

**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
	)	

**COMMENTS OF THE  
COUNCIL OF THE GREAT CITY SCHOOLS**

The Council of the Great City Schools, the national coalition of 66 of the largest central-city school systems, requests the consideration of the following comments in response to the Commission's June 14, 2005 Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking regarding the management, administration, and oversight of the Universal Service Fund (WC Docket 05-195; CC Docket 96-45; CC Docket 02-6).

The Council of the Great City Schools 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 distribution of intended benefits to the neediest schools and libraries. The E-Rate program has no greater advocate than our city school systems, which enroll the highest number of disadvantaged children, employ the largest number of teachers, and occupy the greatest number of school buildings. Specifically, the 66 school districts in the Council represent approximately 7.5 million urban students, including 30% of the nation's minority students, 31% of the nation's English Language Learners, and 28% 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.

## INTRODUCTION

In recent years, high-profile cases of program mismanagement has subjected the E-Rate program to ongoing, yet mostly unsubstantiated, allegations of widespread wrongdoing. An unfortunate but simple response would be for the Commission to enact new and restrictive changes to the program's application and oversight processes. But audit results presented in this Notice demonstrate that less than 3% of funds have been improperly distributed, and the Commission has indicated that vigilance is required in oversight efforts, but overzealousness is not. We appreciate the opportunity this NPRM provides to offer constructive and workable solutions, and under Chairman Martin's leadership, are pleased that the Commission is taking a comprehensive look at existing rules and protocols, and is considering revisions that could result in improvements to this vital program.

For large applicants such as the big city school districts, there are two pivotal issues affecting the USF as it relates to the E-Rate: timing and communication. These issues are central to the operational difficulties that arise for applicants, and also have a role in creating an environment where allegations of misconduct can breed. The lag time which accompanies a standard application for reimbursement, as well as the delays which plague the program during document reviews, oversight control efforts, application adjustments, and appeals, creates a drawn-out, cumbersome, and confusing process which observers often conclude is tainted with fraud. Delays in providing funding commitments results in applicants using less than 100% of their original request, due to an inevitable drop in prices over an extended time period, the inability to complete projects during a shortened time frame, expired contracts, or a number of other reasons. The delay also causes a large number of the circumstances reviewed by audits, such as multiple requests for the same service and equipment over multiple years or repeated requests for service substitutions.

The lack of clear communications from USAC or the Commission during the application, oversight, reimbursement and appeals process further confounds and frustrates applicants. The lack of timely action on an appeal, and the inability of applicants to determine with any certainty when a resolution will occur, deters school districts from pursuing due process remedies. The lack of external information amplifies the deficit of transparency in the E-Rate, and gives greater momentum to critical commentary.

Despite frustration with the administrative difficulties in the E-Rate, our urban districts have noted continual operational improvements since the program's inception, and continue to strongly support the benefits that Universal Service provides to their classrooms. The comments included in this response will offer suggestions to resolve the major problems of timing and communication, as well as provide other operational and practical proposals in response to the Commission's queries.

## **UNIVERSAL SERVICE ADMINISTRATIVE COMPANY (USAC) AND THE UNIVERSAL SERVICE FUND (USF)**

### The Administrator

While it is likely that all of those responding to this Notice will provide the Commission with suggestions for modifying the E-Rate program, we do not feel that the FCC should replace USAC with a new Administrator. The E-Rate program is a unique and vital support mechanism, and USAC's expertise has grown considerably with the program. The Administrator has worked to improve its performance continually, and has shown consistent and steady leadership while fending off detractors and opponents on Capitol Hill and in the courts. The stark improvement in the technology landscape in our nation's school and libraries since its inception has shown that the program has been an overwhelming success, and we strongly urge the Commission against instituting a change in the E-Rate Administrator.

The Commission could assist the Administrator and applicants by providing a clear framework of authority for USAC to make decisions on E-Rate applications, as well as examples or delineation of the circumstances in which they can not make a decision or ruling. While the program rules prohibit USAC from making policy or interpreting the intent of Congress, applicants are often confused when they are informed that USAC has authority to make a decision in one area, but can not issue a decision in another.

