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Public Service Commission

October 18, 2005

VIA ELECTRONIC FILING

The Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 05-195, Comprehensive Review of Universal Service Fund Management, Administration, and Oversight;
CC Docket No. 96-45, Federal-State Joint Board on Universal Service;
CC Docket No. 02-6, Schools and Libraries Universal Service Support Mechanism;
WC Docket No. 02-60, Rural Health Care Support Mechanism;
WC Docket No. 03-109, Lifeline and Link-Up;
CC Docket No. 97-21, Changes to the Board of Directors for the National Exchange Carrier Association, Inc.

Dear Ms. Dortch:

Forwarded herewith are comments of the Florida Public Service Commission and the Florida Department of State, State Library and Archives in the above dockets with regard to Universal Service Funds for Schools and Libraries.

Greg Fogleman at (850) 413-6574 is the FPSC primary contact on these comments. Mark Flynn at (850) 245-6626 is the Florida Department of State primary contact on these comments.

Sincerely,

/ s /

Cindy B. Miller
Senior Attorney

CBM:tf

cc: Brad Ramsay, NARUC

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

In the Matter of)	
)	
Comprehensive Review of Universal Service Fund Management, Administration, and Oversight)	WC Docket No. 05-195
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.)	CC Docket No. 97-21
)	

COMMENTS OF
THE FLORIDA PUBLIC SERVICE COMMISSION
AND
THE FLORIDA DEPARTMENT OF STATE,
STATE LIBRARY AND ARCHIVES OF FLORIDA

Executive Summary

The Florida Public Service Commission and the Florida Department of State, State Library and Archives of Florida (Florida commenters) submit these comments in response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM), released on June 14, 2005.¹ In this Notice, the Federal Communications Commission (FCC) seeks comment on ways to improve the management, administration, and oversight of the Universal Service Fund (USF), including simplifying the process of applying for USF support, speeding the disbursement process, simplifying the billing and collection process, addressing issues relating to the Universal Service Administrative Company (“USAC” or the “Administrator”), and exploring performance measures suitable for assessing and managing the USF programs. The FCC has also requested general comments on ways to further deter waste, fraud, and abuse through audits of USF beneficiaries or other measures.

We are pleased to file these comments to address issues relating to the schools and libraries program (E-rate program), a program that is valuable to schools and libraries in Florida and throughout the nation. E-rate makes connectivity available to students at disadvantaged schools and libraries—those in low-income, rural, or inner-city areas.

An equitable distribution of support should be one of the key goals of any universal service program. To that end, we urge the FCC to focus its review on improving the schools and libraries program by implementing a more cooperative partnership with USAC and the states. This partnership would share responsibility for modifying administrative procedures, developing meaningful goals and measures to assess the impact of E-rate funding, and initiating further measures to eliminate waste, fraud and abuse.

Reform and program updates will enhance and strengthen the program structure and alleviate many of the management, oversight, enforcement, and accountability problems described in a recent GAO Report.² To implement such changes, we ask that the FCC consider the following revisions to its rules:

¹ See Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking released on June 14, 2005, FCC 05-124.

² See “Highlights” of GAO Report to the Chairman, Committee on Energy and Commerce, U.S. House of Representatives, *Telecommunications, Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program*, GAO-05-151, Released February 2005.

1. Establish a state-specific funding cap for the schools and libraries program based on poverty and the number of school-age children within a state;
2. Allow states to administer certain aspects of the schools and libraries program.

Formulaic Distribution

The Florida commenters note that the NPRM seeks comment on whether the FCC should change the rules to use a formula to distribute funds directly to schools and libraries based on their size and to allow funds to be used in a more flexible way. (NPRM, ¶33) While we have some concerns regarding a complete formulaic approach, we believe there is merit in using a formulaic approach to establish a state-specific funding cap.

We support retaining the present \$2.25 billion overall cap on E-rate funding. We also believe there is merit in overlaying the current “tops-down” approach for the schools and library program with a formula designed to determine the total amount of support available to each state. Implementation of state-specific caps would better reflect the distribution of the target audience for E-rate funding throughout the country. Specifically, distribution of the \$2.25 billion to schools and libraries within a given state should be based on the relative poverty level of the state and the number of students enrolled in eligible schools.

