

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Comprehensive Review of Universal Service) FCC 05-124
Fund Management, Administration, and)
Oversight)

COMMENTS OF THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS

The Council of Chief State School Officers (“CCSSO”) hereby submits these comments in response to the above captioned proceeding.¹ CCSSO is a nonpartisan, nationwide, nonprofit organization of public officials who head state departments of elementary and secondary education. CCSSO commends the Federal Communications Commission for initiating this important and timely rulemaking to improve the processes and procedures underpinning the E-rate program. Like other complex enterprises, education institutions depend on information technology and advanced communications services to operate efficiently and effectively. As the education community prepares students to succeed in the increasingly competitive global economy, education institutions, and the students they serve, must have access to advanced communications services at just, reasonable and affordable rates. The E-rate bestows an important competitive advantage on American students by not only "wiring" schools and libraries, but also providing critical ongoing monthly support for telecommunications services and Internet connections. Without E-rate support, millions of students would be left on the wrong side of the digital divide at a time when global competition is challenging America's

¹ Action by the Commission, June 14, 2005, by Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, (FCC 05-124).

economic success. In light of this challenge, CCSSO strongly supports the Commission's effort to improve the operation of the E-rate program and to enhance its integrity.

Consistent with the Commission's effort to improve E-rate management, administration and oversight, CCSSO urges the Commission to implement: (1) performance measures ensuring that all students and educators have access to advanced communications services commensurate with national trends; (2) a multi-year application process and simplified application forms for Priority 1 Services and relaxed competitive bidding requirements; (3) focused auditing requirements targeting intentional fraud and negligence and not ministerial errors; and (4) improved technical assistance practices that provide clear and concise guidance.

1. The Commission Should Implement Performance Measures Designed to Ensure that all Students and Educators have Access to an Evolving Level of Advanced Communications Services

The Commission seeks comment on how to measure the Universal Service System's impact on the level of telecommunications and information services available in the nation's schools, focusing on identifying "clearly articulated goals and meaningful performance measures" to improve program management.² CCSSO notes that the E-rate is not an education program. The E-rate is the only federal mechanism for ensuring that schools are connected to the nation's telecommunications infrastructure. CCSSO agrees with the Commission's statement that the FCC should be "careful to measure only the goals of the program and not stray beyond our jurisdiction."³ Thus, the Commission should not attempt to isolate the impact of E-rate-supported services on student achievement, nor should it create program goals or performance measures tied to student achievement. Student achievement measures are critical components of

² NPRM ¶18.

³ NPRM ¶18.

federal education laws, such as the No Child Left Behind Act, but are not relevant to the Communications Act.

CCSSO urges the Commission to analyze the E-rate's success through the lens of the Communications Act, which articulates Congress's intention to ensure that education institutions maintain a level of telecommunications connectivity consistent with other sectors of the information economy. The Commission should, as the Communications Act directs in Section 254, measure the E-rate's success on whether schools and libraries have access to a "constantly evolving" level of telecommunications and information services, including advanced services, comparable to the services offered through "the normal operation of the free market" and that are being deployed in public telecommunications networks by telecommunications carriers.⁴

CCSSO urges the Commission to use its periodic "Section 706 Report" concerning the availability of advanced telecommunications capability in the United States, the twice yearly data published by the Commission regarding advanced and high-speed services, and other relevant broadband measures, as benchmarks for determining whether the E-rate is successfully keeping the nation's classrooms and libraries on par with the advanced communications services demanded by other high tech sectors of the economy and is providing schools with the communications tools needed to fully prepare students to succeed in the global economy.

The Commission should measure: **(1) the degree to which students, teachers and administrators have access to advanced communications capability** (A single Internet connection in the library, or in the principal's office, is not a sufficient level of connectivity. CCSSO believes all teachers should have reasonable, on-demand access to advanced communications services in their classrooms, and all students should have reasonable on-demand access to advanced communications services at appropriate times during the school day.

⁴ Communications Act, 47 U.S.C. § 254(c)(1)(A).

Providing such access to teachers and students requires that all classrooms, labs and other learning areas in a school have ample connections to serve the students in a given class.); and (2) **the speed at which schools are connected** (Sufficient bandwidth should be provided to every workstation in a school to support the educational services offered by a participating education institution. Such services might include high-bandwidth, two-way interactive classroom video, online assessments, or one-to-one student computing.). Access and bandwidth benchmarks and measures must also periodically increase to ensure schools are receiving a "constantly evolving" level of service.

