Council of the Great City Schools
1301 Pennsylvania Avenue, N.W. ♦ Suite 702 ♦ Washington, D.C. ♦ 20004
(202) 393-2427 ♦ (202) 393-2400 (fax)
http://www.cgcs.org

October 7, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., SW
Washington, DC 20554

Re: Ex Parte Meeting (CC Docket 02-6; FCC 03-323)

Dear Ms. Dortch:

On October 6, 2004, this letter is to inform you of an an *ex parte* meeting between local officials in the Council of the Great City Schools and staff in the Wireline Competition Bureau to discuss Universal Service discounts to schools and libraries, also known as the E-Rate program. Manish Naik, Council of the Great City Schools; Bob Westall and Jennifer Gardner, Philadelphia Public Schools; Bud Bullard, Denver Public Schools; Laura Palmer, Houston Independent School District; Jean Cherfils and Ling Tan, New York City Department of Education; Steve Gag, City of Boston, Office of the Mayor; Ilze Lacis, Cleveland Municipal School District and Anthony Machado, Miami-Dade Public Schools met with Karen Franklin, Jennifer Schneider, Greg Lipscomb, and Vickie Robinson of the Telecommunications Access Policy Division.

In the meeting, the local school district officials provided FCC staff with verbal accounts of the negative impact that lowering the E-Rate’s discount matrix for Internal Connections would have on the nation’s poorest urban schools. Miami and Cleveland provided information on the poorest schools in their districts that were unable to receive E-Rate benefits due to the fact that local financial circumstances made it difficult to provide even the current 10% match. Boston offered information on the ancillary costs associated with providing a modern learning environment which a district must assume, which are not reimbursable under E-Rate rules, and which require a district to provide funding beyond the match required for universal service discounts. Philadelphia and New York City explained that a doubling of the local contribution, from 10% to 20%, would make the current costs associated with network and equipment maintenance impossible to afford. Philadelphia and Cleveland provided information on budget cuts and diminished local funding, and the fact that a hypothetical doubling of the match would result in a reduction of projects by half, since additional local funding would not be available to meet the reduced discount.

The official from Houston explained that the poverty level in their district and schools had been on the rise, and schools that previously did not qualify for the 90% discount would now be seeking reimbursements to serve their high poverty populations. All districts underscored the fact that the E-Rate program was enacted to serve the nation's poorest schools and students, and that the Commission must continue its vigorous efforts to eliminate cases of fraud, waste, and abuse. They also echoed the comments of Commissioner Abernathy at the October 6, 2004 Symposium on Broadband, that the negative actions of a small group of people must not, "determine the direction of the program." The local officials at the meeting gave evidence that students in urban school systems continue to require the original benefits of the program, and despite the tainted actions of a small group, the current discount matrix should be preserved to provide these students with universal service benefits.

Local officials also provided feedback on a potential solution to the new accounting standards which has resulted in a suspension of E-Rate funding commitments. The viability of a "soft commitment" or "pre-notification" letter from the Universal Service Administrative Company was dismissed by local school officials. New York City explained that any notification which was not considered an obligation under the federal Office of Management and Budget (OMB) standards would not be considered an obligation by a local OMB, and would be insufficient to avoid the current delay. Cleveland indicated that their legal counsel informed them that the district could not proceed on E-Rate projects that were contingent on a "soft commitment." The districts present also concurred that their local vendors would not sign a contract if the possibility of not receiving a reimbursement existed, and the liability for the full cost of the project had to be guaranteed by the vendor to satisfy the school district.

Additional information with greater details on proposed changes to the discount matrix, as well as requested information on recent Commission rule changes, will be provided in an upcoming *ex parte* filing from the Council of the Great City Schools. In addition, Commission staff was provided with copies of the Council's most recent set of comments and reply comments, written in response to the Commission's December 23, 2003 Third Report and Order and Second Further Notice of Proposed Rule Making (FCC 03-323). These comments are included at the end of this letter.

Thank you for your consideration, and please do not hesitate to contact me, or Manish Naik on my staff, for any additional information.

Sincerely,

Michael D. Casserly, Executive Director
Council of the Great City Schools

Address:
Council of the Great City Schools, Suite 702
1301 Pennsylvania Avenue, NW
Washington, DC 20004
202-393-2427 (phone)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	
	)	FCC 03-323
	)	

To: The Commission

COMMENTS OF THE COUNCIL OF THE GREAT CITY SCHOOLS

The Council of the Great City Schools, the coalition of 61 of the nation's largest central city school districts, requests the consideration of the following comments regarding the Commission's December 23, 2003 Third Report and Order and Second Further Notice of Proposed Rule Making on newly adopted rules for Priority Two eligibility and equipment transfer, as well as the ongoing discussion of proposed changes to improve the efficiency, benefits, and oversight of the E-Rate program (FCC 03-323).

Introduction

The Council of the Great City Schools, the coalition of 61 of the nation's largest central city school districts, is pleased to submit comments to the Commission's December 23, 2003 Third Report and Order (Order) and Second Further Notice of Proposed Rule Making (FNPRM). The Council has long supported the effort and goals of the Commission to improve and streamline the E-Rate program, reduce mistreatment of the program's support, and ensure the fair distribution of intended benefits. The E-Rate program has no greater advocate than the city school systems that enroll the highest number of disadvantaged children, employ the largest number of teachers, and occupy the greatest number of school buildings. Specifically, the Council of the Great City Schools represents approximately 7.3 million urban students, including 33% of the nation's minority students, 31% of the nation's English Language Learners, and 26% of the nation's children eligible for free and reduced-price lunch. The value of universal service is immeasurable for these students and the inner-city, where the E-Rate can be used to bolster shallow resources and enhance the delivery of modern educational instruction. The Council has offered its assistance to the Commission by providing input on past Notices and in public forums, and we offer the following comments in response to the recent Order and FNPRM.

Third Report and Order

Limiting Internal Connections Support

The Council of the Great City School appreciates the Commission's careful deliberations on ways to provide internal connections support to economically disadvantaged school districts beyond the 90% level, and is pleased that the current Order sought to enact this change with an adjustment to the annual eligibility for reimbursement. This new rule will allow Priority Two funding to reach the poor schools and students that the Commission has been working to assist, while also requiring all applicants to strengthen their planning skills and carefully review all applications submitted to the SLD. The Council is also pleased that maintenance services are excluded from the Commission's decision on Priority Two limitations, as recurring maintenance on telecommunications equipment is an essential component of local technology plans, and is vital to protect and extend the investment made by the FCC and local school districts.

