

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS
OF
SPRINT CORPORATION

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Sprint Corporation, on behalf of its local, long distance and wireless divisions, hereby respectfully submits its reply to comments filed in the above-captioned proceeding on April 5, 2002.

I. INTRODUCTION AND SUMMARY.

As noted by the dozens of schools and libraries that filed comments in this proceeding, the E-rate program has been a critical factor in fostering access to advanced telecommunications services by eligible schools and libraries. Billions of dollars have been funneled to this very worthwhile program over the past five years, and substantial progress has been achieved in wiring the nation's schools and libraries.¹

Sprint has been an active provider of telecommunications services under the E-rate program, and is one of the largest contributors to the SLD (and other universal service) funds. As such, we are concerned about the possibility of excessive increases in the SLD fund size and imposition of undue burdens on service providers and on

¹See, e.g., Alaska, p. 1; American Association of School Administrators, p. 6; American Library Association, p. 4; Arkansas, p. 1; Benton Foundation, p. 1; EdLiNC, p. 1.

mandatory contributors to the various universal service funds. The Commission and other interested parties must recognize that any increase in fund size or in the administrative and financial burdens on common carriers comes at a real economic cost. To avoid jeopardizing the goals and the past successes of the E-rate program, Sprint recommends that:

- funding of the E-rate program should remain capped at \$2.25 billion annually, with E-rate funds equitably distributed for use only for purely educational purposes;
- the Commission reject proposed rule changes to govern payment options; and
- the Commission avoid increasing the burden on USF fund contributors, and reduce that burden to the extent possible. Specifically, unused funds should be used to offset next-period contributions, and additional USF support should not be given for services provided by entities that do not contribute to the SLD fund.

II. THE EXISTING CAP ON SLD FUNDS SHOULD BE MAINTAINED, AND SUCH FUNDS SHOULD BE EQUITABLY DISTRIBUTED FOR PURELY EDUCATIONAL PURPOSES.

The schools and library program was intended to provide support for “services to elementary schools, secondary schools, and libraries *for educational purposes...*” (see Section 254(h)(1)(B), emphasis added). Although numerous parties recommend that SLD funds be used to support various worthwhile causes, the Commission has an obligation to ensure that E-rate funds are used only as specified in the statute, and it must therefore reject proposals to make “excess” E-rate services available for non-educational purposes. To maximize the dollars available for direct use by schools and libraries, the Commission should also avoid expending E-rate funds on administrative costs incurred by applicants and states, and on the proposed on-line database. Finally, the Commission should consider in greater detail various proposals intended to help ensure the equitable distribution of E-rate funds.

A. Use of E-Rate Services for Non-Educational Purposes Is Prohibited.

In the NPRM in this proceeding, the Commission requested comment on whether “excess” services (however defined) obtained with E-rate financing should be made available for non-educational purposes, specifically in rural areas that lack local or toll-free dial-up access to the Internet. Several parties opposed this proposal, correctly pointing out that use of E-rate services in this matter is prohibited by the statute; that such use would encourage fraud and abuse; that it would be impossible to ensure that applicants would not request more service than they would have if the service were limited to purely educational uses; and that allowing the subsidized use of one entity’s Internet access service would discourage competitive entry by other providers.² While use of “excess” capacity might be allowed in limited and unique circumstances upon receipt of a waiver of the relevant rules (as occurred in the case of Alaska), generalized use of E-rate services for non-educational purposes by parties other than the applicant must be prohibited on legal, financial, and public policy grounds.