The Council also suggests that the Commission review the USAC's Board of Directors by-laws, and amend their rules to require that the education representatives to the Board include at least one local program administrator. The current stakeholders represented have an important job in governing the program, and including an individual who has completed the application process themselves and is personally aware of the program's challenges and successes can only improve the efficacy and value of the Board's decisions. We also feel that the effectiveness of the USAC Board and their governance of the program could be strengthened if their meeting agenda included time for public comment, and a select number of the quarterly meetings were held in different regions of the country, in addition to in Washington, D.C.

While we are unsure of the specific staffing levels at USAC, we feel that the Administrator does require either an increased staff, or at the least, needs to reassign current employees to ensure that big cities have USAC representatives with distinct training and expertise in working with large applicants. The basis for this proposal is to ensure that there are specific regular staff, Help Desk employees, as well as PIA and audit staff who are trained and devoted solely to large applicants. Such staffing revisions could aid USAC in eliminating duplicate efforts, in which applicants now routinely spend a significant amount of time reviewing an application with one USAC representative, only to go through the process again with different USAC representatives later in the year.

The Commission should also consider requiring USAC to conduct regular and ongoing professional development, training, and technical assistance sessions designed

specifically for large applicants (with reimbursements over a specified amount). This would allow both USAC staff and applicants to become more familiar with the unique needs of the E-Rate program's biggest beneficiaries, and would provide for an exchange of information which simply does not occur during the one-size-fits-all workshops that are currently available. USAC and the FCC should also consider hosting regular seminars around the country focusing on specific technical areas of interest to all applicants, such as telecommunications services, purchasing routers, etc. With its recent ABC Training, USAC has begun these efforts, and with over seven years of remarkable progress and success in the E-Rate, there is a grand surplus of available "Best Practices" information waiting to be tapped and shared.

#### Universal Service Fund

As a result of the decision to apply the Anti-Deficiency Act to Universal Service programs, the Council is greatly concerned that any resulting change to the USF's contribution factor will cause major fluctuations in the phone bills of consumers, and put more political stress on the program. As Congress continues to debate the merits of an exemption from the Anti-Deficiency Act, we urge the Commission not to alter collection periods based on demand.

### **APPLICATION PROCESS**

#### Emergency Circumstances

The Council offers its highest praise and sincerest appreciation to the Chairman and the Commission for utilizing the resources of the E-Rate program to assist those schools affected by Hurricane Katrina, by offering additional flexibility and reimbursement opportunities in this current funding year to both devastated school districts and those systems that have opened their doors to displaced students. As we have pointed out in previous comments, however, a natural disaster is not required for school districts to encounter unforeseen circumstances. In instances where districts face an enrollment spike in certain buildings due to the transfer policies of the *No Child Left Behind* law, shifting demographics in a city due to housing changes or federal immigration settlement patterns, or emergency rebuilding efforts for any number of reasons, the established technology plan can quickly become outdated. For districts that utilize the Chairman's offer in the wake of Hurricane Katrina, as well as those applicants who face unforeseen changes for other reasons, we urge the Commission to consider waiving those project sites' inclusion in the two-out-of-five rule.

#### Shifting the Program to a Formula Distribution or Instituting Funding Caps

The Council is strongly opposed to either of these major changes to the program. As currently constituted, an application for funding is submitted when a library or district undertakes a project, and less funding is requested by those entities in the years when their need for project support wanes. This mechanism ensures that sufficient funding for high-poverty applicants is available when Universal Service support is needed. By contrast, a formula will be an inflexible response to local needs, will spread the funding

around thinly each year, and will never provide a sufficient concentration of funding in the manner that the current reimbursement process can.

We understand the attraction of taking E-Rate funding and developing a formula that would simply divide the resources among education efforts throughout the nation, either for states, school districts, or school buildings. But the E-Rate was not intended to provide direct funding based on an enrollment count of students, or even a count of poor students, for states, districts, or schools. The E-Rate provides reimbursements for the specific and constantly-changing telecommunications projects which serve the highest percentages of poor children. It is skewed towards the poorest buildings, and is not equitable towards all schools, because it is trying to balance out the funding inequities which already exist in our nation's poorest communities.

The Council also fears the reaction of the telecommunications contributors who pay into the USF, as well as the contractors who perform the E-Rate project work, and whether they would support a major expansion of non-telecommunications items which the proposed flexible funding would permit. Allowing E-Rate funds to be used for almost any technology-related service, as suggested in the Notice, would weaken support for the program from the industries it supports, exacerbate problems with oversight, and would make it impossible for the Administrator to manage expenditures for relevant services. If such a formula provided funding to the school building level, district administrators would have an equally difficult time overseeing the local purchases, particularly in big cities with hundreds of buildings. A site-specific allocation would also hinder the ability of administrators to ensure that the necessary pieces of a school system's technology plan were being implemented adequately throughout the district.

