NW-LINKS

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Federal Communications Commission
445 12th Street Southwest
Washington, D.C. 20554

SUBJECT: COMMENTS ON NPRM IN THE MATTER OF SCHOOLS AND LIBRARIES UNIVERSAL SERVICE SUPPORT MECHANISM: A NATIONAL BROADBAND PLAN FOR OUR FUTURE

CC Docket No. 02-6
GN Docket No. 09-51
NPRM FCC 10-83

I am writing these comments on the Notice of Proposed Rulemaking regarding the Universal Service Administrative Fund Schools and Libraries E-Rate Discount Program. The NPRM as issued lays out several programmatic and administrative changes for the E-rate program. I am responding from two perspectives, both as a former state E-rate program liaison for Minnesota and now as an E-rate applicant for the NW-LINKS consortium of schools and libraries.

1. I have been involved with the federal E-rate program since its inception in 1998. I served as the Minnesota state e-rate liaison for the Minnesota Department of Education from 1998 – 2008. As part of that role I developed and managed the technology plan approval process for the Minnesota Department of Education, trained schools and libraries on E-rate application procedures, and provided technical assistance to school districts, charter schools, and nonpublic schools on technology planning and E-rate program application.

2. I am now managing a telecommunications/Internet access/distance learning consortium composed of 70 public school districts and four regional public library systems. I apply for E-rate on behalf of these entities because we cooperatively purchase leased telecommunications and Internet access services to support public schools and public libraries in northwestern Minnesota. In this role, I apply for discounts on Internet access services, and also assist districts and libraries in my region and other areas of the state with individual E-rate applications for phone services and internal connections.

I am not commenting on all the aspects of this NPRM, but only those specific sections where I have significant suggestions or concerns. In the case of topics where I do not see a significant implication for applicants or states, I have not addressed these areas, so you can assume I have no comment to offer on those sections or topics.

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TABLE OF CONTENTS:

STREAMLINING THE APPLICATION PROCESS
Technology Plans – Page 2
Competitive Bidding Process – Page 4
Discount Matrix Streamlining – Page 5

PROVIDING GREATER FLEXIBILITY TO SELECT BROADBAND SERVICES

Wireless Services Outside of School – Page 6
Expanded Access to Low-cost Fiber – Page 7

EXPANDING THE REACH OF BROADBAND TO THE CLASSROOM

Predictable Internal Connections for More Schools and Libraries – Page 8
Indexing the Annual Funding Cap to Inflation – Page 8

CREATING A PROCESS FOR DISPOSAL OF OBSOLETE EQUIPMENT – Page 8

STREAMLINING THE APPLICATION PROCESS

Technology Plans.

Page 8, B. 17: "Specifically, we propose to eliminate technology plan requirements for priority one applicants that otherwise are subject to state and local technology planning requirements."

Page 8, B.18: "We propose to amend section 54.508 of our rules to eliminate E-rate technology plan requirements for priority one applicants that otherwise are subject to state and local technology planning requirements. We seek comment on this proposal."

In Minnesota, and in several other states, the E-rate program provides the impetus for states to require technology plans. Minnesota requires technology plans of all school districts, nonpublic schools, and public libraries who wish to be eligible for E-rate. In turn, there are state funding streams for telecommunications/Internet access support that help school and library entities pay the costs of connectivity after E-rate discounts have been applied. These statutes require a good faith effort to apply for E-rate, and having a technology plan in order to be eligible for E-rate would logically be part of a good faith effort.

Specifically, M.S. 125B.26, Telecommunications/Internet Access Equity Aid, Subd. 2, states "**E-rates**
To be eligible for aid under this section, a district, charter school, or intermediate school district is required to file an e-rate application either separately or through its telecommunications access cluster and have a current technology plan on file with the department. Discounts received on telecommunications expenditures shall be reflected in the costs submitted to the department for aid under this section."