Benefits of the program should go to schools and libraries providing services to the most economically disadvantaged. Providing a cap on a state’s available funding based on the state’s poverty level would yield the most equitable distribution of E-rate monies. Under the present allocation approach, some applicants can obtain funding that is disproportionate to an area’s poverty level, relative to other states or nationwide. This is not an equitable outcome. Similarly situated eligible entities attempting to take advantage of the program would not adversely impact the available funds to some unknown school or library in another state. Rather, the impact of a request would be limited to similarly-situated schools and libraries within the same state.

The Florida Public Service Commission previously submitted similar comments in response to the Notice of Proposed Rulemaking (FCC 02-8) released on January 25, 2002. In those comments, we stated that “. . . we believe augmenting the FCC’s current rules for support

distribution can achieve a more equitable distribution of funds to each state, if an initial state cap was established based on poverty.”³ We further affirmed:

A cap could be established based on a ratio of a state’s population in poverty relative to the national population in poverty as estimated by the United States Census Bureau. This ratio would establish a cap for a state by multiplying it times the overall funding cap of \$2.25 billion. The ratio could be updated each year to capture changes in economically disadvantaged areas. . . . Funds would be awarded for all Priority One services and then Priority Two services, as long as funds were available under the capped amount of the state.”⁴

We believe it would also be reasonable for the FCC to add other measures if it believes doing so would aid in establishing an appropriate state cap. For example, the we could support including a variable that considers the number of students attending elementary and secondary schools. These different variables could be assigned different weights. An estimate of how various states would be affected with an equal weighting for both variables is attached.

Under this proposal, each state has a vested interest in ensuring that resources are used in the most efficient manner. The FCC should also consider allowing some of USAC’s administrative savings to be reallocated to states for the purpose of administering the proposed responsibilities of the schools and libraries program.

Such an approach may address potential under-representation of eligible schools and libraries. Currently, the program uses participation in the school lunch program as a proxy to estimate the need of schools and libraries in the community. We are concerned that this proxy measurement may underestimate the needs of some schools and communities. We also note that relying solely on the school lunch program under-represents the working poor and the elderly who rely on libraries as a source of Internet access. Using a more general measure of poverty, in conjunction with school size data, can better establish a state cap by focusing E-rate funding to states with proportionally higher poverty and, thus, greater need.⁵

³ See Reply Comments of the Florida Public Service Commission Regarding the Review of Rules Governing the Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, date April 23, 2002.

⁴ Ibid

⁵ The Census Bureau uses a set of money income thresholds that vary by family size and composition to determine who is in poverty. If a family’s total income is less than the family’s threshold, then that family and every individual in it is considered in poverty. The official poverty thresholds do not vary geographically, but they are updated for inflation using Consumer Price Index. The official poverty definition uses money income before taxes and does not include capital gains or noncash benefits (such as public housing, Medicaid, and food stamps).

Commissioner Copps has expressed concern about proposals to adopt overly formulaic approaches for universal service programs. He states, “Allocating support based on formulas, like school size, may ignore critical differences in the cost to obtain services in rural parts of the country and may work against smaller or private schools that cannot achieve economies of scale.”⁶ While we share this concern, we believe that these differences can be addressed outside the schools and libraries program. First, the high-cost fund is best suited to address differences between rural and non-rural regions for all consumers. Second, to the extent that a given school or library lacks the size to attract the best terms and conditions a competitive market may offer, participation in a consortium may be a viable solution. It is our understanding that the current application process can put participants in consortiums at a disadvantage. These concerns may be mitigated by working with states to administer certain aspects of the schools and library program as discussed in the next section.

Federal and State Shared Responsibility

The FCC seeks comment on whether it should replace the permanent, designated Administrator with another type of administrative structure or entity. (NPRM, ¶12) As the GAO Report states, “To carry out the day-to-day activities of the E-rate program, FCC relied on a structure it had used for other universal service programs in the past—a not-for-profit corporation established at FCC’s direction that would operate under FCC oversight.”⁷ In order to comply with the requirements of §254 and to ensure that national policy is properly implemented, the FCC must retain the authority to establish guidelines.⁸

The Florida commenters propose that the FCC can retain this oversight authority and share administrative responsibility with states by modifying the current structure. (NPRM, ¶12) In this new environment, the FCC would retain oversight authority and promulgate rules and prescriptive guidelines, while states would be responsible for taking administrative action to reduce waste, fraud, and abuse. Allowing states to assume certain administrative responsibilities

⁶ See Statement of Commissioner Michael J. Copps, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM), CC Docket No. 05-195, released June 14, 2005, FCC 05-124, page 56.