The Council also expresses a strong opposition to the idea of caps on funding for E-Rate applicants, and has always done so. The number of formula factors required to achieve a fair amount for the projects with the highest concentrations of poor students changes constantly, and involves more than a simple count of school buildings and enrollment totals. In large cities, the confluence of increased regional costs, higher wages, expensive insurance premiums to perform work in old buildings, and a litany of other factors result in some of the nation's most expensive projects. It would be extremely difficult for the Commission or the Administrator to keep an updated list of all factors, to develop a fluid but changing formula that includes all pertinent considerations, and make a determination at least once a year. As mentioned above, any formula that is developed, whether to determine the distribution of funding or to set a cap on applicants, would inject more complexity into the E-Rate, and would subject the program's funding decisions to constant criticism.

Furthermore, in the time since the SLD Task Force recommended such a cap, the Commission has already taken action to lower demand, and in effect capped the amount that districts could receive over a certain time period by instituting the two-out-of-five rule. USAC has reported lower requests for funding in each cycle since this decision was made, and additional artificial restrictions are not needed.

### Competitive Bidding

We support the Commission's review of the competitive bidding procedures, and ask the FCC to consider eliminating the requirement for the Form 470, and allow applicants an opportunity to use an alternative process that recognizes local bidding requirements and the utilization of an existing municipal, state or Federal (e.g. GSA) contract.

We also propose that the Commission add transparency to the 28-day bidding period by requiring applicants to inform all bidders of any conversations they've had or questions they've fielded from a particular service provider. This practice is common in state and local procurement procedures, and helps ensure that a level playing field is cultivated in plain sight for all those involved. However, the Council does not support the proposal to require competitive bidding only for applications over a certain threshold, as the Commission should make certain that an economical value is being sought for E-Rate projects of any cost. It is the competitive bidding process itself which should be looked at, not a particular group of applicants.

### Guidance for Eligible Services, Pricing Lists, Service Life or Depreciation

Continually updating these types of lists, though useful, will be an increasingly burdensome task for the Administrator, and with the current available resources, our preference is that USAC and SLD focus their efforts on processing applications. The Council supports additional guidance for E-Rate, but would not support making strict adherence to any such list – for costs, eligible services, or depreciation guidelines – a requirement. If used as guiding documents only, USAC's decisions, as well as their ability to update the guidance, are less likely to become subject to repeated questioning and repeated appeal. For those that follow the guidance strictly, the application process can proceed quickly; those that use the lists solely as a guide can expect follow-up questions from the Administrator. The frequent changes in technology, and the even more frequent changes in costs, require flexibility in order to ensure the timely delivery of services that are appropriate for each applicant.

### FCC Forms

One area where the Commission can make a significant improvement in the oversight process involves the FCC Forms 472 and 474. Currently, service providers submit a Form 474 to USAC for reimbursement without any verification from the applicant, while the form used by the school district for reimbursement, the Form 472, requires dual certification from both parties.

There are two potential solutions, the first of which is to eliminate the Form 474 and require the exclusive use of the Form 472 for all entities seeking reimbursement. As an alternative, changes could be made to the existing Form 474 to create a joint sign-off document that protects the integrity of the E-Rate program. The necessary changes to the Form 474 include: (1) modifying Block 2 to include an itemized breakdown of the specific goods or services actually delivered to the school district (merely listing the corresponding FCC Form 471 and Funding Request Number is insufficient to guarantee that the goods or services were provided); and (2) modify Form 474 to include the amount paid by the Billed Entity for its corresponding percentage of responsibility. This

will prevent the Service Provider from billing the entire approved amount when only a portion of the approved amount is actually spent by the school district.

A likely concern from service providers with such a change will be that requiring district sign-off will slow down their ability to get timely reimbursements. However, the joint sign-off can require a 30-day turn-around time period for the applicant to approve the vendor's verification forms. A non-response from the district within 30 days would allow the vendor to continue with the process of recovering SLD refunds.

