Before the
Federal Communications Commission
Washington DC 20554

In the Matter of:

	)	
Schools and Libraries Universal Service	)	
Support Mechanism	)	CC Docket No. 02-6
	)	
	)	

Comments of the Alaska State Library/Alaska Department of Education and Early Development

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INTRODUCTION

The Alaska State Library and Department of Education and Early Development (EED) appreciate the opportunity to comment on the April 30, 2003 Second Report and Order and Further Notice of Proposed Rulemaking (NPRM), FCC 03-101 and commends the Federal Communications Commission (FCC) for taking positive steps to streamline the program and address waste, fraud, and abuse issues. EED looks forward to future improvements to the E-rate program and offers these comments to support the FCC's effort to streamline processes and improve program oversight.

E-rate is an important program to help schools build technology infrastructure needed to increase access to educational resources. In the short term, the EED believes the new rules will help. The implementation of the new rules and definitions needs to be carefully crafted in order not to make the E-rate application process more burdensome and complex. With the high level of applicant frustration with the complexity of the E-rate process, continuous improvements are needed to make sure that all eligible schools are receiving benefits from E-rate. The process must be streamlined to ensure new applicants, small schools, and in particular, rural and poor schools are able to successfully navigate the E-rate application process. Increasing attention to program waste, fraud and abuse (WFA) challenges the program to develop effective oversight and enforcement rules that do not overburden the already frustrated applicants with more complexity.

In the longer term, the Commission and the E-rate program Administrator must, in collaboration with the E-rate community, continue to seek improvements to streamline the program and provide appropriate oversight. While the new rules in the Second Report and Order provide needed process improvements and begin to address WFA issues, it must be acknowledged that the E-rate program is still very complex for many applicants and the battle to address waste, fraud and abuse is ongoing. There is much more work yet to be done.

SECOND REPORT AND ORDER

The EED offers observations on implementation of three new rulings for educational purpose definition, a computerized eligible services list and codification of the 30 percent policy.

Educational Purposes

In the Second Report and Order (Paragraph 17), the FCC defines educational purpose in schools as activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services, to qualify as educational purposes under this program. EED appreciates the clarification of the statutory term "educational purposes." This clarification broadens E-rate supported services, should simplify the application process for applicants, and shorten the review process for the administrator. However, the development of procedures must clearly define educational purposes and streamline the process. The process implementing this new definition must be designed to be easier and less burdensome for applicants and reviewers. In the detailing of exactly what this new definition is to cover, we urge the Administrator and the FCC to consult the applicant community for insight into the nuances of the daily operations of the eligible services.

We are particularly pleased to note the reiteration of the commission's insistence that wireless and wireline services be treated equally under the rules. We also were grateful for the recognition by the commission of the ubiquitous nature of voice mail in the modern usage of telecommunications and of its inclusion in the eligible service.

Pilot Computerized Eligible Services List

The idea of a computerized eligible services list is admirable; as with so many things, the devil is in the details. If the list can be constructed in such a way that it is easily searchable and user friendly, and makes all service providers and their offerings equally apparent to applicants, it could possibly make early decisions in the application process less cumbersome. If, in the actual implementation of the list, some providers are given more, or perhaps earlier, listing than others, not only the service providers, but the applicants, will be ill served. We hope that the commission will not rush to implement this list, but will insist that the actual publication of the list wait until it is fully developed and tested.

92 **Codification of the 30 Percent Policy**

93 The 30 percent policy developed through a give and take with the applicants and the
94 Administrator. As a compromise between the mistakes which cannot help but creep into even the
95 most carefully prepared application and the needs of the agency to be able to reach finality, the
96 30 percent policy served to define the outer limit for the acceptance and processing of an
97 application containing requests for ineligible items and services. It is only appropriate that this
98 limit be codified. All applicants should realize that the inclusion of 30 percent or more of
99 ineligible items in a request will result in the denial of funding. However, the Administrator has
100 recently enforced a new standard using this same policy.

101 In FY 2003, applicants are being denied if they requested funding for which more than 30
102 percent of the request is unsubstantiated. In other words, even though the applicant has not
103 included ineligible services, but merely – and only apparently - overestimated the costs of
104 eligible services, the Administrator is reacting as though there were a deliberate attempt to
105 receive funding for ineligible services.

