

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**COMMENTS
OF
SPRINT CORPORATION**

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Summary

The Commission's goals in this proceeding of improving SLD program administration and ensuring the equitable distribution of SLD funds are laudable. To achieve these goals, and to prevent unwarranted increases in the SLD fund, Sprint recommends the following:

- rejection of the proposed on-line database of eligible services;
- adoption of measures to ensure that USF support for leased WAN services is provided only when those services are provided on a common carrier basis;
- limiting e-rate consortia only to eligible entities;
- allowing service providers limited access to the USAC database to determine the status of their customers' funding requests;
- rejection of the proposed rule change to govern payment options;
- adoption of the proposed limits on the transfer of e-rate subsidized equipment;
- rejection of the proposal to allow use of "excess" e-rate services for non-educational purposes; and
- return of unused SLD funds to contributing carriers.

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COMMENTS OF SPRINT CORPORATION

Sprint Corporation, on behalf of its local, long distance and wireless divisions, hereby respectfully submits its comments in the above-captioned proceeding in response to the Notice of Proposed Rulemaking and Order released on January 25, 2002 (FCC 02-8). In this NPRM, the Commission has initiated a review of certain of its rules governing the schools and libraries universal service support mechanism, with an eye towards improving program operation and oversight, and ensuring that USF benefits are distributed in a fair and equitable manner.

Sprint supports the goals of the school and library universal service program, and is an active participant in this program. We provide comments on several issues relating to the application process, post-commitment program administration, and disposition of unused funds.

I. CERTAIN CHANGES TO THE APPLICATION PROCESS SHOULD BE MADE.

In this section of the NPRM, the Commission seeks comment on issues relating to eligible services and participation of consortia in the SLD program. Sprint does not believe that the on-line eligible services database proposed in the NPRM would be cost-effective, but we offer suggestions relating to support for leased WAN services and voice

mail services, limitations on consortium participation, service provider access to the USAC database to check the status of funding applications, and review of high-dollar funding requests, which we believe will improve e-rate program administration and help ensure the equitable allocation of e-rate funds.

A. Eligible Services

The Commission asks for comment on whether to implement an on-line database listing eligible services (para. 14); whether to limit support for Wide Area Networks (WANs) (paras. 16-19); and whether to expand the list of eligible services to include voice mail (para. 22). Sprint opposes creation of a database; opposes an increase in the 3-year period to recover WAN-related capital costs and removal of leased WAN service from the Priority One list, but recommends tighter scrutiny of funding requests to ensure that support is provided only for leased WAN services provided on a common carrier basis; and supports inclusion of voice mail as an eligible e-rate service.

On-line database: The Commission suggests (para. 14) that the number of instances in which applicants seek funding for ineligible services would be reduced if they were able to select only from an on-line list of pre-approved eligible products and services. Sprint does not believe that this database proposal is either workable or cost-justified.

As an initial matter, there is no information about the extent of the supposed problem. The NPRM does not include any data on the number of applications for non-eligible services which have been submitted, the cost of processing such applications, or the amount of funding for ineligible services which has been granted in error. It is highly unlikely that error-free submission and processing of SLD service requests will ever be achieved. However, before considering whether corrective action is needed, the

Commission must first ascertain whether the problem is sufficiently serious to merit additional consideration. Since this first step has not been taken, it is premature to consider adoption of any proposed “solutions,” particularly those which are likely to be prohibitively expensive to implement and maintain.

No matter whether a problem of any significance exists here or not, it is clear that the proposed database approach would be unwieldy and impractical, and thus unhelpful to applicants. A comprehensive database would be huge (tens of thousands of codes), given the number of service and equipment providers¹ and the number of options each provider offers.² Inclusion of pricing information, which changes constantly, would make the database even larger and complicates the maintenance function enormously. Providing information on conditional eligibility (services that may receive USF support only if used in a certain manner) adds another degree of complexity. The costs of creating and maintaining the database are sure to be significant,³ and would almost certainly outweigh any potential administrative savings gained from processing fewer requests for ineligible services. Indeed, as the SLD program enters its sixth year, applicants are becoming increasingly familiar with the types of products and services which are eligible for universal service funding, and the number of ineligible requests can be expected to decrease accordingly.

