

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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

**COMMENTS OF SPRINT CORPORATION**

Sprint Corporation hereby respectfully submits its comments on the Further Notice of Proposed Rulemaking in the above-captioned proceeding (FCC 03-101, released April 30, 2003), pursuant to the Public Notice released June 25, 2003 (DA 03-2081). Sprint addresses the various debarment proposals included in the FNPRM; recommends required use of a worksheet as a means of limiting waste, fraud and abuse in cases in which the applicant chooses a discounted bill; and discusses below the viability of an on-line computerized eligible services list.

**I. Other Measures to Prevent Waste, Fraud and Abuse Can and Should Be Adopted.**

In the companion *Second Report and Order*, the Commission took some important initial steps at preventing waste, fraud and abuse in the e-rate program by adopting rules to debar persons convicted of criminal violations or held civilly liable for misconduct arising from participation in the program from further participation for three years or, where circumstances warrant, longer. The Commission now asks for comments on other measures that can be implemented to prevent waste, fraud and abuse in the e-rate program. Sprint comments below on various of the debarment proposals included in the FNPRM, and recommends use of a worksheet to ensure that a discounted bill accurately reflects the e-rate funding to which an applicant is entitled. Adoption of such additional

mechanisms will further reduce and prevent waste, fraud and abuse in the e-rate program and accordingly increase the funds available to continue to wire the nation's eligible schools and libraries on a cost-effective and legitimate basis.

**A. Debarment Proposals.**

The Commission has tentatively concluded that it should have the flexibility to debar willful or repeated violators of FCC rules, where such violations threaten to undermine program integrity and result in waste, fraud or abuse, from participating in the E-rate program, even if such violators have not been convicted or held civilly liable (paras. 104-105).<sup>1</sup> Sprint agrees in principle. Such violations potentially involve millions of E-rate dollars, and identifying and addressing such violations consume significant Commission and Administrator human resources as well. However, because it is difficult to anticipate all of the types of "willful or repeated" violations which might warrant debarment, and because Sprint lacks complete information on the types of violations identified (or suspected) to date, Sprint is hesitant to recommend a list of certain rules or procedures whose willful and repeated violations would lead to debarment proceedings (para. 107). Determining the appropriate disciplinary action may depend at least in part upon the nature and scope of the problem actually experienced. For example, violation of a seemingly minor rule or procedure could have significant implications for the health of the e-rate program as a whole depending upon the number

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<sup>1</sup> Consistent with section 312(f) of the Act, the Commission proposes to define "willful" as "the conscious and deliberate commission or omission of any act," and defines "repeated" as "the commission or omission of any act more than once, or if such commission or omission is continuous, for more than one day." See *FNPRM*, para. 105. However, inadvertent (non-willful) violations that occur more than once should not automatically be considered "repeated" violations that should be subject to harsh disciplinary actions.

of times such violations occur (once by many parties, many times by one party, many times by many parties).

In comments filed in an earlier phase of this proceeding, NEA, ISTE and CoSN jointly proposed adoption of a “sliding scale” of e-rate rule violations, ranging from Class 1 (least severe, with the mildest punishment such as a warning) to Class 5 (most severe, whose punishment would be a permanent ban from participation in the program).<sup>2</sup> Sprint supports this concept; it makes little sense for minor infractions by a first-time offender to be severely punished, or to subject serious repeat offenders with a mere slap on the wrist. Sprint recommends that classification of various infractions into each of these five classes be deferred until a sufficient body of evidence is available to reasonably institutionalize the appropriate classifications.

One approach for determining when to institute disciplinary proceedings would be based on violations in excess of some specified threshold. For example, in situations in which an application has been approved, and an apparent violation is subsequently identified, the violator would be subject to disciplinary (including potential debarment) proceedings if the violation involves more than 30% of the e-rate dollars approved for the violator.<sup>3</sup> This threshold approach is analogous to the 30% processing benchmark used when reviewing applications that include both eligible and ineligible services.<sup>4</sup> It is a

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<sup>2</sup> See Comments of National Education Association, International Society for Technology in Education, and Consortium for School Networking, filed April 5, 2002, pp. 27-29.

<sup>3</sup> Thus, if the violator is the applicant, the threshold would be based on the e-rate funds approved for that applicant for that funding year. If the violator is the service provider, the threshold would be based on the e-rate funds approved for payment to that service provider for that funding year. The Commission could adopt different thresholds for applicants than for service providers.

