



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

In the Matter of)	
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51
)	

**INITIAL COMMENTS OF THE CHESTER COUNTY COMMUNITY NETWORK (CHESCONET)
IN RESPONSE TO MAY 20, 2010 NOTICE OF PROPOSED RULEMAKING**

The Chester County Community Network (Chesconet) is a non-profit organization that provides broadband Internet connectivity to schools, libraries, government offices and other community-based non-profit organizations including higher education institutions. Chesconet is a service provider under the federal E-rate program and, because of the unique structure of its organization and its association with the Chester County Intermediate Unit (CCIU), is deeply concerned that the proposed illustrative examples of inappropriate competitive bidding behaviors will have unintended consequences for non-profit organizations that were created to provide connectivity to public sector organizations.

Background of Chesconet

In 1996, the Chester County, Pennsylvania County Commissioners recognized the need to provide broadband connectivity and Internet service to the schools, libraries and county offices of Chester

County. This led to the establishment of the Chester County Community Network (Chesconet), which originally provided frame relay service over leased copper lines. The network was administered by a board of directors comprised of representatives from the customer base, who received no compensation for their service. Technical and fiscal operations of Chesconet were outsourced to West Chester University, one of Chesconet's charter members.

Chesconet became a 501(c)(3) in November of 1999. As a non-profit organization, any revenue that was accrued in excess of operating expenses was reinvested in the network infrastructure or used to expand services to the Chesconet membership.

In 2001, the Chester County Intermediate Unit (CCIU) received a large state grant to build a fiber optic network designed to connect all of the school districts in Chester County. This collaborative project between the CCIU and Chesconet enabled the network to not only serve public school districts, but public libraries, county government offices, several private schools, as well as local colleges and universities. E-rate funding was not used to help pay for the build-out of the network to schools and libraries.

The building of the new Chesconet fiber optic network led to a reorganization of the board. The new board was comprised of representatives from all of the Chesconet member groups, as well as representatives from the Chester County community at-large.

The Chesconet Board of Directors issued an RFP for Network Operations services and awarded the bid to a local technology firm. Less than a month before the network was to be completed, the firm alerted Chesconet that it had lost its venture capital funding. At the request of the Chesconet Board, CCIU

quickly constructed a network operations center and assumed responsibility for providing these services on behalf of Chesconet.

The Chesconet network was one of the first community anchor networks in the United States and continues to provide low-cost Internet service to anchor institutions, including schools and libraries.

Proposed Competitive Bidding Changes

In the NPRM, the FCC proposes to amend its rules to codify the requirement that an applicant must conduct a fair and open bidding process when seeking bids for E-rate eligible services, and Chesconet fully supports this proposal. These requirements have been the bedrock of the E-rate's competitive bidding requirements and codification of these rules should create no additional burden or restrictions on applicants or service providers.

However, the Commission also proposes to adopt a list of types of conduct that would be illustrative of activities they feel would be considered inappropriate, and would therefore violate the competitive bidding rules. Chesconet strongly opposes the adoption, listing, or similar dissemination of several of the proposed activities.

Specifically, Chesconet opposes the prohibitions that 1) an applicant may not have a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information; 2) applicant employees or board members may not serve on any board of any type of telecommunications, Internet access, or internal connections service provider that participates in the E-rate program in the same state; and 3) service providers may not offer or provide gifts, including meals, to employees or board members of the applicant.

While Chesconet and its Board understand the Commission's desire to provide clear guidance to applicants and service providers about what would cross the line in terms of competitive bidding infractions, it would be in the clear disinterest of schools and libraries and the E-rate fund itself if non-profit community-based service providers, such as Chesconet or Intermediate Units, were to be prohibited from serving on the board of such organizations.

Such community-based service providers exist to provide low-cost service to community members such as schools and libraries, and the voice of these organizations on such boards, and the role of educational service agencies in providing these low-cost services in no way perpetuates waste, fraud or abuse.

More specifically, by prohibiting the involvement of E-rate eligible organizations from any connection with a service provider, the Chester County Intermediate Unit may no longer be able to provide low-cost support for Chesconet. This would result in Chesconet having to make substantial changes to its organizational structure and technical infrastructure which would undoubtedly raise costs for the Chesconet members and would undermine the vision set forth by the county and state governments in establishing a network that has successfully served the community for more than a decade. And such increased costs to Chesconet would be pushed onto E-rate requests, should schools and libraries continue to select Chesconet as the most cost effective solution to their E-rate Internet requests.

The fundamental requirement of the E-rate program is that schools and libraries select service providers through a fair and open competitive process, that the most cost-effective bid for services is selected with price being the primary factor considered, and that the technology selected is the most cost-effective means of meeting educational needs and technology plan goals.

Because the Chester County Intermediate Unit is the operational subcontractor to Chesconet for the ongoing administration, operation and maintenance of the network, Chesconet has always worked to abide by the USAC guidance for ESAs that also serve as service providers. Understanding that a potential conflict of interest may arise when an Intermediate Unit acted in the capacity of a service provider and an applicant, many years ago USAC provided clear, illustrative guidance about what would be considered a potential conflict of interest.¹ That guidance has been invaluable for Intermediate Units as they worked to continue to provide their community-based technology services, and serve in the capacity for which they are mandated as regional educational service agencies. Specifically, the guidance required there be an organizational and functional separation between staff working in the service provider capacity and staff providing technology planning support and E-rate application and procurement assistance. It is significant that this guidance did not prohibit school employees from serving on the boards of Intermediate Units, as this is the typical make-up of such IU or ESA boards and such a prohibition would have made an impossible standard in which to comply. Unfortunately, the Commission's proposal would now undo this working guidance and render impossible E-rate eligible services provided by an IU or IU-related institution.

And because Chesconet is also an independent 501(c)(3) non-profit organization with its own governing board, it has also strived to meet high E-rate standards. The Chesconet Board established a policy prohibiting any board member from an E-Rate-eligible institution to participate in the rate setting or bidding process associated with the E-rate process. Rate approval and the submission of bid proposals to schools' and libraries' Forms 470 were restricted to board officers from non-E-rate eligible organizations. Furthermore, the Chester County Intermediate Unit, because of its relationship as a subcontractor for Chesconet, elected to forgo seeking E-rate discounts on Internet service.

¹ <http://www.universalservice.org/sl/applicants/step01/esa-guidelines/default.aspx>

The USAC-provided ESA-guidance on conflicts of interest, together with Chesconet's own policies, have created a competitive bidding environment that is above reproach. Yet if the Commission adopts the proposed "bad behaviors" doctrine, it will threaten the future of this successful, non-profit enterprise. This is entirely counter to the increased national interest in the community-anchor network approach to broadband deployment.

For these reasons, we implore the FCC to reconsider adopting any language that would prohibit or severely restrict Intermediate Unit-based or community-based non-profit service provider relationships with schools and libraries.

Respectfully submitted,

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