106 Applicants are asked to make estimates of funding requests far in advance of the actual incurring
107 of those expenses. They are also required to take into consideration possible changes in usage
108 and in pricing. Further, they must frequently make these estimations from bills and documents
109 which are difficult for the average person to decipher. In the past, such over-estimations have
110 been dealt with by notifying applicants and allowing them to adjust their requests to the amounts
111 which are supported through documentation. Please include in the codification of the 30 percent
112 policy, a notice that it is not to apply to unsubstantiated estimates and that applicants will be
113 allowed a chance to amend or document amounts for eligible services which have been
114 challenged.

115 **FURTHER NOTICE OF PROPOSED RULEMAKING**

116 **A. Technology Plans Must be Approved by the Time Supported Services Begin**

117 EED agrees that technology plan approval should be required by the date services actually start
118 (Paragraph 100). However, the Administrator should be directed to be more cooperative with

119 the technology planning processes taking place in every state. All states require technology plans
120 of their schools, each structured to help advance the goals of the state education authority. The
121 technology plan as originally considered in the E-Rate process was simply to be an extension of
122 plans which were already being made for other, and more basic, educational purposes. Over the
123 past 5 years, the requirements of the E-Rate technology plan have come to outweigh those of
124 basic educational need - a clear case of the cart leading the horse.

125 While the necessity for a plan is inescapable, the form it takes needs to be reviewed. The five
126 requirements listed by the SLD should be reviewed in light of the new No Child Left Behind
127 technology planning requirements and should be changed as necessary. Currently, technology
128 plan questions are asked on the Forms 470, 471, 486 and 500. With this ruling, the FCC should
129 simplify those forms by eliminating the technology questions where appropriate.

130 **B. Computerized Eligible Services List**

131 Since it is difficult to assess the feasibility of an online eligible services list without the
132 experience of the operation of the pilot list for Internal Connections, it would seem prudent to
133 await those results before making the decision to move further into Telecommunications and
134 Internet Access (Paragraph 101). An online eligible services list might eliminate some of the
135 applicant guesswork in the determination of which services are eligible or ineligible, but it is just
136 as likely that it would lead applicants to only those providers who are listed. Applicants are so
137 unsure of the correctness of their answers on the complicated forms that they will almost
138 inevitably choose the easiest way to select vendors….and that would be to select only from the
139 list, thus freezing out any newcomers who want to enter a market but have not yet gone through
140 whatever hoops are necessary to be listed.

141 If such a list is enacted, an SLD online eligible services list could provide for quicker preparation
142 and review of E-rate applications from the Administrator's viewpoint. This list should take the
143 burden of "proof of eligibility" for services and products away from the applicant and place it on
144 the service provider. Questions and explanations should be between the SLD and the provider
145 community.

146 The question of competitive neutrality may arise from such a list. Discussions with the service

147 provider community might result in a process that allows service providers to submit services
148 and products for inclusion on the list. It would be important for the online eligible services list
149 to be database driven to allow for easy updating and archiving of records. A further question
150 arises in the situation of an applicant making a choice from the approved list, only to find a
151 better product and service at a lower price added to the list at a later date. It is reasonable to
152 assume that applicants will wait until the last minute to make selections, which, of course, will
153 increase the burden on the Administrator.

154 Keeping a computerized eligible services list up to date will require diligent attention and effort
155 by the SLD. Because of the difficulty in keeping a computerized eligible services list current, it
156 may be more useful if the list were focused on products and services for which eligibility is
157 difficult to determine or focused on services and products that represent a "safe harbor" of
158 eligible products. In any case, it must be made clear to applicants that items not on the list will
159 not automatically be determined ineligible.

160 **C. Program Enforcement**

161 In Paragraphs 102 to 115, the commission asks for comments on the enforcement issues with
162 regard to waste, fraud and abuse. With the surfacing WFA issues, it becomes increasingly
163 important to enforce penalties for those who choose to violate program rules. There obviously
164 should be consequences for willfully and repeatedly breaking the rules. Service providers,
165 applicants or consultants should be debarred for willful or repeated violations of program rule
166 (Paragraph 103). Regulations should go beyond debarment from the program for violations that
167 are criminal in nature. Obviously, civil or criminal penalties should be added to debarment. This
168 debarment for willful or repeated program violations should be applied against service providers,
169 applicants, or consultants whenever evidence proves that their actions were indeed deliberate and
170 intended to defraud the program. (Paragraph104).

