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

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

COMMENTS FROM ARKANSAS E-RATE WORK GROUP
ON THE NOTICE OF PROPOSED RULEMAKING AND
FURTHER NOTICE OF PROPOSED RULEMAKING (FCC 05-124)

On behalf of the
Arkansas E-rate Work Group:

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I: INTRODUCTION

1. Pursuant to Section 1.51 (c) of the Commission's rules, the Arkansas
E-rate Work Group (AEWG) hereby submits these comments in response to the Commission's Notice of Proposed Rule Making and Further Notice of Proposed Rule Making released June 14, 2005.

II: BACKGROUND

2. The AEWG is a working group representing public officials responsible for K-12 education and public libraries in the State of Arkansas. The Arkansas E-rate Workgroup (AEWG) works on behalf of schools, public library patrons and other state agencies that serve to increase performance for pre-K-12 and K-12 students as well as enhance public libraries services. The AEWG includes representatives from the following Arkansas agencies: Department of Education, Department of Information Systems, Governor's Office, Office of Executive CIO, Arkansas State Library, Little Rock School District and North Central Educational Service Cooperative. These individuals have offered ongoing support for schools, libraries and consortia to navigate the E-rate application process from the beginning, through multiple steps and, finally, to the acquisition of discounts and/or refunds on their telecommunications and advanced services purchases. The AEWG members have knowledge about the E-rate program because they help school districts and public libraries with their E-rate applications, are responsible for state consortia applications, regularly work with the Universal Service Administrative Company's Schools and Libraries Division ("Administrator"), and have a particularly good grasp of the program's history and intent. These comments reflect the best knowledge available about the E-rate program and were developed with the principles that support the Telecommunications Act of 1996.

III: DISCUSSION

3. In this Notice of Proposed Rulemaking and Order (NPRM), the Commission has requested comprehensive comments on specific issues related to all programs under Universal Service and administered by the Universal Service Administration Company (USAC) as well as the administration of all programs. The AEWG appreciates the opportunity to comment on these important issues and strives to provide the perspective of the state organizations we represent and the

schools and libraries we serve. The AEWG's comments are specific to the Schools and Libraries E-rate Program.

4. AEWG supports the Commission's efforts to date to implement access to advanced services for schools and libraries under Universal Service support mechanisms. Without these efforts many schools, libraries, health care providers and indeed many rural communities would not have access to services that have become commonplace and expected in urban locations.

IV: PROGRAM MANAGEMENT

Administrative Structure:

5. The Commission seeks comment on whether they should codify certain USAC administrative procedures in the Commission's rules.

6. AEWG concurs with the Commission's belief that there is a fundamental difference between ministerial errors and intentional fraud, and greater clarity in USAC's rules and procedures will help reduce ministerial errors.

7. AEWG is concerned with the fact that there is not a single repository for rules, policy and procedures related to the E-rate Program. Applicants and Service Providers must refer to multiple sources to obtain all the FCC rules and Administrator policies and administrative procedures on a given topic. FCC rules are found in Orders and appeal decisions. Policy and Procedures are found in E-rate Form instructions or the Administrator's Web site. In many cases contradictory information is provided on the Web site and information is rarely updated in a timely manner. Applicants must adhere to guidance provided in the "Reference Area" of the Web site in addition to a number of other areas such as the "Service Provider Manual" and "SLD Training" Power Point slides. There must be one repository where the applicant and service provider can reference ALL appropriate guidance. The rules must be clear, concise and up-to-date. If rules from another federal program also apply to the E-rate program, the Internet URL must be listed and updated. The repository must be posted to the Schools and Libraries website under a section heading of Program Compliance. Every rule, policy or procedure must be listed in this section. The information must include the effective date (beginning and ending) of each item. The FCC rule, policy or procedure must remain in this section for the duration of any applicant or service provider audit period. Additions, changes and

deletions to any rule, procedure or policy must be identified via the "What's New" section of the Schools and Libraries web site.

8. AEWG further recommends the addition of a Best Practices section to the Schools and Libraries website. SLD should review all process and procedures. When a form such as a budget or letter of agency is requested, SLD must post an OMB approved template for applicant use. The OMB approved template must include all necessary information. If an item is not included in the template the applicant or service provider is not held liable for excluding the information pertaining to that item.

9. The lack of readily available, clearly defined information on the FCC rules, policies or procedures leads to many problems in the E-rate program. The lack of information leads to what appears to be waste, fraud or abuse of the E-rate Program. Program complexity leaves unknowledgeable applicants prey to unscrupulous providers and/or consultants.

