

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

The following comments are submitted in response to the Commission’s Notice of Proposed Rule Making and Order, Docket No. 02-6, regarding proposed changes to the application process, program administration, appeals, enforcement, and treatment of unused funds.

Tel/Logic Inc. (d.b.a. E-rate Central) is an independent firm providing full E-rate application support services to public and private schools. It also holds the contract to provide statewide E-rate support for the New York State Education Department and, in this role, has been an active member of a broad group of state E-rate coordinators organized under the auspices of the Council of Chief State School Officers (“CCSSO”). Tel/Logic’s combined E-rate roles, both at the local applicant level and the national policy level, afford it an unique view of the program’s processes and benefits – and of the occasional frustrations engendered at all program levels.

Tel/Logic has been involved in, and supports, comments being filed in this proceeding by the CCSSO state E-rate coordinator group. The following comments are designed to reinforce and expand upon selected CCSSO recommendations, from Tel/Logic’s own perspective, and to address several additional issues.

SUMMARY OF COMMENTS

- 1. Application Process
 - a. Eligible services
 - i. Current eligibility distinctions are confusing to applicants and require excessive reviews of applications and invoices by SLD personnel. Service classes should be broadened and simplified with a goal of eliminating highly subjective and/or low dollar value service distinctions.
 - o Whenever possible, all services within standard commercial packages should be deemed fully eligible or ineligible.

- Most telecommunications services should be deemed eligible. All school services should be deemed educational in nature. In particular, this change would eliminate the confusing and administratively burdensome eligibility distinction regarding mobile services.
 - ii. Mandatory use of a computerized online list of eligible services as a part of the Form 471 application process is not recommended.
 - iii. The SLD's current 30% ineligibility policy represents a reasonable balance of fairness and administrative efficiency.
 - b. A proliferation of additional certifications, not directly related to program administrations (e.g., compliance with the Americans with Disabilities Act), should be resisted.
 - c. The Form 470 process provides little more than applicant contact information to suppliers. The Form 470 filing and posting process should be replaced with a less burdensome and more accurate SLD Web directory of participating schools and libraries.
 - d. The current technology plan requirement does little to encourage sound planning, and the approval process itself places a significant unfunded mandate on state educational organizations. The requirement should be eliminated, at least for all telecommunications services. For other services, the current state review process should be replaced with a self-certification process.
 - e. With proper controls, elimination of the requirement that Form 471s be filed only by billed entities would permit the formation of efficient E-rate filing consortiums for small schools and libraries.
2. Post Commitment Program Administration
- a. Payment methods
 - i. Discount billing for usage sensitive recurring services is problematic for both vendors and applicants.
 - Service providers should be encouraged, not required, to offer both discount and reimbursement options.
 - Discount bills, when provided, should clearly indicate both pre-discount and discount amounts.
 - ii. The BEAR reimbursement process (including Form 472) needs to be revised. Direct reimbursement payments to applicants are desirable and, under current law, may be feasible if assigned by service providers.
 - b. Equipment transfers should not be prohibited, but limits must be placed on new E-rate funding of replacement equipment.
 - c. The criteria for service substitutions should be simplified.

3. Program Funding

a. Overall program funding

- i. Carrier collection rates should be set to assure consistent contributions to an aggregate fund at the program cap (currently \$2.25 billion per annum).
- ii. The SLD, with FCC concurrence, should have the flexibility of setting annual awards at levels consistent with the aggregate fund size. Adequate reserves should be managed to permit full funding of appeals, actual disbursements, and administrative costs.

b. New or revised policies resulting from new FCC interpretations, appeals, and orders should, on a limited basis, be applied retroactively to all affected applicants.

c. Higher priority should be given to funding the maintenance of internal connections than for the installation of new internal connections projects.

d. Discount matrix revisions

- i. The urban/rural distinction should be eliminated. Other Universal Service mechanisms provide subsidies for higher cost telecommunications environments.
- ii. Elimination of the 90% discount band would help reduce program abuses.
- iii. Smaller discount level steps (e.g., 30%, 35%,.....,75%, 80%) would make discounts less sensitive to small changes in NSLP eligibility and may permit use of simple aggregate (rather than site-specific) applicant discounts.

4. Enforcement

a. Audits

- i. A provision to conduct audits at applicant expense is not desirable. A meaningful, but limited, internal audit budget provides an appropriate checks-and-balances mechanism for review.
- ii. Service providers, as well as applicants, should be subject to the same audit conditions.

b. Prohibitions on participants

- i. Repeated and willful violations of program rules should result in prohibitions for either applicants or vendors, but lesser and more immediate remedies may be needed to avoid extended legal entanglements.
- ii. Greater publicity of questionable practices and alleged infractions is required.

APPLICATION PROCESS

Eligible Services

- 1. Current eligibility distinctions are confusing to applicants and require excessive reviews of applications and invoices by SLD personnel. Service classes should be broadened and simplified with a goal of eliminating highly subjective and/or low dollar value service distinctions.**

The determination of eligible services, and the associated allocation of eligible expenses, is the most difficult aspect of the E-rate funding process. It is confusing to applicants and service providers alike, and is the source of excessive review efforts of FCC Forms 471, 472, and 474 by the SLD itself.