We also propose that the Form 500 be adjusted and used for all changes that are made by an applicant. The Form 500 could be amended to include: (1) contract changes and contract date extensions; (2) SPIN changes; (3) Service Substitution requests; (4) FRN funding adjustments, and; (5) cancellation of unused funds. Finally, we also ask the Commission or USAC to complete a comprehensive review of the required certifications, affirmations, and guarantees required on FCC Forms, and delete unnecessary duplications. For example, requiring applicants to certify that they have implemented CIPA requirements is a vital assurance for the E-Rate program. However, variations of specific certifications are required on multiple forms, and it is not uncommon for an assurance to be approved by SLD on one form, while the same certification is held up by a different reviewer and causes delays.

#### Disbursement of Funds

Neutrality has improved when it comes to the timing of funding commitments, although large applicants were clearly at a disadvantage for many years, and still often find themselves waiting at the end of the line. Since projects in the big cities involve the greatest numbers of contractors, buildings, and classrooms, USAC should increase its number of review staff with large applicant expertise, and continue to include the amount of funds approved in its processing targets (and not merely the number of applications). Both of these steps will help USAC improve its understanding of large applicant needs and requests, as well as the efficiency and effectiveness of its processing.

Improvements to the timing of disbursed funds can also occur if the SLD shifts Maintenance and all recurring services under Priority One, and aims to process all of these requests by July 1<sup>st</sup> of every year. The Commission and USAC has found that Priority One services are not the area where questionable practices occur, yet lengthy delays in Priority One funding cause tremendous problems for districts of all sizes. A staggered window for Priority Two requests, both in terms of when the applications are due and when commitments are delivered, would ensure that the essential basic services in Priority One for all applicants are processed efficiently and given preference.

The Maintenance aspect of the program is vital to ensure that the E-Rate's investment in telecommunications infrastructure is not ignored. In order to ensure that the proper upkeep is performed and accurate applications for reimbursement are submitted, we suggest that USAC develop a Maintenance Standards template to highlight the minimum documentation and information needed when filing a request for maintenance support. The Commission should also direct USAC to determine the circumstances in which the

SLD can allow dedicated maintenance and monitoring services as an eligible support. The rules currently do not allow applicants to utilize cost-effective monitoring contracts to determine if a site or device is functioning correctly, yet does allow a continuous accrual of payments for technician visits.

We also suggest that the Commission develop a new category of service for Internal Connections that is exempt from the two-out-of-five rule. The new category would permit the purchase and installation, within a certain value, of centralized equipment and services that are necessary for overseeing a district-wide network or shared internal connections.

#### Improving Communications and Technical Support at USAC

Big city applicants have found that calls to the E-Rate Help Desks often are of little assistance. As we have suggested in other areas, we propose the creation of a Help Desk specifically dedicated to serving large applicants, staffed by individuals with specific and distinct training. An additional frustration of applicants is found in the lack of assistance or clarity in the correspondence they receive from SLD. Letters informing districts of denials or reductions in funding requests provide stock replies and generic wording, and do not help applicants understand the problems with their applications and what changes they should make in the future. USAC can improve the communications and clarity of its program decisions by requiring SLD to send a detailed notice to all applicants explaining why a Funding Request was reduced or deemed ineligible.

The Commission can also reduce frustration and streamline the program by improving the process for Service Substitutions. Requests for lateral Service Substitutions are typically the result of newer generations of equipment becoming available during the time while awaiting funding commitments, yet applicants can submit updates to products or services only by submitting "Service Substitution Requests" after receiving a funding commitment. Applicants receive no feedback after submitting the Service Substitution Request, have no way of tracking the status of the request, and the lack of technical understanding and technology expertise at USAC complicates and draws out the process for submitting Service Substitutions.

The Council proposes two changes to improve the Service Substitution process. The first requires the SLD to grant automatic approval to applicants for certain Service Substitution Requests, such as updates or new generations of products or services, when the change does not increase the value of a funding request. Second, we also propose that the SLD create an internal technical body that will provide their technology expertise to staff, make decisions on Service Substitutions, and expedite the PIA reviews. To build this internal capacity, we suggest that SLD either: (1) hire representatives from E-Rate's most common manufacturers (such as Cisco, Nortel, etc.) to provide expertise; (2) subscribe to the Help Desks or Technical Support services of those manufacturers which are used most commonly by E-Rate applicants, or; (3) or hire an independent engineering firm outside of USAC to provide expertise.