In Minnesota, therefore, the requirement for a technology plan in state statute is tied to application for E-rate discount, which in turn is required to be eligible for any state aid to help support the cost of school Internet access. The state's Regional Library Telecommunications Aid (RLTA) program (M.S. 134.355) is also based upon the premise of state aid provided after E-rate discounts. The State Library Services Office also requires a technology plan from regional public library systems as part of a good faith effort to secure E-rate discounts on eligible services.

That said, it is unclear to me whether the rule change would or would not require Minnesota schools and libraries to have technology plans since this seems to put us in a "what comes first, the chicken or the egg" situation. The statutes in Minnesota that require technology plans are tied to program requirements for state aid programs that are based on the need to apply for E-rate in order for schools and libraries to receive state aid after E-rate discounts for costs of Internet access.

How would we determine whether these would count as "state and local technology planning requirements" or not? I expect other states may have similar situations. In my view, I would interpret this to say that Minnesota schools and libraries wishing to receive e-rate would still need to have approved technology plans since both the E-rate and the state aid programs are tied together.

I should think that this might require FCC rules to be somewhat specific about what type of state and local planning requirements would exempt an entity from having a technology plan to receive E-rate discounts on Internet access. This would create a dilemma in finding a comprehensive definition of exempt since there may be many different scenarios in which states require or don not require technology plans in state and local regulations.

Page 9, 18B: "According to one commenter, the U.S. Department of Education and most if not all, states already require technology planning, and therefore our requirement is largely duplicative." This is somewhat true, but only if the U.S. Department of Education continues to require a technology plan for receipt of No Child Left Behind Title II D (Enhancing Education Through Technology) program funds. In Minnesota, we created a technology planning process that would encompass all the requirements of both the Enhancing Education through Technology and the E-rate programs. In addition, Minnesota distributes Title II D funding in the form of competitive grants, therefore, not all school districts are required to have technology plans for that program – only those that apply for grants need to have one.

Secondly, many states are probably doing the same thing in Minnesota – requiring technology plans to ensure their schools and libraries are eligible for and taking advantage of E-rate discounts.

Page 9: 19: "For example, should we retain the E-rate technology plan requirement for applicants that request more than a specified amount of funding for priority one services, such as $1 million."

From a state perspective, this will create additional work, because the state will then need to monitor the levels of E-rate requests from various school districts to determine who needs to have a technology plan. In addition, how would this work for a consortium of schools and libraries in which each school district and regional public library system currently has an approved technology plan in order to be eligible for E-rate? The consortium I manage would in total be over the $1 million dollar limit for the whole consortium, but the individual entities would not.

Right now, the technology plan requirement is for ALL school and library entities who wish to receive E-rate discounts, so the states are able to establish a uniform process and get the plans approved as needed. E-rate already creates a burden on states because there is no administrative funding provided to state departments of education to provide e-rate assistance or coordinate the technology plan review and approval process. Having this additional layer in place on the technology plan requirement would simply add more work to agencies that are already strapped for personnel and resources, create confusion about who is required to have a technology plan and who is not, and create a greater burden on the Schools & Libraries Program Integrity Assurance process for the same reasons. I would recommend either FCC keep the technology planning requirement for everyone regardless of state and or local requirements or do away with it altogether.

Page 9, 20.: "We also seek comment on whether the current third-party approval process should be retained to the extent that we continue to require technology plans."

As stated earlier, most state departments of education are resource-strapped, and the third party technology plan review and approval process has added significantly to the burden. What might make it significantly easier for states and applicants is if schools and libraries were required to submit technology plans to the state department of education or other appropriate agency for E-rate, but the

review process could be simplified to the point where the state agency is only required to have evidence the plans exist. For example, entities covered by the plan could submit a check-off list for the five E-rate technology planning criteria and where those are found in the plan, provide the website where the plan can be located or an electronic copy, and document that the plan does not extend for more than three years. The state agency would then only need to check for those three things instead of doing an exhaustive page-by-page review of the plans against established criteria and approval rubrics. If those three items can be verified by the state upon technology plan submission, the school district or library would then be considered to have a technology plan in good standing for E-rate eligibility for whatever program years the plan covers. This would be especially helpful in the case of nonpublic schools since some state agencies do not serve nonpublic entities to the same extent as public schools.