Continuity of Operations:

10. The Commission seeks comments on whether they should adopt a rule to require USAC to develop and maintain a Continuity of Operations Plan (COOP) for dealing with emergency situations. As the Commission itself noted, the E-rate program has become *MISSION CRITICAL* to the schools and libraries around the nation. Many schools and libraries would not be able to provide their students and patrons with the resources required for education. The Commission has only to refer back to the problems created by the delay in funding commitments created by the Anti-Deficiency Act (ADA). Many applicants across the nation were impacted by this delay. A delay caused by lack of preparedness on USAC's part would create the same or worse situation. Regardless of the cause the perception to a delay in funds due to USAC's lack of a COOP would be met with more negative publicity than the delay due to the ADA. This would be driven by the perception that USAC had no control over ADA but they do have control over a COOP.

Timing Issues:

11. The Commission seeks comment on timing issues that need improvement and request particular deadlines that should be modified.

12. The time between filing the application, application review and funding decision has increased over the past couple of years. As of October 10, 2005 applicants have yet to hear anything on their application, including Priority 1 services. This puts a burden on the applicants' budget. Vendors have begun the practice of increasing the cost of their services if the school is using E-rate funds or not doing business at all if E-rate is involved. This is due to the delays the vendor experience in receiving payment from the SLD.

13. Program complexity and timing delays leaves applicants unsure of their ability to file accurately for funds. This is true of applicants filing for basic service as well as more complex requests. Unexplained delays in the application and invoice review process cause unnecessary anxiety for the applicants. This anxiety and insecurity in their ability to file a successful application leads applicants to seek service of consultants or to listen to service provider advice. While there are good consultants and service providers, there are also the unscrupulous. Today timing of application review in both the application and the invoice stages of the process is in as much need of improvement as is program complexity.

14. While AEWG is concerned with the delay, we suggest the Commission not set arbitrary or unrealistic deadlines. One can refer to any number of time management studies and see that deadlines without meaning or measures create nothing but problems or sloppy results.

Formulaic Option:

15. The FCC asked several questions related to the use of formulaic as an option for funding schools and libraries. The AEWG is concerned with many areas when discussing the use of formulaic. The most pressing question is how would the dollars associated with the formulaic be developed? A formula based on number of students causes disparity among large urban school district and rural states.

16. Applicant size in and of itself cannot be used to determine the formula. The cost to deliver a service is dependent on location and type of service. For example, the cost of a T1 for Internet Access may change from provider to provider or number of miles to a location. The number of students served by the T1 does not impact the cost.

17. A funding cap cannot be based on the number of circuits or bandwidth at a location. This concept contributes to inequality in

rural areas. The demands of education on connectivity will continue to grow. The applicant must be able to keep up with the demand. Without E-rate funding for these services education and library services will stagnate.

V: APPLICATION PROCESS

18. The Commission seeks comment on streamlining the application process. The AEWG believes there are measures that can simplify the program. These range from combining forms, deleting forms and adopting a streamlined multi-year application for priority one services.

19. AEWG believes Multi-year contracts should be reviewed in year 1, and automatically funded through the life of the contract. States may have different rules when dealing with contract extensions. State and local law should be the final say on this issue. There must be a mechanism in place to allow for reduction of funding and increases in funding. This could be handled by modifying the current E-rate Form 500. If for any reason the application is denied in Year 1, the applicant must be allowed to reapply in subsequent years. Eliminating the multi-year application review and approval process reduces not only the Administrator's time but reduces applicant's time. The Administrator would now have time to devote to the more time-consuming Priority II applications.

20. AEWG applauds USAC for its work on creating an electronic Item 21 attachment as well as the ability to upload Block 4 data. The upload feature will relieve consortium applicants and state network applicants duplicate effort. Consortium applicants and state network applicants create a database of information pertaining to the entities to be listed in Block 4. These applicants then have to re-key the information to the Form 471 Block 4. When state network applicants are procuring services for all public schools and/or libraries in their state, the Block 4 takes three to four weeks to complete. The ability to copy the previous year's Block 4 data provided some relief, but the majority of information had to be changed. Upload of Block 4 information from applicant database should reduce the consortium applicants' and state networks applicants' processing time by three – four weeks. AEWG would like USAC to consider allowing the same upload ability for the Funding Request Block 5.

21. The E-rate Form 470 designed to begin the competitive bid process has not provided the increased competitive market envisioned when it was developed. The form has become a source to deny funding for a myriad of reasons. Well intentioned applicants have been denied because they did not select contract, tariff or month-to-month on the form. SLD Program Integrity Assurance has moved the applicants requested service from telecommunications to Internet Access and denied funding because the applicant did not include information in that category of service.