171 Since the E-Rate process is so complex, however, there must be consideration given for novice
172 applicants. New applicant staff should get the same consideration as newly applying entities. It is
173 extremely common in school districts for personnel changes to result in untrained applicant
174 submittals. In Alaska, the state E-Rate Coordinator has estimated that approximately 1/3 of the

175 personnel who are actually involved in filling out forms changes every year. This turnover
176 applies as well to service providers. It is probably apparent that the smaller, more remote
177 applicant districts, libraries and service providers are even more likely to suffer this lack of
178 training as program deadlines near. Novice applicants may make inadvertent mistakes and may
179 even make repeated mistakes. These applicants should not be considered "willful" program
180 violators and should not be debarred (Paragraph 106). Similarly, schools experience turnover in
181 their administration. School board members and administrators come and go, so there must be
182 consideration for an applicant school that has been debarred and in which there is an
183 administrative change to specifically remedy the willful misconduct. Students must not be
184 penalized for the misconduct of adults.

185 A program violation that may result in debarment from the E-rate program must be a rule-based
186 condition. The definition of "willful" must be defined in rule, otherwise the debarment process
187 could become mired in appeals (Paragraph 107). Willful and repeated violations must be
188 documented as part of the Whistleblower Hotline - Code 9 process, audit, or investigation.
189 Debarring a service provider or consultant prior to the denial of an E-rate application could put
190 an innocent applicant at risk of being denied E-rate discounts for a year. If the applicant is not
191 involved in the violation, there should be an opportunity to select a new vendor (Paragraph 108).

192 If the SLD determines that willful or repeated violations have occurred, either during application
193 review or subsequently, it should refer the matter to the FCC for investigation that may
194 culminate in a notice of proposed debarment (Paragraph 108). Applicants, service providers and
195 consultants should be advised and sign a certification that they are aware of the rules and
196 conditions of program violations and possible debarment (e.g., Form 471, Form 498, Form 473,
197 etc.). Notice of proposed debarment should include: (a) giving the reasons for the proposed
198 disbarment; (b) explaining the debarment procedures; and (c) describing the potential effect.
199 The person should be given 30 days to respond (Paragraph 109).

200 Applicants whose service providers have been debarred should be permitted to change service
201 providers, if they are not implicated in the program rules violation. This service provider change
202 should processed as early as possible to prevent E-rate funds from going to the offending service
203 provider (Paragraph 113-114). Some method has to be devised for allowing applicants who

204 become innocently involved with providers who are being investigated to select other providers.
205 The year-long wait for decisions by the Administrator places an undue burden on applicants who
206 are simply caught up in the process.

207 Applicants who willfully break the rules should also face the potential of debarment. It may be
208 difficult to prove that an applicant willfully breaks the rules in connection with a service
209 provider. If an applicant is clearly willfully in violation of program rules or civil laws, action
210 should be taken. The difficulty is to prove "willful" versus "ignorant". Many applicants are too
211 busy to study E-rate rules and some are persuaded by skilled sales professionals to submit E-rate
212 applications that are in violation of the rules. Applicants must not be automatically determined
213 to be complicit if the service provider has willfully violated program rules (Paragraph 115).

214 **Adoption of government-wide non-procurement debarment regulations**

215

216 In terms of sanctions for the violation of the E-Rate application and administrative process, the
217 increasing formalization of the program is regrettable but apparently necessary. Debarment
218 regulations are just one more step in that formalization process. The responsibility of the GSA to
219 publish a printed list of parties excluded government-wide from non-procurement transactions
220 [see 5CFR970.500] seems to have been largely superceded by the Excluded Parties Listing
221 System (EPLS). Should the SLD choose to voluntarily adopt the government-wide rules,
222 international terrorists and those in violation of E-Rate program rules and procedures will all be
223 lumped together. (To date, the EPLS seemingly has no FCC components, even though the
224 agency is listed as a search selection.). It is a strange state of the world when wrongdoers at such
225 opposite ends of the spectrum find themselves in the same database.

