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## **I. Introduction**

Initially, the Illinois State Board of Education (ISBE ) wants to thank the Federal Communications Commission (“FCC” or “Commission”) and the USAC/SLD for its ongoing commitment to the Universal Service Program for Schools and Libraries (“E-Rate” or “Program”). The E-rate Program has successfully spurred connectivity across our State, especially for public and non-public K-12 schools and districts in economically-disadvantaged and rural areas of Illinois. The program’s focus needs to remain with these schools, assisting them to complete their network infrastructure and allow on-going maintenance in support of their educational activities. We welcome the opportunity to comment in this important proceeding.

The ISBE respectfully submits its comments in the various roles it has with the Program: as the lead agency representing primary and secondary public schools across the State of Illinois; as one of the primary funding entities for the Illinois’ statewide internet access network, the Illinois Century Network (ICN); and finally, and in its most important role, as the lead agency that assists K-12 public schools -- and to extent possible non-public schools -- in Illinois with their Program applications, appeals and reviews.

The ISBE also supports the efforts of the Chief Council of State School Officers (CCSSO) and has assisted them in their comments filed in this proceeding. We offer these State-specific comments as a complement to those in order to highlight issues that are critical to Illinois. In these comments, the ISBE will not comment on all of the issues within the NPRM or those covered by the CCSSO’s comments, but instead will focus on several key issues.

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There is no doubt that the e-rate program has been a very real benefit to our schools by providing monies and resources to improve teaching and learning. However, we believe that five years of experience allows everyone involved to take a step back for

a moment and reflect on successes and improvements to the program. Accordingly, we submit these comments in an effort to streamline the process to make it more inclusive of schools who find the program administratively burdensome; further the legislative goals of the program while continuing to push for an equitable distribution of program dollars; and prevent fraud, waste and abuse so the resources are appropriately and efficiently spent. *At the same time, we respectfully disagree with parties who would eliminate the program without offering and supporting a viable alternative to assist schools and libraries in this important policy area.*

Among the important goals of our comments are these:

- The program's primary focus needs to remain with applicants, assisting them to complete their network infrastructure and allow on-going infrastructure maintenance in support of their educational goals.
- The Program should allow applicants the maximum flexibility to choose between service providers, technologies and service options to promote their educational interests.
- The program should be administered in the simplest, most efficient method possible in order to ensure equitable distribution of program funds, and reduce fraud, waste and abuse.

The ISBE believes these principles should be guiding factors in any decisions related to program improvement. We fully recognize and continue to support the FCC and SLD's efforts in verification and other duties to support their investigations. However, we believe the solution is ***not*** to add more Rules, Regulations and Forms to an already complicated process. If any new Rules, Regulations and Forms should be necessary, these should eliminate several existing barriers to better serve the applicant.

We appreciate the opportunity to comment on these important issues and strive to provide the perspective of a state organization that is an active, multi-role participant in

the program -- as a representative and advocate for applicants, as the lead for the statewide consortium, and as an administrator and verifying entity supporting the FCC and USAC/SLD.

## **The FCC Should Recognize the Heavy Administrative Burden on Applicants**

Once again, we applaud the FCC and the SLD in implementing and administering a complicated, heavily scrutinized program that weaves together several laws, rules, and regulations. Yet throughout the process, it is imperative that the FCC and SLD treat E-Rate applicants as customers -- customers who cannot spend precious administrative time and money to comply with the myriad and often confusing program rules and regulations that appear to do more to discourage applicants (especially small schools) than to root out fraud, waste and abuse. The Commission should recognize that despite all of our best efforts, many schools do not apply simply because the administrative burdens outweigh the benefits. Hence, the roles that states play in the process -- including face-to-face contact to complete forms to make the process easier -- is critical to program success. Toll-free 888 numbers and web-sites are good and important, but they do not go far enough in assisting applicants to go through the program's "gauntlet", much less have them remain active participants and supporters.

We have no doubt that the level of scrutiny by Congress, the FCC, the GAO and others is very high. Yet, we believe the answers are not to add Rules and Regulations, but instead simplify the program, and make the accountabilities easier and stronger. Hence, much of the focus of our comments is to simplify the program without a loss of accountability.

For example, the FCC and SLD need to be able to quickly remedy simple procedural errors, such as a certain box on an E-Rate form either checked or not checked, a missing notation in a box, or, as has happened on several occasions, a process mistake by the Administrator that leads to an incorrect denial. Simple, non-critical errors such as a misplaced date, a printer error on a form, an allegedly non-original signature in the wrong ink color, (all errors for which applicants have been denied monies) are issues that should be easily addressed, not subject to appeals processes that can take anywhere from

6-12 months. We submit that the key to any review and subsequent denial needs to be evidence of willful fraud or program abuse, not simple procedural errors – especially when all other evidence points to compliance.

### **The Customer Outreach and the Administrative Burdens on States Needs to Be Recognized by the FCC and the USAC/SLD**

We repeat our statement that the FCC and SLD have done an excellent job in trying to work through a very complicated program. The FCC and the SLD have much to be proud of when they state that the Program’s administrative expenses, as a percentage of total funding, are among the lowest of any other federal program. However, please note that the bulk of the administrative dollars go into a centralized program and a process of application data-entry, review, and re-review -- much less is directed at customer outreach.

