

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 issues raised in the *Second Further Notice of Proposed Rulemaking* in the above-captioned proceeding (FCC 03-323, released December 23, 2003). In the *Second FNPRM*, the Commission asks whether the discount matrix should be revised; whether to alter the definition of “Internet access”; whether to modify its policies regarding funding of Wide Area Networks (WANs); and whether the process for recovering funds disbursed in error should be revised. Sprint addresses each of these issues below.

1. The Maximum Discount for Internal Connections Should Be Lowered.

The Commission has asked (*Second FNPRM*, para. 59) whether the current discount matrix, which provides for discounts of between 20-90% off the pre-discount price of eligible services, should be adjusted. Sprint agrees that revising the current discount matrix would improve the effectiveness of the E-rate program, and we recommend lowering the maximum discount on internal connection installation requests to 80% beginning in Funding Year 2005.¹ We are concerned that because some schools

¹ However, Sprint recommends that the 90% maximum discount for *maintenance* of internal connections systems be retained. It makes little sense to install equipment and

currently are required to provide funding for only 10% of their service requests, they have little incentive to select the most cost-effective configuration. Increasing the amount of the internal connections installation bill for which the applicant is ultimately responsible will encourage applicants to consider their options more carefully, and to select the configuration which best meets their needs given their available resources, since they will have more at stake financially in the decision.

Reducing the maximum discount also will free up more internal connections funds for schools other than the poorest in the nation. To date, very few schools with a discount percentage of less than 70% have ever received internal connections funding.² It is likely that some mid-level schools (in the 40-60% discount range) have been caught in the middle – too “rich” to qualify for E-rate internal connections (or other federal program) funding, but too “poor” to upgrade their internal connections infrastructure on their own. In many cases, these mid-level schools then are unable to take advantage of certain telecom and Internet Access services because they lack the internal connections infrastructure to use such services effectively.

Sprint is aware that some of the nation’s poorest schools and libraries may experience hardship if the top discount percentage on internal connections installations is lowered from 90 to 80%. However, the E-rate program is now in its seventh year of operation, and one might reasonably expect that many (perhaps most) of the neediest

facilities, but then have those facilities (and any services using those facilities) operate below par because of lack of maintenance.

² An analysis of Sprint Local’s E-rate customers shows that approximately two-thirds had discount percentages of below 70%, and thus would not have qualified for internal connections funding in most years. The cut-off point was as high as 86% in one funding year.

schools and libraries have already received funding to wire their buildings and otherwise prepare their basic infrastructure to accommodate up-to-date telecommunications and Internet access services, particularly since the schools with the highest discount percentages have been given priority over schools with discount percentages that are below 90% but above the cut-off point.³ Providing mid-level schools and libraries with a reasonable opportunity to obtain Internal Connections funding will help to expand the benefits of the E-rate program to a greater number of applicants.

2. Internet Access Definition

Under current E-rate rules, Internet access support is provided only for “basic conduit access to the Internet;” transmissions that involve “the generation or alteration of the content of information” are specifically excluded.⁴ In the *Rural Health Care* proceeding, the Commission recently adopted an expanded definition of “eligible Internet access” as “an information service that enables rural health care providers to post their own data, interact with stored data, generate new data, or communicate over the World Wide Web.”⁵ In the *Second FNPRM* (para. 70), the Commission asks whether the definition of Internet access should be similarly expanded for E-rate purposes.

³ For example, if the funding cut-off point for internal connections is 70% in any given funding year, schools with a 90% discount will receive funding before a school with an 80% discount level.

⁴ *Second FNPRM*, para. 70, citing *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 9008-9009 (para. 436) (1997) and Section 54.5 of the Rules (47 C.F.R. Section 54.5).

⁵ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, *Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking*, FCC 03-288 released November 17, 2003, para. 25.

Sprint opposes expanding the definition of Internet access for the E-rate program. Definitional conformity in the rural health care and E-rate programs is neither mandatory nor even desirable, because the circumstances surrounding the E-rate and rural health care programs are very different. For example, demand for funding under the rural health care program is well under the cap; therefore, broadening the definition of Internet access might be considered an acceptable means of stimulating demand for this program. The E-rate program, in contrast, is experiencing demand that is billions of dollars in excess of the available funding cap, and there is no need to expand the definition of Internet access in order to stimulate additional demand. Indeed, if the definition of Internet access is expanded as suggested here, such action will necessarily reduce the funding available for other services that are unambiguously eligible under the E-rate program.

