

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of:

))
Schools and Libraries Universal Service)
Support Mechanism - Third Report and) **CC Docket No. 02-6**
Order and Notice of Proposed Rule Making)
)

Comments from the Wisconsin Department of Public Instruction
(Filed March 10, 2004)

The Wisconsin Department of Public Instruction (department) appreciates this opportunity to comment on this Order which addresses several important E-rate issues. The department is a strong supporter of the E-rate program, and we have commented on many FCC Orders related to this program, including the first FCC Order (CC Docket No. 96-45). Our staff are active in the State E-rate Coordinators' Alliance (SECA) and the American Library Association's E-rate Task Force. Our comments below emphasize several specific issues we believe are of particular importance and, in general, we support the more extensive comments filed by SECA. Overall, the prevailing theme in our response is to simplify and streamline the program in all aspects.

A. Changes to the Discount Matrix

It appears that the vast majority of questionable applications and the few cases of outright fraud are in the 90% discount band for requests involving internal connections (Priority 2). While the FCC's recent decision to allow funding for internal connections no more than twice every five years will be helpful, we also agree with several other organizations (e.g., SECA) that some discounts in the matrix should still be reduced. Our specific recommendation is that discounts for Priority 1 services remain the same, but that the discount for Priority 2 services be reduced to a 70% maximum. In other words, all applicants now in the 70-90% discount bands for Priority 2

services would be pegged at 70%. We believe that lowering the maximum will not just help reduce waste and fraud in the program but will give other applicants a chance to finally get discounts for internal connections. For example, in the 2003 E-rate funding year, 84% of Wisconsin applicants were at a discount level below 70%. Thus, in most program years a large majority of our applicants have been prevented from even qualifying for discounts on internal connections. Those applicants in the 90% discount band have now had seven years in which to upgrade their internal networking infrastructure. It is time to allow applicants in the lower discount ranges a chance to get internal connection discounts.

Currently, libraries must determine their discount using an average of all the schools in the community's school district. But school districts have the option of calculating discounts on a school-by-school basis. This results in libraries receiving fewer discounts than schools or possibly being disenfranchised entirely from receiving discounts for Priority 2 services. To address this inequity, the department proposes that library branch locations have the option to use the lunch discount figure from their nearest public elementary school. This simple step could be of considerable help in addressing this inequity.

B. Competitive Bidding Process

In paragraph #6 the Commission says, "We seek comment on whether this [470] process continues to suit the needs of the schools and libraries program, or if a different application process would better suit the program's needs." Let us be blunt, competitive bidding, envisioned by the Form 470 process, is fiction for most applicants. Very few ever get genuine responses from their 470 posting. Instead of resulting in real competitive bids, the 470 has turned into a "gottcha" form that PIA uses to harass or outright deny legitimate applicants who make honest mistakes in trying to complete all the questions asked on the form. The Wisconsin Department of Public Instruction proposes the following options for the Commission to consider. These are not all mutually exclusive.

(1) Radically reduce the 470: The 470 should be reduced to a single page for (a) school/library contact information, (b) check boxes for the service(s) requested (telecommunications, Internet, internal connections) and (c), at the applicants discretion, a brief narrative describing the requested services, unusual conditions, etc. Considering that the vast majority of applicants never get any responses to their 470, there is no need to ask for the voluminous data now required on the form. Our proposed level of information should suffice, with the understanding that the school/library will provide any further information in the remote chance it is actually contacted by a vendor.

(2) Eliminate the 470 for Plain Old Telephone Service (POTS): For POTS, which includes local/long distance services, consider a radical restructuring of the discounts. Many small schools and libraries are intimidated by the complexity of the E-rate program and its detailed application process, even for something as straightforward as POTS. (In 2003 only 19% of Wisconsin's 404 public libraries applied for discounts on POTS services.) And in most rural areas there is no competitive exchange carrier. From a customer's perspective, USAC's other two programs, the High Cost and Low Income programs, are not nearly so complex as the E-rate program. If USAC's two other programs can provide discounts to millions of customers with little or no action needed by customers, why can't a similar process be applied to thousands of schools and libraries to get discounts on their telephone bills? With the E-rate POTS discounts modeled more closely on these other USAC programs, there would be no applicant waste, fraud, or abuse and with a much more streamlined and rational application process, more schools and libraries would apply too. We challenge the FCC to find a way to make something as simple as POTS simple for applicants to apply for too.

(3) Extend Evergreen 470: The FCC now has an evergreen 470 process for contracted services. That is, there is only need to file a single 470 for a multiyear contract. We request that the Commission consider extending this to any Priority 1 service. If the FCC is concerned about the perpetuity of this, it could establish a timeline to say that a 470 filed for any noncontractual Priority 1 services will be valid for three years. This will certainly help the thousands of schools and libraries that currently need to apply every single year for basic services like voice telephony, data circuits, and Internet access. In many instances there is no local competition for

such services, and filing a 470 each year is a waste of time for both the applicant and the PIA reviewer. A more focused suggestion in this area is to treat tariffed services like contracted service. After all, tariffed services are already regulated. In such a scenario only one 470 would need to be filed for multiple year requests for tariffed services.