Experience has taught everyone involved with the Program that applicant assistance responsibilities are neither small, nor limited to the three-month application “window”. The Program typically includes the following steps:

- Filing the Form 470;
- Assistance with any RFP’s or requesting bids from vendors;
- Assuring that schools have valid technology plans and assisting them with e-rate-specific requirements and renewal timelines;
- Filing the Form 471;
- Assisting with Pre-commitment reviews and information requests;
- Filing Form 486 and complying with CIPA Rules;
- Filing the Form 472-BEAR (hopefully no more than twice a year) to actually receive Program monies;
- Assisting schools to “Bird-dog” reimbursement checks from some vendors that may not have sent the reimbursement monies back to the applicant;
- Then, finally, assisting schools with Appeals on Administrator decisions;

Many of the necessary duties, including face-to-face assistance with Forms and other details described below, are done by States and other entities without any compensation from the Program. Accordingly, not only do applicants rely on the face-to-face assistance, but the SLD continues to rely on the important work of state-level E-rate coordinators. So while we applaud the relatively low administrative costs of the program, any discussion on this topic would be remiss if it did not include the work that States and other local educational administrative entities have done to assist the applicants with this important, but very complicated Program.

### **The FCC Should Direct the USAC/SLD to Explore an Administrative Contribution to States to Continue to Support the Program.**

We respectfully ask the FCC to direct the USAC / SLD to work with States on some form of administrative compensation for their work in the program. While on-going program support varies from state to state, there are similar responsibilities that do not vary from state to state. For example, in most cases, States are the primary point of review and approval for technology plans. We submit that in most cases, States have had to alter their technology plan review and approval structures to accommodate e-rate eligible plans and their requirements for a three-year review cycle. Our own estimate of applicant outreach, which includes: assistance on applications, reviews and appeals; responding to review and verification calls from the SLD on eligible entities and free/reduced lunch numbers; and the costs to peer-review and approve technology plans is annualized at approximately \$428,000 a year. Moreover, the ISBE continues to provide assistance -- as far as the law and our resources allow -- to its program-eligible non-public schools so they are not left out of the process.

Without question, the ISBE will continue its efforts to support the program, as a continuing service to its schools and in total support of the program's goals. However, we submit that the FCC does need to assess the true administrative costs of the program and compensate states accordingly. We ask that the Commission direct the USAC/SLD to engage in discussions with States, State Educational Agencies, or any State-assigned agency that assists the SLD and applicants with Program administration, on the most effective, efficient and equitable method of compensation for Program-related assistance.

## **Alternative Fund-Disbursement Methods**

### **Direct Payment to the Applicant**

Clearly, a way in which much of the administrative burden can be lifted -- and accountabilities streamlined -- is to allow the USAC / SLD to alter the existing fund disbursement methods. One solution should be to allow payments directly to the applicants. The existing, convoluted, vendor-applicant-discount and/or reimbursement system has led to applicants spending months working through the application process with the SLD, only to find out that the actual monies have to be acquired by the school through the vendor, often leading to another series of delays. While many vendors are to be commended for their efforts to streamline this aspect of their business, in some cases, less-than honest vendors and inevitable business failures have led to many schools waiting additional months to see any benefits, or in many cases not receiving any program benefits.

We believe the discount / reimbursement system has been a source of problems for some vendors, especially those who provide telecommunications and internet access services on a monthly, recurring charge basis. Some of the largest vendors cannot constantly modify their billing systems fast enough to accommodate complicated changes in billing. Hence, while the program started out being a discount program, in too many cases -- and by necessity -- the e-rate has become a reimbursement program. Please note that we do not pretend to speak for the vendor community; however, we have no doubt in asserting that the current disbursement system is too complicated for all parties involved and needs to be streamlined.

We also submit that any audit and review processes are enhanced through direct payment to the applicants. Clearly, any review or audit responsibility should fall to those who receive the monies. If the school receives the monies, it can keep cleaner, tighter records of how much it spent and to whom. Many applicants already keep records as part of other state and federal education grants.

Moreover, it is very clear that the vendor payment system has not totally eliminated the waste and abuse of the program. We have seen cases of vendor abuse of the payment system, including incidents of excessive charges and payback schemes by

vendors who take advantage of the poorest schools with the highest discounts. As detailed further below, the current rules and procedures allow a vendor to submit the Form 474-Service Provider Invoice Form -- without applicant approval. This allows less than honest vendors to submit invoices -- and receiving payment -- for work that was not completed, or not completed to the applicant's satisfaction. We believe that so long as the Rules on eligible purchases and use of funds are clear, the schools should be able to support its own accountability, without the need to so heavily depend on vendors.

We propose that allowing direct payment to the applicant will -- at its core -- streamline the process and allow the USAC/SLD a more direct line of review and audit. We understand that parties may cite a litany of Rules, Laws and procedures that disagree. However, we find nothing in the Telecommunications Act or any other Rulings that prohibit applicants from receiving monies directly from the Program. Nevertheless, we submit that if applicant needs are paramount; and, if streamlining the program and allowing for cleaner, simpler review and audit processes are the goals of this NPRM -- then the Commission will direct parties to work through the important details of this much-needed reform.

### **The FCC Should Reconsider State Caps, Block Grants and Other Disbursement Options to Promote Equity and Wider Disbursement of Funds.**

The ISBE wishes to again acknowledge the important contribution the E-rate has made to reach the most disadvantaged schools, particularly those in the poorest urban and rural districts. With E-Rate support, these districts have had access to technologies that now allow them to provide improved services to their students and teachers. As the E-rate Program rolls into its fifth funding year, we recommend that the Commission also take another look at disbursement options to promote a wider dispersion of funds between applicants. The current system has led to serious inequities between and among States, as internal connections and other priority two goods and services, continue to go to fewer and fewer schools -- and all indications are that in Year five even fewer schools will receive internal connections monies. These inequities do not bode well for the long-term health of the program.

Clearly, applicants – especially those in the highest discount categories – are given every incentive to maximize their own priority 2 applications, many times leading to distortions in demand that preclude lower discount schools to receive any monies at all. Also, applicants in the highest discount levels have been easy prey for questionable vendors and consultants who try to convince the unsuspecting school or library to apply for large sums of funding, regardless of whether the school/library actually needs the service or equipment. Recent cases of questionable vendor practices, including the *Mastermind* case, were concentrated among the highest discount schools.

