

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**

Sprint Corporation hereby respectfully submits its reply to comments filed in response to the *Second Further Notice of Proposed Rulemaking* in the above-captioned proceeding (FCC 03-323, released December 23, 2003). As discussed below, there is widespread support among commenting parties for immediate reform of the commitment adjustment (“COMAD”) process, and for revising the existing discount matrix structure. Sprint also replies to comments relating to the proposed expansion of the definition of “Internet access,” and to the elimination of the Form 470.

**1. The COMAD Process Must Be Reformed.**

Under current Commission policy, any E-rate funds that are erroneously disbursed are recovered from the service provider, even if the error occurred on the part of the applicant or the fund administrator. As pointed out by numerous commenting parties, this policy is extremely inequitable, since it holds service providers responsible for actions beyond their knowledge and control.<sup>1</sup> While service providers generally agree (*id.*) that they should be responsible for repayment of erroneous disbursements resulting from their own actions, there is no rational basis for imposing repayment obligations

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<sup>1</sup> See, e.g., Sprint, p. 7; BellSouth, p. 4; Cox, p. 8; E-rate Central, p. 6; NTCA, p. 4; Qwest, p. 9; SBC, p. 1; Verizon, p. 2.

upon service providers for errors made by applicants or by SLD. The Commission should be aware that service providers' ability to recover COMAD funds from applicants (even in cases of applicant error) is extremely limited – even if the school or library acknowledges responsibility for the error (not always the case), in many if not most cases, they do not have surplus funds available to repay the service provider. In the many cases involving COMAD requests for equipment or services provided several years previously, state laws prescribing damages caps and setting a statute of limitations often prevent services providers from recovering some or all of the COMAD payments made. For customer and public relations purposes, service providers are often reluctant to aggressively pursue repayment from schools and libraries. And, if the applicant is no longer even a customer of the service provider, the likelihood of recovering COMAD repayments from the applicant is even lower. Thus, for financial and equity reasons, the Commission must act on the long-pending petitions for reconsideration of its COMAD policy, and adopt new COMAD rules which more properly assign recovery of erroneously disbursed funds with the party that committed the error.

Other revisions to the COMAD policy are also warranted. First, COMADs should not be issued for infractions involving very minor amounts or minor rule violations which do not involve statutory infractions and do not threaten program integrity.<sup>2</sup> Pursuing recovery of minor amounts involving minor infractions is an inefficient use of limited resources.

Second, no COMADs should be served on service providers who act as “Good Samaritans.”<sup>3</sup> A service provider who agrees to act in this capacity should not be asked

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<sup>2</sup> See, e.g., Sprint, p. 9; BellSouth, p. 6; E-rate Central, p. 6; SBC, p. 5; Verizon, p. 7.

<sup>3</sup> See, e.g., BellSouth, p. 5; Verizon, p. 5.

to accept (in addition to the administrative burden of serving as a Good Samaritan) responsibility for repaying erroneously disbursed funds for any E-rate transaction in which it was not the actual service provider involved in the erroneous disbursement. Unless this policy is made explicit, service providers will be extremely reluctant to act as Good Samaritans, to the detriment of applicants and affected subcontractors and suppliers.

Third, except for statutory violations, Sprint agrees that COMAD recovery efforts should be subject to some reasonable statute of limitations.<sup>4</sup> It is a fact of modern corporate life (and presumably academic life as well) that employee turnover, computer crashes and upgrades, and varying document retention policies make it very difficult to re-create E-rate transactions and locate all requested documentation from several years ago. Thus, audits may unfairly conclude that unsupported disbursements occurred simply because all of the underlying paperwork could not be located. In addition, given the complexity of E-rate rules and the rate at which those rules change, it can be very difficult to ascertain whether transactions from several years ago were in compliance with the rules then in effect.<sup>5</sup> For these reasons, audits generally should be performed only on transactions that occurred within the relatively recent past (with more extensive audits performed only if there is evidence of statutory violations), and COMAD requests should be limited to funds disbursed within some reasonable period.

Fourth, some parties suggest that E-rate funds disbursed due to errors made by SLD should simply be forgiven.<sup>6</sup> This proposal appears to be reasonable, as both

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<sup>4</sup> See, e.g., Cox, p. 9 (2 years from FCDL date); Verizon, p. 9 (1 year after the funds were disbursed, except in cases of statutory violations or waste, fraud or abuse).

<sup>5</sup> See, e.g., Sprint, p. 9; Council of the Great City Schools, p. 7.

<sup>6</sup> See, e.g., SECA, p. 9; SBC, p. 6.

applicants and service providers must be able to rely upon a funding commitment issued by the program administrator. However, Sprint suggests that information on the extent to which this has occurred first be entered into the public record, so that the Commission and interested parties can determine whether such an exemption is in the overall public interest, and whether additional safeguards need to be implemented to prevent future errors on the part of the program administrator.

## **2. A Revision to the Discount Matrix Is In the Public Interest.**

Numerous parties support a reduction in the maximum discount available to E-rate applicants for internal connection projects.<sup>7</sup> These parties point out that such a revision to the discount matrix would make more Priority 2 funds available to more schools and libraries, would encourage applicants to select the most cost-effective configurations available to them given their financial resources and technological requirements, and could reduce waste, fraud and abuse because applicants have more of a financial stake in the transaction.