22. The application review process has gone to the extreme of making sure not a single penny is funded that is not eligible. Too much time is spent on both the administrators' and applicants' side justifying a $.50 charge for an item such as directory assistance. While the need to ensure applicants adhere to program rules, less time spent on the $.50 charges will release reviewers time to review the applications more likely to contain waste, fraud and abuse.

23. In line with the statement above is the provision of service to Pre-K, Adult Education and Juvenile Justice. Current rules defer to state departments of education on whether their state recognizes these entities as schools. If the state does not recognize the entity as a school, that entity is not eligible to receive E-rate funds. The application reviewers refer to state websites to verify applicant data. When a pre-K school is listed at a school, the applications reviewer calls the applicant and questions what services and what percentage of service is used by the ineligible entity. The use of service by Pre-K entities that are housed on a school campus or as part of a school building housing an eligible entity is negligible. The AEWG recommends the FCC modify their guidance to state Pre-K not housed on a schools campus are eligible based on the state department of education's recognition as a school. Again, this reduces time spent on low cost items and allows reviewers the opportunity to spend time on complex applications.

24. The Commission asks if the Administrator should provide applicants and service providers more, or less, information concerning the status of applications. AEWG believes the applicant must be kept informed on the status of their application.

25. Applicant information is available from previous year's applications. The application reviewer can refer to this at any time. AEWG recommends this information be reviewed to clear items prior to requesting the information from the applicant. The Administrator

could be proactive in assisting the applicant. If someone is denied, or there are many questions on the application, SLD should provide the applicant with timely information that can help in future years. This could be as simple as putting Best Practices on the SLD's website and sending the applicant a reference to the items that can help them improve their application process.

Technology Planning:

26. The FCC seeks comment on how the technology planning process required by E-rate be reviewed in accordance with other federal technology planning requirements. The Arkansas E-rate Work Group supports the comments submitted by the State E-rate Coordinators' Alliance regarding harmonizing technology planning goals and requirements with other federal agencies. AEWG believes that if a technology plan is accepted by the U.S. Department of Education (USDoE) or the U.S. Institute for Museum and Library Services (IMLS), it should also be acceptable for the E-rate program. E-rate has five required elements that must be included in the technology plan. The USDoE already requires each of these elements to be included in technology plans required in Title II, Part D of the No Child Left Behind Act (NCLB).

27. The current E-rate purpose of the technology plan is to ensure that applicants will pay the undiscounted portion of bills and that they have the resources in place to use E-rate discounted services. According to E-rate rules, a three-year plan must be developed almost four years prior to its expiration date. It is often difficult for applicants to plan expenditures so far in advance. We believe that a better way to provide this information has already been established by the addition of the Item 25 certification on Form 471. An authorized person now certifies specific information about funding and resources every year on Item 25 of the Form 471. Thus, to streamline the Priority 2 application process, AEWG suggests that although technology plans should provide for sufficient resources, compliance should be certified on the Form 471 rather than the long-range educational technology plan. This compliance could be as simple as a check box stating that the applicant has a technology plan.

Multiple Bid Requirement

28. Responders are asked to address how a multiple bid requirement would be an effective deterrent against waste, fraud, and abuse and whether the costs of imposing additional rules in this regard

would outweigh the benefits. The FCC's desire to further competition and drive down cost is to be commended. The reality is even in urban or metropolitan areas the applicant does not receive multiple responses because there are not multiple providers. This is especially true in small rural locations. Adding a multiple bid requirement creates additional pressure on an already complex process. When applicants seek new services they follow local and state law as well as file the E-rate Form 470. A requirement to then call multiple providers who have already expressed their lack of desire in doing business with the applicant is fruitless. There is also the potential a service provider may not be contacted even though the applicant has reached out to multiple providers. This disgruntled provider could claim discrimination. How far is the applicant to go?

29. In previous sections AEWG has raised the concern about the amount of time spent on issues where the amount of funding in question is less than the time and material cost the Administrator spends on the issue. The applicant always has the burden of proof during the application and/or invoice review. This requirement would create additional paperwork in documenting the requirement, the responses and the questions/answers from the Administrator.

How does the additional paperwork relate to the Paperwork Reduction Act?

VI: FUNDING CAPS

30. The FCC asks if there should be a ceiling on the total amount of funding that an applicant can request. AEWG believes the applicant should be allowed to request funds to cover their projects as described in their technology plan. If the funding request appears out-of-line, the applicant history should be reviewed. If there is still concern the application should be reviewed with higher level scrutiny.