We submit that many of our technology-poor schools are now in those areas with 60-85% discount levels, as many of these schools cannot raise enough local funding, or are not poor enough to qualify for large Federal grants based on poverty. In keeping with the recently confirmed national policy that “no child left behind”, these children in more modestly discounted schools from 60-85% discount categories should also be given the opportunity to use e-rate monies to procure needed internal connections, maintenance, and other services to improve teaching and learning as well. Restructuring the disbursement model will allow them to access more of the program’s resources.

Also, we note that while the Program states there are several ways in which efficiency is promoted, the fact is that under the current Rules and Funding allocations, inefficiencies may be rewarded. For example, an efficient Statewide network that reduces unit costs, pools internet traffic and reduces local access costs gets fewer program dollars per capita than states or localities where individual applicants are left to their own devices, many times paying more for similar, or perhaps even fewer services. While we are not insisting that everyone develop cost-saving networks, we submit that an alternate disbursement format, based on K-12 population (and an appropriate allocation for libraries and rural health care), and also factoring in for poverty level, such as is done for Title 1, TLECF or other Federal education technology programs, would result in a fairer distribution of monies, and provide incentives to maximize the value of the

Program dollars along with any State and local initiatives. This coordination is vital, as we need to start emphasizing the non-“wire and box” issues such as software, professional development and other important expenditures that are necessary to assure that the investments actually improve teaching and learning.

Clearly, this change would be significant. It should not happen quickly, and without the necessary considerations of maintaining all existing participants in the Program. Significant time and energy are needed to work through the important details of such a major reform. As a starting point, the Commission can refer back to testimony in its May 7, 1997 Universal Service Report and Order -- FCC 97-157 (pp.515-518) to guide the direction of a follow-on NPRM specifically on this issue. Therefore, we respectfully ask that the Commission direct parties in a separate proceeding to develop a record on which to reform the current funding disbursement system.

## **Application Process:**

### **Eligible Services**

- a.) **What changes to the eligible services process should the Commission implement that relate to the application process and will serve to improve program operation and oversight of the program?**

### **Eligibility Framework:**

In the Telecommunications Act, at 47 U.S.C. Section 254(h)(2) the Law specifies that “[t]he Commission shall establish *competitively neutral rules* [emphasis added].... to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries; and ...to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.”

The ISBE submits that this competitive and technology - neutral premise needs to be followed more closely. For example, leasing technological solutions from a common-carrier offers greater assurances that the service will be eligible for discount, regardless if the services offered are the best, most effective or most efficient choices for the applicant. In contrast, developing a wireless solution by leasing similar services from a non-common carrier is virtually guaranteed to NOT offer a discount for the majority of schools unless the services are exclusively for Internet use – a very inefficient use of resources that would require duplicate networks. Therefore, we submit that schools should have the maximum flexibility (as the Telecommunications Act intended) to choose between competing carriers and technologies – in order to best fit their educational needs. The current system heavily favors funding traditional, leased wired services and equipment through an eligible telecommunications carrier. Schools act accordingly -- not because it best fits the applicants needs -- but because it is much more likely to get funded.

### **Creation of an On-Line Computerized Eligible Services List**

The FCC has asked for comment on creating a computerized list accessible on-line that would allow applicants to only select from pre-approved products and services. The ISBE has strong concerns about utilization of an online computerized list of eligible products. While the intent of utilizing such online support is reasonable and would provide the benefit of restricting schools to selection of only E-Rate-eligible services, there are significant limitations to the plan. Is it possible to provide a pre-qualified list for every service/equipment and every type of project? Would the products/equipment be listed by brand names? How would unbranded products/equipment such as network maintenance be handled? Is this list unfair to new technologies, new vendors and new products and/or services that have not undergone an FCC/SLD list-vetting process, yet provide clearly e-rate eligible services more effectively and efficiently? Can the SLD/FCC administer a prompt approval process for vendors wanting to get products approved just before the close of the application window?

Other important issues include the matching of the on-line list with any RFP's or state/local procurement rules. Unless schools/school districts were able to select from a multitude of vendors, how would the issue of competitive bidding for cost efficiencies be addressed? Districts that employ a strategic sourcing program for purchasing equipment may have difficulty in complying with local rules as well as with SLD requirements to utilize online computerized selections for eligible products.

We believe one of the many positive aspects of the program is its efforts to bring new technologies to schools and libraries, traditionally among the last sectors to integrate new technologies to clients. Restricting purchases to an on-line database does not lend itself well to allowing new technologies to emerge in the marketplace, nor does it create efficiencies for districts to comply with their own procurement rules. Unless these issues can be addressed, we believe the current system is a better solution for applicants.

### **PBX's Need to Be Put on Par With Other Telecommunications Services**

Thanks in large part to four years of E-Rate funding, many more teachers now have telephones in their classrooms, giving them greater access to students, parents, administrators, and other teachers. Schools and school districts are adding telephone lines, providing needed access to more teaching professionals in the schools. Telephones for teachers in the classroom are now important safety necessities, not luxuries. One of the more efficient ways this happens is through the school's acquisition of modern PBX technologies that allow schools and districts to effectively and efficiently add lines, offer important caller ID, voice mail and other important communication and safety features. However, PBX's are treated very differently from regular phone lines and leased Centrex services. We recommend that leased PBX's are afforded the same Priority 1 designation as is currently afforded to single phone lines, leased Centrex services and other "core" telecommunications services.

## **Voice over IP**

The Commission realizes that technological advances are now allowing an unprecedented level of converging of voice, data and video to support communication and instruction. Internet Protocol (IP) is now routinely used for voice and video transmission. Many schools are using IP protocols to reduce their telecommunications costs. Yet, the SLD treats IP as a separate, Priority 2 category, while almost all of the traditional voice technologies are treated as Priority 1 services. Our experience is that multi-school districts whose schools cross lata-lines -- in several cases within 5 miles of each other -- have suffered through very high inter-lata phone costs between schools.