226

227 The voluntary adoption of existing government-wide non-procurement debarment regulations by
228 the SLD, as opposed to the development of customized E-Rate program rules, is a complicated
229 question not easily answered. On the one hand, adoption of the government-wide rules would be
230 more effective in that penalties would be enforced government-wide; on the other hand, given
231 the complexities of the schools and libraries program and the potentially drastic consequences
232 for future infractions (i.e., government-wide disbarment), some applicants and providers might
233 decline to participate in the program altogether, since it could put other sources of government

funding and contracts at risk.

We recommend that these federal rules be informally adopted and subject to modification by FCC, so that the government-wide debarment is not automatically invoked which would have consequences detrimental to the program. Even still, these federal rules should be closely reviewed, particularly with respect to keeping the burden of notification of debarment or ineligibility upon the debarred or ineligible party, as opposed to other parties in the transaction, i.e., schools and libraries should be able to rely on the parties with whom they are dealing that those parties are eligible participants in program transactions. Additionally, any new certifications of eligibility should be minimal, e.g., just one more paragraph in existing certifications rather than new and separate documentation requirements. As a practical matter, SLD should link findings of violations to its automated systems so that, upon reaching a final determination of suspension or debarment, that action is tied to the identification numbers in those systems and serves as a final, unavoidable check against continued activities by sanctioned parties.

Above all, in whatever rules are adopted, there must be careful distinctions made between persons and their positions: in the case of actions which undermine the program and result in waste, fraud or abuse, the initial presumption should always be that employees, whether participants or providers, were acting outside the scope of their official responsibilities. There must subsequently be a showing of complicity or, at the least, negligence, before imputing conduct which requires sanction to an organization or company: acceptance of benefits alone – absent a showing of knowledge, approval or acquiescence - is not a sufficient basis for imputing improper conduct to a second party, particularly an organization. The exception, of course, would be a showing of a pattern of violations which would create knowledge, approval, or acquiescence in the mind of a reasonable person acting in their official capacity within the organization. Finally, suspension, debarment or other sanctions should not go into effect before available administrative remedies have been fully exhausted. This presents the SLD and FCC with a real dilemma: how to provide expedited adjudication without undermining due process.

265 **D. Limiting Waste, Fraud, and Abuse**

266 In Paragraph 102, the FCC seeks comments on measures to reduce WFA. Although emphasis
267 has been placed on the enforcement and debarment issues, the process to reduce wasteful
268 practices, fraudulent activities, and abusive activities in E-Rate is far more complex.

269 There are at least three major areas for potential waste, fraud and abuse in the E-Rate program:

270 (1) requests by program participants and approval by SLD of more equipment
271 and services than are needed or can possibly be put to effective use;

272 (2) failure or inability of program participants to actually monitor whether they
273 have received the equipment and services for which they have contracted; and,

274 (3) inefficient use or disuse of contracted services and equipment.

275 To date, most attention has been paid to the first of these areas, the one which is most likely to
276 involve actual fraud; however, it is in the other two areas where the most waste and abuse takes
277 place. Most E-Rate participants do not have the tools and the knowledge to determine the actual
278 bandwidth they are utilizing. If there is one single point of wastage in the current program, it
279 may that participants do not receive the bandwidth for which they have contracted and don't
280 know it, or, if the bandwidth is available, participants don't realize they are paying for more
281 bandwidth than they are using. Bandwidth usage can be easily monitored; what is more difficult
282 is for the ISP to provide Quality of Service (QoS) guarantees. The SLD should actively
283 encourage and educate program participants to routinely monitor their bandwidth.

284 Many results that on the surface look like WFA are actually the result of ever-more increasing
285 complexity in rules and processes. Simplifying and streamlining the program can result in
286 eliminating stumbling blocks before they ever arise to the level of WFA. The WFA mitigation
287 measures discussed further in these comments include Simplifying E-Rate Forms, Approval of
288 Recurring Priority One Services, Making Collection of Data Regarding Poverty Levels
289 Automatic, and Enhancing Administrative Capacity.

