

**Before the Federal Communications Commission
Washington, D.C. 20554**

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

**COMMENT OF THE STATE OF FLORIDA,
THE DEPARTMENT OF EDUCATION**

I. Introduction

1. The State of Florida, Department of Education respectfully submits these comments in response to the notice of proposed rule making (NPRM) issued by the Federal Communications Commission (Commission) on January 25, 2002.

2. In the administration of the entire Universal Service Program, the FCC has been able to work through many problems and provide solutions to the telecommunication industry through the individual companies that qualify under the Universal Service Program. Although E-rate is part of the Universal Service Program, the E-rate program is a departure from the normal guidelines of a typical program under Universal Service. The number of E-rate applicants each year is exponentially greater than the number of service providers who qualify under the Universal Service Program, thus making the rules for participation and program administration under E-rate unwieldy. Simplification of the E-rate program is not only an administrative must, but it is also imperative for equitable funding to the most needy in the high-cost areas of the nation. We thank the Commission for the opportunity to respond to this much anticipated NPRM and to assist the Commission in its difficult job of modifying E-Rate regulations to make the program more effective and efficient and to eliminate waste, fraud and abuse.

3. Throughout the NPRM the Commission has voiced concern on two subjects; first, the Commission would like to reduce waste, fraud, and abuse associated with the E-Rate program. Second, it wants to be receptive to suggestions on ways to increase administrative efficiencies of the program. We believe these goals are the core to correcting problems that if left unremedied will ultimately undo the original intent of the law and the Joint Board rules. It is time to take a broad look at the E-Rate program not through current regulations, resulting from the Federal State Board on Universal Service, but rather through the Telecommunications Act of 1996 and

make adjustments to the program using the law as the focal point for change.

The Commission has stated the results it wishes to achieve with this NPRM: “(1) to consider changes that would fine-tune our rules to improve program operation; (2) to ensure that the benefits of this universal service support mechanism for schools and libraries are distributed in a manner that is fair and equitable; and (3) to improve our oversight over this program to ensure that the goals of section 254 are met without waste, fraud, or abuse. We intend to build on the solid foundation we have established.” These goals can be met by applying a distribution of funds process that brings accountability from all participants.

II. Discussion

4. As a beginning, consider the first and second goals of the NPRM: to “fine-tune our rules” and “to make sure there is equitable distribution of benefits in this program.” The Telecommunications Act of 1996 contemplates that the Universal Service Educational Rate program (E-rate) should:

- (a) Address the most economically needy within our elementary and secondary schools and public libraries, and
- (b) enable quality service to be available at just, reasonable, and affordable rates.

In the course of the administration of the program in the last four years, these initial principles have mutated. The program rules are general in nature and difficult to administer thus allowing for vendors and consultants to manipulate the rules of the program to their best advantage at the expense of non-funded applicants.

5. It is also believed that when all applicants and service providers look at a \$2.25 billion funding source for the application process, that “reasonableness” in the application process is not the first consideration. A certain degree of greed along with “loop holes” in the program’s administration has led to waste, fraud and abuse. For example;

- a) In an application sent to the SLD from a Michigan, school funds were requested for a computer server and a network switch for each classroom in the

school. When the school representative was questioned by Program Integrity Assurance (PIA), the representative acknowledged that he was assisted by the vendor in an assessment of the schools needs and in filling out all the paperwork for the school This school is a 90% discount school

b) In an application sent to the SLD, a company in New Jersey convinced many small schools with a 90% discount across the U.S., (it was reported more than 100 small schools) that for a schools with 30 –70 students 4 servers with 3 hard drives each was needed. In addition, a \$250,000 PBX was also needed in the school. It is reported that these applications are presently under review at the SLD, but there is nothing in the rules to disqualify these applications from going forward.