## **Voice Mail**

In the eligible services category, the ISBE proposes that voice mail should be an eligible expense. The use of voice mail becomes more and more important in communicating with school staff and administrators for educational purposes and fulfills a similar function as e-mail. The ISBE feels there should not be an eligibility distinction between simple methods of communication — voice, recorded voice, text (e-mail). Voice mail is serving the education needs of students, teachers and parents. For many parents that do not have access to computers or modern technology, it is one of the best modes of communication with school. Therefore, we ask that the Commission allow voice mail services to be an eligible telecommunications service.

## **E-911 - Emergency Services**

The Telecommunications Act clearly states that services shall be supported that are “essential to education, public health or public safety”. Given recent safety events at schools such as Columbine High School in Colorado, the program should support E-911 expenses by schools, including telecommunications services, trunk lines and any network hardware components that support this vital communications service. These services are no longer luxuries, but instead are vital parts of a school’s communications infrastructure.

## **Network Security and Filtering**

Additionally, we would like the Commission to consider adding firewalls, filtering services, and costs for increased Internet security measures to the eligible

services list. As technology plays a more and more significant role in the educational process, it is vital that Internet security issues be revisited and addressed by the Commission to assist schools in protecting against outside forces that could bring down the school's network and disrupt the educational process.

## **ADA Compliance**

The ISBE feels strongly that schools should make every effort to conform to the ADA demands and is working hard to bring all District schools up to ADA requirements. Completing ADA work, however, requires a significant outlay of local district funds. By staggering the work over a period of time, the District is able to also stagger the accompanying costs associated with upgrading the schools to meet ADA compliance.

If schools/districts are required to certify compliance in order to qualify for funds, a tremendous financial burden would be placed on the district to immediately complete the ADA-required work, rather than stagger the work and costs over a period of time. ISBE feels strongly that the E-Rate program should continue to encourage ADA compliance, but not base funding commitments on ADA certified compliance.

## **Rules on Consortia**

- 3. Should the Commission modify its rules regarding consortia to increase consistency or fairness to them in the program? Should it clarify that only ineligible members cannot receive below tariffed rates? What other proposals or reorganization of the rules and requirements are necessary to reflect a fair and consistent approach to the roles and obligations of consortia leaders and other members?**

The Commission has asked applicants to provide proposals on how the Commission could clarify, change or re-organize other rules and requirements relating to consortia. We provide additional comment here to assist the Commission in its efforts.

The Commission recognized early on that encouraging consortia is a benefit to the Program. Nevertheless, in its May 7, 1977 Universal Service Report and Order -- FCC 97-157 pp 596, the Commission also recognized the potential concerns in bringing together consortia. The Commission was concerned with cost-allocation issues and possible abuse of resale prohibitions in Program Rules. As a lead agency for one of the

the largest educational consortia in the Program, the Illinois Century Network (ICN), we concur with the FCC in their efforts to assure that costs are properly allocated and only eligible entities receive discounts.

Concerns aside for a just a moment, the FCC was very clear in stating that the benefits of consortia outweigh the dangers. We wholeheartedly agree. Moreover, if we look at the technical, financial, infrastructure, institutional and educational content benefits of consortia, the benefits clearly weigh in favor of encouraging consortia. If the Congressional intent was to assure that schools and libraries would have access to modern telecommunications services, then consortia have served the intent very well by pooling costs and aggregating demand to lower overall and unit costs. Our conservative estimates are that the Illinois Century Network has been able to save the Program approximately \$20 Million dollars a year by pooling internet access to over 3500 e-rate eligible entities across the State into seven high-capacity lines. In contrast, without the network all of these entities would procure their services individually, and at a much higher cost to everyone involved. Finally, our experience has also allowed our diverse consortia membership and their joint market strength to obtain infrastructure investments in sparsely populated rural areas and other formerly infrastructure-poor areas of Illinois.

Not only has the ICN reduced costs to schools, libraries and the Program, but they also have played a major role in the important *content* side by bringing together educational content for use by all the members. While we fully realize that content is not the focus of the Program, nor are we asking for funds to support content, the beneficial content results of consortia *cannot* be downplayed. In effect, spending scarce resources on access to modern telecommunications services without linking it to relevant educational content is like a fancy car without roads or a destination – a technological marvel with no place to go.

In retrospect, the Commission also needs to recognize that consortia have assisted schools and libraries from some of the financial and operational issues with their internet service providers (ISP's). In many States, consortia have been used by eligible entities as their "internet access carrier of last resort" when their incumbent carriers abruptly ceased

operations, or when high-capacity services were not available in remote, rural areas. In short, the benefits of consortia – originally intended and otherwise -- are even more evident now than in back in 1997.

The question here is how to balance the efforts to encourage the formation of consortia, and their clear (and growing) program benefits with the need to prevent waste, fraud and abuse by assuring that only eligible consortia members receive e-rate resources; and excessive legal and administrative burdens on consortia and the SLD alike. Our comments below are offered in a similar spirit of cooperation and balance.

### **Clarifying Consortia Rules:**

The Commission requests guidance on clarifying that only ineligible private sector members seeking services as part of a consortium with eligible members are prohibited from obtaining below-tariffed rates from providers that offer tariffed services. To accomplish this, the Commission recommends adding a clarifying phrase to 47 C.F.R. 54.501(d)(1). The Commission also requests comment on whether this rule would increase or decrease administrative costs, and whether costs would outweigh the benefits of the change.