¹ Approximately 22,000 service provider identification numbers (SPINs) have been assigned to date, and there are about 10,000 active service providers, many of which serve multiple jurisdictions. Sprint Local, for example, serves 18 different states, and often charges different rates in different jurisdictions for the same service.

² For example, in Florida, Sprint Local has 3758 codes pertaining to voice/data circuits.

³ If these costs are recoverable from the SLD universal service fund, the amount of USF available for discounted products and services would be accordingly reduced.

Leased WANs: The Commission next asks whether its policy regarding WANs is causing a “critical drain” on program resources, and if so, whether this problem can be addressed by either increasing the term (currently three years) over which the non-recurring charges associated with capital investment in WANs may be recovered, or by removing leased WAN service from the list of Priority One services (paras. 18-20).

Although Sprint agrees that steps should be taken to ensure that leased WAN services do not consume an unreasonable percentage of SLD funds, we do not believe that either of the proposals set forth in the NPRM is sound. The first proposal -- to increase the three-year recovery period for leased WAN capital expenses -- unfairly penalizes the providers of leased WAN services. Service providers incur real capital costs in providing leased WAN service, and increasing the three-year period directly affects service providers’ ability to recover these costs within an acceptable timeframe. This is a matter of some concern, particularly given the severe tightening of the credit market for telecommunications companies. If service providers cannot recover the costs associated with leased WANs from the customers to whom the services are provided in a timely fashion, those costs will inevitably be recovered from other customers in the form of higher rates. Total USF assessments are already a significant burden on telecommunications service providers, and the Commission must seriously consider whether it is appropriate to adopt policies which result in additional cross-subsidization between classes of customers.

Sprint also opposes the proposal to remove leased WANs from the list of Priority One services, since this would reduce funding for a service which the Commission notes has experienced a marked increase in demand (para. 20). WANs are a cost-effective

means of delivering voice, data and video services to applicants, and individual schools and libraries would be significantly impacted if they were unable to obtain Priority One USF support for leased WANs. Before taking the rather severe step of removing leased WANs from the list of Priority One services, the Commission must at least assess the impact of the proposal on the total SLD fund. Because critical information is not publicly available -- the NPRM does not, for example, indicate the proportion of Priority One dollars that has gone to funding leased WANs -- it is not possible to determine whether the proposal would be effective at preventing a “critical drain” on available funds.⁴

To help ensure that universal service funds are properly allocated, Sprint recommends that the Commission and the USF administrator tighten scrutiny of requests for USF funding for leased WANs to ensure that such support is provided only in cases in which the leased WAN service is being provided on a common carrier basis.⁵ Sprint is concerned that certain entities may be obtaining SPIN numbers in order to provide leased WAN services (and possibly other services as well) to a very limited audience on individualized terms, rather than offering such services “indifferently” to “all potential users.”⁶ One way to help ensure that USF support is being provided only for leased

⁴ For example, if leased WAN discounts accounted for only 1% of total Priority One requests, removing leased WANs from the Priority One list would have very little practical impact.

⁵ The Commission has found that leased WAN service, unlike the building and purchasing of a WAN, is eligible for USF discounts because it is a telecommunications service. Only telecommunications services provided “on a common carrier basis” (*Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration*, 13 FCC Rcd 5318, 5430 (para. 193) (1997)) and internal connections are eligible for SLD support.

⁶ *National Association of Regulatory Utility Commissioners v. FCC*, 553 F.2d 601, 608 (D.C. Cir. 1976), defining “common carriage.”

WAN service that is provided on a common carrier basis, is to cross-check whether the leased WAN service provider is contributing to the universal service fund.⁷ If the service provider is not reporting its relevant common carrier revenues to the USF administrator, and is not contributing to the universal service fund, then its leased WAN service should not be eligible to receive USF support. This cross-check is relatively simple to perform, and could help reduce fraud (USF support to ineligible service providers) significantly.

