminated.

## **B. Post Commitment Program Administration**

### **B.1. Choice of Payment Method**

*We seek comment on whether our rules should specify that service providers must continue to offer applicants the option of reimbursements via the BEAR form process.*

35. Comments: Continue to allow applicants the options of using BEARS or receiving discounts. Permit a third option: A combination of BEARs and discounts. Further, we recommend that a more streamlined BEAR process should be implemented by allowing “direct assignment” of reimbursement funding directly to applicants.

36. We believe that the applicant should be allowed to choose among three funding options: (a). Discounts on services (discounts on bills). This is currently allowed. (b). Reimbursements from the provider (applicant pays in full and then is reimbursed through the provider.) This is currently allowed. (c). A combination of discounts and reimbursements for each bill (applicant pays in full for the first few months of the program and then switches to discounts on bills). This is currently not allowed but should be.

37. The option of utilizing a combination of discounts and reimbursements (option c above) has not been allowed under current program rules. Once an applicant chooses the

BEAR/reimbursement option for a particular service and provider, the applicant is required to complete the funding year with the reimbursement method. Many of our applicants work with service providers who are unable to gear up their billing to handle discounts in the beginning months of the funding year but would be able to implement discounts later in the funding year. In many cases, both the applicant and the service provider would prefer switching to discounts partway through the funding year but are prohibited by program rules from doing so. The applicant should be permitted to work with the service provider to mutually agree upon a combination of reimbursements and discounts within the same funding year.

38. Further, we believe that the cumbersome process of funneling reimbursement funds through service providers creates unnecessary paperwork for both the service provider and the applicant. Instead we recommend that service providers be permitted to assign reimbursement payments directly to the applicant without funds “flowing through” the service provider. We believe this would streamline the BEAR/reimbursement process and relieve the paperwork burden on some of our smallest service providers while providing the applicant with quick turnaround of program funds.

## **B.2. Equipment Transferability and Priority Two Services**

*We seek comment on whether...to adopt a rule limiting transfers for three years from the date of delivery and installation of equipment for internal connections...We seek comments on limiting internal connections discounts within a specified period of years.*

39. Comments: Do not prohibit transfers of priority two equipment to other eligible entities. Do not limit the applicant to receive internal connection discounts every other year. Instead create a new discount matrix for Priority Two services that lowers the discount matrix to a maximum discount level of 50%.

40. We do not favor the proposal that would prohibit an applicant from transferring internal connection equipment to other eligible entities. Neither do we favor the proposal to allow applicants to only receive priority 2 funding every other year. While both these proposals would appear to allow more applicants to receive funding, we believe each of these proposals would be unnecessarily complex and difficult to administer.

41. Instead we favor lowering the discount level to a maximum of 50% while still funding priority 2 requests (internal connections) in descending order according to the current definition of need (90% applicants funded first; 89% funded second, etc). This lowering of the discount matrix will create two benefits to the E-rate program:

- More applicants will receive priority two funding. During Years 3 and 4 of the E-rate program, a relatively small number of applicants received sizable funding discounts as priority two funding. Given the current rules of the program, the same applicants could purchase equipment year after year at very high discounts rates while other applicants never receive any priority two funding.

- Waste, fraud and abuse is more likely to be curtailed. By lowering the discount level to a maximum 50%, the applicant will be required to invest 50% of local funds to purchase internal connections. The current discount level requires a local match as low as 10%.

42. While it may be argued that the neediest applicants (those in the 90% and above discount band) will be unduly penalized, we contend that after five years of the E-rate program, the highest need applicants have had ample opportunity to apply for and receive funding for internal connections. Further, because Priority Two (internal connections) are generally purchased equipment (rather than leased on an annual or month-to-month basis as is true for Priority One), this change would not impact the high-need applicants from receiving the discounts they need for telecommunications and Internet services.

43. We believe this change is likely to discourage the ever-growing population of questionable vendors that target high-need applicants with promises of securing products and services far beyond what the applicant truly needs. When a sizable local match is required, schools and libraries are far less likely to fall victim to unscrupulous practices.

### **C. Appeal process**

***Should the Commission extend appeals to 60 days and deem an appeal filed on the date it is postmarked instead of the date it is received?***

44. Comment: We support the extension of appeals to 60 days. Further we support using the postmark as the date of the appeal rather than using the date received.

45. We believe that both the extension of the deadline for appeals as well as allowing the postmarked date as date of the appeal are of great assistance to applicants. We thank the FCC for taking these steps.

### **D. Enforcement Tools**

#### **1. Independent Audits**

***We seek comment on whether...to require independent audits...at the recipients' and service providers' expense...We further seek comment on alternative that might provide other assurances of program integrity***

46. Comment: We do not favor requiring audits paid for by either the applicant or the service provider. We believe that by restructuring the program through a state cap or state allocation the FCC will have further assurance of program integrity.