The ISBE commends the Commission on its decision to clarify this portion of the regulations and supports the change as it relates to tariffed interstate services, but asks that the Commission make clear that the Rule applies *only to inter-state, tariffed services, and does not apply to intra-state services, nor to competitive services where tariffs do not exist*. We agree with the Commission's Proposed Rule change as it relates to other educational entities eligible for interstate rates; however, we submit that the proposed list of consortia-eligible, non-profit entities is by no means comprehensive and ask that the commission include other non-profit educational entities in the list of eligible entities. In short, and as we believe the Commission intends, the Proposed Rule should accurately describe who is eligible to receive interstate services, but should clearly refrain from determining who is eligible to participate in consortia for purposes of intra-state, non-tariffed, or other competitive services. States and local entities need to maintain the

flexibility to allow diverse consortia based on local directives. To assure this clear distinction, we offer the following adjustments to the Proposed Rule:

**PROPOSED RULE:** *For the purposes of seeking competitive bids for interstate telecommunications services, schools and libraries eligible for support under this subpart may form consortia with other customers. When ordering interstate telecommunications services under this subpart, the consortium may even seek to negotiate for pre-discount prices below tariffed rates on behalf of members that are eligible schools or libraries, health care providers eligible under subpart G, or public sector (governmental) entities, including, but not limited to, state colleges and state universities or other non-profit educational entities, state educational broadcasters, counties and municipalities. However, while eligible entities and enumerated governmental agencies in a consortium may benefit from the consortium's negotiated rates, ineligible private sector entities in that consortium may not so benefit but must instead pay no less than the pre-discounted tariffed rates for interstate telecommunications services where such tariffs exist.*

#### **Other Consortia Issues:**

##### **Letters of Agency (LOA) / Consortia Participation Agreements (CPA)**

The FCC should allow individual consortia to frame and merge their Program-specific LOA's, and any accompanying consortia-specific state and/or local language Consortium Participation Agreements (CPA's) to be created, filed and treated as a single omnibus agreement. The combined Agreement would cover both e-rate specific and any state/local requirements that may be necessary to assure legal participation in the consortia. Allowing this merging permits consortia to customize their Agreements, and reduce paperwork and administrative burdens on all parties in the process.

##### **Letters of Agency (LOA):**

We believe that an important requirement for Letter of Agency (LOA) is to let consortia members know that the consortia lead is applying for e-rate services on their behalf. As such, the LOA's can be a part of any audit process for consortia applications. However, the FCC should not use the LOA as a punitive document for the purposes of denying eligible consortia their appropriate share of eligible monies, if it is clear that the entity is knowingly and willingly receiving consortia services. Also, any failure to submit an LOA by any single entity or entity members should not jeopardize funding for the entire application, but only for those who are not receiving the services stated in a consortia application.

**LOA – Term of Force and Effect:**

The LOA or merged LOA/CPA should remain in force for however long the member is part of the consortia. There ***should not*** be an annual update requirement unless there is a significant, substantive change in the relationship between the consortia and the eligible member entity. The administrative and paper burden of requiring a repetitive filing every year would place a heavy burden on everyone involved, and would not accomplish any substantive goal other than produce even more paperwork.

**Appropriate Administrative Level for the Filing of the LOA:**

Another important issue is the question of which member level is valid to certify the LOA. The primary example offered here are K-12 public schools. In this example, the LOA should be allowed to be certified at the District level, especially since the District already serves as the legal, administrative and fiduciary representative for all of its schools. To require the LOA down to the school level would create an enormous paper burden for the consortia lead and its members, especially so for large urban district members. If the school or library is its own administrative entity, as in the case of many non-public schools and libraries, then clearly, an LOA at the individual school or library level would be appropriate. However, to artificially impose a layer of paperwork at the school level, when every other Agreement is done at the district level, does nothing to improve program operation.

**Ability to Record and File LOA’s Electronically:**

Finally, we submit that the LOA should be allowed to be filed and stored electronically by the consortia and its members, so long as any state or local laws do not prevent such an arrangement. The FCC should not place any additional burdens on the format in which the filing occurs. We sincerely hope the “original ink” experience was enough evidence to keep the process as efficient as possible.

**Discount Calculation:**

Currently, consortia applicants are denied the opportunity to use a weighted average to calculate system-wide discounts. We believe it is unfair, discourages formation of consortia, and penalizes consortia members. In contrast, school districts can calculate the shared discount level using a weighted average of their member schools. Under the current system, consortia are left with two options, using a simple average of

each entity, including districts as a whole, or using a simple average of each member down to the smaller individual school level. The former process is unfair for consortia in that in Illinois – as in many other states -- a small district of 100 students is weighted the same as a district of 425,000 children, while the consortia resources needed to serve both entities are very clearly different. The latter process of individually listing entities forces consortia to list every school individually, creating huge Block 4 applications. Allowing weighted average options of districts allows consortia to simplify the application process and treats them equally with other applicant classes. This change will also go a long way in reducing the paperwork burden on everyone involved in the process.

### **Other Administrative and Reporting Requirements**

The FCC should recognize that consortia, by their nature, are beneficial structures that are fluid entities whose individual members come and go as best suits their needs. Many consortia have seen rapid growth in their memberships, as entities renegotiate their Internet Access arrangement, or just as often, as their ISP's cease operations and the eligible entities look for more stable, viable options. From an application and administrative standpoint, the FCC needs to realize that the Program application process for consortia forces us to take a “snapshot” of a constantly moving picture, not a definitive tablet etched in stone at the time of the application.

We fully recognize that Consortia should maintain its administrative duties to monitor usage by eligible entities and properly allocate costs. We have taken aggressive steps to continually monitor usage in our network to assure that only eligible portions of the network receive subsidies. In our case, not only do we assess our entities prior to applying, but also do a “post-commitment” re-check to assure that our calculations to base discounts and reimbursements are still valid – even though we clearly cannot exceed the commitment “cap” if our network has increased the number of eligible entities. Accordingly, the Commission needs to recognize the challenges that come with having to take “snapshots” of the consortia membership months (and in some cases, years) in advance to comply with application deadlines.