Voice mail: The Commission seeks comment on whether voice mail should be eligible for e-rate support (para. 22). It points out that voice mail, like e-mail, is a legitimate and increasingly prevalent means of “communicating with school and library staff for educational purposes,” and that making voice mail eligible could reduce administrative effort and costs associated with separating out voice mail costs to ensure they are not erroneously discounted (*id.*).

Sprint believes that the Commission properly classified voice mail as an information service rather than a telecommunications service, and we remain concerned about creeping expansion of covered services. However, given the importance of voice mail in allowing school and library staff to communicate with each other, with parents and with administrators, Sprint recommends that voice mail services be eligible for e-rate program support.

⁷ Common carriers are mandatory contributors to the support mechanisms (*Fourth Order on Reconsideration*, para. 786).

B. Consortia

The Commission has found that where a consortium composed of both eligible and ineligible entities is offered service at below-tariff rates, the ineligible members may not obtain service at the below-tariff rate.⁸ In this NPRM, the Commission asks whether section 54.501(d)(1) of its Rules should be clarified “to establish clearly 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” (para. 31).

Sprint does not oppose the proposed modification to Section 54.501(d)(1). However, if the Commission’s goal here is to prevent ineligible entities from obtaining below-tariffed rates under the USF program, a far simpler way to achieve this goal is to forbid ineligible entities from participating in a consortium seeking to obtain service under the e-rate program. By keeping the consortium pure (that is, composed only of eligible entities), there can be no dispute that the below-tariff rate, and the SLD discount which is subsequently applied to that below-tariff rate, are made available only to eligible schools and libraries. Because this approach reduces the likelihood of misuse/ misapplication of SLD funds (as well as violation of the Commission’s existing policy regarding availability of below-tariff rates), and consequently reduces enforcement costs associated with attempting to recover below-tariff or discounted rates given in error

⁸ *Universal Service Order*, 12 FCC Rcd 8776, 9028 (para. 477) (1997) (allowing ineligible entities to obtain service at below-tariff rates “could compromise both the federal and state policies of non-discriminatory pricing”).

to ineligible entities, it fosters the Commission's goals of reducing fraud and waste in the e-rate program.

In addition, limiting e-rate consortia only to eligible entities significantly reduces the administrative burden on both the applicant and the service provider: there is no need to maintain or audit records proving that the e-rate discounts were applied only to services used by schools and libraries, and that the ineligible entities were correctly assessed the tariffed rates. The cost of maintaining separate books of account for members of the consortium can be significant, and elimination of those costs will benefit all SLD program participants.

C. Other Recommendations to Improve Program Efficiency and Equity

In order to streamline the application process and enhance the equitable allocation of SLD funds, Sprint suggests two other revisions to e-rate program administration. First, we suggest that service providers be allowed limited access to the SLD Administrator's application database so that they are able to check on the status of their customers' funding requests. Sprint has experienced cases in which electronic or paper copies of funding approval letters were not received, were misplaced or were otherwise rendered unavailable. Incomplete information results in billing errors and delays in submitting and processing BEAR (Billed Entity Applicant Reimbursement) forms. To protect confidential or proprietary information, service providers should of course be allowed to access information relating only to their own customers and their own SPINs.

Sprint's second recommendation is to subject funding requests above a certain dollar amount to more extensive USAC review than exists today. There have been cases in which a small number of applicants have received extremely high funding; for

example, the USAC recently approved \$66 million in SLD funds to 76 schools in El Paso, Texas.⁹ While large funding requests may be entirely legitimate, the SLD community (applicants, service providers, and fund administrators) should be acutely conscious that disproportionate allocations will reduce the funds available to other (presumably equally worthy) applicants. To ensure an equitable allocation of e-rate dollars among the many applicants competing for those funds, Sprint recommends adoption of more stringent review of large-sum applications.

II. POST-COMMITMENT PROGRAM ADMINISTRATION

In the section of the NPRM dealing with post-commitment program administration, the Commission seeks comment on choice of payment method (para. 33); equipment transferability (para. 37); and use of excess services in remote areas (para. 41). As discussed below, Sprint strongly recommends retention of the BEAR process; supports limits on the transfer of equipment; and firmly opposes use of “excess” services in remote areas.