Technology planning is a good business practice for both schools and public libraries, but the process should be flexible enough so that each school district and regional public library system can develop the plan that fits their needs. Scaling back the third party review requirements would lend itself to more flexibility at the local level to build a plan that is actually viable instead of a plan being developed for a federal requirement that may or may not serve the local needs.

Competitive Bidding Process.

Page 9, 21: "Specifically, we propose to eliminate the requirement that applicants for priority one services file an FCC Form 470 and wait 28 days before signing a contract with their selected service provider, as long as those applicants are subject to public procurement requirements."

In Minnesota, this would effectively eliminate Form 470s only for all requests over $50,000, since schools in Minnesota are required to work through a public bid process only for procurements that exceed $50,000. Those under that amount would not be considered as subject to public procurement requirements because our schools do not need to go out on bid if it is under that amount based on Minnesota statute. If, however, FCC would consider eliminating the Form 470 requirement for the basic telecommunications services requests under a certain amount, such as regular phone service, cell phones, and other small service requests for which the Form 470 adds a burden of time and effort that usually achieves only a small savings across providers, that would make more sense. This type of procurement is quite routine in schools and libraries. In many rural areas, there are only one or two providers who can serve the area anyway. Schools and libraries are very astute when it comes to procuring services that are cost effective and know what they need. This would also eliminate a lot of burden on USAC because there would be less work for Program Integrity Assurance to verify Form 470 alignment for smaller basic phone service and voice requests.

I am not able to speculate on what the savings of time and resources would be nationally since I am not familiar with the procurement requirements of the other 49 states, but from my view of Minnesota, this would make sense.

Another way to streamline this would be to make the Form 470 easier to complete. There could be drop-down boxes for basic services as an example, or drop down boxes that mirror the service descriptions used in the Eligible Services List. This would eliminate a lot of errors in terms of how applicants describe the service, and prevent debates about whether the services were described adequately enough for vendors to respond. An additional RFP or supplemental service description could then be attached to provide further information if the service does not fit the existing description.

Page 11, 24: "We propose that priority one applicants not subject to state or local bidding requirements, for example, private schools or some charter schools, continue to be required to follow the current e-rate competitive bidding process by posting an FCC Form 470 and waiting 28 days to select a service provider."

I believe that in a program as complex and large as E-rate, simplicity is key. I would recommend either establishing a standard cost level cap for requests that require a Form 470 across the board, or just

continue requiring as it currently stands. If you start requiring it for some entities, but not for others this will create confusion for states who are trying to help their schools and libraries with the program and will also create an additional burden for the USAC application review teams. With this scenario, you will likely have different requirement procedures for each state, requiring another step for Program Integrity Assurance staff to verify which will slow down their review process.

Competitive Bidding Processes.

Page 12, 27: "We therefore propose to amend 54.510 of our rules to codify the requirement that an applicant must conduct a fair and open bidding process when seeking bids for services eligible for E-rate support."

Page 13, 29: "If we codify this rule, we propose to provide illustrative guidance of the types of conduct that would satisfy or violate the rule, which could be updated periodically based on experience gained through providers involving waste, fraud, and abuse."

How exactly, does codification of something that is already a program practice help with prevention of fraud, waste, and abuse? The requirement to conduct fair and open bidding processes is basically already stipulated in all the excellent training provided by the Schools and Libraries Division. The one problem we encounter is that the program calls for a "fair and open bidding" process, and then there are often additional conditions added to that definition by the FCC or the SLD that may or may not be in concert with local procurement practices. For example, this last year in training, the SLD laid out several different types of timing scenarios regarding the 28 day posting rule for Form 470, and conditions in which the clock starts and stops that were new information to many.