Urban districts are also hopeful that implementation of the new rule will not preclude reimbursements for legitimate projects that will be necessary to provide modern educational services in the nation's oldest and most overcrowded school buildings. In accordance with the new rules, an urban school may spend two years to wire their classrooms, as the Order suggests they often need to do (Paragraph 18), but the district may find soon afterwards that additional space is needed in that building. Throughout the year, certain school buildings in a district may experience an influx of students as a result of required transfers under the No Child Left Behind Act, changes in urban housing and development, or a wave of recent immigrant settlement.

Due to state laws on class-size ratios or fire, health, and safety codes, each year the affected schools must come up with creative ways to find new space for these children, often in recently built additions or converted, unwired, non-instructional rooms. As a result of the Commission's Order, school districts have begun to adjust their planning and application processes to adhere to the twice-ever-five-years rule, but the Administrator should also recognize that attendance at schools, urban ones in particular, changes more often and more unpredictably than that. In their decision on equipment transfers, the Commission recognized that special circumstances such as school closings and remodeling will require flexibility. When such circumstances inevitably arise with regard to internal connections, children learning in these locations should not have to wait three years for the technology support that will enhance their education, and the Council hopes that experiences that are beyond the control of the district and their students are also given their due consideration.

Equipment Transfer and Eligible Services

The Council supports the change made by the Commission that bars the transfer of equipment from one eligible location before three years, as well as the decision to annually define eligible services. Some of the alternatives considered by the Commission, including requiring the Administrator to develop and update "useful life" guidelines and lists of endorsed products, would have been an increasingly burdensome task, and USAC's decisions may have become subjected to repeated questioning and repeated appeal. The new rules outlined in the recent Order delineate specific and reliable timelines, which will allow districts to further refine their planning process, and will require all participants to strictly review their applications for reimbursement. The Council expects that guidance and clarification on the three-year rule, which USAC may have already developed, be made available so districts can know the time frames in question for specific circumstances, such as whether the new rule applies to equipment purchased less than three years before the rule change. A useful table of examples was included in Appendix C of the recent Order, and a similar one will be helpful for districts in adhering to the new rule regarding the transfer of equipment.

Second Further Notice of Proposed Rulemaking

Adjusting the Discount Matrix and Funding Priority

The Council opposes the Commission's proposal to lower the discount matrix from the current level of 90%, and feels that such a move would represent a major and unnecessary shift in the operations, focus, and intent of the program. The Commission itself, in explaining why limiting internal connections support to twice every five years would not harm the poorest applicants, explained succinctly, "Indeed, program rules continue to provide greater discounts for the most economically disadvantaged schools and libraries" (Paragraph 15). It would be contradictory and confusing for the Commission to alter the discount provision espoused in the same decision, and such a change may call into question the rationale for the new internal connections limitation.

The Council believes that the rule changes limiting Priority Two eligibility and equipment transfer will address the issues which have stretched the internal connections fund in the past. These new rules will achieve the Commission's goal of providing more reimbursements to applicants below 90% while strengthening program integrity, and additional changes are not needed. Adjusting the discount matrix and removing the priority for the nation's absolute poorest schools, as proposed in the FNPRM, will clearly have a negative financial impact on these entities, and the result will be an E-Rate program that no longer recognizes or addresses the additional challenges that applicants at the highest level of poverty face in providing a high-quality education.

In previous NPRM's, the Commission sought to retain the focus of the E-Rate program on the nation's poorest school and libraries, while also delivering assistance to economically disadvantaged applicants that are just below the highest level of poverty. In its comments to these past Notices, the Council has supported extending the reimbursement benefits through adjustments to the annual eligibility guidelines, and not changes to the discount matrix or funding priority for the poorest schools. The 90% discount and priority for the nation's poorest schools remains vital today, as state and local budget cuts, as well as freezes or reductions in most federal education appropriations, have left high poverty districts with even less resources than when the E-Rate program first began.

In Florida's Miami-Dade County Public Schools, the school district has 158 schools at the 90% discount level, and 57 of those buildings have yet to receive support for internal connections because scarce resources make it difficult to raise the local 10% that is needed to complete E-Rate projects. This situation is not uncommon in urban districts that have unusually high numbers of schools eligible for 90% discount. One-hundred of Boston's 134 school buildings are eligible for the 90% discount, while the Houston Independent School District has 230 schools, out of 299, located in the highest band. Any decrease in the discount offered to the poorest applicants may permanently put E-Rate reimbursements out of reach for these schools and the students the discounts were specifically intended to support.

In calling for retention of the 90% discount and priority, the Council also rejects the suggestions by commenters that the E-Rate should shift its focus and become a program that provides equitable resources to applicants from all discount bands (Paragraph 60). These comments, as well as the proposal to lower the maximum discount, at a minimum, to 70% (Paragraph 61), will undermine the often-stated goal of the Commission to provide universal service discounts to those schools and libraries that are also economically disadvantaged, albeit not to the same extreme degree as those in the 90% band (Paragraph 15). While the Council agrees that there are economically disadvantaged applicants in the 80% band that have been unable to receive reimbursements due to the funding cap, the schools and libraries in even lower bands have enrollments reaching average poverty levels for the nation. Schools with average levels of students eligible for free and reduced-price lunch can not truly be classified as economically disadvantaged, and the request for equal status with poorer schools is an attempt to conceal the greater resources that these applicants, by definition, already possess.

The Council requests that no change to the discount matrix and priority be enacted, as the new limitation and transfer rules were enacted to solve the very issue posed again in the FNPRM. The Commission was correct in its attempt to spread reimbursements to economically disadvantaged applicants, and has been able to make that change with the adoption of new eligibility rules. But changes that would require the nation's poorest schools and libraries to at least double their costs would undermine the success the E-Rate program has come to know. The recent rule changes came after multiple years of input through public comments, testimony at Commission forums, an SLD Task Force, and intense deliberations at the FCC, and certainly any additional decisions should follow a similar course and require careful consideration of the impact on the E-Rate program and its intended beneficiaries.

Cost-Effective Funding Requests

Urban school districts are also wary of the cost-effective funding proposal suggested for the universal service program, and does not support the introduction of a per-pupil, per-building, or per-applicant ceiling for the E-Rate. While the Council shares the Commission's endeavor to ensure that participants base their applications on specific needs and the most cost-effective services, the new program rules for Priority Two funding and equipment transfers establish additional criteria to ensure that applicant requests are made in accordance with these objectives.