31. Would a cap be an effective measure of deterring waste, fraud, and abuse? A cap has two impacts: 1. An applicant who needs more service may not be able to afford it. 2, an applicant really does not need funding to the capped amount, but because it is available they spend to the full amount of the cap.

32. When discussing connectivity a cost per student is not an adequate gauge of funding request amount reasonableness. The cost to deliver a service is dependent on location and type of service. For example, the cost of a T1 for Internet Access may change from provider

to provider or number of miles to a location. The number of students served by the T1 does not impact the cost.

33. Should the FCC establish maximum prices for particular services or equipment? Cost for service or equipment is not equitable through out the nation. Service in an urban location is less expensive than the same service in a rural area. This fact is the basis for Rural Health Care funding. Equipment made by the manufacturer has a base price but the distributor or reseller marks it up to cover their overhead. Shipping and installation costs vary depending on location and provider. AEWG is concerned that the FCC believes competition will stop service providers from atomically charging the maximum price; this may not be the case in remote areas where there is only one provider. What then will stop this provider from charging the maximum price?

VII: AUDITS

34. Should the FCC institute a targeted independent audit requirement to further safeguard the E-rate program against potential misconduct, including waste, fraud, and abuse?

35. There is a suggestion in the NPRM that any applicant receiving $3 million or more be audited every year. While audits are necessary, every year is unnecessary. The AEWG suggests the dollars per student, not the application amount is a more reasonable guideline when determining who to audit. For instance, Arkansas' state application is $12 million a year. This amount equates to under $13 per student per year.

36. The AEWG recommends a moratorium on audits during application filing window as well as two weeks prior to the invoicing deadline.

37. Comments are sought on whether audits should be limited to compliance with FCC rules or whether and under what circumstances the audits should include compliance with USAC administrative policies and practices. As AEWG emphasized in the administrative section the applicant must not be held liable for obscure policies and practices. Lack of compliance with unpublished USAC administrative policies and practices should not be included in the audit. The Administrator should provide the applicant with documentation of the non-compliance and suggested corrective action to ensure the same error is not repeated. The Administrator should track the instances of

non-compliance to determine commonalities. The policies and practices routinely misunderstood by applicants should be communicated in an outreach effort to all applicants.

38. Due to the complexity of the E-rate program, applicants will occasionally have ministerial or clerical errors. In the event this occurs the applicant should take corrective action to ensure the error does not recur. The applicant should provide documentation to the Administrator of this corrective action. No penalty outside re-payment of funds disbursed in error should occur.

Application Cycle Timing and Procurement Processes:

39. The established Form 471 application filing window drives all applicants to file at least 6 months in advance of the earliest delivery of service and sometimes up to 24 months in advance of receipt of services. Therefore applicants must forecast their needs based on budget projections, perceived technology needs and state-driven procurement cycles. It is commonplace for state network applications to reflect seemingly duplicate services in that the application must cover all potential eventualities, in order to ensure that the selected solution is covered and eligible for funding. An application may be filed that requests both fiber and copper circuits; until the budget on the state level is finally resolved (which may not occur until the service delivery period has already begun), there can be no selection of the technology. Once the budget is finalized, the state network will then select one technology, based on available state funding and what reflects the most cost effective and efficient service delivery solution for the state. Given the lag in timing between the application filing period and funding decisions, AEWG wonders how the SLD can make decisions about duplicative services during the application phase, rather than after final funding decisions have been made and services are actually delivered.

VIII: RECOVERY OF FUNDS

40. Much discussion has taken place in relation to preventing Waste, Fraud and Abuse. Repayment of improperly disbursed funds should be discussed as well. Waste, Fraud and Abuse is the result of action taken by small number of individuals within the school, library or service provider company. At a minimum the individuals are removed from the E-rate process. Schools and libraries across the nation do not have the funds available for all their technology needs. This fact is what makes the E-rate program necessary. Requiring the

applicant to reimburse the program improperly disbursed funds could send them into financial distress. Therefore the AEWG recommends the Commission authorize the Administrator establish the following repayment process.

- The applicant may repay the funds over a one to five year period determined by the amount of the reimbursement.
- BEAR or SPI payments go toward repayment
- Administrator may charge interest or a handling fee based on repayment period;
- 1 year at 2%, 2 years at 3%, 3 years at 4%,etc.
- Allow applicant to determine repayment period based on their financial condition

IX: CONCLUSION

41. The AEWG appreciates the opportunity to provide comments to this Notice of Proposed Rule Making. AEWG members are available to support the Commission and provide assistance as new regulations are considered to further the E-rate program.

Respectfully submitted this 18th day of October, 2005

Becky Rains on behalf of
The Arkansas E-rate Work Group