A revised and expanded Eligible Services List is published by the SLD at least once a year. The current version is 35 pages long and, as shown in table below, covers over 230 classes of products and services of which over 40% cannot be cleanly defined as either eligible or ineligible, but contain at least some “conditional” elements.

Category	# Classes	# Conditional
Telecommunications	65	17
Internet Access	20	4
Internal Connections	146	80
Total	231	101

Although the Commission’s current inquiry does not appear to contemplate a complete revision of the Eligible Services List, such a review would be timely at this stage of the program’s development. At a minimum, the Commission may wish consider several specific eligibility changes based on the following principles:

- Whenever possible, classes of products and services should be broadened and simplified so as to make all components either fully eligible or fully ineligible — even if this means making certain currently eligible components ineligible.
- Whenever possible, products and services that are typically included in commercially available packages — particularly low cost components that would have an immaterial impact on funding and that would require greater administrative costs to separate — should be classified as either fully eligible or fully ineligible.
- All employees are critical contributors to the educational mission of schools and libraries. No job title distinctions should be included in the determination of eligible services.

Specifically, and in line with these principles, Tel/Logic proposes the following eligibility changes for telecommunications services:

- **Wireless telephone and paging services should be eligible for use by all school and library personnel.** This change would assure that wireless services are treated no differently than wireline services. From a practical standpoint, it would also eliminate a major allocation and review burden on applicants, vendors, and the SLD.
 - **Voice mail — as a telecommunications service or as an internal connections add-on to a telephone switch — should be an eligible service.** Voice mail is currently used extensively by most corporate and public institutions and, as such, has become an important, and increasingly basic, telephone service. This change would move homework hotline services from conditional to fully eligible status.
 - **E911/911, burglar, and fire alarm lines should be eligible.** These services and circuits are important to the safety of students and staff, and are of relatively low cost.
2. **Mandatory use of a computerized online list of eligible services as a part of the Form 471 application process is not recommended.**

An online list of eligible services, indicating product eligibility by manufacturer and model number, would provide an additional level of detail not currently available to applicants in the more general Eligible Services List. Presumably, it would give applicants access to the same level of eligibility detail now enjoyed by PIA reviewers. Since applicant requests are ultimately validated by PIA, access to comparable information appears only reasonable.

We note, however, that an online product list would be difficult to update. It would involve substantial SLD review of individual products leading to inevitable delays between product introductions and listing online. Further, by making product eligibility decisions publicly available, the SLD, and ultimately the FCC, is probably opening the door for service provider appeals.

Use of an online eligibility list, integrated into the application process itself, is even more problematic. We have the following concerns with such a requirement:

- For many products and services, eligibility is not an absolute characteristic. As indicated above, many classes of products are considered conditionally eligible based on circumstantial usage. This makes eligibility a subjective issue, not easily addressed through an online screening process.
- Funding requests, particularly for internal connection systems, often involve long lists of product components and/or specifications and of services. Determinations of eligibility, at this level of detail, would involve considerable data entry by applicants in the midst of an already cumbersome application process.
- Procedures would have to be developed to permit applicants to bypass any online eligibility conditions for products and services not on the list (or designated as conditionally eligible).

- Products or services designated as ineligible during the application process would lead applicants (or their vendors) to make difficult and/or inappropriate last minute changes to system designs (and contracts).
- A requirement to screen eligible services online as a part of the application process suggests a requirement to file online as well. While we recognize that a high percentage of paper applications remain a valid way (and, in some cases, the only practical way) to file. Unless and until the SLD develops the means to allow applicants to prepare applications offline for subsequent uploading, online filings should not be mandated.

3. The SLD’s current 30% ineligibility policy represents a reasonable balance of fairness and administrative efficiency.

Tel/Logic believes that it is both fair and efficient to set standards of applicant accountability with regard to the eligibility of funding requests. To do otherwise would encourage applicants to simply file for everything, placing total responsibility on the SLD for funding only eligible services. Conversely, given the complexity of the program’s eligibility rules, it is unfair and impractical to expect applicants to avoid any errors in their applications. The SLD’s current 30% ineligibility policy appears to represent a reasonable balance between the two extremes and should be maintained. PIA reviewers should be given some discretion in calculating the 30% in instances when a given product or service is deemed ineligible but has not been included in the Eligible Services List made available to applicants.

ADA Certification

4. A proliferation of additional certifications, not directly related to the program’s administration (e.g., compliance with the Americans with Disabilities Act), should be resisted.

Implementation of compliance certifications for the Children’s Internet Protection Act (“CIPA”) placed a significant burden on E-rate applicants and administrators in 2001. It required new forms and notification procedures, delayed FY4 funding, and created new deadlines (with the loss of funding to applicants who missed them). Certification, while simple in concept, is not simple in practice. Although CIPA certification was a problem, it was at least an understandable one since: (a) it addressed issues in Internet filtering and policies and was thus directly linked to the underlying objectives of the E-rate program, and (b) its implementation and enforcement for E-rate purposes was specifically delegated to the FCC by statute.