Although the NPRM contemplated use of “excess” services only in remote areas that lack local or toll-free dial-up access to the Internet, it is clear that many parties view this stricture simply as a starting point. Various applicant organizations urge that “excess” capacity be made available in “less densely populated rural areas [that] do not have access to low-cost commercial Internet providers” (Benton Foundation, p. 4); “in economically depressed areas” (Illinois State Board of Education, p. 23); in communities

² See, e.g., Sprint, p. 13; Verizon, p. 2; BellSouth/SBC, p. 18; WorldCom, p. 12; Trillion Digital Communications, p. 2; Indiana, p. 7; York County, p. 10; NOBLE, p. 2; WiscNet, p. 3.

generally, “regardless of a community’s access to toll-free dial-up access” (CTCNet et al., p. 1); by adult learning centers and public job training programs (New York City Board of Education, p. 7); by residents in all communities for whom Internet access is “prohibitively expensive” (NEA et al, p. 23); by “organizations that serve the population served by the school” (CCSSO, p. 48); and by “non-profits...at any time – not only during the school and library off-hours” (Information Renaissance, p. 7).

The parties urging use of “excess” services for purposes and by entities outside the scope of the Act are doubtless well intentioned. However, aside from the statutory limitations, the inevitable impact of using E-rate services for non-E-rate purposes will be an increase in program costs. There is simply no way to ensure that applicants will not request more services than they need for purely educational purposes; to the contrary, there is a clear incentive to order additional services to ensure that there is indeed “excess” capacity to serve a wider population. Furthermore, attempting to measure (much less ensure) compliance with safeguards against waste or abuse will impose a “significant” (and no doubt costly) administrative burden on USAC (USAC, p. 26). Many schools and libraries assert that there are not enough E-rate funds available for educational purposes; it makes no sense to jeopardize funding for educational uses which are clearly within the scope of the SLD mandate, in order to fund services for ineligible uses by ineligible entities. As NEA, *et al.* stated (pp. 10-11, in relation to paying for Internet access bundled with content), “any rule change that diverts resources away from applications for the already oversubscribed group of eligible services ... would set a dangerous precedent by allowing program funds to be diverted to other worthwhile but clearly ineligible services.... Although well intentioned, those proposals to expand the

program would only serve to undermine the core connectivity mission of the E-Rate” program.

In light of the legal and financial implications of this proposal, the Commission should not adopt a rule or a policy allowing use of “excess” capacity for non-educational purposes. In extreme cases, such as Alaska, parties may request, on a case-by-case basis, dispensation from the relevant rules through the Commission’s waiver process.

B. E-Rate Funds Should Not Be Used to Cover Applicants’ or States’ Administrative Costs.

Various commenting parties recommend that SLD funding be provided to defray the administrative costs incurred by applicants and the states to participate in the E-rate program.³ These parties point out that they incur costs to attend E-rate program training sessions, to manage the application process, and to handle on-going program administration and oversight.

There can be no dispute that state and municipal (school and library) staff play a vital role in helping schools and libraries obtain E-rate funding, and Sprint is sympathetic to concerns over the limited resources they have to devote to the E-rate program. Nonetheless, we cannot support use of USF funds to cover administrative costs incurred by applicants or by state entities that assist their constituent schools and libraries to obtain E-rate discounts. The SLD fund is limited, and use of that fund to pay for administrative costs will necessarily decrease the pool of money available for telecommunications

³ See, e.g., Intelenet Commission (Indiana), p. 5; Alabama Dept. of Education, p. 3; Benton Foundation, p. 3; Michigan Information Network, p. 4; Colorado Dept. of Education, p. 13; Greg Weisiger, p. 26; Florida Division of Library and Information Services, p. 2; Illinois State Board of Education, p. 7; MOREnet, p. 14; North Carolina

Footnote continued on next page

services and internal connections used for educational purposes.⁴ Schools and libraries are receiving billions of dollars of support annually under the E-rate program, and applicants must make an individualized assessment (and communities must make a collective assessment) to determine whether the administrative costs of obtaining E-rate funding are worth the benefits received.

C. The On-Line Database Is an Inefficient Use of SLD Funds.

In the NPRM, the Commission sought comment on whether to adopt an on-line database of pre-approved eligible products and services. Many parties (including numerous school and library entities) opposed implementation of such a database, pointing out that it would be confusing and unwieldy; expensive to create and maintain; and could discourage applicants from choosing services (including those based on new, more efficient technologies) not included on the list.⁵

Parties that support the idea of a database⁶ appear to be less interested in an exhaustive database of services and equipment than in a list, such as the one apparently used by USAC program administrators, which provides general guidance on the

Dept. of Cultural Resources, p. 2; CCSSO, p. 64; American Library Association, p. 39; State of Alaska, p. 12.