Moreover, as has become increasingly clear over the past year, new technologies have dramatically expanded the use of the Internet and Internet protocols to provide many different types of services, both voice and information. In most cases, it is impossible to distinguish between “voice,” “data,” or “information” bits, and Sprint is concerned that the proposed new definition will further blur the line between pure Internet access services and telecommunications services. This distinction is of critical importance, as not all providers of Internet access services are eligible to provide telecommunications services under the E-rate program; as specified in Section 54.517 of the Rules, non-telecommunications carriers may provide Internet access and internal connection installation and maintenance, but may not provide telecommunications services. To the extent that non-“eligible telecommunications providers” are able to take advantage of a broadened definition of Internet access to provide telecommunications

services through the Internet access bucket (either deliberately or on an “ancillary” -- and largely undetectable -- basis), the E-rate program will surely suffer. Common carriers, which are eligible to provide service under the telecommunications bucket, are subject to a slew of regulatory obligations from which non-“eligible telecommunications providers” are exempt. Thus, any action which facilitates the leakage of telecommunication services through the Internet access bucket presents serious competitive and policy issues.

3. Wide Area Networks

The Commission asks (*Second FNPRM*, para. 74) whether “expenditures that subsidize infrastructure investment, either on-premises or off-premises, may properly be viewed as Priority One services.” In particular, the Commission asks (1) whether it should provide funding where the upfront capital investments exceed 25% of the funding request for the service in question, and (2) whether discounts for any service provider charges for capital investment of \$500,000 or more must be prorated over a period of at least five years.

Sprint agrees that E-rate funds should not be used to subsidize the build-out of a service provider’s network. Such subsidies raise serious competitive issues, and are not an appropriate use of federal E-rate funds. Sprint therefore recommends that Priority One funding should be limited to 25% of the total funding request, to a maximum of \$500,000, with the funding pro-rated over 5 years. Based on anecdotal evidence, it appears that Priority One WAN requests have accounted for an increasing percentage of total Priority One requests and commitments over the past several funding years. By limiting funding for the relatively costly end-to-end Priority One configurations, the proposed 25%/\$500,000 over 5 years capital investment funding cap will, as the

Commission correctly points out (*Second FNPRM*, para. 74), help to “spread funding for Priority One services more evenly across all recipients....”

The Commission also asks for comment on the provision of E-rate funding for unlit (dark) fiber (*Second FNPRM*, para. 77). Sprint does not oppose provision of Priority One funding for leased optical equipment used to light dark fiber. However, the Commission must specify precisely what is necessary to light the fiber so that is actually usable for handling telecommunications or Internet access services. For example, attaching a \$150.00 copper-to-fiber converter (a “GBIC”) at one end of a strand of dark fiber will *not* render that fiber usable for telecommunications or Internet access services. Lighting fiber also requires investment in modulating equipment (a switch or router), as well as appropriate monitoring and maintenance services. Providing Priority One funding for dark fiber with only a GBIC added on is wasteful, as such fiber will not be capable of handling Priority One services.

Finally, Sprint recognizes that rule changes which are adopted on the basis of a comprehensive public record, and with appropriate public notice, are allowable and are presumably in the public interest. However, the Commission should be aware that rule changes can, if not carefully crafted, have a deleterious impact on existing E-rate customers who entered into multi-year contracts on the basis of the rules in effect at the time the contract was signed. For example, if the Commission were to adopt a 5-year pay-out period, this rule should apply prospectively only; customers and service providers who contracted for an eligible Priority One WAN configuration under the currently effective 3-year schedule should continue to be subject to the 3-year period, not a 5-year period, for the remaining balance of the contract term. Grandfathering existing

customers in multi-year contracts that are affected by rule changes or by unexpected changes to the eligible services list is a reasonable and appropriate approach which will help to minimize harm to the applicants.

4. Recovery of Funds Issues

Under current rules, E-rate funds that are disbursed in error are recovered from the service provider, irrespective of whether the error occurred on the part of the service provider, the applicant, or the E-rate administrator. In the *Second FNPRM* (para. 81), the Commission has requested comment on what procedures are needed to govern the recovery of E-rate funds that have been committed or disbursed (1) in violation of statutory requirements; (2) in violation of programmatic requirements; or (3) as the result of waste, fraud or abuse.