6. In establishing a new efficient direction for the E-Rate program using the Act as guide, It is hoped that the Commission’s stated goals can be achieved. Section 254 (h)(2)(A) of the Act, states that Commission rules to provide Advanced Services to schools and libraries shall be competitively neutral “...to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services...” (Emphasis added). However, the Commission’s May 8 Order and subsequent Orders on Reconsideration neglected the notion of economical reasonableness, which has contributed to the FCC’s perceived problem of waste, fraud, and abuse within the program. Throughout these comments the concept of economic reasonableness will be a common thread for E-Rate funding of telecommunications, Internet access, and internal connections.

7. To illustrate the lack of economic reasonableness with current FCC regulations and SLD policies, examine a recent funding commitment in the current funding year (Year Four) to Roosevelt Elementary School District #66 (RES#66) in Phoenix, Arizona. This school district was issued a funding commitment letter in early February 2002 for a total dollar amount over \$19,000,000. This is a school district of only 18 schools and 11,000 students. Granted, it is a high poverty school district and deserving of E-Rate support, but \$19,000,000 (more funding than some entire states) in a single year goes far beyond the concept of economic reasonableness. In fact, in year three of the program, this school district received over \$7,000,000 in funding commitments for internal connections. This school district has contracted to have fiber optic

connections in every classroom, installation and maintenance of all equipment, broadband connections to all schools, and top-of-the-line Quality of Service agreements. All these expenses are eligible and allowable under current E-Rate regulations; however, if all other 90 percent schools across the nation embraced such installations, demand for funding would explode to over \$10 Billion. RESD#66 should be commended for using existing E-Rate regulations to bring the best state-of-the-art technology to each student in the district. Hopefully the District can install all that equipment before the deadline of September 30, or use some method in program policy to extend installation time another year.

III. Questions for Consideration

The NPRM issued on January 25, 2002, invites comments on specific issues related to the E-Rate program. Listed below in bold text are excerpts from the NPRM, followed by comments presented for consideration by the Department of Education for the State of Florida.

We seek comment on the effectiveness and fairness of our WAN policy, and on whether other policies could result in a more equitable distribution of discounts in the program.

8. WAN policy should address “cost effectiveness.” It is not cost effective to build fiber networks for telecommunications companies (*Brooklyn decision*), nor is it cost effective to force applicants to use one source of connectivity over a less costly source of connectivity for district-wide networks. Schools and libraries have high-cost budgeting issues in addressing continued service in many areas of the country. Applicants should not be limited to leasing wide area services and products. The functionality of the service or product should be the main concern.

We seek comment on whether a change in our approach to WAN-related expenses is warranted by this increase in demand, and if so, what changes consistent with the statutory restrictions of section 254 of the Act should be adopted to meet the program’s goals of improved operation, a fair and equitable distribution of funds, and effective oversight to prevent waste, fraud and abuse.

9. The Telecommunications Act of 1996 specifies that telecommunications providers shall provide discounted service to eligible entities for telecommunications and advanced services.

Internal connection eligibility has been hotly debated since the outset. Consequently, with the Fourth Order on Reconsideration, the Commission has given explicit direction that telecommunications and Internet connections shall receive first priority with this program. Now, largely because of the *Brooklyn decision*, the universe of priority one services has expanded to include items that would not only be considered internal connections but also vendor central office equipment to facilitate WANs. Indeed, both *Brooklyn decision* and the *Tennessee decision* to a lesser extent have opened the door for funding of vendor equipment to deliver eligible services.

10. While it may be in the best interest of the program to include funding for on-premise equipment such as routers, the notion of providing funding to build vendor infrastructure for eligible services to the detriment of competitors should be illegal. Current WAN regulations allow universal service funding for vendor owned central office equipment that will provide service to eligible applicants on a non-exclusive basis. In the confusing evaluation of such applications, the equipment must be necessary to provide service to applicants at the most cost effective basis. Yet the equipment must be available for other customers of the vendor. This in effect provides E-Rate universal service dollars to vendors who wish to expand service territories or expand services to areas either served by others or not served at all. Although this may be the intention of the universal service program in general, it has absolutely no basis in law for the E-Rate program. The question remains as to whether the Schools and Libraries mechanism is the proper conduit for this type of subsidy. Vendor central office equipment should more appropriately be funded through the low-income, high cost division of universal service. Again, when considering funding discounts for WANs, which should be eligible for funding, applications should be evaluated on the basis of economic reasonableness for services ordered. All charges, beyond reasonable installation or connection charges, should not be considered. Consideration should be given to reversing the *Brooklyn decision*.