We believe taking these simple steps outlined above will go a long way in both encouraging consortia as intended in the original Order, while satisfying the need to prevent waste, fraud and abuse, and excessive legal and administrative burdens on all the parties involved. For a variety of reasons stated above, consortia further the goals of the program. As such, they should be encouraged, not made to suffer through an administrative and bureaucratic gauntlet to serve their members, and ultimately, to serve the best interests of the Program.

## **Post Commitment Program Administration**

### **1a. Should the Commission specify that service providers must offer applicants the option of discount or completing a Billed Entity Applicant Reimbursement (BEAR) Form?**

In the interim, and unless the Commission dismisses the proposal to allow direct payment to applicants, we submit that the applicants should continue to have the option of receiving a discount (if the vendor is capable of doing so) or completing a BEAR Form and receiving reimbursement. The ISBE strongly urges the Commission in its Program Rules to specify the ability of the applicant to have this choice. As the Commission recognizes, there are instances where applicants are being forced into payment arrangements that are burdensome and difficult for them. In addition, applicants often face the problem of delayed payment using the BEAR Form process. In short, applicants should continue to have maximum choice to assure administrative ease.

### **Applicant Authorization of the Form 474 – Service Provider Invoice Form**

The Commission should require vendors to obtain signoff from the applicant prior to submission of the Form 474 – Service Provider Invoice Form for non-recurring services. In brief, the Form 474 allows the vendor to submit invoices for payment to the SLD. The Form assumes and asks the vendor to certify that the work is completed satisfactorily and the services are functional. Yet nothing in the current rules and procedures prevents a vendor from submitting the Form 474 without school/district approval. In all fairness, the SLD requires the applicant to obtain vendor approval for submission of BEAR Forms for reimbursement, but the SLD makes no similar requirement of vendors for the Form 474. By requiring applicant signoff, the school/district has the opportunity to review

vendor invoices and billing statements to ensure accuracy and compliance to SLD regulations prior to Form 474 submission -- and most importantly -- prior to having funds released to the vendor.

Fairness and accountability insists that if the vendor receives monies in the name of the applicant and subject to audit of the applicant, then the applicant should have some sign-off on the Form 474. While some parties may submit that submission of the Form 486 is ample notification for the applicant, we submit that requiring the vendor to obtain applicant signature on the Form 474 will assure that the vendor has not over-charged, nor asked for funds before the goods and services are provided.

**Every Other Year Discounts on Internal Connections Equipment:**

In an effort to better distribute scarce internal connections monies, the ISBE supports the option of limiting applicants from requesting discounts on internal connections equipment for billed entities to once every other year. It is important to emphasize that this restriction should be site-specific, that is, applicable to each billed entity, and should apply only to equipment. Maintenance services should be exempted from this restriction and continue to be eligible for annual discounts. While there is potential for frivolous requests at the 90% discount level, it is important not to penalize truly needy applicants by disallowing maintenance support for the ongoing use of equipment they have purchased. In addition, large school districts and other larger applicants that are choosing to develop infrastructure slowly and prudently should not be penalized by requiring them to purchase eligible equipment all in one year.

This option would be simple to implement as well, since all applications identify affected sites and the Administrator can electronically validate each site for which a discount has been requested. The computer system could block additional non-recurring requests every other year for each site making compliance automatic, just as the Administrator automatically denies or reduces application requests when they are partially ineligible. Thus, the issue would be resolved during the application process and would reduce the need for extensive post-disbursement auditing.

Finally, this option maintains the concept of competitive neutrality, presuming the Commission chooses to act on the issues raised previously in this document. More applicants will be able to consider using Priority 2 equipment when it is more cost effective.

### **Use of Excess Services in Remote Areas:**

In Paragraphs 37-43, the Commission entertained the notion that the *Alaska Order*, which allowed for the use of excess services in remote areas of Alaska, could be expanded within the five criteria defined in the order as long as there were limitations to prevent fraud, waste and abuse in the E-rate program. We believe that many parts of the US, while certainly not as remote as Alaska, also suffer from infrastructure shortages that make high speed connections rare, and if available, prohibitively expensive. We submit that providing access in economically depressed areas can be treated in the same manner – that is, whether because of distance or income -- the results are the same as access is denied.

Accordingly, the ISBE agrees that the FCC should consider allowing schools to share excess services that are not being used during school hours. We also agree that such resource-sharing should be pursued in such a way that the services are not misused. The telecommunications market sells dedicated telecommunications services (56K, T-1, Cable) and internet access as “24-7”, full-time, services that extend beyond the traditional school day. This market reality is no reason to deny access to others who may use the services without imposing additional costs to the applicant or the Program. To allow these services to go unused -- as long as the use is dedicated to support K-12 education and community, non-profit access -- is a waste of valuable resources.

We agree with the Commission’s criteria in the Alaska decision on allowing “excess services”. We recommend that allowance be related to educational purposes, and that this use should not impose any additional costs on the school or the Program. Eligible educational institutions should continue to be allowed to resell portions of the network that have not received e-rate funds (such as desktop computers, staff time necessary to monitor and maintain the access and services, including filtering and other

necessary, but unsubsidized services), and should continue with the ban on reselling Program-subsidized services. But so long as e-rate subsidized resources are not re-sold, efficiency should allow these services to be used in off-hours and at the discretion of the applicant. Finally, we note that allowing teachers and educational staff remote access to resources after hours is one of the primary ways teachers prepare themselves to use the resources in the classroom. Limiting this usage in any way will negatively affect the goal of using the resources during the day as well.

To provide for these assurances, one scenario could be to insist that resource sharing occurs only with organizations that serve the population served by the school or library, and their respective staffs for purposes of professional development.