The Commission asks the public to consider whether measuring the percentage of students that access the Internet and the percentage of teachers that use supported services provides an accurate measure of program success.⁵ CCSSO agrees that this approach could provide one meaningful measure, so long as the metric captures the bandwidth at which teachers and students are connected and the access levels they enjoy. The Commission should analyze schools' use of a wide range of E-rate-enabled advanced communications services (e.g. online learning, two-way interactive classroom video, and online assessments). CCSSO also urges the Commission to work with state education agencies to identify schools with no broadband access and to find ways to ensure these schools are connected to the network.

Gathering this information, however, should not be executed through an overly burdensome data collection process. Instead the Commission should consider obtaining the data through periodic surveys or during the random auditing process, in order to minimize beneficiaries' reporting requirements. The Commission might also monitor relevant U.S. Department of Education technology reports, such as the National Center for Education

⁵ NPRM ¶20.

Statistics' distance learning survey, to gain a better understanding of the learning opportunities made possible by the E-rate.

The Commission's USF outcome measures should also focus on helping to accomplish President Bush's call for "universal, affordable access for broadband technology by the year 2007" (President George W. Bush, March 26, 2004). The President's broadband goals are consistent with the Universal Service System's goals, particularly the E-rate, which provides broadband access to populations typically located on the wrong side of the digital divide. Providing broadband capacity to the nation's schools and libraries, and ensuring that they remain connected to the telecommunications network, is an absolutely critical step in meeting this vital national goal. The Universal Service Fund is one of the only federal mechanisms designed to help accomplish the President's broadband goals, ensuring that millions of otherwise unconnected Americans have access to telecommunications services, including advanced services and the program should thus be used aggressively to move the nation's communications infrastructure forward.

2. The Commission Should Adopt a Multi-Year Application Process and a Simplified Application Form for Priority 1 Services

The Commission seeks comment on ways to improve administration of the E-rate application process while maintaining effective oversight procedures.⁶ CCSSO urges the Commission to adopt a multi-year application process and a simplified application form for telecommunications services and Internet access services ("Priority 1 Services"). Simplifying the application form and implementing a multi-year application process will minimize common ministerial and processing errors, and will enable beneficiaries, and USAC, to improve overall program management. The current annual application process for Priority 1 Services burdens

⁶ NPRM ¶28.

applicants, and USAC, by consuming limited employee time and resources. As the Commission observed, "relatively few" instances of waste, fraud and abuse are associated with requests for these services. Furthermore, the nature and structure of Priority 1 Services rarely change; thus, yearly applications provide little or no new information about beneficiaries' activities. For these reasons, CCSSO also recommends adopting a shortened and simplified form for applicants seeking only Priority 1 Services. Adopting these recommendations will enable beneficiaries, and USAC, to focus on managing and monitoring the use of E-rate funds as opposed to diverting attention to satisfying requirements that yield minimal benefits.

In order to further streamline the program, CCSSO encourages the Commission to provide district-wide discounts for shared services and endorses SECA's proposal that all Priority 1 services should be considered shared services, which are subject to the shared service discount of all entities existing in the district at the time the 471 application is prepared. The current computation system is unnecessarily complex and burdensome.

CCSSO also urges the Commission to relax applicants' obligations to comply with existing federal competitive bidding requirements. Many education institutions are not served by multiple telecommunications carriers, and small projects, requiring only nominal funding, often do not attract multiple bids. In such circumstances, the competitive bidding requirements do not serve the purpose for which they were created - ensuring efficient use of program funds - and ultimately act only as a bureaucratic hurdle. CCSSO urges the Commission to rely on existing state and local competitive bidding laws and regulations rather than redundant federal requirements. Schools now rely on state and local procurement processes to procure goods and services far in excess of their E-rate discounts. Furthermore, if state and local procurement regulations are used to obtain E-rate eligible services, Form 470 can be eliminated.

3. The Commission Should Not Distribute Funds Through a Formula Grant Process

The Commission should not distribute E-rate funds through a formula grant system. The E-rate was designed to provide telecommunications services to all schools at "just, reasonable, and affordable" rates.⁷ Using a formula to distribute program funding does not further this important, yet unrealized, goal and developing a formula that fairly distributes the funding would be extremely difficult.

CCSSO's experience with other formula-based systems, suggests that using a formula in this context could disadvantage rural and economically disadvantaged schools and would likely spread the program's limited resources across too many institutions, some of which would not be prepared to properly use the funding. Until the program is fully funded to satisfy existing demand, program dollars should be channeled to schools that are not only most in need, but also prepared to show the initiative needed to secure and properly use the funds based on their unique local requirements.⁸

4. The Commission Should Focus Audits on Identifying Intentional Fraud and Negligence

CCSSO agrees that an efficiently designed auditing process is necessary to ensure program integrity and to deter waste, fraud and abuse, but CCSSO urges the Commission to implement auditing requirements and associated penalties, focused on intentional fraud and gross negligence, and not ministerial errors. The auditing process should be designed to focus the FCC's and USAC's limited resources to root out the most egregious instances of waste, fraud and

⁷ Communications Act, 47 U.S.C. § 254(b)(1).