⁴ As EdLiNC stated (p. 6, in opposing discounts for Internet access bundled with content), using E-rate funds for non-telecommunications services will stretch “the limited funds available to support telecommunications services and other permissible means of extending the existing network...even thinner.”

⁵ See, e.g., Sprint, p. 2; BellSouth/SBC, p. 6; Verizon, p. 11; USAC, p. 8; City of Boston, p. 2; Trillion, p. 1; Indiana, p. 2; Tamsco, p. 1; ISBE, p. 2; California Dept. of Education, p. 2; Cleveland Municipal School District, p. 3; Los Angeles Unified School District, p. 1; Memphis City Schools, p. 1; New York Public Library, p. 1; WiscNet, p. 2; Alaska, p. 3; GCI, p. 3; Coalition for E-rate Reform, p. 2.

⁶ See, e.g., Arkansas, p. 2; Florida, p. 2; NYC Board of Education, p. 2; Pennsylvania Dept. of Education, p. 2; NEA, p. 4.

categories of services and equipment which are likely to be approved if requested. Sprint does not oppose publication of such a list (which is presumably more extensive than the list currently available on the SLD website), provided that it is not unduly expensive to maintain, which applicants may use as a reference tool when they are researching what services and equipment they are requesting under the E-rate program. It should be made clear that this list is not exhaustive and that items not on the list could also be eligible for E-rate support.

D. Steps Should Be Taken to Ensure the Equitable Distribution of E-Rate Funds.

In their comments, several parties expressed concern over the equitable allocation of E-rate funds, citing individual applicants that received unusually large grants and states whose schools and libraries received far fewer E-rate dollars than their citizens contributed.⁷ Various parties suggest that rather than evaluating each application as it comes in without regard to geography, that the total SLD fund instead be allocated in some reasonable fashion among the states, with eligible schools and libraries drawing support from their own capped state fund. The amount each state is allocated could be based on a variety of factors, potentially including state-wide contributions to the SLD fund, poverty levels, and population. Other parties suggest that reducing the maximum discount from 90% would increase the applicants' financial stake in the program and thus help limit their requests to only those services and equipment they genuinely need.⁸

⁷ See, e.g., Sprint, p. 8; Iowa, p. 3; Greg Weisiger, p. 25; Arkansas, p. 4; Delaware, p. 1; Florida PSC, p. 6; Florida Dept. of Education, p. 2; Illinois SBE, p. 9; Maine PUC, p. 2; Funds for Learning, p. 14.

⁸ Decreasing the maximum discount also would make more funds available to a larger number of applicants.

Sprint believes that these suggestions have merit, and should be considered in greater detail. We certainly do not mean to suggest that applicants that received unusually high dollar grants are undeserving of such generous support, or that their requests were in any way illegitimate. However, in the interest of equity and to promote on-going public support for the E-rate program, steps should be taken to ensure that funds are distributed fairly.

III. CODIFICATION OF BILLING OPTIONS WOULD UNNECESSARILY INCREASE COSTS AS WELL AS THE BURDEN ON SERVICE PROVIDERS.

In their comments, a number of entities representing school and libraries recommend adoption of a rule which would require service providers to offer at least two billing options – discounts on invoices, and BEARs (payment in full for services received, with subsequent reimbursement of the discounted amount).⁹ Certain parties also state that the customer should be allowed to select whichever billing option it prefers.