Sprint offers the following comments regarding the Commission's commitment adjustment (COMAD) process:

First, the COMAD process should be changed such that E-rate funds disbursed in error as the result of actions by either the applicant or the program administrator should be recovered directly from the applicant, without the involvement of the service provider. In these instances, it is the applicant that caused or benefited from the erroneous disbursement, and there is no rational basis for unnecessarily inserting the service provider into an awkward and often expensive process.⁶ Under existing rules, where the applicant lacks the resources to repay erroneously disbursed E-rate funds, or refuses for whatever reason to do so, financial liability for the debt is laid at the doorstep of the

⁶ In fact, by the time a COMAD request is issued, the applicant may no longer even be a customer of the service provider that is served with the request.

service provider, even if the service provider had no responsibility for or control over the error that occurred – hardly a reasonable outcome.

There is no basis for suggesting that the Commission somehow lacks authority or jurisdiction over schools and libraries that participate in the federal E-rate program. If the Commission believes it can impose administrative requirements on applicants, audit applicants to assess their compliance with program rules, or punish applicant violators by fining them or restricting their participation in the E-rate program, it is difficult to understand why the Commission (or its agent, USAC) would not also have authority to recover erroneously disbursed funds directly from applicants. Indeed, in the instant proceeding, the Commission even asks (para. 84) whether it should implement procedures or adopt rules to prevent payment of any future E-rate discounts to a “beneficiary” (which may be either an applicant or a service provider) “until there was full satisfaction of [an] outstanding commitment adjustment” – a proposal which seems to imply that the Commission would hold applicants financially responsible for COMADs that were the result of actions within their control.⁷

Sprint agrees that E-rate funds disbursed in error as the result of actions by the service provider should continue to be recovered from the service provider. This is consistent with Sprint’s recommendation that financial liability for COMAD repayments should be assigned to the party responsible for the violation.

⁷ Sprint does not support this proposal as regards service providers, to the extent that they continue to be held liable for COMADs that result from errors/violations on the part of the applicant or the program administrator. Sprint also does not support this proposal as regards COMADs under appeal; the appeal process can last for months or even years, and it is simply not fair to defer decisions on all subsequent funding requests pending a final decision on a COMAD.

Second, Sprint agrees that the Commission should waive the recovery of funds for *de minimis* errors which are the result of minor, non-statutory, violations that do not affect program integrity (*Second FNPRM*, para. 82). The Commission has adopted a *de minimis* exception in other venues,⁸ and it would seem appropriate to do so in the context of the E-rate program as well. Sprint recommends that the *de minimis* standard used in the instant context be based on a cost/benefit analysis rather than on a percentage of disbursement basis: recovery of erroneously disbursed funds should be waived if the administrative cost of recovering those funds exceeds the amount to be recovered. However, Sprint does agree that “a pattern of systematic noncompliance with Commission rules warrants recovery of the full amount disbursed, irrespective of the dollars associated with specific audit findings” (*Second FNPRM*, para. 82), since the cumulative effect of systematic noncompliance may well be more than a *de minimis* amount.

Third, post-disbursement compliance and eligibility audits of E-rate disbursements should be based on the rules in effect at the time the disbursements were made, not the rules in effect at the time of the audit. For example, if Service X was eligible in Funding Year 2000, but was deemed ineligible in Funding Year 2001, no COMAD should be issued for E-rate monies (properly) received for Service X in Funding Year 2000. Although it is unclear to Sprint whether this has been a significant

⁸ For example, pursuant to Section 54.708 of the rules, contributors need not remit payments to the universal service fund if their contribution in any given year is less than \$10,000. The contribution base for the schools and libraries and rural health care funds for the fourth quarter of 1999 (this rule became effective in mid-1999), was \$50.101 billion. Obviously, the \$10,000 figure cannot be used in isolation, and Sprint certainly does not suggest that E-rate COMADs of up to \$10,000 be waived.

issue in any of the audits performed to date, the likelihood that incorrect standards may be applied is not negligible, given the complexity of the eligibility requirements and the frequency with which the eligibility lists are changed.

Respectfully submitted,

SPRINT CORPORATION

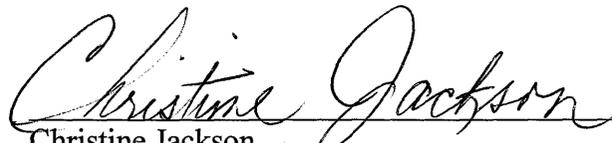


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was filed by electronic mail on this the 11th day of March, 2004 to the below-listed parties.


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March 11, 2004

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