The FCC is proposing stipulating some clear examples of what constitutes fair and open bidding practices, which would be very helpful, but the onus in the NPRM is on the applicant to ensure the process is fair and open. If this requirement is codified, the examples of fairness and openness must be made clear to all applicants well in advance of the program year in which the codification will take effect.

In addition, the examples of fair and open process provided in this NPRM focus on applicant behavior. What about provider and vendor behavior? There should be examples stated to ensure the applicant is treated fairly by the vendors as well. Over the years in working with the E-rate program, I have observed the best and worst of vendor behavior in these circumstances. This includes vendors aggressively attempting to pressure an entity to change or amend their RFP to fit the vendor's business model, vendors demanding a longer contract period than that stipulated in the RFP, vendors requesting reams of documentation and creating situations that require applicants to engage attorneys after bids have been awarded because the vendor wants to force the applicant into changing their selection decision, vendor demands to change bidding conference and proposal due dates to meet vendor schedules, vendors who demand to partially bid on only certain portions of the RFP, and so on. If there are to be applicant expectations for fairness and openness, then there ought to be examples provided of acceptable vendor behavior as well that support the applicants in following a fair and open process.

In addition, the Form 470 process adds another layer of timelines and expectations to a process that already gets complicated for a large project, which is another good argument for doing away with the Form 470 if there are local or state procurement requirements in place. For example, if an applicant has a Form 470 and RFP posted for 45 days, has advertised the business opportunity in newspapers, posted it on their website, and otherwise made a good faith effort to communicate the opportunity, is it really fair to expect the applicant to accommodate a vendor who spots the Form 470 at 4:30 p.m. on Day 43 and wants to submit a response when there may be a significant amount of time and effort needed to bring that vendor up to speed on the project requirements as posted?

Discount Matrix Streamlining.

Page 16, Item 35. "1) calculate a single discount percentage rate for the entire school district by dividing the total number of students eligible for the National School Lunch program by the total number

of students in the district; and (2) then compare that single figure against the discount matrix to determine the school district's discount for priority one and priority two services.

Please, if you do nothing else, make this change. This will save school district applicants a lot of time, particularly those of us doing consortium applications, because we currently have to download all the school data from our state website, and then upload or enter that data in the Form 471 only to have the Form 471 calculate the same discount level we would likely get if we did a straight district average. It would be much easier to just use the school district total enrollments and NSLP eligibility, and the end result for the discount will be much the same. That will also make it much easier for USAC Program Integrity Assurance staff to verify discounts at that level because confusion about individual school names and shifting school sites (opening and closing buildings) will be eliminated.

Page 17, Item 37. "We propose to adopt a new definition of "rural area" for the purpose of determining whether an E-rate applicant qualifies for the rural discount"

Page 18, Item 39, "We now propose that, for E-rate purposes, an area will be considered rural based on the methodology and locale codes used by the U.S. Department of Education's National Center for Education Statistics (NCES), also known as urban-centric locale codes."

I heartily support this change. The NCES designation is readily available on the NCES data bases and much easier to use for applicants than the Bureau of Census Goldsmith modification. It will also be easier for USAC staff to use for verification purposes since it is an official source of data.

PROVIDING GREATER ACCESS TO BROADBAND SERVICES

Wireless Services Outside of School.

Page 20, Item 45: We propose to adopt the National Broadband Plan recommendation to provide full e-rate support for wireless Internet access service used with portable learning devices that are used off premises. We seek comment on this proposal."

Page 20, Item 46: "We propose to modify our rules so that we can lessen the digital divide between those who are fortunate enough to subscribe to broadband at home and those who do not."

Page 21, Item 48: "We emphasize that this proposal only relates to support for Internet access monthly service and not the purchase of devices or equipment such as mobile broadband cards, smartphones, or e-books. This proposal, therefore, would allow E-rate funding for Internet access services, which are already eligible, to be used to facilitate learning both on and off premises. It also would permit funding for connectivity that schools may increasingly utilize in the future to provide customized content for students.