Certain parties, notably those representing the neediest applicants, oppose any revision to the discount matrix because it would reduce E-rate funding to the poorest schools and libraries which are already facing tight budgets.<sup>8</sup> Sprint is certainly sympathetic to the plight of these applicants. However, it is not clear precisely how many 90% schools and libraries still need extensive Internal Connections funding, given that they have received priority Internal Connections funding since the inception of the E-rate program. Moreover, for many school districts, the increase in funding to their 50-70% schools and libraries may well counterbalance or even outweigh the decrease in

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<sup>7</sup> See, e.g., Sprint (maximum 80% discount); SECA, p. 4 (70%); BellSouth, p. 7 (75%); AEWG, p. 4 (80%); E-rate Central, p. 3 (70%); Funds for Learning, p. 2 (80%).

<sup>8</sup> See, e.g., Council of Great City Schools, p. 3; Alaska, p. 2; AASA, p. 3.

funding to their 90% schools. The E-rate program was intended to benefit all eligible schools and libraries, and it is reasonable, 7 years into the E-rate program, to extend the benefits of Internal Connections funding to more moderate income applicants.

### **3. Expanding the Definition of Internet Access is Unwarranted.**

In the *Second FNPRM*, the Commission asked whether it should redefine “Internet Access” under the E-rate program to be consistent with the definition used under the Rural Health Care program. Sprint and other parties opposed this proposal, explaining that definitional conformity is neither required nor desirable, that the proposed redefinition would further blur the distinction between pure Internet access services and telecommunications services, and that redefinition could divert E-rate funds, for which there is already excess demand, from services and equipment that are unambiguously eligible.<sup>9</sup>

Alaska (p. 7) suggests that expanding the definition of Internet Access would better reflect how schools and libraries use the Internet. However, applicants are already able under existing rules and definitions to take advantage of distance learning capabilities on a Priority 1 basis. These services are available under the telecommunications services bucket from the hundreds or even thousands of telecommunications service providers (“eligible telecommunications providers,” or “ETPs,” in SLD parlance).

WiscNet, an Internet Access service provider, supports the proposed redefinition of Internet access, arguing that the current “basic conduit access” definition is “not competitively neutral” because it “penalizes” Internet service providers who are not also ETPs (p. 4). However, along with the right to provide telecommunications services,

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<sup>9</sup> See, e.g., Sprint, p. 4; Verizon, p. 10.

ETPs must accept significant common carrier obligations, including contributing to the various universal service, local number portability, telecommunications relay service, and North American Numbering Plan Administration funds, and complying with CPNI (Section 222 of the Act), access to people with disabilities (Section 225), CALEA (Section 229), interconnection (Section 256), and a host of other tariffing and regulatory requirements.<sup>10</sup> WiscNet wants the best of both worlds: permission to provide telecommunications services under the E-rate program, but exemption from any of the myriad common carrier obligations to which ETPs are subject. Unless Internet Access service providers are willing to accept all such obligations, there is no competitive reason to expand the definition of Internet Access to make it easier for non-ETPs to provide telecommunications services.

#### **4. The Form 470 Should Not Be Eliminated.**

Some commenting parties suggest that the Form 470 should be eliminated in part or entirely, because this form is administratively burdensome and does not generate multiple competitive bids.<sup>11</sup>

While Sprint is sympathetic about the administrative burden of filing any of the E-rate forms, we believe that elimination of the Form 470 would compromise the competitive bidding process. If a Form 470 is not posted, potential service providers may not be aware of applicants' E-rate needs, and schools and libraries could inadvertently foreclose economically attractive bids from competitive service providers. With the development of new technologies and services such as VoIP and wireless access, the potential for alternative ways of meeting even basic telecommunications needs increases

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<sup>10</sup> See also Sunesys, p. 3 (FCC must prescribe rules for attaining ETP status).

<sup>11</sup> See, e.g., AASA, p. 4 (no Form 470 for recurring services); E-rate Central, p. 4; Council of Great City Schools, p. 5.

dramatically. Rather than eliminating the Form 470, the Commission should consider ways to make the information contained on the Form 470 more usable (for example, as recommended by the Task Force on the Prevention of Waste, Fraud and Abuse, by requiring applicants to list generally the types of products and services that they are seeking, regardless of whether they have also prepared an RFP). The Commission should also be cautious about allowing individual Form 470s to be replaced by comprehensive state-wide network proposals, as such arrangements are sometimes less flexible in addressing the specific needs of an individual applicant, and can be costly to administer.

Respectfully submitted,

SPRINT CORPORATION

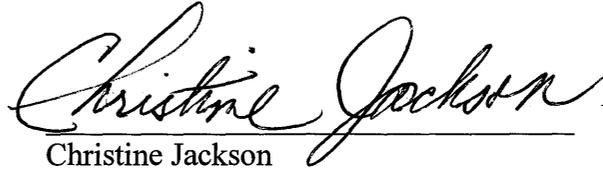


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April 12, 2004

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REPLY COMMENTS OF SPRINT CORP** was sent by electronic mail or by United States first-class mail, postage prepaid, on this the 12<sup>th</sup> day of April, 2004 to the parties on the attached list.

  
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