A. No Rule Changes to Govern Payment Options Are Necessary.

Under current procedures adopted by the SLD Administrator, applicants and service providers “are advised to work together” (NPRM, para. 33) to determine which of two payment methods will be used:

- The school or library pays the service provider in full for the services received, and is reimbursed for the discounted amount through the filing of FCC Form 472 (the BEAR form) with the fund administrator. The administrator issues payment of the discounted amount to the service provider, which is required in turn to remit that payment to the school or library within 10 days.

⁹ See www.sl.universalservice.org, funding commitments for FY4.

- The school or library pays the non-discounted portion of the services, and the service provider seeks reimbursement from the administrator for the discounted portion.

The Commission expresses concern that service providers might insist that applicants use the first option, and therefore asks whether the rules should specify that service providers must offer applicants either of these two options.

Sprint recommends that the Commission reject this proposed rule change. There is no indication that the existing cooperative approach is flawed, and codification in the Rules of billing procedures is overly intrusive and burdensome.

Currently, Sprint employs both the BEAR process and bill credits for e-rate customers. However, the latter method is manual and very expensive, and thus Sprint uses the BEAR process for billing a majority of the services provided under the e-rate program. In our experience, the BEAR process has been working satisfactorily and we believe that most of our customers prefer this option. Sprint (and, we believe, many other service providers as well) have developed back office systems which support the BEAR process in a cost-effective and efficient manner. The proposed rule change could well encourage applicants to insist on the second option (paying only the non-discounted portion of the bill), even though such option would substantially increase Sprint's costs of administering the program, potentially by tens of millions of dollars.

For example, implementation of the second option requires substantial modifications to our billing systems to enable Sprint to systematically charge rates which reflect an individual customer's correct percentage discount for the e-rate services received. Sprint's customer accounts are not currently structured to allow discounts on only a portion of the account (for e-rate services only, or for only certain locations or even for certain lines within a single location). The e-rate discount may be different for

every eligible member of a consortium; in addition, each consortium across the country may receive a different rate, resulting in a huge increase in the number of billing rate elements and a corresponding increase in the likelihood of billing errors (correction of which does, of course, impose additional costs on both the applicant and the service provider). Sprint's costs will also increase because of the lag time between the date on which the service is rendered, and the date on which we receive reimbursement from the SLD fund for the discounted portion of the bill (*i.e.*, carrying costs). Third, there are costs associated with processing reimbursement forms to be submitted to the SLD Administrator, booking reimbursed funds to the correct accounts, and cooperating with audits by the SLD Administrator of the outstanding bill invoices. All of these cost increases directly affect the rates we are able to offer SLD applicants.

The Commission indicates that it has received reports that under the BEAR option, some service providers are not remitting payments from the SLD Administrator to the applicant within the 10-day window (NPRM, para. 35). Sprint is not aware (and the record does not reflect) that this is a general problem, and we have implemented internal controls to ensure that we meet the 10-day window. However, the 10-day window is a standard adopted by the SLD Administrator; it is not mandated by either the Commission or relevant statute. Therefore, rather than codifying an administrative procedure in the Commission's Rules, Sprint suggests that the Administrator work with the service providers who purportedly are not remitting SLD payments to the school or library in a timely fashion to devise more efficient processes. Often, Commission oversight or the threat of Commission involvement is sufficient to encourage service providers to adopt mechanisms which improve their processing time.

B. Limits on the Transfer of Equipment Should Be Adopted.

The Commission states that it has received reports that some recipients are replacing, on a yearly or almost-yearly basis, equipment obtained with universal service discounts, and transferring that equipment to other schools or libraries that may not have been eligible for such equipment (para. 37). The Commission accordingly seeks comment on whether to adopt a rule limiting transfers for three years from the date of delivery and installation for internal connections other than cabling, and ten years for cabling (para. 39). Sprint believes that this proposal will help to ensure that universal service funds are distributed equitably, and accordingly supports the proposed rule change.