<sup>4</sup> This benchmark was codified as Section 54.504(c)(1) of the Rules in the companion *Second Report and Order* in this docket.

quantitative measure which is relatively easy to administer, and which avoids the need to determine an “appropriate” dollar threshold.<sup>5</sup>

The Commission has proposed (para. 109) that persons subject to debarment proceedings for willful or repeated violations be given the reasons for the proposed debarment; an explanation of the applicable debarment procedures; a description of the potential effect of debarment; and an opportunity to respond within 30 days after the notice is published. Sprint supports these debarment notification procedures, and further recommends that the notice of proposed debarment be sent to the accused party by certified mail; that the Commission commit to rendering a decision within a specified period of time, such as 60 days after the affected person has responded to (and presumably attempted to rebut) the notice; and that provisions for the filing of a petition for reconsideration of a debarment decision be adopted. While Sprint recognizes that the Commission’s resources are already stretched thin, relatively expeditious action by the Commission and a reconsideration mechanism are procedural necessities and are also desirable as a matter of fairness to the affected party.

The Commission also seeks comment on whether it should permit applicants whose service provider has been debarred to change their service provider before their application has been approved or after the last date for invoices (para. 113). Sprint believes that applicants should be allowed to do so; otherwise, they may be placed in the untenable position of having no service provider, and thus an invalid application, through no fault of their own. Although applicants presumably understand that submission of a

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<sup>5</sup> Too high a dollar amount, for example, might allow hundreds of potential violations involving relatively low dollar amounts – but which cumulatively can be a significant drain on the e-rate program – to slip under the radar. On the other hand, too low a dollar amount might lead to disciplinary proceedings or debarment review for trivial violations.

Form 471 application is no guarantee that such application will be approved, as a practical matter, Sprint believes that many schools and libraries make budgeting decisions up-front assuming that at least some of their e-rate application will be granted. Schools and libraries are already facing increasingly stringent budgets, and to be excluded from the e-rate process because their service provider has been debarred could present a serious hardship. It is not clear how many applications would be affected by the scenario at issue here. However, in order to reduce the burden on SLD administrators who would have to track service provider changes, the applicant should be required to append a letter to their applications explaining the reason for the SPIN change request so that SLD staff does not have to backtrack to try to determine the reason for the request. If adopted, the rule should explicitly limit such SPIN change requests to situations in which the service provider has been debarred.

As discussed above, Sprint agrees that the Commission should be able to debar persons whose rule violations result in waste, fraud and abuse of e-rate funds. However, where violations lead to disbarment of an applicant, and presumably disgorgement of improperly disbursed e-rate funds, an amendment to COMAD rules is critically important. Currently, the SLD recovers erroneously disbursed funds from the service provider, not the applicant, no matter what the cause of the erroneous disbursement. If an applicant commits a violation so serious as to warrant disbarment from the e-rate program, the Commission should clarify that erroneously disbursed funds to that applicant are to be recovered directly from that applicant, with no involvement by the

service provider.<sup>6</sup> It is manifestly unreasonable to hold the service provider responsible for repayment in such situations; even if the service provider is ultimately able to recover some or all of the erroneously disbursed funds from the debarred applicant (generally unlikely), the service provider will still have been forced to incur the costs of investigating the matter and recovering the funds.

**B. Use of A Worksheet Where Applicant Chooses Discounted Billing.**

In the companion *Second Report and Order*, the Commission concluded that service providers must give applicants the choice each funding year either to pay the discounted price or to pay the full price and then receive reimbursement through the BEAR process (para. 44, codified in new section 54.414(a) of the Commission's Rules). Because discounted invoices currently are not widely used, Sprint believes that some additional mechanisms must be established to prevent waste, fraud and abuse in cases where the applicant chooses this billing mechanism. Specifically, Sprint recommends that the Commission sanction use of a worksheet which contains the information needed to properly render a discounted bill, including applicant name, billed entity number, funding year, fund commitment cap, FRN, approved discount percentage; and rate information relating the specific services being provided (a copy of a sample worksheet is attached). Sprint further recommends that this worksheet be submitted as part of the applicant's Form 471, and should replace the Block 5, item 21 information request. Unless the relevant, correct information is provided on a timely basis, the applicant may be inadvertently billed for e-rate services and equipment at levels either above or below

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<sup>6</sup> Indeed, the Commission should reconsider the COMAD rules generally, so that the service provider is responsible for returning erroneously disbursed funds only when the error occurred as the result of actions of the service provider itself.

the amount to which the applicant is entitled. The worksheet is not time-consuming to complete, and is a significant tool for helping to ensure correct billing.