## **Appeals**

**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?**

The ISBE strongly supports the Commission's willingness to re-consider rules on timing of appeals. The appeals process is a legal step applicants are taking to resolve issues they feel were inadequately addressed by the Administrator. However, most applicants are neither telecommunications nor legal experts and have been frustrated by the streamlined 30-day appeal window available to them. In addition, since almost every other E-rate deadline has been based on the postmarked date, some applicants have been confused about the differing deadlines for appeals. The ISBE applauds the Commission's flexibility and willingness to incorporate these changes to assist applicants' participation in a complex and foreign process. Again, we strongly support the extension of appeals to 60 days from the date of the funding commitment letter, and that the filing date is the postmarked date of the appeal, not the date it was received by the SLD or FCC.

## **Unused Funds**

### **Reduction of Unused Funds**

In Paragraphs 63 and 64, the Commission outlines the new process to address program resource under-utilization that will allow the Administrator to estimate potential commitments that will exceed the funding level of \$2.25 billion so that historical funding disbursement shortfalls will diminish. The Commission expresses interest in why

applicants and provider may fail to fully use committed funds and whether it is necessary to adopt procedures to address a situation in which more funds are committed and used than are available for disbursement.

Unfortunately, there is a significant amount of funding that remains unspent in the E-rate program. A large part of this under-utilization relates to the disjointed cycles of the E-rate process and the school district and state budgeting process. In most cases, states and school districts, while operating on the same funding cycle as the E-rate, cannot make final funding decisions until after the state legislature has completed its budgeting process, typically April or May of the same year. Proposed projects cannot move forward without local monies, and just as often, schools cannot move forward with budgeted dollars that sit idle while the applicant undergoes a long, drawn out review process, only to receive funding commitment decisions halfway or more into the funding year. Due to the insecure nature of E-rate funding when projects have begun and funding commitments have not been announced, E-rate funds have been disregarded as a reliable funding source by many schools. This is especially so for internal connections projects.

In this regard, we repeat our earlier proposal to alter the disbursement methods to allow more direct, faster funding to applicants. With the proper safeguards in place to eliminate fraud and abuse, this reform will go a long way towards reducing, if not eliminating unspent funds. We applaud the Commission and the Administrator's efforts to create a process by which the entire amount of funds will be available to applicants. However, we respectfully submit that the Commission must significantly reform the application and disbursement process to fully address this important concern.

## **Revising or Eliminating Outmoded Rules**

### **Allow applicant's full access to previous year's forms:**

Often applicants are applying for the same services each year for the same set of eligible entities. In order to streamline the process for both applicants and Administrator's staff, a simple change of allowing applicants to update their forms from previous years would reduce the administrative burden for the applicant and the

Administrator. We applaud the steps taken by the SLD by allowing almost full electronic submission of the Forms 470 and 471. We now ask that the SLD allow full access to the Form 471, including full access to previous year's Blocks 3, 4, and 5, in order to further expedite the process.

**Reform the Form 470 Competitive Bidding Process Requirements:**

The Administrator has stated that the primary reason for funding denials is applicants' inability to comply with the E-rate Program's competitive bidding requirements, particularly the posting of the Form 470 and the 28 day window requirement. The ISBE recommends that the Commission reconsider the value of the Form 470 and the 28-day window bidding requirement. At program inception, there was a presumption of a "growing competitive marketplace" of which schools and libraries were expected to avail themselves (Universal Service Order, Paragraph 575). In addition, to further expand the reach of competition beyond local companies, the Commission required that an application describing the school or library's technology needs should be posted on a website maintained by the program administrator (Universal Service Order, Paragraph 576, 47 CFR 54.511). Finally, the Commission believed that in order to provide access to any potential bidder, requests should be posted on the website at least 28 days. (Universal Service Order, Paragraph 579)

Our applicants have not been very positive about the results of this Rule. First, in remote rural areas, applicants have rarely received responses from additional, capable bidders interested in offering services. Second, in urban areas, large applicants have been inundated with advertisements and marketing materials not relevant to the particular request. Worst of all, many smaller applicants have not received any response to the posting, even from the only provider eligible to provide service, the local telecommunications carrier. This has caused applicants to view the Form 470 as merely a stumbling block to acquire services and discounts, rather than an opportunity for broader access to relevant and competitive services. Finally, larger school districts most often have their own state and local procurement rules and practices that allow for an ample bidding process. In short, the Form 470 bidding process has added little to the

competitive marketplace, and as noted by other comments, is a major stumbling block for the applicant community.

The ISBE, therefore, offers a middle ground for allowing notification of all potential bidders while eliminating some of burdensome aspects of the Form 470. First, eliminate the 28-day wait and use current state and local procurement rules to govern competitive bidding processes. Second, simplify the Form 470 so that it is merely a public notice of intent, which most school districts already employ under any applicable state or local procurement rules. This form could be updated annually if there is a substantive change in the services needed in a particular year. This would streamline the application and review process while maintaining fair and equitable access for all service providers. Because this would be a reform, not an elimination of the Form 470, this improvement would not require a rule change.

### **Urban / Rural Designation**

The Commission originally created the discount matrix with an urban and rural column to cover potential increases in costs between sparsely populated rural areas (with longer local and inter-office loops) and urban areas, where individual cost of service tends to be lower. While we completely agree that the cost for services in remote areas may be higher, we disagree with the Commission's determination of which schools and libraries are considered rural and which are considered urban. The current county-specific designations (even with the rare Goldsmith modifications) are not a valid or appropriate "proxy" for increased service costs.