The link between E-rate and the Americans with Disabilities Act (“ADA”) is tenuous at best, and there is no indication that ADA enforcement is lacking or could be improved as a result of an E-rate certification process. Adding an ADA certification would simply encourage a proliferation of other unrelated E-rate certifications.

Form 470 Requirement

- 5. The Form 470 process provides little more than applicant contact information to suppliers. The Form 470 filing and posting process should be replaced with a less burdensome and more accurate SLD Web directory of participating schools and libraries.**

In theory, the Form 470 process was designed to permit schools and libraries to post information about their specific E-rate product and service needs, and to provide service providers with a mechanism to review these needs and propose competitive solutions. In practice, the process falls short of meeting these objectives. Specifically:

- Under the current application cycle, a Form 470 must be filed more than six months prior to the start of the next program year. Service needs for the next year can rarely be detailed at this stage of an applicant's planning and budgetary cycle.
- The Form 470 itself — particularly the paper version — provides only limited space for detailing services or functions required.
- Since every specific funding request on a Form 471 must be covered by a previously posted service requirement on a Form 470, experienced applicants have learned — and, indeed, have been encouraged by state E-rate trainers — to express Form 470 requirements in the broadest and most general terms.
- Service providers, in turn, have learned to use Form 470 information only as a simple indicator of an applicant's needs. To determine detailed needs, service providers generally contact an applicant directly.
- The one consistently valuable aspect of the current Form 470 process is to provide service providers with the name and contact information of at least one knowledgeable individual at each applicant.

Tel/Logic recommends that the Form 470 process be revised to simplify applicant filing requirements and improve the availability of current contact information for service providers and others.

The process can be simplified by eliminating the Form 470 entirely. Such a change would recognize the impracticality of requiring an applicant to post service requirements with enough detail to permit service providers to bid without direct and personal contact with the applicant.

In lieu of the current Form 470 posting requirement, an applicant should be required to post and maintain expanded contact information on the SLD Web site. Specifically:

- Applicant information should be maintained throughout the program year, not just to provide sales leads for service providers prior to the Form 471 application period, but to facilitate SLD reviews and to coordinate BEAR reimbursements.

- Separate contact information should be maintained for an applicant's E-rate, technology, purchasing, accounting, and senior administrative personnel (much like the multiple contact information collected for service providers in the Form 498).
- Contact information could include a simple check-off indicating an applicant's intention to file for discounts on telecommunications, Internet access, and/or internal connections in the coming application year.
- Every applicant should be encouraged and reminded to update contact information continually. An easy reminder would be to include a correctable list of current contact data with each quarterly disbursement report. All applicant forms should contain a certification that the applicant's posted contact information is up-to-date.
- Once a year, prior to the opening of the application window, a record of currently posted contact information should be mailed to each applicant for update as necessary. (Note: A similar update procedure should be established for service providers as well.)

Technology Plan Requirement

- 6. The current technology plan requirement does little to encourage sound planning, and the approval process itself places a significant unfunded mandate on state educational organizations. The requirement should be eliminated, at least for all telecommunications services. For other services, the current state review process should be replaced with a self-certification process.**

Formal planning should be an integral part of any school or library's use of Internet and computer technology, and the E-rate process should both encourage and demand that planning be done before funds are provided. The current technology plan approval process, however, is wasteful and ineffective.

Over the past few years, on behalf of the New York State Education Department, E-Rate Central has approved over 450 school and library technology plans for E-rate purposes. Several hundred other plans (or earlier versions) have been returned for correction prior to approval. Of these plans, only a small minority can be characterized as truly effective planning documents. Generally, the best of these plans had been developed independent of the E-rate process, often as a part of broader, state mandated planning initiative.

The larger majority of plans reviewed apparently had been generated only to meet E-rate requirements. Most adequately addressed the five criteria set forth for approval, but did not represent true working plans. Plans submitted by applicants seeking funding solely for non-basic telephone services, including Centrex or a new PBX (an internal connection product), were typically skeletal.

Although it may be argued that any planning is better than nothing, it should be noted that there is a cost to the current E-rate plan approval process. Most of the burden for E-rate approvals falls on the state education departments, for which they are not compensated. The plan approval process, as currently constituted, represents an unfunded state mandate.

From a practical standpoint, a less costly but almost equivalently effective approach would be to:

- Eliminate the technology planning requirement for any applicant requesting funding solely for telecommunications services — all telecommunications services, not just basic telecommunications services.
- Continue to require a technology plan for any applicant requesting Internet access or internal connection funding, but allow an applicant to simply self-certify the adoption of a current technology plan addressing the five planning criteria.

Elimination of a planning requirement for all telecommunications services, and the use of a planning certification for all other services, would align the technology plan requirement with the Internet Safety Policy requirement adopted by the Commission for CIPA purposes last year.

7. With proper controls, elimination of the requirement that Form 471s be filed only by billed entities would permit the formation of efficient E-rate filing consortiums for small schools and libraries.