Any cap on reimbursements that the Commission considers would have to be based on an evolving and lengthy list of factors, which in order to be fair to applicants of all sizes and locations must be nothing less than exhaustive. The creation of such a formula will place an enormous burden on the Administrator to include all possible circumstances allowed under existing rules, and the task of keeping the list of factors up-to-date and revised appropriately may prove impossible. While a school's enrollment has likely been identified as a factor to include, much more complex factors such as age of the building facility, square footage, geographic region, and a number of other market factors must also be included.

For example, in addition to the general higher cost of services in the cities, urban classrooms are housed in the nation's oldest schools, and any work in those buildings often has to account for lead paint and asbestos. While urban schools do not wish the E-Rate to pay to remove these items, workers must be certified to work in these conditions, and the resulting higher labor rates increase the costs of many urban technology projects. The Council is concerned that any ceiling imposed will have a negative impact on urban districts with the highest costs and the largest funding commitments, and their schools will be penalized as a result of factors beyond their control. While the proposal to develop a cap is well-intended, there is a distinct possibility that any calculated total would never account for all possible situations that districts encounter, and which are not penalized in the current request system.

Competitive Bidding Process

The Council is eager to explore changes by the Commission that would limit the requirements associated with the Form 470, including the decision to eliminate it entirely. While the goal and intent of the Form 470 is important, and well aligned with the overall mission of the E-Rate, many districts have not found the Form 470 process useful in getting bids for universal service projects. Indeed, a large number of urban school districts have never received one bid as a result of the process.

Schools districts have complex state purchasing rules which they must strictly adhere to, which they are not able to waive, and which are not a consideration in the Form 470 process. In addition to state regulations, many districts also have a local compliance office where they must file all bids and verify contracts with outside providers. Since there is very little coordination between the state and universal service requirements, there are more difficulties than benefits when districts have to meet local procurement regulations and the mandates of the E-rate's competitive bidding process.

The Form 470 could be retained for the applicants that find it useful, while permitting an alternative that recognizes local bidding requirements and allows the utilization of an existing state or Federal (e.g. GSA) contract. This substitution could be enacted by requiring applicants to sign a disclosure certifying that such state or master list was the source of the vendor contracts, and this alternative will be of greater use to Council school districts than the Form 470. Such a change would preserve the important intent of the current Form, and ensures that the goods or services covered by the existing contract have already been through a formal public bid process. By recognizing these contracts, the Commission would lift the burden of duplicate bidding that districts undertake in order to achieve compliance with the E-rate, usually without benefit.

<u>Wide Area Networks and Dark Fiber</u>
The Council shares the Commission's concern that the leasing of Wide Area Networks (WANs) in order to receive Priority One reimbursements may be a practice undertaken in order to divert funds from high poverty applicants under Priority Two. In a previous NPRM, and under different program rules, the Council recommended allowing a payment to be amortized over five years to minimize the impact of such requests on Priority Two funding. As a result of the recent rule changes, however, the three year minimum imposed in the *Brooklyn Order* should be retained.

The continuing changes in the E-Rate program rules, as well as the delay applicants have experienced awaiting inquiries, appeals and receipt of funding commitments, finds urban school districts unwilling to extend the number of times they must submit an application for such services, as well as extend the period during which they must await reimbursement from the SLD. Furthermore, in its recent Order the Commission made two of the most significant changes to the program since the E-Rate's inception, and the exact effect of these new rules on Priority One and Priority Two funds can not yet be determined. The implementation and resulting effects of the rule changes must be allowed before any additional proposals, originally suggested and based on now obsolete disbursement patterns, are considered.

In its mission to maximize available funding resources, the Commission can further foster and promote the ability of school districts to select the most cost-effective telecommunications solution by permitting the inclusion of dark fiber as an eligible connectivity option. Much of the hesitancy for support in the past was a result of the apprehension expressed by telecommunications companies, who may lose substantial future profit if fiber overtakes conventional telecommunications connectivity options. However, in dense urban areas, the return on investment of a leased-fiber network can be valuable for many years to come, particularly as provisioning systems and premise devices improve with technological advancements. The cost benefit of dark fiber aligns well with the financial goals of the E-Rate, and increasing the capacity for school districts is certainly a sound investment as technology services and instructional delivery increase rapidly.

<u>Recordkeeping Requirements, Cost Recovery, and SLD Audits,</u>
The Council supports the codification of the current rule which requires school districts to maintain records for five years, and would support the implementation of such a rule for service providers as well. What would be of equal or greater assistance to the E-Rate program, however, is an exact list of the documents required for retention, as well as the documents which may be requested during an audit.
Urban districts are a seemingly frequent target of audits, and the collective sense after these experiences is that the auditor did not know what to look for or which documents to request, and the bulk of the district time is spent processing trivial requests. A

comprehensive list of the documentation districts should be able to provide, in general or in response to a review, would lend credibility and succinctness to an audit process that is currently renowned only for its inefficiency and protracted duration.

As we have offered in past comments, the Council suggests that the Commission further review the efficacy of the audit operation utilized by the E-Rate. From the program's inception, the audits have suffered from a lack of organization and informed personnel. Auditors are not versed in the details of the E-Rate and public administration, and require the tutelage of local program administrators to understand the process. Furthermore, districts routinely have to defend actions, purchases, and processes done in accordance with the rules for the funding year in question, while the auditors persist in holding districts accountable for changes made in later program years. The Commission and SLD must make it clear to auditors and districts that the reviews being performed, and any cost recovery that occurs as a result, are based only on the program rules that were in place at the time of the applicable funding year, and not on the rules at the time of the audit. Delineating specific recordkeeping requirements as suggested above will help facilitate improved information collection during the audit, and will result in a more useful final report. Such an outcome will make the process more effective for auditors and less detrimental for applicants.

In addition to the time-consuming task of working with auditors, urban districts have been subjected repeatedly to SLD's Program Integrity Assurance (PIA), Item 25 pre-audit, or Selective Review Process. There are more than a handful of urban school districts that have undergone these reviews for a number of consecutive years. For those large districts that annually have to reassign or dedicate staff for the purpose of handling relentless paperwork requests, the targeting of urban districts for a review every year seems to be extremely punitive. Even more frustrating is the lack of feedback from SLD after the process is completed; depending on the type of review, districts hurry to provide a response to the inquiries within a specific and narrow time frame (often between seven and 21 days), and then go months without hearing from the SLD.