### Additional Suggestions Regarding the Application Process

Currently, applicants can only make changes to their application, however minor, by using a FCC Form 471 (post-filing) via the RAL process. We suggest that USAC develop a system that permits applicants to make minor corrections in certain fields on the Form 471 through an online post-filing form, allowing a set window of time to make updates.

We also urge caution to the Notice's suggestion that USAC require three bids for all applications in order to avoid "goldplating." While the Commission notes the difficulty that remote locales may have in meeting this requirement, it is our experience that urban districts often have just as much trouble finding multiple bidders for E-Rate projects. Regardless of their size, applicants should not be punished for the lack of availability, interest, or capacity of service providers to perform work in their geographic area, since it is often just as difficult to receive three bids for a \$20 million E-Rate project in Cleveland as it is to receive three bids for a \$20 thousand E-Rate project in rural Ohio. The Commission has sought an unprecedented number of recommendations to improve oversight in this Notice, and the suggestions put forth by commenters will surely include constructive and worthwhile rule proposals that will meet the FCC's goal, without putting certain applicants at a distinct disadvantage.

### **OVERSIGHT AND AUDITS**

The Notice made public the information that since the program has begun, E-Rate audits have recovered a total of \$7.6 million for program violations, and have identified an additional \$24 million in funds that are currently either pending recovery or under review. These recoveries total \$31.6 million, and were recouped from \$1.14 billion in total disbursed funds that were the subject of the audits. The Council appreciates the publication of these figures, which make it clear that while the FCC must continue its effort to reduce any improperly disbursed funds, the problems of fraud, waste, abuse, or applicant error are not just isolated, but *remotely* isolated, despite congressional and media declarations to the contrary. In fact, even if one includes the funds whose recovery is still pending or on appeal, the E-Rate audits, which target large applicants almost exclusively and have been performed in many big cities on an annual basis, have resulted in less than 3% in recovered disbursements. As debate on the E-Rate program continues, during the upcoming reauthorization of the Telecommunications Act on Capitol Hill and in future years, we urge the Commission to continue making such statistics available. They are vital to ensure that policymakers have accurate information on which to base decisions.

### Performance and Program Measurement

The Council has proposals for ways in which the Commission should consider assessing the success of the E-Rate program, but also suggests that the FCC convene an official Task Force to study this specific topic before making any rule changes. Stakeholders from the service provider industry, as well as researchers, school district officials and teachers should join together to develop a set of standards based on the comments received by the Commission in this proceeding. The E-Rate is vital to our schools, and

the program should certainly invest the requisite time before any accountability measures which may be used to reduce funding to our nation's schools and libraries are instituted.

As far as measuring the program's performance, the Commission should consider the essential services the E-Rate supports, and the success the applicant has in deploying such services to schools and classrooms. In other words, the availability of access for users in terms of bandwidth performance and reliability should be considered. A basic measure of this would be to advance beyond the current practice of counting the number or percentages of schools that have been connected to the internet, and begin to gauge the number of classrooms that have access. In terms of broadband or network services, the Commission could look to see how regularly the network was functioning properly, i.e. how long the network was "up." The Commission could include a measure to determine whether wired classrooms were getting the bandwidth they need, as well as a measure to determine exactly what level of bandwidth capacity end users need to access resources and applications. The Commission can also assess the number or percentage of direct connections on a network, as well as the number of email accounts and email usage by an applicant.

While a number of utilization statistics are available to measure the performance of the E-Rate and a broadband network, measuring the program in terms of academic impact is more difficult. The level of sophistication of any measurement tool that can extract the benefits of a specific support in isolation of other factors which exist for students and schools is not readily available, is not always agreed upon by researchers, and certainly isn't common or standard throughout the nation. The E-Rate impact may be easier to measure when the program is viewed as a resource of the district, however. Determining how the E-Rate has benefited applicants in terms of personnel and staffing, cost savings, or the amount of funds that would have been available in the absence of the E-Rate, are areas which the Commission should explore, and can be translated nationwide.

#### E-Rate Audits

Large urban districts have been the target of E-Rate audits since the program's inception, and have always opened their doors and demonstrated patience with inexperienced auditors. The Council supports regular audits of applicants over a financial threshold, and random audits for those who fall below. For large applicants who routinely require reimbursements over the determined threshold, we propose that an audit every 2-3 years, or twice every five years, would be appropriate.