⁸ Failing to allow funding levels to rise sufficiently to meet annual demand has left many schools – specifically schools that are neither extremely disadvantaged, nor extremely wealthy - unconnected from advanced communications services. CCSSO urges the Commission to find a solution for these institutions, including acting to ensure that sufficient E-rate funding is available to connect all schools as Congress intended.

abuse. Auditors should be clear about their findings. When audit results are published, intentional or negligent acts should be distinguished from inadvertent ministerial errors.

CCSSO urges the Commission to avoid conducting audits where the cost of executing the audit exceeds the value of the discount provided by the program. Audits must not be so extensive and repetitive that they consume more beneficiary staff time and resources than the E-rate support obtained. Furthermore, beneficiaries should not be required to pay for independent audits. The expense associated with independent audits would make participation in the program prohibitively expensive for many small and disadvantaged institutions. CCSSO also urges the Commission to use a "wait and see" approach before implementing new requirements in order to incorporate the results of site visits being conducted by USAC as part of the organization's expanded outreach initiative.

Auditors must be properly trained and prepared to ensure that audits are based on up-to-date program rules. E-rate program rules sometimes change annually and past auditors have been known to apply out-of-date requirements. An audit applying incorrect standards is unreliable *per se* and should not be viewed as an accurate measure of program performance.

CCSSO believes audited entities should have an opportunity to respond to issues raised by the audit prior to publication. Prepublication review opportunities are common in many audits, but such reviews are not afforded under the current E-rate auditing process. An opportunity to review the audit prior to publication will help ensure the audit's accuracy. Furthermore, USAC should timely provide a final report to audited entities. The auditing process must be efficient and transparent and provide recipients with clear instructions on methods for improving problem areas. Timely final reports will enable beneficiaries to quickly implement required changes.

Furthermore, beneficiaries who are previous, serious rule violators should be subject to greater scrutiny in order to uphold the integrity of the program. The Commission should also require specific reports and set performance goals for past violators. A modest number of bad actors have been responsible for the serious problems that have tarnished the image of the program. Honest program beneficiaries deserve to be protected from these individuals and entities.

5. The Commission Should Direct USAC to Improve Technical Assistance Initiatives

The Commission should provide clear guidance to beneficiaries about E-rate supported services and program rules. Current technical assistance structures provide inconsistent and unreliable answers about the application process and services supported by the program. Furthermore, program information is not centralized sufficiently, and beneficiaries are often unable to find definitive rules. Detailed guidance, provided in a single document, and written in clear and understandable language could significantly decrease the number of inadvertent ministerial errors made by beneficiaries.

6. The Commission Should Urge Congress to Exempt the Universal Service System from the Antideficiency Act

Last year, Commission staff and Office of Management and Budget staff interpreted the Antideficiency Act to apply to the E-rate program. This new and unexpected interpretation severely impacted the E-rate program for months by disrupting commitment letters and forcing the divestiture of valuable investments that ultimately cost the program millions of dollars. Congress rescued the program at the conclusion of the 108th Congress, by temporarily exempting the E-rate from the Antideficiency Act until December 31, 2005.⁹ Since that time, two bills (S.241 and H.R.2533) have been introduced to implement a permanent statutory exemption.

⁹ Public Law No: 108-494.

Language to enact a second temporary exemption (until December 31, 2006) is also pending as part of the FY'06 Senate Commerce, Justice Science appropriations bill (H.R.2862). CCSSO urges the Commission to support these efforts to reexamine and restore the E-rate program's longstanding exemption from the Antideficiency Act.

Conclusion

The E-rate is an invaluable federal program that has played a critical role in connecting America's schools to the nation's telecommunications networks. Access to advanced communications is no longer a luxury, but is instead a prerequisite to success in the global information economy. Denying or limiting communications access to the students who represent the next generation of American innovators would be extremely shortsighted. CCSSO hopes this important proceeding will resolve any outstanding questions regarding the administrative criticisms leveled against the program and looks forward to working with the Commission to secure the success of the E-rate for many years to come. CCSSO urges the Commission to adopt the aforementioned recommendations for the reasons discussed above.

Respectfully submitted,

COUNCIL OF CHIEF STATE SCHOOL
OFFICERS

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Executive Director

October 18, 2005