(4) *Evergreen 471*: All applicants still need to file a 471 every year for every service. For some services, like those covered under contract, this is a waste of the applicants' and the PIA reviewer's time. When there are no substantive changes from year to year, there should be no need to file a 471 each year. At a minimum, even if the Commission wants to retain the annual 471 filing requirement, there should be some type of expedited review process. For example, there could be a check box on the 471 that states, "These *same services* were applied for [insert establishing year] and the application was funded." This could be very helpful to PIA reviewers. We have been told that each year reviewers scrutinize an application as if it was being filed for the first time. When services have been requested and funded previously, scrutinizing such applications as if they were being filed for the first time is a waste of PIA reviewer resources.

(5) *State and local procurement regulations*: Applicants procure non-E-rate services that far exceed the cost of their E-rate discounts. Such procurements fall under state or local procurement regulations. Most states have procurement processes set by statute or administrative code. And most local schools districts and libraries have similar procurement policies. The FCC should rely more on these state/local procurement regulations instead of on the 470 application process.

In relation to local procurement regulations, the SLD now has a state master contract process to address the fact that many state government procurement practices do not parallel the E-rate application timeline. It would be very helpful if the flexibility of state master contracts was extended to local schools and libraries. They too often have long procurement cycles that are not the same as the E-rate timeframe. Allowing such flexibility at the local level can both enhance the competitive bidding process and make it easier for applicants to apply.

(6) *Establish a discount threshold:* For Priority 1 services, the FCC should consider setting a discount threshold. Applicants falling below the threshold need not file a Form 470. In Wisconsin, a discount threshold of \$30,000 for telecommunication services and \$15,000 for Internet services would exempt about 75% of our school districts and libraries. Such a threshold amount could be coupled with an evergreen 470. For example, if the applicant's telecommunication and Internet discounts fall below the thresholds, a 470 would only need to be filed every three years. If the FCC believes the above amounts are too high, reduce them accordingly, although the department thinks that a figure less than \$10,000 will help a very limited number of applicants.

The department does not believe that setting "bright-line" rules will be of much value, since the costs for services vary tremendously, not just from one state to another but from one area of a state to another. For regulated services like POTS, the FCC can feel some confidence that prices are being offered at least at a rate not exceeding the public tariffed cost.

D. Rural-Urban Definition

The ideal method for identifying rural and urban areas should be both precise and straightforward to apply. The department believes that the current method of identifying rural and urban areas by county, and making some exceptions using the Goldsmith modification, could be improved by making the school district the unit identified. This improves accuracy because school districts are often more numerous than counties, thus making the unit of measure more fine-grained. In Wisconsin, for example, there are 72 counties but 426 school districts. It also simplifies the application process for school districts, whose discounts make up almost 80% of the total funding (see <http://www.sl.universalservice.org/funding/y2003/national.asp>). The library discount would follow the school discount, as it does currently.

Of the identification methods mentioned in the NPRM, we believe that the definition of rural as "non-urbanized areas, as specified by the Census Bureau" would meet the above criteria and be a reasonable mechanism for identifying the rural/urban status of applicants.

The department further suggests that because these data are available through the US Census Bureau, the SLD identify the rural/urban status of each nonconsortium entity and not ask for this information from applicants. While this work “up front” would be significant, it would save the time that PIA reviewers currently use to verify this information and reduce the burden on applicants.

D. Definitions of Internet Access

We are pleased the Commission wants to review the definition of what constitutes eligible Internet access. Current eligibility for Internet access in the schools and libraries program is only for “basic conduit access to the Internet.” For rural health care the FCC has rightly concluded that this limited definition would “significantly undercut the utility of providing support for Internet access to rural health care.” This limited definition in the schools and libraries program is also having a negative impact on the delivery of education services to our schools. As more information is being delivered over an IP-based infrastructure, it is important that E-rate eligible Internet uses reflect this change. For example, Wisconsin is in the process of moving from a proprietary and expensive non-IP video network to an IP-based network to provide interactive video to our education community and libraries. In lengthy conversations with SLD staff in June 2003, they made it clear that many of the services needed for managing a robust IP-based video Internet network would *not* be eligible as Internet services, because such video management was viewed as not fitting the narrow definition of “basic conduit access to the Internet.” However, we were told that such services would be eligible in the telecommunications category of the E-rate. We believe this directly contradicts the language in section 254 of the Telecommunications Act that states, “The Commission shall establish competitively neutral rules (A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services.” Furthermore, we find it more than a little ironic that an Internet provider, whose core business is managing IP packets, cannot provide such management for video packets, but a common carrier can provide such service. Therefore, in the interests of competitive neutrality, and to more accurately reflect current uses of the

Internet, the definition of Internet for the E-rate should be changed so that such services are eligible for discounts if provided by either a non-common carrier ISP or a common carrier ISP.