We seek comment on whether we need to modify any rules or policies regarding the eligibility of wireless services for support under the schools and libraries mechanism so that distribution of funds is consistent with our principle of competitive neutrality and does not favor wireline technology over wireless technology.

11. Wireless should be addressed in the context of “cost effectiveness”. In many cases the only means for a school or library to receive higher bandwidth is through wireless products and services. It should be the functionality that is addressed and not how the services are delivered, (*i.e., wired or wireless*) This would be in keeping with the original intent of the Telecommunication Act of 1996 that competitive neutrality be a driving force throughout the program.

Accordingly, we seek comment on whether a change in voice mail eligibility would improve the operation of the program or otherwise further our goals of preventing fraud, waste and abuse and promoting the fair and equitable distribution of the program’s benefits.

12. Yes, voice mail and a whole host of other telephone services not now listed, including wireless should be included, with the exception of directory advertising. Many times teachers need to communicate with parents on the instructional information a student is provided during the school day. Because of the inability of the parents or teachers to be available during many parts of the school day, it is imperative that this service be available and discounted for the instruction of the student. To ensure applicants do not abuse telephone charges and in keeping with the concept of economic reasonableness, the Commission or SLD should establish benchmark levels of acceptable service for applicants of various sizes and direct the SLD to initiate special reviews of requests that exceed the benchmark. It should be noted that teachers are the only class of professionals that routinely do not have access to telephones in their offices (classrooms). Thanks 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.

We also seek comment on whether, in keeping with our current rules, universal service discounts would continue to be available for a provider only for the cost of access without content, if a service provider offers Internet access to consumers both with and without content.

13. The E-rate program should not be in the business of providing content to students. In the case of providers using this as a selling point to the schools and libraries, it will become a nightmare for the applicants to weed through all the “free” content that will be the marketing

tools of the vendors. Schools and libraries should be purchasing Internet Access, not content. There are other funding sources that are available to schools and libraries under federal guidelines that should be considered instead of E-rate.

We further seek comment on whether, and how, the Administrator and the Commission would verify and enforce compliance, and the extent that such actions promote our three goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

14. If the program funds were capped for each state based on a poverty indicator equal to the level of funding issued by the USED, then the program would be easier to administer and the three goals noted above would be realized to a greater degree.

We seek comment on whether a change to section 54.501(d)(1), recommended by consortia members and service providers working with consortia, would improve program operation. We also invite comment on whether changes to other consortia rules might achieve a greater consistency or fairness in our approach to the participation of consortia in the program.

15. The E-rate program was originated to support connectivity to the Internet for schools and libraries. It was not developed to aid non-eligible entities to capitalize on services and products at a lower cost. However, if services and products can be obtained by non-eligible entities at no cost to the E-rate program or the eligible applicants of a consortium, it should not be of concern to the administration of the E-rate program.

We also seek comment on the extent to which a modification such as lengthening the remittance period would have a deleterious impact on eligible schools and libraries that is inconsistent with our three goals of improving program operation, ensuring that the benefits of the program are equitably distributed, and preventing fraud, waste, and abuse.

16. Schools and libraries should be given the opportunity to work with the vendors to decide what process best accommodates the billing and services being provided to the applicant. Many time schools are on budgets that must reflect complete charges rather than those charges after the

E-rate discount has been applied.

We seek comment on these and any other proposals to address this issue and thus give us further insight on how, with regard to equipment issues, we might further our goals of improving program operation, ensuring that the mechanism's benefits are fairly and equitably distributed, and eliminating fraud, waste, and abuse.