A number of large applicants have been subjected to audits on an annual basis without objection, but when taking into account the reality of low non-compliance and low fund recovery that has resulted, a yearly audit for 25% of applicants as suggested in the Notice represents the overzealous and inefficient action the Commission is hoping to avoid. A schedule of random and regular audits for applicants, coupled with the existing rule allowing a retroactive audit of five years, provides the balance of strict oversight and efficiency the FCC seeks.

The disproportionate harm of requiring smaller applicants to fund their own audit, and the Council's support for randomly auditing each applicant on a schedule determined by the size of their reimbursements, leads us to recommend that funding for audits continue to emanate from the Universal Service Fund, and not the applicants themselves. Most E-Rate beneficiaries rely on public funds, and by their eligibility for the program demonstrate their limited resources. Such entities may have difficulty budgeting an audit for a timeframe that is out of their discretion. After reviewing the comments submitted to this Notice, the FCC will likely identify ways that efficiencies can be built into USAC's current oversight operations, and ease the burden for hiring an independent auditor that is chosen and compensated by the Administrator. This will also allow the program to stay clear of any appearance of impropriety that will inevitably result from applicant-employed auditors.

The Council does feel that there should be a clear distinction made between administrative error and willful fraud, particularly since the E-Rate program has been routinely blanketed with charges of malfeasance. If a school district has no way to know that an unpublished USAC rule exists, a finding of non-compliance against them should not be included with the audit findings. There should be improvements to the communication between the auditors and subjects, and USAC should develop a method to inform districts to ensure that applicants are aware of such unwritten rules. And we agree that it would improve the efficiency of the program and the various oversight efforts employed by the program if duplicate audits were not required in the same program year.

We also support the suggestion in the Notice that audit results be shared with the subjects, and propose this occurs within 90 days of the completion of the site visit or document review. Before the audit begins, the auditor or USAC should provide the applicant with target dates for the audit's completion, a target date when the findings will be provided, and a revised date based on the 90-day deadline after the review has been completed.

Prior to the final report, the Commission should also consider allowing districts to review, discuss, and challenge preliminary findings with auditors before a final audit determination is made. This will help ensure that inaccurate and unnecessary charges of non-compliance are not made official. USAC should be sure to distinguish those audit findings that are the result of poor vendor behavior and which an applicant can not control, such as when a vendor has not submitted invoices for equipment and services. USAC can be charged with creating a compilation of Best Practices based on positive audit findings, with approval from the applicant. Not only will this be useful to all applicants in the future, but it will help to ease the allegations of non-compliance that are based, in part, on the lack of information available from previous audits.

At the current time, program rules do not require applicants to meet a sufficiency measure for internal oversight controls, and we believe it would be unfair to include such an audit finding as suggested in the Notice. School districts work with a system of financial controls which are sometimes determined by the school board, but often times

are based on municipal, county, regional, state, or even federal decisions. As the E-Rate program is currently structured, applicants will receive a negative audit finding if they fail to comply with an aspect of the Commission's rules. Proper communication from the auditors should include a detailed explanation of the non-compliance. The finding of non-compliance against an applicant is more effective than measuring against an arbitrarily-calibrated scale which does not exist.

#### Stoppage of Payment

The Council does not support the stoppage of payment for any reason prior to a finding of non-compliance, or as queried in the Notice, at a specific threshold. There are a number of procedures and approvals through which an application must proceed before any funds are disbursed by USAC, such as the initial review, the formal review, a PIA review, a Selective Review, and Invoice Review. An application has been adjusted and approved a number of times once it makes it through these processes and a funding commitment is issued, and if non-compliance or an erroneous disbursement is determined at a later time, we fully support the recovery of funds by USAC. But holding up funding when an application has been approved at all of the formal steps in the process confuses applicants, and reduces the transparency and legitimacy of the previous oversight efforts which did not turn up any problems.

#### Penalties for Non-Compliance

If an applicant's non-compliance, whether intentional or due to administrative error, results in erroneously disbursed funds, we support the recovery of funds by USAC. However, if the non-compliance was due to administrative error, and the correction results in a legitimate application, USAC should allow the funds to remain, and not punish the school or district for errors which the Notice itself described as inevitable.

The Council supports appropriate oversight and tighter scrutiny, and believes that penalties should become more severe depending on the level or continued reoccurrence of non-compliance. This includes a probationary period for those who have been found to be frequently non-compliant, and additional training and oversight for the applicants that have encountered such difficulties.