To consolidate and simplify the filing procedures for small- to medium-sized schools and libraries, it should be possible to form an efficient E-rate consortium that would:

- File one Form 470 on behalf of all members.
- Accept bids from a number of service providers and let members sign up for basic E-rate eligible services (e.g., local, long distance, and Internet access) from selected vendors.
- File one Form 471.
- File one Form 486.
- Review member bills for proper discounting, or file vendor-specific BEARs and distributing payments in accordance with individual member usage and discount rates.

Current program consortium rules require that a Form 471 be filed only by a consortium leader that is, itself, the billed entity. This would appear to preclude the formation of an E-rate filing consortium by members that would continue to pay their own bills. We recognize the need of program reviewers (and auditors) to obtain billing

documentation centrally from the consortium itself, but believe that proper control conditions can be met by requiring the consortium leader to maintain membership billing records without actually paying the bills itself.

POST COMMITMENT PROGRAM ADMINISTRATION

Payment Methods

8. (a) Service providers should be encouraged, not required, to offer both discount and reimbursement options.

(b) Discounted bills, when provided, should clearly indicate both pre-discount and discount amounts.

Whenever practical, we support giving applicants the option of selecting either discounted or reimbursement billing arrangements. Discounted bills provide cash flow advantages to applicants (particularly the high discount applicants) and reduce applicant filing requirements (by eliminating the need to file Form 472 BEAR forms). Many applicants, however, prefer to budget and pay for the full amount of services used, and to receive discounts retroactively. Applicants preferring reimbursement payments often have more flexibility to use E-rate discounts to support additional technology expenditures.

For usage sensitive recurring services (including many telephone services), however, discount billing is often problematic for both service providers and applicants. Carrier billing systems are typically complex and are not easily or inexpensively modified to handle E-rate discounts (particularly when E-rate users represent only a small percentage of a carrier's customer base). Vendors face at least three types of problems when implementing discount billing, specifically:

- Typically only a portion of an applicant's bill is eligible for discounts. Discounts, for local telephone service, for example, should not be applied to such line items as late charges, directory advertising, voice mail, etc. This means that a consistent discount must be applied on a line-by-line basis, not simply to the total current bill amount or even to certain major subtotals.
- As an alternative to line-by-line discounting, the SLD suggests an option whereby the service provider can estimate the portion of the total bill that is eligible (say 80%), multiply that by the applicant's nominal discount rate (say 60%), then discount the total bill by the resulting product ($60\% \times 80\% = 48\%$). This makes the actual discounting easier, but requires a preliminary estimate by the vendor — often based on applicant eligibility data that is not included in the funding information provided to the vendor by the SLD. Currently, this is an impractical alternative.
- So far in the E-rate program's history, the SLD has made many funding awards well after the start of a funding year. Unless a vendor is willing to speculate on an applicant's ultimate funding, and credit discounts in advance, discounting cannot

begin until after the applicant has been funded (and a Form 486 has been filed). At this point, to provide discounts for the full year, the vendor must calculate and apply credits retroactively from the beginning of the program year. Retroactivity is a complicate process to automate and often has to be handled manually.

While we applaud vendor efforts to provide discount options in their billing systems, we recognize the difficulties and expense of adapting billing systems for many usage sensitive services. For certain small service providers, the costs may be prohibitive. As a result, we do not believe that discount billing should be mandated.

Discounted billing for usage sensitive recurring services can also cause problems for applicants. Because of vendor billing difficulties (discussed above), it is not always easy for applicants to determine if their bills are being properly discounted or, in some cases, if they are being discounted at all. In the New York area, applicants have experienced the following types of problems:

- Several vendors are discounting bills, but are doing so manually. Their billing systems continue to produce standard bills, but the applicants are advised separately to deduct the discounts before paying. Unfortunately, the applicants' accounts payable procedures cannot always deal with these exceptions, so the vendors are often paid the full undiscounted amounts. The vendors' billing systems, in turn, do not recognize that the applicants have actually overpaid, so no credits are generated. If the overpayments are not recognized by the applicants or vendors, the applicants receive no E-rate benefits, but the vendors get paid extra (full payment from the applicants, plus the discounted amount from USAC).
- One carrier treated Universal Service billed surcharges as ineligible items for discounting purposes. It took months of effort, including SLD intervention, to get this discounting issue resolved.
- One wireless carrier provides E-rate discounts one month in arrears. For multi-user accounts, individual user credits are shown separately in the billing detail, with the total incorporated as a part of a single "Other Charges and Credits" amount. To review discount amounts each month, an applicant must multiply the discount rate by the previous month's usage shown only on the previous month's bill, and total the discounts for each user. This is too much trouble for many applicants, so discounting errors go undetected.

Service providers that do provide discount billing should be required to clearly show E-rate discount amounts on their bills. Such a requirement would be fully in line with the FCC's "truth-in-billing" guidelines released in 1998.

9. The BEAR reimbursement process (including Form 472) needs to be revised. Direct reimbursement payments to applicants are desirable and, under current law, may be feasible if assigned by service providers.