290

291 **1 Simplifying E-Rate Forms**

292 **i) Eliminate the Form 470**

293 The Form 470 could be eliminated and other specific procedures could be established to
294 assure competitive bidding of services. The purpose of the Form 470 is to promote
295 competition to minimize pre-discount prices. After six years, many applicants view the
296 Form 470 as an administrative burden and the 28-day posting window remains a common
297 reason for denying E-rate applications.

298 If the services list referred to in Paragraph 101 becomes a reality, another use for such a
299 list could be to make vendor-supplied and SLD-maintained information available to the
300 E-rate applicant community. Applicants could use the list as a vendor contact point. On
301 the Form 471, the applicant could indicate to the SLD that they had used a state or federal
302 master contract (and cite which contract was used), or that they had signed an agreement
303 with an SLD pre-qualified vendor while also listing at least 2 other vendors who were
304 invited to bid on the service (if such vendors were available). By replacing the Form 470
305 with a detailed vendor/services listing, a common reason for denial is removed and
306 competition is preserved.

307 **ii) Eliminate Block 3 on the Form 471**

308 The information collected in Block 3 of the Form 471 is a reporting burden to applicants
309 and does not contribute to the application process. Information entered here is often
310 misleading and frequently duplicative. To streamline the application forms and eliminate
311 the collection of unneeded data, the Block 3 of the Form 471, the Schools and Libraries
312 Universal Service Services Ordered and Certification Form can be eliminated.

313 **2 Approval of Recurring Priority One Services**

314 Requests for recurring telecommunications and Internet access services offer an opportunity
315 to streamline the SLD process by allowing for the approval of Priority One recurring services
316 based on a previous year approval of a Form 471 for the same services. The SLD reviews
317 nearly 40,000 applications per year. The same information that is reviewed and receives

318 approval in one year has to go under the same scrutiny in the next year. In the cases of POTS
319 and monthly Internet dial-up service, not only is there frequently no change in the
320 application, there is often no opportunity for the applicant to change service providers or
321 services. And yet these reviews of annual recurring service applications that are the same
322 from year to year are subject to the same rigor as more complex applications.

323 Applications for Priority One recurring services have a smaller risk for WFA than more
324 complex applications. The delay in funding commitments for this category of application
325 causes a financial burden to fund services for which E-rate funding commitments are not
326 received by the start of the funding year. This multiple reviewing process also applies to
327 contracts that are signed for a term of several years. Each year, the contract is re-scrutinized
328 as though it were undergoing an original approval.

329 The adoption of a process for approving "no-change" Priority One recurring services for
330 tariffed, month-to-month, and contracted services would allow for a streamlined application
331 process for applicants and a minimized review process for the SLD reviewers. The process
332 can be highly automated to increase the efficiency of the review process for this category of
333 applications. This proposal can apply to consortia as well as individual applicants. This
334 does not preclude competition because the originating approved Form 470 was used to select
335 a service provider. If an applicant changes service providers, the applicant would submit a
336 new application for E-rate discounts.

337 **3 Making Collection of Data Regarding Poverty Levels Automatic**

338 Among the most onerous tasks facing applicants every year is the collection of the data for
339 proving the poverty level of the student body, thus determining the discount level applicable
340 to each school. In cases where there is an active National School Lunch Program (NSLP), the
341 usual decision is to accept the NSLP numbers as they are, rather than face the heavy
342 administrative job of determining the number of children who actually do fit within the
343 parameters laid out by the program. If the NSLP applications were totally reliable in
344 determining numbers of students who are eligible, the universal drop-off of student numbers
345 as the grade levels rise would not be happening. The same families whose children attend the

elementary school with its traditionally large enrollment for NSLP provide the students who attend the secondary schools where numbers are always lower.

It is a fact well known to school officials that many families refuse to sign NSLP papers through pride, distaste for government prying, or language barrier. Those schools with heavy non-English speaking populations are consistently undercounted. In Alaska, bush communities do not return the NSLP forms in overwhelming numbers. Of even greater consequence to Alaskan schools, a large percentage of schools do not have a lunch program of any type and thus never have occasion to collect the NSLP data. These schools (and the libraries located in their communities) must rely on collecting information through a survey. All of the drawbacks of the NSLP forms and their collection arise again with the surveys. The data gathered for E-Rate frequently does not reflect the poverty level that all other indicators of poverty do.

