Before the Federal Communications Commission
Washington, DC 20554

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

INITIAL COMMENTS OF THE MISSOURI PUBLIC COUNSEL IN RESPONSE TO THE SCHOOLS AND LIBRARIES UNIVERSAL SERVICE SUPPORT MECHANISM NOTICE OF PROPOSED RULEMAKING & ORDER RELEASED JANUARY 25, 2002

Introduction

In this Notice of Proposed Rulemaking and Order (NPRM) the Federal Communications Commission sought comment on issues affecting the operation of the Schools and Libraries Universal Support Mechanism. The FCC requested comments on specific issues and on the general program administration so that the Commission and the Administrator can fine-tune the program in ways that improve operation, ensure equitable distribution of program funds, and prevent fraud, waste and abuse.

The Missouri Office of the Public Counsel (MOPC) is the state agency charged with representing the interest of Missouri's investor owned utility consumers. MOPC appreciates the opportunity to participate in the review of this program that is so vital to the academic, economic, and social development of Missouri and the nation. The Telecommunications Act of 1996 envisioned that consumers including low-income consumers and those living in insular areas, would have access to a wider variety of telecommunications services. It also provided that rural consumers would have access to comparable services at comparable rates to those available in urban areas. The Schools and Libraries Universal Support Mechanism has been successful in advancing the goal of universal service. In these comments MOPC suggests ways to further enhance the benefits of the Schools and Library Program.

1. The Commission should give significant weight to comments regarding reasonable methods for streamlining and simplifying the application process in order to reduce barriers to participation in the Program;

2. The Commission should provide greater flexibility to applicants in types of services eligible for discount and the manner in which the applicant receives discounts on eligible services;

3. Claims of waste, fraud, and abuse should be carefully evaluated prior to establishing additional costly administrative procedures that would unduly burden applicants and ultimately affected consumers. In the event that the Commission believes that additional administrative procedures are necessary to guard against abuse of the Program, the Commission should model those procedures after those implemented for the other components of the Universal Service Fund;

4. Unless and until the Commission adopts rules that insure that carriers collect no more from customers than the carriers are assessed, any unused funds should be made available to provide additional discounts in subsequent years through the Schools and Library Universal Support Mechanism;

MOPC believes that the goal of the review of the current Schools and Library Universal Support Mechanism should focus on eliminating barriers and expanding participation in the Program.

I. Answers to Requests for Comment

A. Application Process

1. Eligible Services

The Federal Telecommunications Act of 1996 at 47 U.S.C. Section 254(h)(2) specifies that "[t]he Commission shall establish competitively neutral rules … to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries." Section 254(c)(3) specifically allows the Commission to designate additional special services not necessarily limited to traditional telecommunications services for support of discounted rates to schools, libraries and health care providers. The clear intent of the law is to promote innovation and competitive and technological neutrality among available service offerings in an effort to promote efficiency and competition in the delivery of traditional and advanced services to the nation's schools and libraries. Expanding and enhancing the connectivity of schools and libraries to the telecommunications network should not be restricted by rigid adherence to a list of designated services. While MOPC believes that the availability of a list of services that has a history of support may assist applicants for informational purposes, it should not be treated or cast as the limit on the types of services eligible for discounts. This may discourage schools and libraries from seeking other creative and cost efficient methods for improved connectivity. Broader support for cost efficient wireless solutions and area discounts for services that expand connectivity beyond a limited geographic area encourages autonomy for solutions that meet the particular needs of the communities.

MOPC supports the concept that the primary functionality of equipment should be the guiding criteria to support eligibility. If, according to the manufacturer, a particular piece of equipment has a primary function of delivering telecommunications and Internet services to the school or library, it should be eligible. If, according to the manufacturer, the primary purpose is not the delivery of telecommunications and Internet services, but may be used for that purpose by an applicant, it should be eligible, provided that the applicant certifies its being use for that eligible purpose.

5. Consortia

A primary benefit of Consortia is that it provides meaningful opportunities for participating entities to achieve cost savings through both volume purchasing and the use of shared facilities. The benefits of participation in such arrangements should not be adversely affected by the Schools and Libraries Universal Service Mechanism. If a consortium negotiates a below tariff price for eligible services, receipt of support by eligible members should not be premised on non-eligible members paying the higher tariffed rate. This is unfair to both the members eligible and ineligible for support. MOPC supports application of discounts to the best available pre-discount price an applicant can acquire under competitive bid practices.

B. Post Commitment Program Administration

1. Choice of Payment Method

The Commission requests comment on whether program rules should clarify that applicants should have the option of a discount or completing a BEAR Form. MOPC supports codifying this choice in program rules because it would increase the flexibility with which applicants can receive discounts and may significantly reduce the "carrying cost" and time lag to small entities.

C. Appeals

1. Appeals Procedure

MOPC supports the Commission's willingness to provide an appeal extension by treating the postmark date as the filing date. This affords an additional margin of time for applicants to appeal and reduces confusion by uniform measures for submitting Form 470 and the Form 471.

2. Funding Successful Appeals

Successful appeals should receive funding to the extent possible in the same manner as if the application had received approval following the initial submission. A reasonable allowance for successful appeals should be factored into the year's anticipated funding requirement

D. Enforcement Tools

1. Independent Audits

In Paragraphs 54 and 55, the Commission seeks comment on improving oversight capacity to guard against waste, fraud, and abuse. Specifically, it seeks comment on a proposal requiring "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."

While MOPC recognizes the need to safeguard against abuse of the Program, this proposed remedy is not warranted at this time. Without allegations that fraud and abuse is significant, requiring applicants and providers to bear the audit expense without any limits or parameters, is unreasonable. Audits are allowed under the current process. The proposal does not increase the Commission's ability to obtain information, but, it merely shifts the costs of these audits to applicants and providers even though there may be no proper cause for the audit or no finding of any irregularities. Even if the applicant or provider was totally absolved of any wrongdoing, it must still bear the audit costs. The potential liability for significant audit costs by applicants and providers may work as a disincentive to full participation.

E. Unused Funds

1. Treatment of Unused Funds

In Paragraphs 69 and 70, the Commission seeks comment on the treatment of unused funds. Specifically, it seeks comment on whether unused funds should be credited back to carriers through reductions in the contribution factor or instead used to provide funding above the existing cap in a subsequent year.

The Commission does not regulate the amount of USF charges that appear on customers' bills. Providing a credit to carriers offers no assurance that the savings will be passed onto customers. Unless and until the Commission adopts rules that insure that carriers collect no more from customers than the carriers are assessed, any unused funds should be made available to provide additional discounts in subsequent years.

IV. Conclusion

MOPC appreciates the opportunity to comment on the proposed rules. MOPC urges the Commission to give great weight to the comments submitted by the applicant community and their representatives.