The effects of such a delay have negative repercussions at the local level, not only financially, but also in terms of the long-term planning ability of applicants that the E-Rate was meant to foster. For example, the Jefferson County Public Schools in Louisville, Kentucky underwent a Selective Review for their reimbursement application in Funding Year 2002. The district filed an E-rate application in January 2002, for the funding year beginning on July 1, 2002 through June 30, 2003. In December 2002, six months after the start of the funding period, the district was notified that its application was undergoing a review, which they responded to by February 2003. The district finally received their Funding Year 2002 commitment letter in January of 2004, two years after they submitted their original application, and six months after the SLD began disbursing funding commitments for Year 2003.

The result of this drawn out response time and uncertainty of funding was a tough decision making process at the local level, during which no input or schedule for resolution was provided by the SLD. In the end, Jefferson County Public Schools had to find over $2 million in additional local dollars in order to keep their implementation plans on schedule, maintain good relations with their service providers, and provide communications support for the technology already in place. In the current economic climate, the leveraging of additional local funding can be difficult, and with districts stretching every dollar, also surrendering the interest that they would have realized with an earlier funding commitment is costly.

Many other school districts, however, simply do not have the ability to temporarily support their own projects, and similar circumstances have seen projects abandoned by the time approval from the SLD finally arrives. School districts are unable to count on the availability of funds, and large, urban systems appear to be unreasonably affected by delays. The experience of the Jefferson County schools is unfortunately not unique to their district, or that particular funding year.

As a result of the delays that districts have encountered when cooperating with SLD, the Council also can not support the proposal of the Commission barring applicants from receiving any further benefits from the E-Rate while awaiting resolution of commitment adjustment issues. Not only would this rule dissuade applicants from pursuing appeals, but districts in the past have realized that resolving an issue with the E-Rate program can often mean a waiting period of years. This is extremely unfair to the students who rely on the benefits of the E-Rate, as well as the schools, all of whom will be punished unfairly due to past actions for they are like not responsible.

Accountability is important, and urban schools expect the Commission to be vigilant in ensuring that program rules are abided. But the responsibility of demonstrating program integrity should not be the sole responsibility of city school districts, and must be shared by all applicants, as well as the Administrator. For the E-Rate to continue to evolve, the Council hopes that increased responsiveness and improved services emanates from USAC, and that the required assurance that schools and libraries are playing by the rules does not rest disproportionately on the shoulders of those with the highest funding commitments.

Outside Consultants and Technology Planning

Urban schools support the Commission's goal of clamping down on vendor fraud in the E-Rate, and think that service providers, paid or unpaid, should certainly be required to identify themselves when they assist school districts in preparing their application. The Council feels that the best way to do this would be a simple disclosure on the application, similar to that which an accountant fills out when preparing an individual tax return. We are wary of a prolonged process, however, such as one that would require registering with USAC and having something similar to a SPIN number assigned to each provider. While we agree that accountability for E-Rate integrity must be expected from the companies that provide services, we do not support an extended activity that may deter an individual or company from providing much needed assistance to a school district.

The Commission must also reconsider the proposal to bar vendors that assist districts with their technology plan, or provide other technical and consulting services, from competing for E-Rate bids. E-Rate bidding rules, state laws, and local procurement compliance regulations, as well as SLD audits, are in place to ensure that improper relationships and invalid contracts are not established between applicants and service providers. But a wholesale debarment of those entities that provide a vital service to school districts ignores the longstanding relationships that may exist in certain communities, and the impracticality of performing long-term technology planning without the assistance of the company that will be providing the actual technology. The debarment also creates a problem when there are a limited number of service providers in a district's geographic area.

Conclusion

The Council of the Great City Schools appreciates the work of the Commission to improve the integrity of the E-Rate program and ensure that its benefits will continue to reach the nation's neediest students and schools in the future. In addition to the changes set forth by the Commission in the recent Order, which send a message to all participants, the strong leadership of the Administrator must ensure that these new rules are implemented in a way that enhances the reliability of the E-Rate program. Ongoing discussion, recent upgrades in staff, and a streamlined process at USAC must also be accompanied by a dedication to continuous service improvements and responsiveness to schools and libraries. Applicants from the large urban districts, who know the E-Rate is an invaluable partner in delivering high-quality education to inner-city students, have supported the program while working with meandering audits and laborious paperwork requests, inefficient response times to inquiries and appeals, and belated funding commitments for basic requests for telecommunications and maintenance services. The new rules require all E-Rate participants to converge and focus on program improvements, and the Council of the Great City Schools hopes that ongoing upgrades in the process and experience for applicants are an additional result of these new changes.

Respectfully Submitted,

Michael D. Casserly, Executive Director
Council of the Great City Schools

Address:
Council of the Great City Schools
Suite 702
1301 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 393-2427

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	
	)	FCC 03-323
	)	

To: The Commission

REPLY COMMENTS OF THE COUNCIL OF THE GREAT CITY SCHOOLS

The Council of the Great City Schools, the coalition of 61 of the nation's largest central city school districts, requests the consideration of the following reply comments regarding the Commission's December 23, 2003 Third Report and Order and Second Further Notice of Proposed Rule Making (FCC 03-323).

The Council of the Great City Schools is pleased to submit comments to the Commission's December 23, 2003 Third Report and Order (Order) and Second Further Notice of Proposed Rule Making (FNPRM). The Council has long supported the effort and goals of the Commission to improve and streamline the E-Rate program, reduce mistreatment of the program's support, and ensure the fair distribution of intended benefits. The E-Rate program has no greater advocate than the city school systems that enroll the highest number of disadvantaged children, employ the largest number of teachers, and occupy the greatest number of school buildings. Specifically, the Council of the Great City Schools represents approximately 7.3 million urban students, including 33% of the nation's minority students, 31% of the nation's English Language Learners, and 26% of the nation's children eligible for free and reduced-price lunch. The value of universal service is immeasurable for these students and the inner-city, where the E-Rate can be used to bolster shallow resources and enhance the delivery of modern educational instruction. The Council has offered its assistance to the Commission by providing input on past Notices and in public forums, and we offer the following reply comments as a follow-up to our response to the recent Order and FNPRM.

INTRODUCTION

The Council of the Great City Schools reaffirms the position stated in our original comments, and opposes any change by the Commission to lower the highest discount band for E-Rate reimbursements from 90% in the Internal Connections category. If adopted, this change will have a negative impact on the nation's poorest schools and districts, and is inconsistent with the original principles of the universal service program.