Page 21, Item 49: "We note that the requirements of the Children's Internet Protection Act and the Protecting Children in the 21st Century Act still would apply to services being used off-premises."

I support the FCC's proposal to remove the requirement for applicants to cost-allocate the dollar of amount of support for the time that the device is not at school.

The rest of this proposal raises many questions. If I am understanding it correctly, is this saying that E-rate funding would be available for applications to supply Internet access to the homes of students as long as the device is owned by the school? Is it also saying that provisions of CIPA and Protecting Children in the 21st Century Act would apply to that access?

First of all, I would not recommend extending E-rate funds to pay for Internet access in private homes, unless the program is financially expanded to pay for that access. The schools and libraries in Minnesota rely on the E-rate program to sustain sufficient Internet access to provide education opportunities, access to information, and public library services. Any extension of that program without expansion of funds to be available will impact public entities that rely on this program to conduct the business of education and library services. Schools and libraries are facing some of the worst financial

problems in years, and now is not the time to start removing resources needed for a mission-critical service.

At a minimum this proposal raises huge questions about how it would operate, who it would serve, and how it would be managed. For example, how would the program designate need in terms of students who are able to pay for Internet access at home vs. those who cannot? What criteria would be used? How would fraud, waste, and abuse be prevented in this type of a program? What type of additional technical support would be required from the local school? Under which priority bucket would extended wireless service be funded?

Secondly, attempting to enforce CIPA and Protecting Children in the 21st Century Act on extended wireless service to private homes or other locations outside the school is simply not feasible. For a start, schools do not have the resources or staff to ensure this is being done, and since E-rate does not support the purchase of filtering, this will create an added expense for either the school or the families of students. Secondly, if I am understanding the proposal correctly, trying to enforce the bounds of CIPA or the Protecting Children in the 21st Century Act for access within a private home regardless of whether parents can opt to take the school provided service or not could likely raise legal issues relating to government interfering with rights of individuals and freedom of speech.

This proposal, while laudable to the extent that it attempts to extend education resources beyond the school day has some serious flaws in terms of available funding, and considerable complications of implementation and management. It is not an appropriate use of E-rate funds based on the framework of the program and the goals it is intended to address. I strongly suggest the FCC not implement this proposal without serious additional study. At a minimum, FCC should work with other federal agencies that have broadband programs designed to connect communities, such as the U.S. Department of Agriculture and U.S. Department of Commerce (Broadband Technology Opportunities Program and Broadband Implementation Program) and seek more feasible alternatives to providing Internet access to families and communities.

Expanding Access to Low Cost Fiber.

Page 23, Section 54. "We propose to add leased dark fiber to the ESL, pursuant to section 254(h)(2)(A) of the Act. We propose to add leased fiber with the same conditions as when it was on the ESL previously. That is, applicants would be able to lease fiber capacity that does not include modulating electronics, as long as they provide the electronics. In addition, the leased fiber must be used immediately."

This would allow schools and public libraries with greater flexibility to take advantage of existing fiber networks owned by other local government entities when it is determined to be the most cost effective solution to their needs. As long as this provision is subject to the same provisions, including bidding requirements, and other program rules that apply to procurement of E-rate discounted services, this is a reasonable proposal. In Minnesota we have had many cases where it would make sense to connect a school to a municipal, county, or state network connection but all the complications of trying to cost allocate or strip out ineligible entities have prevented us from taking advantage of those situations.

Equity in access is a significant issue as well. I would not like to see some entities be able to stockpile capacity in dark fiber for future use using E-rate discounts, so maintaining the requirement that it be lit and immediately used is important.

EXPANDING THE REACH OF BROADBAND TO THE CLASSROOM

Predictable Internal Connections for More Schools and Libraries.

Priority 1 services continue to be the most important to funding priority for schools and libraries. While it is helpful to provide internal connections, most of the school districts in my region need more assistance procuring larger amounts of bandwidth to accommodate media rich learning experiences. Public libraries continue to experience bandwidth demand increases as more customers are using the library to access government services, search for employment, and meet information needs.