The funds available for universal service support are finite. If a school or library transfers subsidized equipment to another (ineligible) school or library, and immediately obtains USF support for replacement equipment, the dollars available to other applicants (some of whom may be seeking equipment or services for the first time, or who have a genuine need to replace obsolete equipment) will necessarily be reduced. Annual requests to replace transferred, subsidized equipment should be discouraged out of basic fairness, as well as to prevent wasteful and fraudulent behavior.

If the Commission does adopt the three- and ten-year approach, it should hold the applicant responsible for all record keeping requirements and for any violation of the rules. Once the equipment provider delivers the equipment, control over that equipment is entirely in the hands of the customer. Therefore, it is only reasonable to hold the school or library responsible for compliance with the rules.

C. “Excess” Services Should Not Be Made Available for Non-Educational Purposes in Remote Areas.

The Commission asks whether excess service obtained through the universal service mechanism for schools and libraries should be made available for use for non-educational purposes (para. 45), in particular in rural remote areas that lack local or toll-free dial-up access to the Internet. Implementation of this proposal would require a change to Section 54.504(b)(2)(ii) of the Rules, which requires applicants to certify that the services requested will be used solely for educational purposes.

Sprint firmly opposes this proposal. Relaxation of the rules to allow use of subsidized services for purposes other than that mandated by the statute will open the door to abuse and waste of universal service funds, and could even lead to unnecessary and misguided increases to the current fund cap.

The e-rate program was intended to provide support for schools and libraries, for educational uses only. Diversion of e-rate funds for non-educational purposes will drain resources away from the school and library programs the e-rate fund was designed to support. And, there can be no doubt that some diversion -- deliberate, inadvertent, or collateral -- *will* occur if the Commission’s proposal here is adopted. Although the NPRM discusses use of e-rate services only to provide local or toll-free dial-up access to the Internet in remote areas, this is only the camel’s nose under the tent; inevitably, rural (or indeed, any) communities will find other applications “excess” services can be used to provide.

Moreover, it is simply not possible to ensure that only “excess”¹⁰ e-rate service will be used for non-educational services, or that the schools and libraries would not request more service than they would have if the service were limited purely to educational uses. Attempts to implement the criteria listed in paragraph 46 of the NPRM, and to audit applicants’ compliance with those criteria, would be costly and almost certainly ineffective. The SLD fund is finite and already poses a significant burden on contributing carriers; use of that fund for a service (Internet access) which when used by entities other than schools and libraries is not even classified as a designated service eligible for universal service support is both ironic and inappropriate.

Adoption of this proposal could well have unanticipated consequences, even beyond diversion of SLD funds from their designated use. For example, subsidizing Internet access (or other non-educational services) in remote areas makes it even more unlikely that potential competitors will ever enter that market. The Commission has devoted significant resources to opening up markets to competitive service providers, and adoption of the instant proposal would be contrary to the pro-competitive policies so vigorously espoused in other proceedings.

Even if some e-rate services are currently being provided on a flat-rate basis, it is possible that a significant increase in total demand (as might well occur if the service were made available for non-educational purposes) might cause the service provider to re-evaluate its pricing structure. A switch to usage-sensitive rates could result in an

¹⁰ The NPRM does not include a proposed definition for “excess” capacity. However, no matter how “excess” is defined, it will still be extremely difficult to audit usage or to otherwise ensure that only the excess capacity is used for non-educational purposes.

increase in the total cost to the school or library (as well as to the universal service fund) – hardly a desirable outgrowth of a policy of questionable legality or merit.

The Commission has previously allowed Alaska to use “excess” service obtained under the e-rate program for non-educational purposes in response to Alaska’s petition for waiver of Section 54.504(b)(2)(ii) of the Rules.¹¹ To the extent that other extreme cases or special circumstances exist, petitioners may avail themselves of the waiver process to request similar dispensation from this rule. It is precisely to address special circumstances that the waiver process exists. Rather than opening the floodgates of non-statutory uses of e-rate services, the Commission should evaluate requests (presumably very limited in number) to make “excess” e-rate capacity available for non-educational uses on a case-by-case basis.