47. We recognize that the E-rate administration has been under intense scrutiny since the beginning of the program. Reports by the General Accounting Office as well as internal audits of program administration have, understandably, left the FCC and the program administrators nervous about "waste, fraud and abuse." While we can understand that

operating under a magnifying glass has made the FCC cautious, the current wave of inspections and audits by multiple entities (SLD's own Program Integrity, Arthur Andersen, FCC Office of Inspector General) confounds the sensibility of applicants. We contend that if a program requires such extensive inspection and audit, the program cries out to be revamped, rather than simply increasing the policing of the program.

48. As was mentioned in earlier sections of these comments, the existing E-rate program is already fraught with myriad hurdles (a minimum of three different application forms and three different deadlines). This makes the program very time consuming and labor intensive from the start. By adding the expense of audit to the burden for applicants, we question whether many of our smaller applicants will even bother to apply for funding.

49. In section III of these comments, we propose restructuring the E-rate program. Such a change in the program will relieve the FCC of many audit concerns. While it may determine a need to "inspect" the method used by each state in administering the E-rate funds, it will minimize the expensive audits for countless individual applicants.

#### **E. Unused funds**

*The first issue is how to reduce the level of funds that go unused. The second issue is what to do with undisbursed funds.*

50. Comment: Applicants have no viable alternative under current program rules but to estimate "high" in their funding requests. Permit applicants to "pool" the various FRNs rather than restrict each FRN as a unique amount. Roll unspent program year funds into the next funding year, thereby allowing funding to more closely meet the demand (and exceed the \$2.25 billion collected annually).

51. The FCC is concerned that applicants do not claim all of the \$2.25 billion committed on an annual basis. First, we wish to remind the FCC that demand for the funds far exceeds the cap of \$2.25 billion. It is the funding disbursements that are below the \$2.25 billion level.

52. We believe the reasons why applicants do not claim all of the funding allocated to them include the following:

- The current program requires an applicant to estimate "high" on their E-rate funding application in order to ensure they request adequate funding for any given service. Because the applicant receives funding commitments on specific services and cannot transfer funding from one FRN (funding request number) to another, the applicant finds estimating high on each FRN is the only rational alternative.
- The application process for E-rate is in advance of the appropriations process from the legislature as well as the school budget certification deadline. The application cycle does not match the school funding cycle.
- In past years, applicants have not received funding notification for the current funding year prior to applying for the following year. This is especially critical with priority

two funding items. The applicant is often forced to “re-apply” for priority two services since funding is unknown. If notification arrives for the current year, the applicant often neglects to cancel the application for the following year.

- There are no real incentives for applicants to file a form 500 to release funds back into the general “pot.”

53. To correct the above deficiencies, we recommend consideration of the following alternatives:

- Allow applicants to “pool” the amounts of their FRNS into one funding allocation stream. This will help prevent the need to estimate high on each FRN.
- Allow each funding commitment amount (each FRN) to be within 10% of the applicant’s estimated request. This will help prevent the need to estimate high on each FRN.

54. As was noted in our comments above (section III), a change in the structure of the E-rate disbursement will alleviate many concerns. One of the benefits of allowing more state responsibility in administering E-rate funds will be the closer linkage with E-rate applicants. For example, the current program provides no real incentive for applicants to complete form 500. While the form itself is quite straightforward, the applicant does not perceive any benefit in completing form 500. We predict that the problem of unused funds not being “turned back” to the fund will continue while the current program structure is in place. However, if the state E-rate coordinator had better access to ongoing data concerning each applicant’s draw-down of funds, a better outreach effort could be accomplished. (Currently state E-rate contacts have no way of knowing which applicants do not completely utilize funding commitments.) As was noted in section III, applicants will be more likely to “turn back” funds if they believe their neighboring schools and libraries will benefit.

55. We favor the option of carrying unused funds into subsequent years to fund pending appeals and to increase the funding for applicants. We agree with the separate statement of Commissioner Michael J. Copps that the unused funds in one year should be available to support schools and libraries in subsequent years (NPRM: Approving in Part, Dissenting in Part). Further, we urge that the unused funds be considered added to the \$2.25 billion collection cap in a funding year.

## **V. Conclusion**

56. The E-rate program has brought much-needed telecommunications and Internet discounts to schools and libraries all across our state. Without the funds from the program, we are certain that many of our schools would not have been able to provide their students with access to various educational resources. We know that if funding from the program ended tomorrow, many of our schools would be financially forced to deny their students access to Internet, distance learning and basic telecommunications services.

57. We appreciate the opportunity to voice our concerns and recommendations about the E-rate program and look forward to the FCC's future actions.

Respectfully submitted,

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