I would not be supportive of any changes to the program that would involve removing available funds from Priority 1 to Priority 2. I would support changing the way Priority 2 is funded. First of all, school districts and public libraries should be limited to how often they receive this funding, and projects should definitely be applied for on a school district, not individual school basis. This would create more efficient planning at the school district level or public library level and would hopefully result in requests that are more effectively bid and more cost efficient. Secondly, the discount matrix should be different for priority 2 requests. Perhaps the discounts could be adjusted to a somewhat lower level so that they could extend to more schools and libraries. Another approach might be to set a cap on how much a school district or library can request every five years for Internal Connections based on previous program data rather than limiting requests to two in five years. These suggestions could all be studied and simulated with data runs based on the FCC and SLD's data from program operation over the last 12 years.

In addition, I would support limiting or capping basic maintenance for internal connections if it would mean more schools and libraries would gain access to funding for wiring, servers, and other equipment that qualifies as internal connections. These tend to be the bigger ticket items that schools and libraries struggle to find the funds to purchase or lease.

Indexing the Annual Funding Cap to Inflation.

Page 36, item 84."We propose to amend section 54.507of our rules to index the E-rate program funding cap to the rate of inflation, on a prospective basis, so that the program maintains its current purchasing power in 2010 dollars."

Indexing the annual funding cap to inflation makes sense given the economic factors that influence provider pricing and the cost variations in procuring and maintaining wide and local area network and Internet access for schools and libraries. Not accounting for inflation is, in my experience, a huge flaw in most federal and state government programs and can actually lead to more fraud, waste, and abuse as both applicants and providers look for increasingly "creative" ways to wring more resources from funding pools that no longer reflect the reality of demand. Inflationary growth would allow the program to keep up with meeting the needs of the schools and libraries in a reasonable way.

CREATE A PROCSS FOR DISPOSAL OF OBSOLETE EQUIPMENT

Page 37-41. Items 86-95.

Again, I would strongly recommend keeping this very simple. I would recommend stipulating that a school or library can transfer equipment to another site within that school district or regional public library system at any time within three years from purchase as long as it is used in the designated location for the first program year and continues to be used for educational purposes at any other site within the district or library system to which it is transferred. Schools and libraries should be tracking equipment locally with a fixed asset inventory or some type of inventory system so they can maintain information on where the equipment is located at all times in the event of an E-rate audit. I would further recommend that after the initial three years, the equipment is at the discretion of the school or library to recycle, auction, or trade in at whatever point after three years it makes sense to do so. Also, if after three years a school or public library no longer needs the equipment, they should

be able to donate it to another school or public library that needs it outside of their school district or library system. A simple transfer of equipment component could be added to the Form 500 or created separately if SLD really needs to have a paper trail relating to the equipment after three years or five years, which is the typical documentation retention rule for E-rate.

The reality is USAC will expend far more resources trying to collect refunds for equipment that is sold or traded than applicants will ever realize from these transactions. Years of experience working with technology grants and other education technology initiatives have taught me that most schools and public libraries will use equipment until it is literally on its last legs. They also work very hard to make sure if they can't use a piece of equipment any longer, they find another purpose for it.

I realize there is an FCC rule against resale of service or equipment. In the case of services I can understand wanting to prevent a situation where a school or library receives funds to procure Internet access, buys more than they need and then resells the excess capacity to another entity for profit. In the case of equipment, however, the technology changes rapidly, as do technology needs for the school and library applicants. Some flexibility must be provided here so that they can procure and maintain equipment that keeps their networks viable and does not create a huge burden or unnecessary restrictions for them to switch to more efficient solutions. I feel that after three years the school district or public library should have some options on what to do with the equipment purchased. It must be noted that these entities have expended their share of local funds to purchase the equipment as well so it seems entirely reasonable to provide them with some ownership privileges.

Thank you for your consideration of these comments and for all the work you do to support the federal E-rate discount program for schools and libraries. I would be happy to discuss these comments further at any time.

Sincerely,

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