The most common arguments put forth in support of such a change during the initial comment period make the assumption that school districts that qualify for the 90% discount under the existing matrix have little or no regard for examining specific need and cost-effectiveness, and that a ten percent local contribution is not steep enough to force applicants to undertake such measures. Many of the commenters took this supposition one step further, and suggested that to make the poorest schools more accountable for their applications, they should be required to provide the same amount of their own funds as schools with lower, and in some cases even average, levels of poverty.

All school districts carefully consider their technology expenditures, and when dealing with the nation's poorest school districts, the ten percent local cost required for E-Rate projects represents a significant expense. Due to the loss of state and local funds as a result of the economic downturn, districts are already facing large operational funding gaps and annual reductions to technology funding supports. Regardless of whether projects are pursued with E-Rate or other funds, urban schools districts always work strenuously in pursuit of the best and most cost-effective technology solutions, and consistently push vendors for the best possible pricing models.

Reducing the discount from 90% to 80% and the ensuing doubling of costs, for example, will be difficult to absorb for some districts, and outright impossible to achieve for many schools. In Philadelphia, where 70% of the 264 total schools are eligible for the 90% discount, the increased local contribution will not be available anywhere other than the existing technology budget. The district will be required to cut the amount slated for other projects commensurate with any additional required match. This unnecessary and increased contribution is painful and would be difficult to attain for any enterprise; this is particularly true for the nation's disadvantaged educational institutions.

In Houston, increasing percentages of students in poverty make the school district particularly wary of any changes to the discount matrix. The Houston Independent School District (HISD) is the largest public school system in Texas and the seventh-largest in the United States, with 206,716 students attending 290 school buildings. An analysis of the importance of the 90% discount band for HISD is included in APPENDIX A, and demonstrates the significant harm that will be created if any change, small or great, is applied to the discount matrix.

Despite growing poverty in many areas and the economic downtown, a number of commenters were quick to suggest a decreased discount for the poorest schools. Such a change would not only affect a district's ability to make use of the E-Rate benefits, but also its ability to use their local money for items not eligible for reimbursement. Doubling the obligation to 20% entails serious reconsideration of existing budget expenditures, and inevitably would decrease the availability of money previously allocated for PCs, printers, software applications, and teacher training in technology. In the past, districts counted on the universal service fund for connectivity and maintenance, and purchased other items with local funds to ensure that the E-Rate investment was effectively used. If the future requires increased contributions, E-Rate projects (including maintenance), or the accompanying expenditures on associated technology costs, will be curtailed in the poorest schools. In some cases, since neither of those costs are effective without the assistance of the other, there may be instances where technology investment is abandoned entirely.

IMPLICATIONS OF A NEW AND REDUCED DISCOUNT LEVEL

Unanimous Agreement on What Works

In reviewing the comments, the Commission likely found that there was unanimous consent on one topic: that the recent rule changes restricting eligibility for internal connections to twice-every-five years, as well as limiting equipment transferability for three years, will allow a substantial amount of universal fund reimbursements to reach more applicants below the 90% level. While the agreement ended there, and many commenters went on to suggest the Commission make further changes, we stand firm in our position that the rule changes in the Third Report and Order will address the issues that have stretched the internal connections fund in the past, and that any further modifications are unnecessary. More importantly, additional changes, such as a reduction in the top discount tier, would not address the issue sufficiently.

The Schools and Libraries Division recently announced their demand estimates for Funding Year 2004. Priority One services are estimated at $1.6 billion, which, with a $2.25 billion annual cap, would allow $625 million to remain to fund the requests for Internal Connections. Approximately $1.3 billion in 90% requests for internal connections were estimated by SLD, with an additional $1.1 billion of internal connections requests from 80% discount applicants.

If an estimated half of the 90% applications are denied in 2004, the $625 million remainder may be enough to meet all of the top band's internal connections requests, albeit just barely. But requiring an additional 10% match from the districts at the 90% level would only produce an additional $62.5 million for the 80% discount band – hardly significant compared to the 80% internal connections request of $1.1 billion. Increasing the non-discounted share by 20%, and thereby requiring a 30% match for the poorest schools, would still not provide sufficient funds to address a significant portion of the applicants at the 80% level.

Not only is there agreement that the Commission's new rule limiting internal connections support will achieve the goal of providing significantly more reimbursements for applicants below the 90% discount tier, the recent announcement by the Schools and

Libraries Division that Internal Connections reimbursements will reach the 70% discount level for the first time demonstrates that additional changes are not needed. Funding commitments are now available to applicants in a broad range of discount bands; a trend that will likely continue when the widely-supported changes from the Third Report and Order are implemented in the upcoming funding years. An additional change that will have a clear and negative impact on the poorest applicants, that does not have broad support, and does not address the issues that recent changes have already dealt with sufficiently, should not be pursued at this time.

Creating Expanded Markets for Business While Increasing Costs for Schools

The Council is concerned by the support for lowering the discount matrix from its current level of 90% from a number of commenters. These comments may have correctly suggested that if increased financial participation is required of applicants for reimbursement, the result may be the additional availability of some E-Rate funds for entities below the 90% discount band. But they did not address the fact that this positive change would only come about if the nation's poorest schools are required to give more of their own funds to demonstrate that they are truly in need. The same commenters also did not disclose that requiring greater financial participation from fiscally-strapped schools and libraries will in fact expand the market, if not the profit margin itself, that private companies derive from the program.

Under any reduction of the discount matrix, the amount of E-Rate reimbursements for internal connections would remain the same – approximately $1 billion in FY 2002 and FY 2003 – but the additional funds that the poorest schools, districts, and libraries will have to find to leverage that amount will be increased, and will be delivered directly to private companies. Many commenters discussed the strong need for the Commission to increase the "buy-in" amounts for the poorest schools in the nation, but were silent on the fact that this change would demand that more money be taken away from those that need it the most, and transfer it to the profit margins of private sector companies.

The educational, financial, and operational harm to schools and libraries, and the ensuing financial benefits for companies, will be exaggerated the further the Commission moves from the 90% discount that has been in place since the program's inception. The table in ATTACHMENT B shows an example of how the proposed change would transfer funds away from public sector applicants, and create a windfall for private companies. In Funding Year 2002, the SLD provided almost $852 million in 90% discounts for Internal Connections. If that same amount of E-Rate money required a 20% contribution from the local level, over $118 million in increased funding would shift from the accounts of those entities serving the nation's poorest communities into corporate coffers.