The BEAR reimbursement process was originally conceived as a temporary solution to funding delays in the first funding year (“FY1”). At the time, the assumption was that all bills would be discounted by the second year. This did not happen. Discount reimbursement has effectively been institutionalized as an alternative to discount billing.

Although reimbursements now appear to be here to stay, only modest changes have been made to the BEAR process and no changes have been made to the BEAR form (FCC Form 472) itself. It is time to review the entire process to correct the following types of tracking and payment problems:

- The BEAR form contains data fields for the applicant’s contact name and telephone number, but does not provide space for the applicant to designate a name and address to which BEAR payments should ultimately be sent. The SLD has several names and addresses it can use, based on the original Form 471 application, but vendors do not get this information. As a result, vendors must guess where to send payments. Often, vendors simply use their customers’ normal billing addresses, and the checks are received and processed by account clerks who know nothing about E-rate.
- Once a BEAR is processed, but before a payment is disbursed to the vendor, the SLD sends a BEAR “approval” notice to the vendor with a copy to the applicant. This process has its problems. First, the “approval” notice could be for a lesser amount than the original filing (or even for \$0.00). Since the applicant receives only a copy of a vendor’s letter, with no applicant instructions, the chance to appeal a reduction or denial of funding may be inadvertently lost. Second, although a BEAR approval notice normally provides a de facto indication that an actual payment will be made within 2-3 weeks, the applicant is never formally advised that a disbursement has been made. This makes it difficult for an applicant to follow up with a vendor to demand payment.
- Although a vendor is not supposed to cash a BEAR disbursement check until the appropriate payment (or credit) has been made to the applicant, it is not clear that this sequence is followed in even the majority of cases. Of more concern to applicants is that BEAR payments are often not made within the prescribed 10-day period. We have seen numerous examples of applicant payments stretching to months as a result vendor error, unrelated billing disputes, or even vendor liquidation. Definitive USAC payment information (including check date, number, and amount) is needed if an applicant is to effectively demand payment.
- After every quarter in which there is funding activity, each applicant receives a disbursement report from the SLD. This is a useful report for sophisticated applicants, but not for others. To be more useful, the format of the report needs to be redesigned for better readability, and the report needs to be sent to the E-rate contact (rather than the authorized signer of the original Form 471).

The first step in improving the process would be to revise the BEAR form itself. At a minimum, fields should be added to indicate the complete name (or title) and address of the person who should be receiving the payment.

A second step to improve the BEAR approval and disbursement process would be to provide more information to the applicant including: (a) direct applicant notification of BEAR approval or of a reduction or denial of a request; and (b), actual disbursement notification. Disbursement notification by mail is not necessary if invoice status can be adequately provided on the SLD's Web site.

The most important step that could be taken to improving the BEAR process would be to permit direct payments to applicants. This would eliminate altogether the delays and complexities of channeling reimbursements through vendors. While there appears to be some controversy as to whether or not payments through vendors are legislatively stipulated in the Telecommunications Act of 1996, we believe that it should be possible to permit vendors to assign payments directly to their customers. Assignment could be made in all cases (through a check-off on the vendor Form 498 or Form 473) or on a case-by-case basis (through a check-off in the Service Provider Acknowledgment section of the BEAR form). Given the option, we believe most vendors would prefer to assign payments rather than have to channel payments through their own accounting systems.

If payments cannot be made directly to applicants, then improved and/or additional enforcement procedures must be implemented to assure timely payments of reimbursements from vendors to applicants. Possible improvements include:

- Eliminate or reduce the delay between BEAR approval and USAC disbursement. The current policy of giving vendors 20-day advance notice is unnecessary.
- Extending the allowable period for a vendor to remit a payment to an applicant from 10 to 20 days is logical if, and only if, tied with much stricter enforcement measures including vendor audits and program disbarment (see further comments in following sections).¹
- Alternatives to stricter vendor enforcement include better applicant notification on disbursements (as discussed above) and/or a provision for interest charges on late remittances.

Equipment Transfers

10. Equipment transfers should not be prohibited, but limits must be placed on new E-rate funding of replacement equipment.

Given the limited availability of E-rate funds, particularly for the installation of new internal connection equipment, there is growing concern that some applicants may be using funds to prematurely replace recently installed equipment while other applicant

¹ With tighter controls on vendor remittances, the FCC should consider eliminating the requirement, which we suspect is often ignored, for paying or crediting the applicant before cashing the USAC check.

demands go unsatisfied. As a result, some limit on the transfer or replacement funding of equipment appears reasonable.

Simply prohibiting the transfer of equipment purchased with E-rate funds is not recommended. Technology and applicant needs can change quickly. Little is to be gained by requiring a school or library to retain equipment that is no longer needed or that must be upgraded to meet current needs. Having equipment sit idle, simply because of an E-rate transfer prohibition is wasteful.