Currently, the rules state that urban / rural designations are made by using the Metropolitan Statistical Area (MSA) codes which lump all of a county under one label. In sum, if your school is located in or near a city or largely populated area, your entire county is deemed to be urban. As we have commented in previous filings, this "county-level" classification is seriously flawed because it misrepresents applicants in very rural parts of counties that are considered part of an MSA. In Illinois, we have several large (by land mass) "urban" counties, including Clinton, DeKalb, Jersey, Menard, Monroe, Ogle, and Woodford that fit this category. While these counties have far edges that are

considered suburbs or “ex-urbs” of cities, for the great majority of applicants living in these counties, these areas are very rural with higher-cost telecommunications services.

We are also concerned, as we have learned that the Office of Management and Budget has adopted and will be replacing the current MSAs with a dramatically new definition of metro and non-metro. There soon will be three separate categories: 1) Metropolitan Statistical Areas, 2) Micropolitan Statistical Areas - collectively called Core Based Statistical Areas and 3) Areas Outside Core Based Statistical Areas. Our analysis of the new regulations, which take effect in 2003, indicates this will only further exacerbate the current misclassification of rural/urban counties under the E-rate program.

If the Commission is truly interested in providing deeper discounts to schools and libraries in areas where costs are higher, we encourage them to find a better definition of high-cost that relies on actual costs more so than county designation. Until such a solution is found, we believe one possible solution would for the Commission to allow applicants to file for exemptions from their erroneous urban classification. These exemptions would be based on their location, population density, and perhaps most important, the local telco’s cost status.

Finally, we submit that there are much simpler solutions: a blended rate that combines the urban and rural columns from the discount matrix -- one blended discount for all entities; or as proposed in these comments, a streamlined disbursement mechanism that relies on poverty levels, but reduces administrative burdens on the applicants and the SLD/USAC.

**Ability to Change or Upgrade Services Before and During the Funding Year -- Permit changes or upgrades to service in mid-year.**

We strongly encourage the Commission to broaden their current service change policies and procedures. Currently, applicants can only change services in the most narrow of circumstances, and are, in effect, prohibited from upgrading services at anytime during the funding year. Because of the current policy and procedures, applicants' hands are tied from implementing technologies they need, and subsequently,

are left with potentially higher prices for dated equipment, or, just as serious, leave committed, eligible monies unspent.

Time lags between the filing of the Form 471 and the receipt of services are usually 4-6 months, often more. Unless the FCC takes serious steps to reform the program, these delays are a necessary part of the program. Yet markets and technological advances move forward. Prices of services and equipment change, as newer products with similar or better functionalities are available at the same or lower prices. As well, the applicant may have procured additional funding through other non-e-rate sources, enabling the purchase of greater bandwidth or services without the need for additional Program funds.

We believe the Commission should permit applicants to upgrade their services or equipment anytime during the funding year with a minimum of bureaucratic delay. As long as their funding commitment cap was not exceeded, applicants should not be penalized, for example, from investing in greater bandwidth, or availing themselves of the latest server, router or switch with similar or improved functionality. A simple signed notice to the SLD, which describes the change / substitution, should be enough to let the process move forward. This notice would also provide an assurance that the change was permitted under any applicable state or local procurement rules. This scenario is very similar to the budget/contract revisions that are permitted under many State and Federal technology grants.

Ironically, the inability “unlock” oneself from prices set 4-6 months in advance may hurt the applicant and the process more than allowing a relaxed set of rules. The “lock” provides no incentive for vendors to pass on the cost savings and/or new products to the applicant. Finally, we submit that requiring applicants to stay with the “original arrangement”, while a fast-changing market moves forward, does little to support the use of modern telecommunications technologies for schools and libraries.

### **Form 486 -- CIPA Compliance and Telecommunications Services: Getting Penalized for Not Saying That a Form Does Not Apply to You**

In some cases, even after receiving commitment letters and service has begun,

funding is yanked from their grasp – such as applicants that submitted Forms 486 after the October 28 CIPA deadline. In many cases, these applicants were only applying for telecommunications services, services that do not fall under the need for a CIPA certification. We submit that these applicants should be excluded from future CIPA-filing requirements, nor penalized for a submission that is not relevant. Moreover, the USAC/CIPA can easily verify these entities by merely not paying or processing any internal connections or internet access funding requests from applicants who have not submitted the Form. No laws will be broken if an applicant in these categories does not submit a form. To penalize applicants for not submitting an irrelevant Form is neither fair nor appropriate.

### **Timing of Any Rule Changes**

Finally, any new regulations promulgated as a result of this proceeding must be issued well before opening of the Year Six filing window of mid November. It is imperative that state coordinators and applicants have a reasonable amount of time to consider the impact of rule changes on new and ongoing contracts or requests for services. Therefore, any new regulations should be adopted no later than October 1, 2002, if they are to be made effective for the Year Six filing window.

### **Conclusions**

We again commend the FCC and the USAC/SLD for their efforts in implementing and administering the e-rate program. The program has a lot to be proud of in its efforts at addressing the technology needs of many of our poorest schools. Nevertheless, we believe the time is right -- after five years of experience with the program -- to make substantive changes that will continue these efforts, while making the process easier – and more accountable -- for applicant and administrator alike.

Several of the proposals here are simple and should not be hard to implement. These small steps will go a long way towards improving the program. However, many of the reforms we propose require more substantive review and analysis. For example, reforming the disbursement process and administrative support structure to include a state

subsidy, are much more significant and will require a follow-on investigation to assure inclusion from all the affected parties. Hence, we ask that the FCC open an NPRM on these issues. The time and effort to streamline this program will assure its stability in the eyes that are most important – the applicant’s.

The founders of the program expended a lot of time, energy and vision in establishing the e-rate program. We should do no less to assure that the program continues to support their goals and does not get bogged down in Rules and Regulations that ultimately, diminish its impact and do little to impact fraud and abuse. We intend to continue to assist the FCC and the USAC/SLD with these important efforts.

Please don’t hesitate to call on us for any assistance in these important matters.

Sincerely,

Lugene Finley Jr.  
Director – Informational Technology  
Illinois State Board of Education