Political Pressure in States to Make E-Rate Widely Available

One body of commenters that made a unanimous call for lowering the discount matrix were the states and their representative organizations, who no doubt receive endless political pressure from school districts and service agencies that have not yet been able to capitalize on the E-Rate's benefits. But it is the state agencies' succeptibility to political pressure to spread money broadly that led the Congress to require that large educational programs be directed to the local level based on poverty, as is the case with Title I, Reading First, Teacher Quality programs, and the Individuals with Disabilities Education Act (IDEA) in part.

The willingness of state agencies to circumvent their responsibility to provide assistance to districts with need was highlighted by the American Institutes for Research in a report on federal competitive grants, and is a major factor in the decision of Congress to target poverty to the local level through federal funding formulas. The regularity with which many states avoid targeting funding based on need, and surrender to the political pressure of non-poor districts, can also be reflected in the ongoing number of state education finance litigation cases around the country. At the same time that state agencies are trying to allow the E-Rate to serve districts that fall outside of the program's focus on poverty, they are also facing litigation and legislation that would force them to provide adequate education funding for the poorest schools and communities. Their call for more "equitable" E-Rate funding of non-poor school districts strikes us as rather ironic.

Other Federal Programs Focused on "Need"

The Council also refutes the statement made by Funds for Learning (FFL) that a reduction in the discount matrix would align the E-Rate with other federal technology programs. While we disagree with their characterization of Title I, a program focused on raising the academic achievement of disadvantaged students, as a school technology program, Funds for Learning was correct in their comments that the federal government lowered the 50% threshold for schoolwide Title I programs to 40% in the No Child Left Behind Act (NCLB). However, this action was not taken by Congress to provide Title I funds to ineligible students. This change merely allowed local school districts further flexibility in their ability to provide services to disadvantaged students.

Furthermore, along with the passage of NCLB in 2001, Congress for the first time used highly-weighted education funding formulas to distribute Title I and other federal programs. The result was a shift that contradicts entirely the statement of FFL, and represents an increased congressional emphasis on targeting federal assistance to the school districts with the highest concentrations of poverty. Similar to the E-Rate, the demand and need for Title I far exceed the amount of money allocated by the federal government, and lowering the discount bands for the E-Rate would actually result in a misalignment of national priorities. Such a move would represent a shift away from the bipartisan congressional decision to focus limited federal assistance to the schools and districts with the greatest need. Interestingly, Funds for Learning did not reference the Education Technology State Grants, the sole NCLB program that focuses exclusively on technology assistance, in their comments. This technology program was also modified by Congress in 2001, and unlike its previous incarnation, was reauthorized with a poverty factor to ensure that funding is delivered to the nation's poorest districts.

Finally, the same commenters were also incorrect in their reference of federal Qualified Zone Academy Bonds as a parallel to the E-Rate, since that program does not intend to serve needy schools. First, the 35% requirement is a level that an applicant must exhibit simply to apply for this tax credit program, and in no way indicates eligibility for a certain level of funding, as the use of similar data does in the E-Rate program. Also, the stipulation that schools have at least 35% of their students eligible for the National School Lunch Program is just one of a number of broad definitions that a school may meet. As the Council stated in our initial comments on the FNPRM, the 35% level represents the national average for participation in the school lunch program, and has never been seen as a definition of "needy," as indicated by FFL.

The legislative language authorizing the QZAB program demonstrates this broad intention, and the distinction from the targeted E-Rate program, by defining beneficiaries as, "any public school (or academic program within a public school) which is established by and operated under the supervision of an eligible local education agency." An eligible school district, as defined by the QZAB program, is any public school district (see ATTACHMENT C), and is not a targeted definition comparable to the E-Rate.

<u>Harming the Poorest Applicants to Assist the Less Poor</u>
While the Council appreciates the support of a mostly state-focused organization in determining what's best for our local interests, we reject the implication that increasing our total funding is a good reason to support the desertion of our poorest schools. By suggesting in their comments that "large city school districts with individual schools at a range of discount rates would stand more to gain by the increased funding of their lower discount schools than they would lose by a reduction in funding for their highest discount schools," E-Rate Central continues to make the erroneous argument that urban schools have consistently defended themselves against. Urban districts have schools located in a range of universal service discount bands, and would like to see as many of them benefit from the E-Rate as possible. But the Council has always asserted that the Commission should find a way to assist those below 90% without imposing a financial penalty, or in some cases abandoning completely, the absolute poorest schools in the nation.

Urban districts with a more level distribution of discount bands, quite candidly, understand the benefits of making additional funding available to the lower bands. However, since sacrificing 10% or even 20% in additional matching investments from the poorest schools would not provide districts with a substantial increase for a newer discounted band, the negative impact provides insufficient merit for legitimate consideration of such a reduction.

CONCLUSION

The work of the Commission to ensure the availability of universal service reimbursement to the greatest number of schools and students is commendable, but the Council simply does not agree with the often-stated comment that the nation's poorest school districts merely seek the highest funding commitment from the program every year. No school or district can, or does, use funding received as an indicator of success. Progress will only be measured by the ability to improve student achievement. In urban school districts, the availability of technology tools allow students to spend time on tasks related to their education, and E-rate funding has been a primary factor in the ability of many districts to provide such an environment. The E-rate has allowed more equity of access in urban schools, in terms of wider distribution in the district and within schools, and a higher quality of access, in terms of speed and bandwidth available. The result of such benefits can only mean an increased time for learning and educational activities for students in all classes, and an increased opportunity to raise the achievement of our children. In terms of education goals for students, teachers, administrators, parents, and the public, this is the only bottom line.

Computer fluency is a necessity for students, and not a luxury. Urban schools, and the children that attend them, need the support of every dollar that is spent on their education, and current funding levels are often not enough. An increased burden requiring a greater local contribution in order to receive E-Rate benefits is unrealistic for many urban schools and districts. The negative financial impact stemming from a change in the E-Rate discount matrix will also be coupled with the ongoing decline of revenues from state and local sources due to the economic downturn. The inevitable result will be a slowdown of the technology services in urban schools, which will likely cause them to fall behind in their attempt to close the digital divide; the very technology gap that the E-Rate was created to help bridge.