Sprint provides both BEARs and, to a limited extent, discounted invoices, and we attempt to accommodate (based on bilateral discussions) the billing preference of our E-rate customers to the extent possible. However, we firmly oppose the proposed codification of billing options, and must emphasize that billing systems are not nearly as flexible or as easy to change as some applicants appear to believe. For example, in order to render accurate discounted invoices, a service provider's billing system must be able to

⁹ See, e.g., Iowa, p. 8; Illinois SBE, p. 21; Maine PUC, p. 5; MoreNet, p. 9; Pennsylvania Board of Education, p. 4; CCSSO, p. 34; EdLiNC, p. 18; MOPC, p. 3; NEA, p. 17; New York Public Library, p. 4.

identify the customer's correct discount; distinguish which billed items at each billing location are eligible to receive the E-rate discount; and apply the discounts only when E-rate funds for that customer are available (discounts cannot be applied until the request has been approved and funds assigned; discounts cease when the funding cap is reached). Offering discounted invoices to a consortium (individual members of which may have different discounts) involves an additional layer of complexity. If the billing system cannot meet these requirements, the discounts must be applied manually – an extremely expensive process which is prone to error.

The Commission and E-rate customers should be aware that forcing service providers such as Sprint to revise their billing systems to accommodate mandatory discounted billing upon customer demand will be an expensive and time-consuming effort. In some cases, the cost to change the billing system may well exceed the revenues earned from the provision of E-rate services. Any increase to service providers' cost of administering the E-rate program will affect both the rates they are able to offer to their customers, and their willingness to participate in this program.

Much of the concern over the BEAR process appears to relate to delays experienced by applicants in receiving the reimbursement checks from their service providers. This concern can be addressed by a requirement (either a USAC guideline with effective enforcement tools, or FCC-mandated) that service providers remit the discount payment to the applicant within a specified number of days from the date on which the service provider receives the BEAR check from USAC. Sprint supports such

a requirement, subject to the caveat that penalties for non-compliance should be assessed only if a delay is the fault of the service provider, and is substantial and/or systematic.¹⁰

IV. REASONABLE EFFORTS MUST BE MADE TO MINIMIZE THE BURDEN ON CONTRIBUTORS TO THE SLD AND OTHER UNIVERSAL SERVICE FUNDS.

Sprint currently contributes hundreds of millions of dollars each year to the various universal service funds, and, as is true for other carriers as well, we recover our contributions in the form of a universal service surcharge assessed on our customers. To reduce the impact on customers who ultimately pay for universal service, the Commission should apply undisbursed funds as an offset to next-year funding requirements, and reject proposals to expand support for services provided by non-common carriers who do not contribute to the SLD fund.

A. Unused Funds Should Be Returned To Contributing Carriers.

As detailed in the NPRM, a significant percentage of SLD funds are approved but undisbursed every year. Commenting parties offer many reasons why schools and libraries fail to use the funds for which they had received approval, including uncertainties in the budget process; duplicative applications; funding commitments which are received well into the funding period; requests for funding of more services than the applicant actually uses; and staff turnover.¹¹ It is in an applicant's self-interest to ask for more than it actually needs, and there is no penalty to an individual applicant for doing so. It appears that instances in which applicants formally notify USAC that they will not

¹⁰ See, e.g., BellSouth/SBC, p. 15; Verizon, p. 10; WorldCom, p. 11.

¹¹ See, e.g., Sprint, p. 15; Greg Weisiger, p. 40; Alaska, p. 14; Arkansas, p. 8; Colorado Dept. of Education, p. 10; CCSSO, p. 61; EdLiNC, p. 5; Funds for Learning, p. 26; Illinois Board of Education, p. 25; Intelenet, p. 13.

be using approved funds (particularly before the end of the funding year, so that those funds may be allocated to another applicant) are the exception rather than the rule. Rolling over unused funds for distribution the next year in excess of the \$2.25 billion cap (as was uniformly recommended by entities representing schools and libraries)¹² puts a zero price tag on waste and inefficiency (some of which is admittedly beyond the control of the applicant), and further reduces applicants' incentive to request only those amounts which they can expect with a reasonable degree of certainty to use in that funding period.