A more rational approach is to limit E-rate funding for replacement equipment installed within the useful life of previously funded equipment. For example, if a \$10,000 server was funded in FY3, it would seem inappropriate to fund another \$10,000 server for the same application in FY4 or FY5. If, as a result of increased usage, however, an applicant needed to replace the original server with an upgraded model, funding of the incremental server cost (or upgrade components) should be allowed. Where new funding is requested for apparently similar equipment, strong certifications should be required to assure that the new equipment is not simply for replacement.

A policy prohibiting replacement funding of original equipment requires some explicit or implicit definition of “useful life.” Since true “useful life” can depend on the type of equipment involved and/or the pace of technological change, exact determinations are difficult. For E-rate purposes, it may be appropriate to implicitly reference a useful life in any certification, but explicitly set a “safe harbor” limit of, say, three years for the useful life of any equipment.

11. The criteria for service substitutions should be simplified.

Because Form 471 applications are filed well before the start of a program year, there is a high likelihood that actual service needs or equipment availability will be quite different by the time services are actually received. Technically, program rules require an applicant to file a modified Form 471 for a service substitution whenever the service to be used is different in any degree from the precise service that had been approved. The service substitution process introduces additional approval delays and requires additional work by applicant, vendor, and SLD review staff.

Equally important, because the requirement to file service substitution requests for minor changes is deemed ludicrous by many applicants, this program rule is often ignored. As such, it engenders a general sense of disdain for E-rate procedures that is not healthy for the program.

To counter this problem, the SLD and FCC should work to define a level of service change that does not require formal service substitution procedures. The objective should be to establish a set of “safe harbor” guidelines for permissible changes. Specifically, we would argue that the example of a change used in the SLD Web site Reference Area — “use 87 six-port modules instead of the original proposal of 58 eight-port modules” — not require a service substitution filing.

Current guidelines for approving a service substitution include compliance with five specific conditions. Two of these conditions — that “The substitution does not result in an increase in price” and that “The substitution does not result in an increase in the percentage of ineligible services or functions” — are unnecessary and unduly limiting. Since applicant funding for the service has already been capped by the initial FRN award, there is no reason to prevent an applicant from spending its own funds for additional eligible or ineligible services.

PROGRAM FUNDING

12. (a) Carrier collection rates should be set to assure consistent contributions to an aggregate fund at the program cap (currently \$2.25 billion per annum).

(b) The SLD, with FCC concurrence, should have the flexibility of setting annual awards at levels consistent with the aggregate fund size. Adequate reserves should be managed to permit full funding of appeals, actual disbursements, and administrative costs.

The demand for E-rate funding has vastly exceeded the supply of funds in every year except FY2. The initial estimate for FY5, based on applications submitted this past January, shows a total demand of \$5.74 billion, more than twice the amount of annual funds (\$2.25 billion) made available in all but the first year of the program.

Actual disbursements of funds have historically fallen short of awarded funds. As is now recognized, much of the shortfall is structural in nature based on such factors as funding delays, applicant estimation procedures, and declining technology costs. In FY4, for the first time, the SLD granted awards in excess of the annual funding cap based, we assume, on a conservative projection of actual disbursements that will be required. This is a small, but significant, step in effectively increasing the amount funds available for E-rate applicants by decreasing the amount of unused funds.

Another step that could be taken to increase applicant funding, without increasing the aggregate annual cap of \$2.25 billion, would be to permit the carryover of unused funds from one program year to another. In the past, by contrast, the FCC used projected shortfalls to reduce carrier contributions into the Universal Service Fund. The carryover of unspent funds was recommended in the original E-rate report of the Federal-State Joint Board. It is a recommendation we have supported in the past and reiterate in these comments.

In any given year, the SLD is likely to be making actual disbursements covering discounts originally awarded in at least 3 separate E-rate program years. To maintain maximum funding flexibility — covering the disbursement of discounts based original awards or successful appeals, extending over several years — the SLD should have the authority to commingle and manage all funds received from quarterly carrier collections and disbursed as properly used by schools and libraries. Specifically:

- Carrier collection rates should be set at the annual cap (currently \$2.25 billion) to assure consistent rates to the carriers and maximum inflows into the E-rate funding pool.²
- The SLD, with FCC concurrence, should establish an annual program year award total reflecting projected disbursements on a year-to-year basis, including disbursements needed to cover previous year awards.
- Successful appeals should be funded in full as a part of the aggregate demand for funds from past and present years, and, if necessary, from future program years.³
- An appropriate reserve should be maintained to cover potential timing differences between actual and projected disbursements.

13. New or revised policies resulting from new FCC interpretations, appeals, and orders should, on a limited basis, be applied retroactively to all affected applicants.

An increasing number of preemptory appeals are being filed with both the SLD and FCC. Under current appeal rules, the more experienced applicants and E-rate advisors have learned that any beneficial changes or corrections to program rules or procedures made by either the SLD or FCC will be applied only to applicants with pending appeals.

Last November, for example, the FCC released a decision (DA 01-2536) reversing a longstanding SLD policy of rejecting applications not bearing an original signature. Only applicants with similarly pending appeals, were able to benefit from the new signature rules. Despite the FCC's contention that photocopied (or stamped) signatures have long been considered binding acts under Uniform Commercial Code, many other schools and libraries, whose applications had failed the SLD's infamous "wet finger" signature smear test, had no recourse.