III. UNUSED FUNDS SHOULD BE RETURNED TO CONTRIBUTING CARRIERS.

The Commission asks for comment on the appropriate treatment of undisbursed funds (para. 69). Sprint recommends that any unused funds be returned to contributing carriers based on their relative contributions, or alternatively, be applied as an offset to next-year funding requirements. We believe that this approach is more economically rational and will better promote program efficiency, than is the proposal to distribute unused funds in subsequent years of the SLD program in excess of the annual cap.

There are many reasons why some portion of committed funds do not get disbursed: the school or library asked for (and received approval for) more money than it

¹¹ *Federal-State Joint Board on Universal Service, Petition of the State of Alaska for Waiver of the Utilization of Schools and Libraries Internet Point-of-Presence in Rural*

Footnote continued on next page

actually needed; the school or library got approval for certain services, but did not use them because it was unable to obtain related equipment; school and library personnel change, and the new personnel do not realize that the funds are available; and because incorrect or incomplete paperwork was submitted. With the limited exception of funds related to the last factor,¹² Sprint believes that approved but undisbursed funds should either be returned to contributing carriers or used as an offset to next-year funding requirements. The responsibility for implementing the SLD program equitably and efficiently extends to all program participants, and applicants must honor their obligation to use the funds for which they received approval, for their stated purpose, within the applicable funding year. If applicants cannot or do not use the USF dollars allocated to them within that time period, the funds should be forfeited. The fact that the SLD fund is capped at \$2.25 billion annually does not mean that the entire \$2.25 billion must be spent every year, and spending less than the maximum does not in any way constitute a failure of the e-rate program or a lack of commitment to the goals of this program.

Contributions to the SLD, rural health care, low income and high cost universal service funds now exceed \$5.5 billion per year.¹³ These funds are not free money. Contributing carriers recover their USF contributions from their subscribers, in some

Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling, Order released Dec. 3, 2001 (FCC 01-350).

¹² Applicants or service providers (depending upon the reimbursement option selected) should be allowed a reasonable grace period to re-submit the correct paperwork to obtain SLD funds. Failure to submit the correct paperwork within that grace period should result in forfeiture of the funds at issue.

¹³ Projected expenses for the second quarter of 2002 multiplied by 4. See *Proposed Second Quarter 2002 Universal Service Contribution Factor* released March 8, 2002 (DA 02-562).

cases in the form of double-digit surcharges assessed on customer bills. These surcharges, besides being a source of confusion and consternation for many consumers, also tend to suppress demand for telecommunications services. Refunding unused SLD funds to contributing carriers, or offsetting next-year funding requirements, would enable contributing carriers to lower the USF surcharges assessed on their customers.

Finally, applying undisbursed SLD funds as an offset to future funding obligations is entirely consistent with past Commission practice. As the Commission confirmed in the companion Order on Reconsideration here, its decision to apply the estimated unused balance from Funding Year 1 of the program to offset future funding obligations “was consistent with section 54.507 of the Commission’s rules and a previous decision by the Commission to permit excess contributions to the rural health care support mechanism to be credited back to contributors” (para. 75, footnote omitted).

IV. CONCLUSION.

The Commission’s goals in this proceeding of improving SLD program administration and ensuring the equitable distribution of SLD funds are laudable. To achieve these goals, and to prevent waste, fraud, and unwarranted increases in the SLD fund, Sprint recommends the following:

- rejection of the proposed on-line database of eligible services;
- adoption of measures to ensure that USF support for leased WAN services is provided only when those services are provided on a common carrier basis;
- limiting e-rate consortia only to eligible entities;
- allowing service providers limited access to the USAC database to determine the status of their customers’ funding requests;
- rejection of the proposed rule change to govern payment options;
- adoption of the proposed limits on the transfer of e-rate subsidized equipment;

- rejection of the proposal to allow use of “excess” e-rate services for non-educational purposes; and
- return of unused SLD funds to contributing carriers.

Respectfully submitted,

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April 5, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Corporation was delivered by electronic mail, on this 5th day of April, 2002, to the parties listed below.

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