17. If the administrators of the program used a state "capping" of awards and allowed schools and libraries to apply for internal connection only under an individual school or library and that individual school or library could only apply for internal connections every other year, there would be equitable distributions of funds eliminating fraud, waste and abuse. Vendors and consultants who are in the business of increasing their profit margins will not benefit from this scenario with every school getting the internal connections they need. Where maintenance contracts are needed for equipment, the contract should be allowed for two years, thus eliminating the need of a school to apply on a yearly basis for equipment and maintenance.

We therefore seek comment on whether we should adopt this modification. Finally, we seek comment on any other changes to our rules or policies concerning the appeals procedure of the Administrator or the Commission that might further the goals of improving program operation, ensuring a fair and equitable distribution of benefits and preventing waste, fraud, and abuse consistent with the 1996 Act.

18. If the funding awards were granted under state caps, significant gains can be realized against waste, fraud and abuse. In addition, under state caps and state appointed facilitators working with USAC, the administrators of E-rate can ensure review of the applications and awarding funds would be greatly enhanced.

We seek comment on whether, so as to improve our oversight capacity to guard against waste, fraud, and abuse, our rules should explicitly authorize the Administrator to require independent audits of recipients and service providers, at recipients' and service providers' expense, where the Administrator has reason to believe that potentially serious problems exist, or is directed by the Commission. We specifically seek comment on the impact of such a rule on small entities. We further seek comment on alternatives that might provide

other assurances of program integrity consistent with the goals of improving program operation, ensuring a fair and equitable distribution of benefits, and preventing waste, fraud, and abuse.

19. The FCC or SLD should bear the cost of audits. Should fraud or substantial abuse of the program be uncovered during an audit, punitive monetary penalties, including the cost of the audit, should be levied against the offender. Many of the schools and libraries that have problems with audits are those who have listened to vendors or consultants and received incorrect information. There should be penalties levied against vendors or consultants who are involved with more than one incidence of fraud, waste or abuse. As more and more states become involved with the application process and the concerns of the applicants of their states, many of the problems with vendors and consultants taking advantage of the uninformed applicant will diminish. It is in the best interest of the program that the implementation of E-rate go forward under different funding guidelines, such as capping each state for the total amount of funds that can be granted to that state.

Finally, we seek comment on any other changes to our rules or policies concerning the appeals procedure of the Administrator or the Commission that might further the goals of improving program operation, ensuring a fair and equitable distribution of benefits and preventing waste, fraud, and abuse consistent with the 1996 Act.

20. Establishing a new, efficient direction for the E-Rate program which address concerns expressed by the Commission and General Accounting Office (GAO) can be achieved by focusing on an equitable distribution of funds to each state. To address this further, consider if a state were given “on paper” an equitable distribution of the \$2.25 billion according to the poverty level of the state (*i.e. equivalent to Title I distribution by the USED, or school age children by Census information, etc.*). Since the Telecommunications Act of 1996 stated that distribution of funds should be based on the most needy in our schools and libraries, providing a “cap” on the funds would ensure a distribution based on the poverty level of each state. At present with some applicants having the ability to apply for funding that exceeds the poverty level of a particular geographic area, equity has not been achieved when funds are no longer available for other needy applicants. Further consider the following administrative operational

principles that should be put into place under a “state capping” of funds:

- a) Each state would be capped according to the poverty level of the students, (i.e. the USED has a schedule of state poverty levels that are applied to all state distributed funding, Census bureau information also could be considered as well as High-cost need.)
- b) The present USAC administration would continue to administer the funds and approve applicants with an understanding that each state would have a funding cap that could not be exceeded. Funds would be awarded through all priority-one services and then priority-two services as long as funds were available under the capped amount for that state.
- c) Remaining funds from any state at the end of a funding period would be put back into the “general fund” to be redistributed in the next funding year.
- d) State networks, elementary and secondary schools and public libraries would have a better opportunity to plan for technology and telecommunications when the amount of funds were known in advance.
- e) Telecommunications companies would be able to address the infrastructure needs of a state by knowing ahead of time the amount of funds that will be spent in each state. This would facilitate building a level of infrastructure that ultimately would provide quality service and adequate bandwidth to meet the needs of the applicants.
- f) Program Integrity Assurance (PIA) would assign individuals to each state for the review process. This would allow a very self-contained approach to the review process and allow PIA reviewers to become more familiar with the state infrastructures, contracts and applicants. By working more closely with PIA individuals in the review process, abuse in funding requests and vendor selections would become easier to track and eliminate.