**II. The Commission Should Refrain from Implementing an Online Computerized List of Eligible Telecommunications and Internet Access Services or “Safe Harbor” Telecommunications Services Providers.**

The Commission has sought comment on “the feasibility of an online eligible services list with brand name products in the telecommunications services and Internet access categories,” and whether it should create “a safe harbor telecommunications services provider list” (para. 101). Sprint opposes both of these proposals for financial, administrative, and competitive reasons.

In order for an online eligible services list to be useful, it must be accurate, comprehensive and manageable. Given the thousands of service providers, the potentially hundreds or thousands of service offerings and pieces of equipment offered by each service provider, and the fact that many of those services and equipment are only conditionally eligible for e-rate funding, Sprint is not at all confident that the proposed online list would accurately capture all of the information apparently envisioned by proponents of the database. Moreover, given the rate of technological change in the telecommunications and Internet access sectors, this online database would have to be updated constantly. Even assuming SLD has the resources available for such a labor-intensive task, it is not clear how that staff would ensure that it has obtained all of the necessary information either initially or on an on-going basis. If the database is to be truly comprehensive, it will likely be so large as to be unwieldy and thus not useful to applicants, thus defeating the very purpose of the database. Perhaps even more serious, applicants who might rely upon the proposed database might not realize the conditionally

eligible nature of some of the items in the database,<sup>7</sup> and their e-rate funding (and, potentially, their continued ability to participate in the e-rate program) could be jeopardized because of misplaced reliance upon the database or an incorrect understanding of the information contained in the database.

The “safe harbor” nature of the service/equipment and service provider lists also raises serious competitive concerns. Sprint is concerned that some applicants may assume (incorrectly)<sup>8</sup> that only those services and providers on the list are eligible, or that some applicants may choose services and providers on the list simply because it involves less effort to select from a “pre-approved” list than it is to determine whether a non-included service or provider is in fact eligible. In such situations, service providers and vendors whose products meet SLD eligibility guidelines – but are not included on the list for whatever reason – would be placed at a significant competitive disadvantage in the application process. It is also not clear whether applications that involve only “safe harbor” services, equipment and service providers will be given priority or less scrutiny in the funding approval process, than are applications that include items not contained in the online eligibility list.

Finally, Sprint would note that no cost estimates for the design and maintenance of the telecommunications services and Internet access eligibility databases have been provided. Given the cap on total e-rate funding, and the renewed emphasis on ensuring that available e-rate dollars are used to fund eligible school and library projects, the Commission must be very cautious about committing to fund unspecified amounts for

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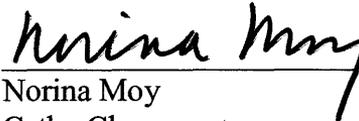
<sup>7</sup> Some services or equipment are eligible only if used in a certain way, and some services are only partly eligible because they include both eligible and ineligible components.

<sup>8</sup> Obviously, products and services not on the list that otherwise meet all SLD eligibility guidelines would still be eligible for e-rate funding support.

databases which present such serious administrative, practical and competitive challenges. If, despite the drawbacks described above, the Commission decides to move forward with the telecommunications services and Internet access eligibility databases, it should at a minimum await the results of the internal connections database project before proceeding.<sup>9</sup> If that project proves to be useful to applicants and administrators, and can be implemented on a cost-effective basis, then the Commission might consider expanding the project. If the internal connections project turns out to be ineffective or excessively costly, it would be throwing good money after bad to expand the project to include telecommunications services and Internet access.

Respectfully submitted,

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<sup>9</sup> In the companion *Second Report and Order* (para. 33), the Commission has approved a pilot project to create an online computerized eligibility list for internal connections. This project is to be implemented by Funding Year 2005.



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was sent by electronic mail on this the 21<sup>st</sup> day of July, 2003 to the below-listed parties.

  
Christine Jackson

July 21, 2003

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