Decisions like this encourage applicants to file appeals on any suspect issue. Given the delays in processing appeals, pursuing an appeal through both the SLD and the FCC frequently gives an applicant a 1-2 year window to benefit from policy changes. We believe the possibility of subsequent changes, applied only to applicants with pending appeals, is a major cause of the growing appeals backlog.

In another FCC decision (DA 02-436) earlier this year, the Common Carrier Bureau rejected a recommendation by E-Rate Central that any applicant who failed to appeal an unfavorable decision by the SLD should be entitled to retroactive application of

² One advantageous result of maintaining consistent carrier collection rates might be to reduce the need for the FCC to monitor changing USF charges to customers based on variable collection rates.

³ A policy of full appeal funding has the added advantage of eliminating the need to delay the commitment of funds for successful appeals until all appeals in a given program year have been decided.

a subsequent policy reversal by the SLD or the FCC. Specifically, we proposed that, whenever the FCC issues a decision deemed a significant reversal of a previous E-rate rule or procedure, potentially affected applicants would be given a 60-day period to seek reexamination of their previous SLD decisions.

In rejecting this recommendation, the FCC noted, in part, that the arguments were “not properly before the Bureau in a request for review of an Administrator decision” and that “E-Rate Central is free to raise this proposal in the context of [this] rulemaking.” We hereby do so.

The recommendation to establish a measure of retroactivity to FCC E-rate decisions is made with the full understanding that there must be a practical tradeoff between the objectives of fairness to all applicants and of prudent E-rate program management. A retroactive process that would require the SLD to review all previous decisions, or would establish new and indeterminate funding requirements, would be impractical.

A more practical approach would be to:

- Provide remedial retroactivity only for selected FCC decisions deemed to reflect a major change in E-rate rules or procedures;
- Place the burden on affected applicants to request retroactivity within a limited time frame; and, if necessary,
- Establish, on a case-by-case basis, a maximum amount of funding available to fund each class of retroactive requests.

It is recommended that funding for retroactive requests be considered as a part of total aggregate demand discussed in Recommendation 11(b) above.

14. Higher priority should be given to funding the maintenance of internal connections than for the installation of new internal connections projects.

Given the year-to-year variations in the supply and demand for internal connections funding, it would be extremely unfortunate if funds had been made available to an applicant for a new installations one or two years ago, but no funds were to be made available to the same applicant to maintain the same equipment on an ongoing basis. Stories about equipment funded by E-rate, but no longer working due to lack of maintenance, would be a public relations disaster for the program.

In an environment of decreasing funds for internal connections, we believe that maintenance of existing equipment should be accorded a higher priority than new equipment. This could be accomplished by leaving internal connections maintenance a

Priority Two service and creating a Priority Three category for new internal connections equipment.⁴

Discount Matrix Revisions

15. The urban/rural distinction should be eliminated.

The current discount rate differential between rural and urban applicants with NSLP eligibility below 50% is an unnecessary distinction requiring an additional application review step. The distinction reflects neither an applicant's ability to pay for services, which is already captured in the NSLP eligibility steps, nor in an applicant's cost of service. High costs of telecommunications and, by extension, Internet access services are already balanced to a large degree by other Universal Service funding.

16. (a) Elimination of the 90% discount band would help reduce program abuse.

(b) Smaller discount level steps would make discounts less sensitive to small changes in NSLP eligibility and may permit use of simple aggregate applicant discounts.

The entire discount matrix structure needs to be reexamined in light of program experience. The current range of discounts from 20% – 90%, with steps as large as 20%, has proven problematic.

The upper 90% band is particularly suspect. Although highly anecdotal, it appears that program abuses are most prevalent at the 90% discount level. Certain vendors have apparently developed business plans targeting 90% applicants with highly expensive systems. Although only the poorer schools and libraries qualify for a 90% discount, it is not clear that the requirement to fund the 10% undiscounted amounts is sufficient to assure prudent fiscal decisions (nor, in all cases, are the applicants even paying their 10% share⁵).

Reducing the upper limit to 80% would still provide significant discounts for the poorer applicants while providing greater incentives to control undiscounted expenses. All else being equal, the reduction would also reduce total demand for internal connection services and thus make Priority Two funding available to a broader number of schools and libraries.

The large steps in the discount matrix lead to widely disparate differences in funding for relatively similar applicants. The difference on one NSLP-eligible student

⁴ Alternatively, if the Commission were to adopt a rule of every-other-year site-specific funding of internal connection services, as had been proposed in the past, provisions should be made for exempting maintenance expenses.