⁷ See GAO Report to the Chairman, Committee on Energy and Commerce, U.S. House of Representatives, *Telecommunications, Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program*, GAO-05-151, Released February 2005, page 12.

⁸ 47 U.S.C. § 254, Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

lessens the burden on the FCC and USAC, and allows the FCC to operate in a more regulatory mode of oversight of the program and processes. This collaborative effort would ensure that the program meets its goals and objectives. The specific administrative responsibilities we believe would be appropriate for states to address include the approval of:

- 1) Technology Plans
- 2) Request for Bids (Form 470)
- 3) Contract Review (Form 471)
- 4) Modification of Contract (Form 500)

States that choose to participate would be able to approve such filings and forward such applications/plans to USAC after they have completed their reviews. A state's department of education or other entities, given their familiarity with similar federal programs, may be better situated to perform these reviews and to evaluate such applications.

We envision that USAC would distribute funding based on the state's verification and approval of the FCC applications. States could also take on the responsibility of certifying that E-rate funds are used in accordance with program rules and objectives and that all state and local bidding requirements are obeyed. (NPRM, ¶40) USAC would distribute the funds from the state's cap allocation directly to the service providers and vendors as is currently done. USAC would then hold states responsible for the accuracy of the approved application, thus significantly reducing opportunities for waste, fraud, and abuse.

Such a proposal has merit because it would improve the application and disbursement process, serve to streamline the review process, reduce the requests for ineligible services, and minimize funding of ineligible services. Moreover, it should reduce the number of appeals to USAC, since states would initially reject applicants whose information was not accurate or in violation of E-rate program rules. Applicants would also be better served as the state level review could anticipate and resolve applicant problems early in the process. Applicants still might appeal to USAC or the FCC, but those numbers should be significantly less, thus allowing for the reduction in a backlog of appeals that now exists. It follows that if the states are in error and appeals are filed, those appeals would only relate to individual states and not have a nationwide impact. As pointed out in the GAO Report, the backlog of appeals that exists adds

uncertainty to the program and is one of the weaknesses in the FCC oversight mechanisms.⁹ Delays in appeals decisions impede USAC's ability to provide guidance to applicants and can cause great hardship for the applicant community as appeals linger. Delays in decisions would be decreased under this proposal. We believe the collaborative efforts between the FCC, the state, and the applicant would most certainly streamline processes.

Target Dates for Processing Applications

The FCC seeks comment on how the application and disbursement process can be better synchronized with the planning and budget cycles of the schools and libraries benefiting from this program. (NPRM, ¶42) School districts, as any business that manages funds, must adhere to budget cycles; generally, these coincide with the E-rate program year cycles—that is, July 1 through June 30th of the following year. Conversely, all school districts, as a business operation, should know the funds they can expect at the beginning of its business cycle. It is desirable for school districts to better know by the start of their cycle the status of their applications, particularly as it relates to Priority One services.

The Florida commenters suggest that the application and disbursement processes be bifurcated to synchronize better with schools and libraries' budget cycles. Operationally, public school applicants would apply for funds in the spring during a window 120 days prior to July 1. This is the time when districts are preparing budgets and planning procurement. Once commitment letters are received, school districts would know the discounts they will receive and can plan their budgets accordingly. Funds for Priority One services could be distributed in waves starting July 1. Generally, Florida libraries have a different budget cycle, which starts in October. The remaining program funds could be held by USAC until libraries have applied for funds 120 days before October 1. Thus, funds for Priority Two services for schools would be distributed at the same time as Priority One and Two services for libraries, starting October 1.

Under the proposed state-operated administration process, the likelihood of meeting such timelines would become more certain. We understand that states must currently certify the

⁹ See page 5 of the GAO Report to the Chairman, Committee on Energy and Commerce, U.S. House of Representatives, *Telecommunications, Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program*, GAO-05-151, Released February 2005, "FCC's three key oversight mechanisms for the E-rate program—rulemaking procedures, beneficiary audits, and reviews of USAC decisions (appeals decisions)—are not fully effective in managing the program."

technology plans of each individual school district under their jurisdiction. States would, therefore, be best equipped to recognize and question any changes or abnormalities in the initial FCC Form 471 requests. Such controls, at the state level, could better serve to control waste, fraud, and abuse. The same level of controls and understanding of individual district requests would apply to all other applications.