Funding universal service comes at a real economic cost, and the burden on mandatory contributors to the multiple universal service funds has been increasing to the point of potential unsustainability.¹³ Applying undisbursed funds to reduce the contribution rate for the following funding year would reduce in some small measure the burden on common carriers and their subscribers. Between competitive pressures (in the long distance and wireless markets) and regulatory oversight, the Commission and interested parties can be quite confident that carriers would flow through any reductions to their SLD cost burden by lowering the USF surcharge assessed on their subscribers (perhaps stimulating demand for telecommunications services in the process). To generate this benefit to telecommunications consumers, the Commission should continue

¹² See, e.g., York County, p. 16; Benton Foundation p. 4; MIN, p. 23; Colorado, p. 11; Greg Weisiger, p. 41; Delaware, p. 3; Kentucky, p. 2; Maine PUC, p. 6; MOREnet, p. 11; NY State Education Department, p. 3; NOBLE, p. 2; Pennsylvania Dept. of Education, p. 11; Seattle Public Library, p. 3; AASA, p. 2; California Dept. of Education, p. 6; CCSSO, p. 63; American Library Association, p. 30.

¹³ See, e.g., Sprint, p. 15; AT&T, p. 1; CTIA, p. 3; BellSouth/SBC, p. 38; WorldCom, p. 14. A decline in the USF revenue base also has contributed to an increase in the contribution factor (see AT&T, p. 2).

its existing policy of applying unused funds to reduce the next-period SLD contribution factor.

B. Additional USF Support Should Not Be Given for Services Provided By Entities that Do Not Contribute to the SLD Fund.

The Commission has found that the following categories of services are eligible for SLD support: telecommunications services provided *on a common carrier basis*, and internal connections and Internet access provided by any registered service provider. In their comments in this proceeding, several parties recommend that the Commission's policy be revised to allow applicants to obtain telecommunications services from non-common carriers.¹⁴ These parties assert that allowing USF support for services obtained from non-common carriers will increase the service options available to schools and libraries, and enable them to select the most cost-effective solution, regardless of the identity of the service provider.

Unless the Commission simultaneously revises its contribution rules to require that non-common carriers also contribute to the SLD and other universal service funds on the same basis as common carriers, the Commission should not revise its existing policy limiting SLD support to telecommunications services provided on a common carrier basis. To do otherwise would put common carriers at a significant and unreasonable competitive disadvantage – common carriers would continue to pay the entire \$2.25 billion SLD bill (with their rates reflecting their mandatory USF contributions) while

¹⁴ See, e.g., Alabama Dept. of Education, p. 6; Colorado Dept. of Education, p. 3; Greg Weisiger, p. 14; MOREnet, p. 4; CCSSO, pp. 12, 21.

being forced to compete against other service providers who do not contribute to the USF and who accordingly have a significant cost advantage.

Allowing non-common carriers to receive USF support for telecommunications services also will encourage them to “cherry pick” the most attractive customers. By limiting their service offerings to a select group of preferred customers, non-common carriers enjoy an additional cost advantage over common carriers, who are required to provide service “indifferently” to all potential users upon reasonable request. Such an anti-competitive outcome is surely contrary to the public interest.

V. CONCLUSION.

There is widespread agreement among commenting parties that significant progress has been made in wiring the nation’s schools and libraries, due in large measure to the billions of dollars available under the E-rate program. To avoid jeopardizing the goals of and the public support for this program, the Commission must ensure that E-rate spending stays within the current cap and that funds be equitably distributed for purely educational uses as required by the statute. Furthermore, the Commission should avoid imposing undue burdens on service providers and mandatory contributors to the SLD and other universal service funds. Thus, the Commission should reject proposals to codify billing options; should continue to apply unused SLD funds as an offset to the next-period contribution factor; and should not grant additional USF support for services provided by entities that do not contribute to the SLD fund.

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read "Norina Moy", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY COMMENTS OF SPRINT CORPORATION** was sent by hand or by United States first-class mail, postage prepaid, on this the 6th day of May, 2002 to the parties on the attached list.


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