E. Wide Area Networks

We do not support the Commission's consideration of a regulation that would limit recipients from receiving discounts for service provider up-front capital investments that exceed 25 percent of the funding request. We simply think this is too arbitrary and may inhibit the development of more robust networks needed, for example, to transport full motion video. Furthermore, prorating such investments over \$500,000, as established in the *Brooklyn* decision, to a minimum of five years places the applicant in too much funding uncertainty. We support the current three-year period.

On the dark fiber issue, there are instances in which the leasing of dark fiber, along with leasing other related services, is the most cost efficient method of procuring a given service. In short, it makes no sense to deny funding for dark fiber when the alternative will cost more.

G. Other Actions to Reduce Waste, Fraud and Abuse (includes Technology Plans)

Technology Plans:

The Commission asks whether even more demands should be placed on applicants in the technology plan area (e.g., codifying its guidelines, making applicants analyze lease vs. purchase, etc.). Our answer is: Absolutely not.

The Commission notes, "We also seek comment on whether the Commission's technology planning requirements could be strengthened through additional or different qualifications for entities, including states, which approve technology plans." Again, our answer is no. At this time states get *no* fiscal support for all the E-rate support they offer their schools and libraries,

including technology plan certification. We are very concerned that this unfunded mandate will become even more burdensome, and that state education and library agencies will be held liable in some manner for plans that pass our review but don't pass review of the FCC/SLD.

The technology plan can be used to identify if the services ordered are consistent with the general educational objectives put forth in the technology plan. In doing this every effort should be made to coordinate the technology planning requirements of the federal government by working with the U.S. Department of Education. The Wisconsin Department of Public Instruction recommends that the SLD reinstate and update the policy, still on their Website, which states; "A school, school district, or education service agency that has developed a plan approved under a Technology Literacy Challenge Fund initiative, has an approved plan for purposes of the Universal Service Program."

<http://www.sl.universalservice.org/apply/step2.asp>

Many technology plans have not traditionally included telephone service, including Centrex. The service has been considered a "given" like heat or electricity. It seems quite obvious that teachers need to communicate with each other, with parents, with community members, perhaps even with the state department of education or the SLD. Similarly, the Internet is now a mainstream form of communication. The department does not believe that examining the "educational purpose" of most Priority 1 services in the technology plan is a good use of time. No applicant should be denied E-rate discounts because their plan did not specifically reference all requested Priority 1 services, like Centrex services.

If the Commission wants more specific information about school district budgets, we suggest that the technology plan is not the appropriate source. The technology planning process timeline is often so far in advance of implementation that budgets within the plans are projections at best. Consider a district whose technology plan expires in December 2004. By the FCC's new plan interpretation, which is in some sense a retroactive requirement compared to previous policy, the district would need to have their plan written by December 2003 and the plan would be approved until 2007. Using budget information created in 2003 for E-rate purposes in 2006-7 is of no use and an exercise in financial fantasy.

Instead, if the Commission is interested in further information about budgets, the school district budgeting process and timeline should be considered. Typically, budgets are prepared early in the calendar year with a target date of June 30 for approval. In comparing the E-rate timeline to the budgeting timeline, the time and venue to ask for budgeting information from school district is on the Form 486. If the commission is interested in whether the school selected the most cost effective solution, information on the Form 471 examining which vendors were selected should be considered.

The department believes that technology plans are extremely important. We provide many resources to schools and libraries to create quality plans. The department believes every school and library needs to be covered by a technology plan, and library consortia plans are required under state statute. The department, however, does not believe that the recent changes in how the plans are being used in the E-rate process are appropriate.

Support for State E-rate Coordination

Whether it is apparent or not, the FCC's first lines of defense to help prevent waste, fraud, and abuse is the E-rate support offered to applicants by state education and library agencies. Our department estimates that staff spend \$90,000 annually on E-rate related services to schools and libraries in Wisconsin. *We know of no other federal program that relies so heavily on state education and library agencies but allocates \$0.00 for all their work.* At a minimum, we ask that the FCC direct USAC to compensate E-rate coordinators for expenses related to attending the annual Train-the-Trainers meeting. With many states having extreme budget problems, we feel this minimal level of compensation is wholly justified. Not doing this opens the FCC to charges of unequal treatment. For example, there are policy statements and E-rate regulatory interpretations made at this annual meeting that are not found in writing. States not able to attend are not privy to this information. Knowledge is power, and not having this knowledge does not help states in their attempts to assist applicants with this complex program.

Conclusion

The Wisconsin Department of Public Instruction appreciates this opportunity to offer its suggestions to simplify and streamline the E-rate program. As the Commission considers all the comments the department asks it to keep in mind that the vast majority of applicants do not engage in any program waste, fraud or abuse. Any new regulations to address the few applicants that do engage in questionable activities should not impose new burdens on all other applicants.

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