While the Council has long supported the Commission's intent to provide E-Rate benefits to a broader range of the nation's poor schools, such availability should not be enacted by altering the structure of the discount matrix and increasing the financial burden for the highest-poverty districts. The effect on the use of technology in urban education curriculums, and among the urban student population that is most at risk, is potentially devastating. The Commission should not enact any rules that will bring about such changes, since these technology-assisted learning environments are vital for students to become a part of the new economy's skilled work force.

Respectfully submitted,

Michael Casserly, Executive Director

Address:

Council of the Great City Schools
Suite 702
1301 Pennsylvania Avenue, NW
Washington, DC 20004
202-393-2427 (phone)

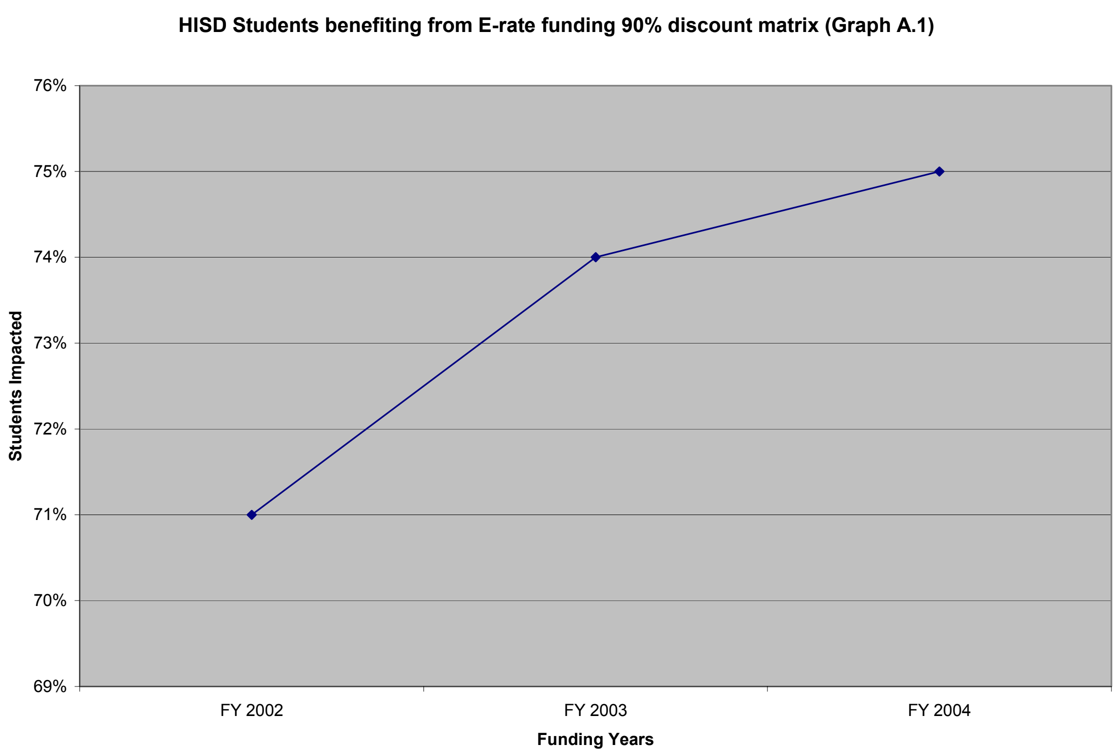
APPENDIX A

ANALYSIS OF THE SIGNIFICANCE AND HARM OF A REDUCTION TO THE DISCOUNT MATRIX TO THE HOUSTON INDEPENDENT SCHOOL DISTRICT

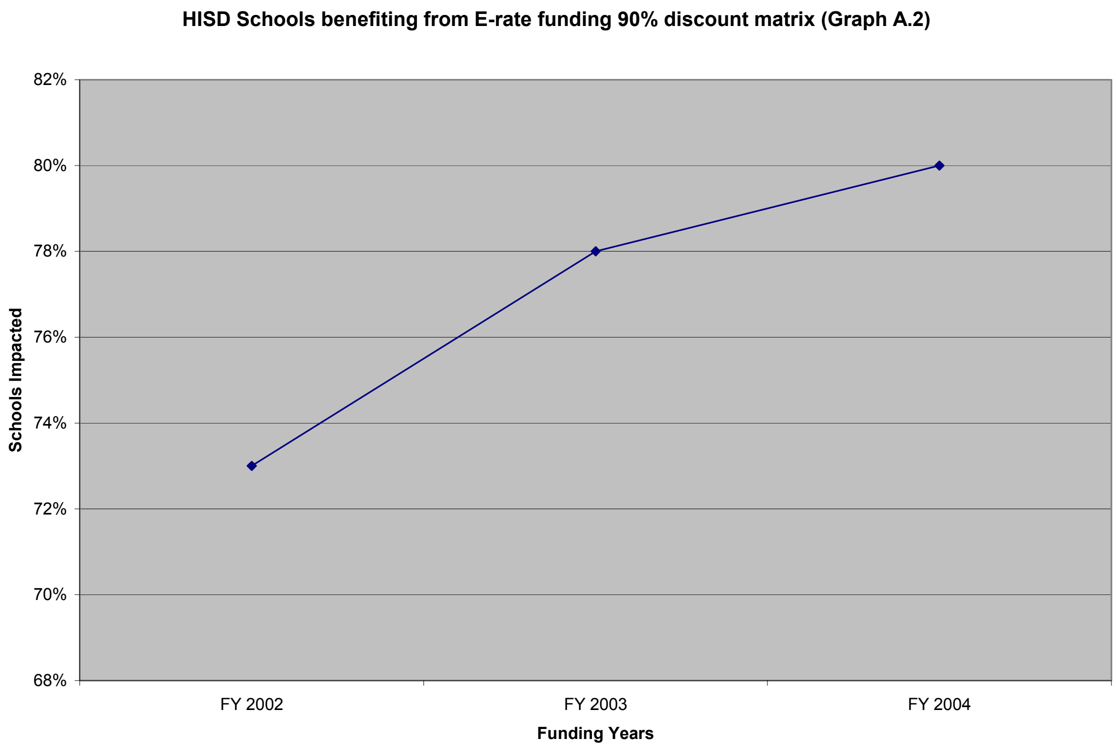
Significance

Without a doubt, E-rate funding has played a pivotal role in closing the “digital divide” for Houston ISD. With 206,716 students attending 290 Houston ISD schools, the district would face an impossible financial task of providing a technology infrastructure to the schools in the district. Furthermore, with the vast majority of Houston ISD students qualifying for the federal Free/Reduced Lunch program, many students in the district have no access to technology resources except as provided by the school. Currently, 154,058 students for Funding Year 2004 will benefit from the current matrix if funding is approved.