The Council also supports an increase in the range of sanctions for those that violate the program's rules, and believes that there should be penalties prior to debarment. Recovering funds when reimbursements have been disbursed erroneously are appropriate, as is the imposition of financial penalties in those instances of willful, repeated, and egregious acts of fraud and abuse. Since the majority of beneficiaries are public entities who rely on shallow local tax revenues for funding, penalty amounts can be recouped through a one-time fine, or through reduced Funding Commitments over a certain future period. We also support the Commission or the Administrator publishing a list of companies that have been fined or from which funds have been recovered. As indicated in the Notice, we feel it is essential that the Commission create and clarify distinctions between instances of fraud or abuse and administrative error, and apply appropriate results to each action.

### Program Integrity Assurance (PIA)

While many of the audits performed to date have required more time, funds, and manpower from our school districts than other reviews, we believe this should prompt a revamping of any inefficient procedures, and not the elimination of audits. However, we would ask the Commission to consider eliminating or scaling back the lengthy, time-consuming, and often duplicative Program Integrity Assurance (PIA) process, as our districts are already subject to regular audits, Item 25 reviews, and other evaluations throughout the process.

If eliminating the PIA process is not a consideration, there are changes which USAC can undertake to ensure PIA oversight efforts work more efficiently and align better with overall operations. For example, USAC should assign PIA representatives with distinct knowledge of large applications consistently to the same entities undergoing review, and require all representatives to create a log of the inquiries, document requests, and questions asked of each applicant. This will help USAC to avoid duplicating the same PIA request multiple times, and helps to develop internal expertise with large applicants to speed up the review of applications in the future. In order to avoid duplicate activities, USAC should also consider eliminating the annual PIA review of a multi-year contract if the contract has not been changed or amended since its initial review and approval.

Finally, the PIA process is often conducted by treating school districts like the enemy, and reviewers regularly project an assumption of guilt onto applicants, and see denial of funding as the goal of their efforts. We suggest that USAC attempt to improve the communications with beneficiaries by requiring a PIA or SLD representative to discuss the results of their document review with the applicant within a specified timeline following submission. We also would also propose that USAC adjust the training of PIA staff to reduce adversarial treatment of applicants.

### **APPEALS**

The problems which exist with the current appeals process for the E-Rate program are well known. Typically, an applicant waits 6-12 months before receiving any feedback about their submission of an appeal to the SLD or the FCC. The ability to track or monitor their submission and determine the status does not exist, and inquiries to the Help Line or an online inquiry will at best return an automated response that "SLD has received the appeal and is reviewing it." The result is that applicants are deterred from submitting appeals, since the ability to pursue due process has been severely rationed.

While the Commission has indicated their intent to address the backlog of appeals that are pending at the FCC, we also suggest that an electronic appeals procedure with online tracking capability be developed. Such a system would help to speed decisions on routine petitions, improve communications with applicants, and increase the transparency of the program. We propose that the SLD create an appeals page on their website, and which functions in a similar manner to the current online inquiry process, e.g. the "Submit a Question" feature on the SLD website.

To determine the nature of the appeal, the website could list the most common appeal positions in a drop-down menu. If the applicant can not categorize their appeal into one of the choices listed, then a written appeal would be required. If the appeal can be submitted online, the tracking system would allow applicants to follow their appeal through various stages, as the online "471 Application Status" tool currently allows applicants to do. If deemed appropriate by SLD or FCC, certain appeal categories could be given automatic approval, such as when a large number of appeals were submitted due to SLD's error in applying the "30% Rule" to deny funding in 2003.

## CONCLUSION

In schools across the nation, the *No Child Left Behind* Act ensures that progress will only be measured by a school or district's ability to improve student achievement. In urban school districts, the availability of technology tools allow students to spend more time on tasks related to their education, and E-rate funding has been a primary factor in the ability of districts to provide such an environment. The E-rate has allowed more equity of technology 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. Such benefits result in increased time for learning and educational activities in classrooms, 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.

The Council appreciates the Commission's efforts to ensure this vital support remains available to communities across the country, and we believe that all respondents to this Notice will testify to the significance the E-Rate has assumed in national education efforts. We also appreciate the Commission's efforts to streamline and simplify the E-Rate program, and know that all school districts welcome the opportunity to focus their efforts on improving student achievement.

Respectfully submitted,

Michael Casserly, Executive Director  
Council of the Great City Schools

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