The FCC seeks comment on the matter of delays in general. (NPRM, ¶38) The Commission notes that, “the timing of various parts of the USAC and Commission processes is critical to schools and libraries, many of which operate according to strict state or municipal budget and procurement schedules.” The we share this concern. We have been informed that many school districts in Florida, in particular Miami-Dade County Public Schools, have never received funding commitments earlier than eight months into a given program year.¹⁰ This delay directly affects future budget plans; deployment of proposed projects as noted in the technology plans; and delays in projected development of new technologies—sometimes to the extent that technological innovations overtake the funding process, and thus render some of the requests useless by the time of approval. Moreover, the impact is felt at USAC’s Schools and Libraries Division when faced with duplicate funding requests from one year to the next as school districts, unaware of funding commitments, re-apply for the same services or equipment as in previous years. These are just a few of the areas impacted by programmatic delays.

We believe handling certain aspects of the application process at the state level would provide immediate relief in various areas.

- The application process would be streamlined because of the familiarity of the applicants and their technology plans, thus processing time periods would be shortened.
- Minor data entry errors by the applicant would not result in funding denials, as the state application administrators would have the ability to make the necessary corrections without lengthy Program Integrity Assurance involvement and resulting delays.
- Finally, funding commitments would be available much sooner than based on current practices as the total amount of funds available to each state would be known in advance and a more efficient application process would lead to an expedited funding process.

¹⁰ Bureau of Educational Technology, Florida Department of Education

The FCC seeks comment on whether USAC and the Commission have adequate staff resources to combat delay and the possible imposition of new deadlines. (NPRM, ¶38) The Florida commenters proposes that program modifications, as outlined in these comments, would serve to address this issue directly. Many issues could now be resolved at the state level by the application administrators who deal directly with local representatives on a daily basis. Efficiencies will be created by shifting some administrative functions to the states which will also result in a lessening of the backlog at the FCC.

Competitive Bidding

The FCC seeks comments on modifying current rules requiring competitive bids. (NPRM, ¶40). The we agree with the Joint Board's conclusion that Congress intended schools and libraries to avail themselves of the growing competitive marketplace for telecommunications and information services.¹¹ The intent of competitive bidding was to increase the number of providers in the bidding process. As the Joint Board recognized, many schools and libraries are already required by their local government or governing body to prepare detailed descriptions of any purchase they make above a specified dollar amount, and they may be able to use those descriptions for this purpose as well.¹² We propose that applicants follow state competitive bidding and procurement rules which will also help avoid inconsistencies between FCC rules and USAC procedures and state and municipal procurement rules. (NPRM, ¶42)

Technology Plans

The FCC seeks comments on how the E-rate technology planning process should be reviewed in accordance with other federal technology planning requirements. (NPRM, ¶40) The Universal Service Order¹³ indicates that the FCC is aware that many states have already undertaken state technology initiatives. It is the FCC's expectation that more states will do so, and will therefore be able to certify the technology plans of schools and libraries in their states.

¹¹ See ¶ 575 in the Report & Order In the Matter of Federal-State Joint Board on Universal Service, FCC 97-157, CC Docket No. 96-45.

¹² Ibid.

¹³ See ¶ 574 in the Report & Order In the Matter of Federal-State Joint Board on Universal Service, FCC 97-157, CC Docket No. 96-45.

In accordance with these state-level technology initiatives, the Order states that, where plans have been approved for other purposes, those plans will be accepted without the need for further independent approval. The Order states, “Furthermore, plans that have been approved for other purposes, e.g., for participation in federal or state programs such as "Goals 2000" and the Technology Literacy Challenge, will be accepted without need for further independent approval.”¹⁴ Accepting approved technology plans promotes the intent of Congress and avoids duplicative efforts of applicants participating in Federal programs.

Conclusion

A new direction for the E-rate program will further the realization of the original program goals. By implementing a two-staged funding mechanism based on poverty and number of students within a state, an equitable distribution of funds can be achieved. Implementing a shared responsibility between FCC/USAC and the states will help streamline the application and disbursement process and improve management and oversight within the guidelines of the original law. State administration of applications will improve program compliance through self-policing strategies such as state audits and reporting and will promote the development and implementation of program goals and measures to assess the impact of E-rate funding, all the while emphasizing the elimination of waste, fraud, and abuse. These reform and program updates will enhance and strengthen the program and alleviate many problems.

Respectfully submitted,

/ s /

Cynthia B. Miller, Senior Attorney
Office of the General Counsel

DATED: October 18, 2005

¹⁴ Ibid.