It is important to note that there is an increasing trend of students in Houston ISD who qualify for the Free and Reduced Lunch program over the last three funding years (Graph A1). For example, 71% of students in Houston ISD (149,485 students) benefited from funding at the 90% level in Funding Year 2002. The percentage of the district’s students receiving E-rate funding at the 90% level increased to 74% (154,058 students) and 75% (156,254) for E-rate Funding Years 2003 and 2004, respectively.



Furthermore, the greatest impact of a change in the discount matrix is evident when these student populations are viewed as a representation of the schools' populations (Graph A.2). For example, 73% of the schools in Houston ISD (216 schools) benefited from funding at the 90% level in Funding Year 2002. The percentage of the district's schools receiving E-rate funding at the 90% level increased to 78% (232 schools) and 80% (235 schools) for E-rate Funding Years 2003 and 2004, respectively.

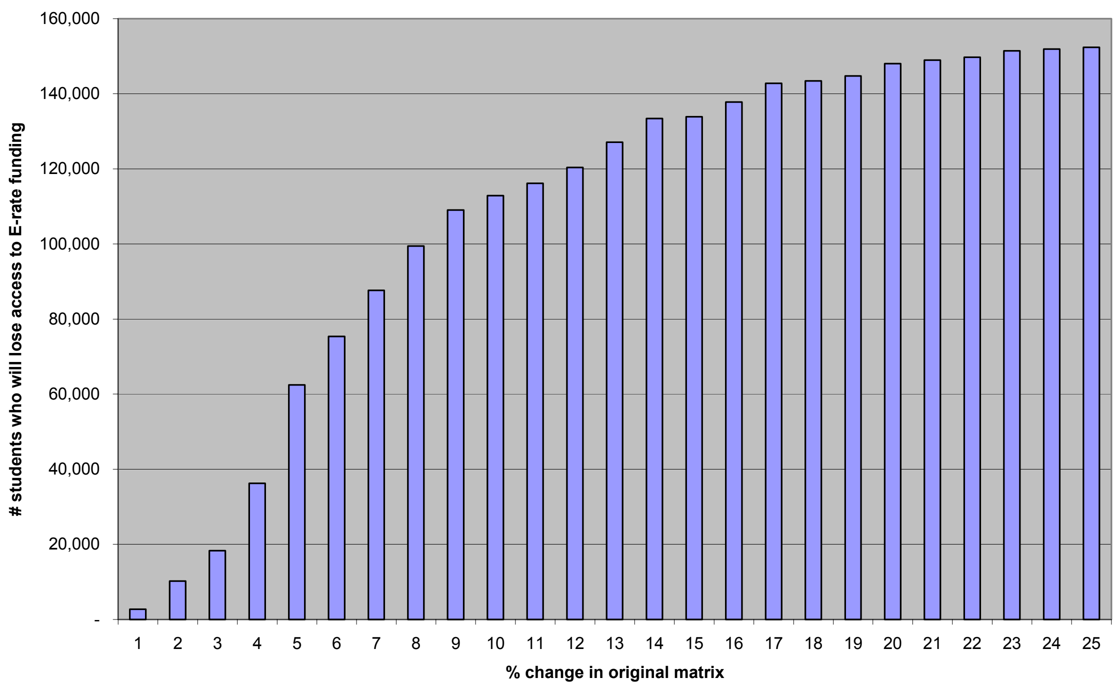


Harm

Clearly, an increasing trend of students benefiting from E-rate funding is noted over the last three funding years. As the trend continues to show increases for both disadvantaged students and disadvantaged schools, the potential impact to these populations could be overwhelming with respect to E-Rate funding if the discount matrix is changed. This trend is significant in that a potential inverse relationship would be created if funding at the 90% matrix level decreases while the number of students qualifying at the 90% level increases.

Moreover, a change in the discount matrix would be antithetical to the trend that has been occurring in Houston ISD schools that qualify for E-rate funding. The result of a change in the discount matrix to 80% is that approximately 40,000 students will no longer benefit from E-rate funding. Therefore, for every 1% lowering of the discount matrix, approximately 6,000 students could be deprived of benefits received through E-Rate funding (Graph A.3).

Impact of students for each 1% change in 90% discount matrix (Graph A.3)



Finally, the proposed change in the discount matrix would eliminate plans to continue various projects to offer students greater access to digital resources, including multi-year projects initiated with E-rate funding. For example, the development and deployment of the HISD Fiber WAN network is a multi-year E-rate project that would be discontinued if the discount matrix is lowered. Students and schools would potentially cancel plans to participate in distance learning, which employs streaming video. In addition, plans for videoconferencing would be cancelled, denying students access to a broader range of courses, and further widening the digital divide.

Consequently, the loss of E-rate funding to Houston ISD schools due to a change in the discount matrix would undermine the district's technology plan. The result would be a major re-shifting of priorities to low-level solutions and the elimination of many initiatives dependent on E-rate funding.

For additional information regarding Houston ISD's opposition to the proposed change, please contact any member of the E-Rate team at (713) 892-7880.

Respectfully submitted,

Bill Edwards, Assistant Superintendent, Houston Independent School District

cc: Laura Palmer, Jacqueline Martin, Joel Castro; Technology and Information Systems

APPENDIX B

EXAMPLE OF SHIFT IN THE DISTRIBUTION OF FUNDS FOR E-RATE PROJECTS AS A RESULT OF A REDUCTION IN THE DISCOUNT MATRIX TO 80%

	90% Discount	**80% Discount**	**Resulting Increase**
Internal Connections Reimbursements	$851,837,967	$851,837,967	$0
Applicant Contributions	$94,648,663	$212,959,492	$118,310,829
Total Amount Paid to Private Sector	**$946,486,630**	**$1,064,797,458**	**$118,310,829**

APPENDIX C

DEFINITION OF LOCAL EDUCATIONAL AGENCY

Elementary and Secondary Education Act of 1965
TITLE XIV--GENERAL PROVISIONS
PART A--DEFINITIONS
SEC. 14101. DEFINITIONS.
Paragraph (18). Local educational agency.--

(A) The term `local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(B) The term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs but only to the extent that such inclusion makes such school eligible for programs for which specific eligibility is not provided to such school in another provision of law and such school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that such school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.