Applicants not only must accept an additional administrative task in order to gain the data through alternative means, and must accept that it doesn't reflect the truth as they know it from daily contact with the community, they then have to defend their survey numbers in frequent contacts with PIA representatives who do not wish to deal with alternate numbers, but insist that the state verify these collected facts. How much better it would be if nationally recognized poverty data, whether collected by the federal census or by state mechanisms, could be substituted for the annual collection of NSLP data. The already collected information could be easily and automatically fed into the E-Rate application databases and would relieve the applicant from the collection as well as the Administrator from the grinding task of checking every enrollment and eligibility figure for every school in the country.

4 Enhancing Administrative Capacity

The question of balancing staffing levels and client satisfaction is very difficult. With a perceived increase in E-rate client dissatisfaction, the E-rate administrators should consider the following to address stated goals of streamlining the program and provide for enhanced program oversight:

374 ○ Increase the number and expertise of E-rate administrative staff to review and
375 approve applications. Since Program Integrity Assurance reviewers are typically
376 seasonal employees, one way to provide for continuity of staff expertise is to maintain a
377 team of full time reviewers to support applicants. These full time reviewers could
378 provide support to applicants from July through the Form 471 window, in addition to
379 application review duties.

380 ○ Review applications with a coordinated team that will review all aspects of each
381 application so that applicants are not repeatedly asked for the same information. Review
382 teams could review all the applications for an entity or types of applications (e.g.,
383 consortia).

384 ○ Permit SLD to correct operationally induced or caused errors without requiring
385 the applicant to file a burdensome and time-consuming appeals to correct the errors.

386 ○ Convene a task force composed of representatives of the applicant and service
387 provider communities to discuss and address operational issues and improvements. The
388 task force should meet annually and make program improvement suggestions to the FCC
389 and SLD.

390 ○ Adjust the Form 471 window to extend into mid-February of each year. This
391 would allow applicants additional time to prepare applications and work with vendors
392 after the winter holiday break.

393 ○ Increase the proficiency of applicants by offering enhanced training programs.
394 Training offerings could include regional training that serves several states; web-based
395 training that offers on demand information on current topics, and electronic e-mail lists
396 that provide the applicant community with up-to-date program information.

397 ○ Eliminate delays in issuing funding commitment decisions letters and appeals
398 decisions. Commitments for Priority One requests should be funded prior to or early in
399 the funding year. Appeal decisions should be made during the funding year. Immediate
400 real-time information about the status of pending funding requests and appeals should be

401 available to applicants.

402 ○ Provide financial assistance to states to support the increased role of state E-rate
403 coordinators in the administration of the E-rate program. Currently, state E-rate
404 coordinators serve as pro bono intermediaries for many applicants, work with E-rate staff
405 to coordinate and communicate with applicants, approve technology plans, and travel to
406 national E-rate meetings. The work of the state E-rate coordinators should be recognized
407 as part of the cost of administering the program.

408 ○ Require consultants to register and certify competence with the SLD. It is
409 difficult for applicants to determine whether a consultant is legitimately operating
410 separately from a service provider and it is impossible for the Administrator to determine
411 who is operating as a consultant. One way to make this distinction is to create a
412 mandatory registration system for consultants that utilize a Service Provider
413 Identification Number (SPIN) type identifier. Consultants would have to file either the
414 current Service Provider Information Form 498 or similar document, giving their contact
415 information. This could allow consultants to be recognized by the SLD, certify a
416 minimum level of consultant knowledge and expertise, and help applicants more clearly
417 understand the consultant and service provider relationships.

418

419 **SUMMARY**

420 The Second Report and Order offers an conundrum; how to "to simplify and streamline the
421 operation of our universal service mechanism for schools and libraries, while improving our
422 oversight over the support mechanism." Simplifying and streamlining while adding controls
423 seem to be opposing goals. The challenge is to serve applicants, ensuring that every school and
424 library in the U.S. receives the funding to which it is entitled. The E-rate program must be
425 preserved and improved to meet this requirement. As new rules are implemented, the FCC and
426 SLD must continually work to simplify the program and work to address the needs of applicants.
427 The program must not become more complex and burdensome for all applicants because of the
428 bad behavior of a few applicants and providers.

429

430 Respectfully submitted,

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