21. Implementing of the foregoing recommendations would address the issues being presented in this Notice for Proposed Rule Making and will accomplish the following:

- a) Economical reasonableness would become the guiding principle instead of the mutated principle because applicants would be aware of a dollar figure that

comes to that state. Applicants would know they are not competing with school districts and libraries in other states for funds, but are working within the state funding allocation. As with other USED funding, school districts will look at what a fair share would be under these rules to make sure all the needs of the applicants of the state are met. For the sake of equity and preservation of the program, the Commission must bring funding certainty to the applicant community under a monetary cap for each state.

b) It is axiomatic that the interest of everyone involved in the E-Rate program is best served by a program that minimizes waste, fraud, and abuse. The unfortunate fact is that program resources are being wasted and the process is being abused. The culprits are for the most part not applicants but rather vendors and consultants seeking profits and fees for assisting applicants through this very complex program. With a state cap on spending, applicants will have less reliance on vendors and consultants to go after a big pot of money. Many vendors and consultants use the model of “us against them” to prompt applicants to apply for more services and products than can be afforded or that can be implemented within the funding year. Again economic reasonableness will supplant the “us against them” attitude.

c) In funding programs from the federal government, state governments usually assign an individual to be program administrator or coordinator for the federal funds coming into the state. Many of these federal funding programs have far less funds to administer than the E-rate program. At the present time only half the states have state E-rate coordinators who monitor the E-rate program and guide applicants from within their state through the application process. It is believed that more states would participate if a known funding amount were established. Having more informed state participation will help to reduce waste and fraud.

d) When one evaluates several decisions that have emerged (*Brooklyn decision, Tennessee decision, etc.*) from the Commission and USAC appeals

process, it becomes apparent that large amounts of funding are going to a few states and a handful of applicants. If a cap is placed on the amount of funding that each state receives, then those applicants who continue to abuse the program with unreasonable funding request will abuse their own state funding and not the funding of other states. This will ensure the greed of a few applicants will not take from all applicants. States will have to take care of abuse problems within their own states.

e) It is believed that the second year of funding (1999-2000) more closely reflects the actual needs of the educational and library communities for telecommunication services and internal connects. Since that time funding requests have continued to double each year. By setting a cap on the funding for each state, the requests will be more aligned with the funds that are allotted to each state and thereby staying within the \$2.25 billion originally allocated. Much of the \$5+ billion that is being requested this year is inflated due to the enticement of vendors and consultants to increase their own profit margin.

f) High discount applicants continue to apply for priority-two funding year after year for the same equipment and related products. By setting a cap for the state, funding for priority-two services and products will be different according to the funding that is available in each state. Schools and libraries won't have to "lie" on applications to get funding for schools and libraries that are slightly lower than the nationally funded discount level.

IV. Conclusion

21. One does not need to look very far into the E-rate program to find instances where the administration has made errors in decisions on funding. In addition, applicant errors on applications as well as filing errors have caused denials and then appeals to the SLD and to the FCC. Since the initial offering of this program, the complexity of the rules has produced opportunities for abuse and waste. In any program of this size some operational problems will occur, but it is imperative that the program be made more efficient in the utilization of funds for telecommunication services.

22. Schools and libraries would not be able to connect to the Internet for instructional purposes without the help of E-rate. The E-rate program is vital to the advancement of educational technology for all the students in America. Without telecommunication funding support, many of our small and rural schools would have to “pull the plugs” on present services. Accordingly, the Commission is urged to reconsider the way funding is allocated to applicants and implement a state “capping” of E-rate resources.

Respectfully submitted April 4, 2002,

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