⁵ Effectively, payments of less than 10% can occur in some cases as a result of state aid granted on undiscounted amounts or in vendor write-offs of receivables in violation of program rules.

can account for a discount rate differential of 10% – 20% or, in the extreme, in the difference between 90% discounts on internal connection services and none. Such slight eligibility differences may encourage applicants to exaggerate the NSLP percentages and force ever more detailed reviews by the SLD’s Program Integrity Assurance teams.⁶

As an alternative to the current discount matrix, we propose for consideration, the following discount table using smaller discount steps (and, as discussed above, making no distinction between urban and rural applicants). With the exception of schools reporting NSLP eligibility under 1%,⁷ now combined in a broader income bracket, most schools would qualify for a slightly lower discount rate. This would have the effect of reducing Priority One demand and making more funds available for Priority Two services.

<u>NSLP Eligibility</u>		Discount Rate
From	To	
Less than 5 %		30%
5	9	35
10	14	40
15	19	45
20	29	50
30	39	55
40	49	60
50	59	65
60	69	70
70	79	75
Over 80%		80

Using a discount table with smaller steps, consideration could be given to applying a single discount rate to each billed entity (or budget authority). This would

⁶ The SLD’s acceptance of alternative discount mechanisms is an extremely important means of fairly calculating discount rates for schools that do not offer free and reduced-price lunch programs or for schools with a high proportion of eligible, but non-participating, NSLP students. The survey method, however, needs to be reviewed.

Under current SLD rules, a school can send an income survey to the parents of all students. For response rates of greater than 50%, the school is permitted to extrapolate the proportion of returns indicating NSLP eligibility to the entire student population. Particularly when the survey is tied to the enrollment in child nutrition programs, we believe that responses are often biased. An urban school, with close to 50% NSLP participation, for example, might easily achieve a greater than 50% response rate with well over 75% of the survey forms indicating eligible income levels if most of the higher income parents failed to respond. This would raise the school’s discount from 60% to 90% and, in recent years, would make the school eligible for Priority Two funding.

We believe that the response rate for extrapolation should be raised to at least 75%.

⁷ In our experience, most schools reporting 0% NSLP eligibility do so, not because they have no eligible students, but because they have so few that lunch programs are not provided and alternative methods of calculating eligibility are not cost-effective. Increasing the minimum discount to 30% for eligibility less than 1% would not significantly increase program demand and would encourage participation by smaller private schools and libraries.

eliminate the detailed calculations of aggregate discount rates required for multi-site applicants, simplifying Form 471 discount worksheets and PIA review. It would also reduce the perceived inequities claimed by certain libraries and single-site schools who have argued that the range of site-specific discount rates available to larger school districts often results in at least partial Priority Two funding not otherwise available to single discount entities.

ENFORCEMENT

Audits

17. (a) A provision to conduct audits at applicant expense is not desirable

(b) Service providers, as well as applicants, should be subject to the same audit conditions.

Audits are an unfortunate, but necessary, tool for maintaining the integrity of the E-rate program. Actual on-site audits — indeed, even the potential for audits — serve as check on overall program compliance and a curb on individual applicant abuses. Although the SLD and FCC have only recently begun an expanded program of on-site audits, extensive use has been made of paper audits (Item 25 reviews and selective reviews). In terms of both time and effort, existing paper and on-site audits have proved expensive for applicants. A provision that would permit the SLD or FCC to recoup its own audit expenses from applicants would create an overly adversarial relationship between program applicants and administrators.

Another negative aspect of requiring applicants to shoulder the full expense burden of on-site audits is that it would remove a valuable check on the enforcement powers of the SLD and the FCC by eliminating any financial constraint on the scope of audits undertaken. A meaningful, but limited, internal audit budget, on the other hand, provides an appropriate checks-and-balances mechanism for review. It encourages the program administrators to carefully select their audit targets rather than casting a wider and less discriminate net.

Applicant fears of overly aggressive audits have been fueled by the spate of selective reviews recently aimed at smaller applicants requesting funding for services to be provided by vendors considered questionable by the SLD. Rather than audit the vendors directly, which has been done infrequently, the SLD appears to be relying on applicant reviews to investigate potential vendor abuses indirectly.

While it is true that applicants bear some responsibility for the actions of their vendors, relying on applicant reviews and audits to address vendor problems is misplaced. Direct audits of service providers, as well as applicants, should be used frequently to address potential vendor problems.

Prohibitions on Participants

18. Repeated and willful violations of program rules should result in prohibitions for either applicants or vendors, but lesser and more immediate remedies may be needed to avoid extended legal entanglements.

We agree that repeated and willful violations of program rules should result in prohibitions for either applicants or vendors, but we are concerned that the legalities of enacting such prohibitions may unduly delay corrective action. We believe that the SLD and the FCC have already uncovered instances of applicant and vendor abuses, many of which have gone unpublicized. Even in the few instances made public, the SLD has declined to categorize abuses as “fraud” because of the implied legal consequences. Attempts to formally bar applicants or vendors from the program may be expensive and time consuming.

Although strict prohibitions should be pursued, lesser and more immediate remedies may be needed to avoid extended legal entanglements. Most importantly, we recommend greater publicity of questionable practices and alleged infractions brought to light through the existing mechanisms of PIA reviews or “Code 9” calls. Models for publicizing real or potential problems include the Better Business Bureau’s online database and eBay’s rating system for sellers and buyers.

Respectfully submitted,

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