

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 IN RESPONSE TO
MAY 20, 2010 NOTICE OF PROPOSED RULEMAKING

Introduction:

The California Department of Education (CDE) submits our comments in accordance with the FCC's Notice of Proposed Rulemaking (NPRM) released May 20, 2010 seeking comment on various proposals for “upgrading the E-rate program” as part of comprehensive Universal Service reform that is called for in the National Broadband Plan. Our Response to this NPRM is viewed as an opportunity to make changes to a program that has greatly benefitted applicants in our state. These applicants have also found the program complex, confusing, and

containing numerous negative financial consequences when minor mistakes are made. The attached comments are presented as recommendations that we feel will benefit not just the applicants in California, but applicants throughout the country. The insight, suggestions and information attached are from input collected from California applicants through the programs various application cycles.

Along with the potential changes, we encourage the Commission to consider the benefits that the program has offered applicants to date. At the same time, we encourage the Commission to make every effort to ensure that no harm is incurred by applicants who have implemented E-rate eligible technologies and have now become highly dependent on these funds. In light of recent fiscal reductions, that dependence has only increased. The initial concept and intent of the program was to provide Internet access and to build out telecommunication infrastructure for Schools and Libraries throughout the nation to ensure 21st century educational tools, skills, and access to timely information. Technology and user needs have evolved that require Broadband technologies to accomplish these educational goals. At the same time the need for support of legacy technologies, for example, voice services, continues.

Technology Planning

The FCC proposes to eliminate E-rate technology plan requirements for priority one applicants that are otherwise subject to state and local technology planning requirements. The FCC also seeks comment on whether separate E-rate mandated technology plan requirements remain useful for larger telecommunications and Internet access service priority one funding requests, even for those applicants that are subject to other state or local requirements.

While the CDE wholeheartedly embraces the overarching need to streamline and simplify the entire E-rate process, including the technology plan process, we see a balance between the

need for program simplification and overall program benefit. For technology planning in California, we have two acceptable tech plans for E-rate – the Enhancing Education Through Technology (EETT) technology plan (with nine elements) which is part of the No Child Left Behind Act, and the USAC E-rate five element tech plan. We understand that the EETT program is likely to be eliminated after the 2010-2011 federal fiscal year, possibly making the E-rate tech plan the only required plan. In California, over 90% of the tech plans in effect are for EETT purposes. With the real possibility of elimination of the entire EETT program, there may be a large migration from EETT plans to E-rate only plans. This is expected to cause severe strain on the existing review and approval system. While there was previously fiscal support to the state from other sources for the function of approving technology plans, which support has been eliminated. This will cause severe issues in California related to the ability to provide resources at the state and local level for technology plan development, review and approval. These are real issues facing California - its ability to pay for any technology plan process.

We support the simplification of the E-rate process for applicants, and yet we have concerns about the proposed elimination of technology planning for priority one services subject to state and local technology planning requirements. The term subject to state and local technology plan requirements causes concern because its meaning is unclear. It may mean that California will have to adopt new technology plan requirements and develop a new state technology plan process for E-rate. Or it may mean that USAC expects a carefully crafted, fully functioning state and local technology plan process will replace the current E-rate tech plan requirement. We want simplification and streamlining for E-rate, but we do not want it to shift the program requirements and responsibilities from USAC to the states. We simply cannot support or afford it.

CDE would recommend that the requirement for applicants to have an approved tech plan in place prior to receiving E-rate discounts be modified. We believe that the technology planning process is a great benefit to the program because it causes schools/districts to plan and focus on how best to use scarce technology resources to improve the delivery of educational services to students. However, with the current technology plan process this could mean a 50-100 page document that in many ways does not add value to the E-rate program or the integration of technology into the educational delivery system. Instead of eliminating the tech plan requirement for priority one services, we suggest modifying the entire E-rate tech plan process (for priority one and two) by requiring schools/districts to provide a concise technology plan statement or document every year as part of the Form 470 or 471 submittal. That way USAC can review the technology plan statement/document and address any shortcomings with the schools/districts directly during their application review process. In this model state and local organizations with no resources to support the current technology plan process can focus on other critical education areas.

Lastly, the CDE recommends that USAC/FCC develop a concise technology plan template for the form 470 or 471 (or a standalone document) and have the applicant complete this technology plan form, sign it and submit it in lieu of the current technology plan system. This would still allow for the tremendous benefits of the technology planning process to both the applicants and the E-rate program, and at the same time eliminate the tremendous burden on the state and local organizations to administer (train, review and approve tech plans) this E-rate program requirement.

Form 470 Reform & Competitive Bidding

Recognizing that some applicants could benefit greatly by not having to submit a form 470, the FCC proposes that applicants that are subject to public procurement requirements would be excused from posting a Form 470 for Priority 1 telecommunications and Internet access service. All other applicants not subject to public procurement rules would continue to post a form 470 for Priority 1 and all applicants would continue to post a form 470 for Priority 2 procurements. NPRM, ¶¶ 21-25.

Once again, we urge the FCC to implement simplification without doing harm to competitive bidding. Simplicity can be ensured by consistency. If P1 does not require a form 470, but P2 does, this will increase the complexity (or risk of confusion) for some applicants. The need to understand when to use the “abbreviated” process vs. when to use the “full” process will potentially introduce new confusion. It is recommended that a streamlined and simplified form 470 be used for both P1 and P2. This will help ensure applicants receive as many vendor responses as possible. The administrative oversight of the program will also help ensure the Commission that there is a standard of fair and open competitive bidding by all applicants. Given this, the attached simplified form 470 is, in our opinion, critical to ensure applicants can complete the form without the unintended consequence of application denial for minor errors, such as failing to check a box for a category of service that is bundled (and therefore considered ineligible, for instance, for discounted Internet services).

Many subsequent audit issues of the form 470 are difficult to detect and should be eliminated. A perception has developed that an average applicant can often unknowingly commit errors and essentially creates unnecessary work that ultimately helps no one. It is this attitude that keeps some eligible applicants from even applying in the first place. The forms should not

be so difficult and the process so daunting as to dissuade applicants from applying for the critical funds. In addition, the posting of a simplified form 470 will also assist those applicants that do not have strong local, or state procurement guidelines that are clear for telecommunications services. The on-line posting of an FCC Form 470 for solicitation of responses to requests for eligible services will trigger the competition that the process was intended to create.

Additional Details:

As you can see by the attached Form 470 sample, the applicant will continue to have the ability to select the general category of service, and also have the ability briefly describe the type of service. Where applicable, schools or libraries will have an opportunity to provide a more formal description/RFP by directing the vendor reviewing the form 470 to a web link where more detail is found. Finally, there is a field “Service or Function” & “Quantity and/or Capacity” that will allow applicants to put information that will indicate to potential vendors the type of service or product for which a response is being sought

In addition to simplification of the form 470, it is also recommended that the Form 470 posting period be reduced to 14 days (or however many days the state or local guideline requires or permits). In California, and in other states, the procurement cycle only requires 14 days, and the current 28 day period creates challenges for organizations with small staffs who find the bidding window too long. In addition, this aligns better with state and local requirements, and gives vendors ample time to respond to web/simplified Form 470 postings. There is no evidence and should be no concern that reducing the time of posting will interfere with the competitive bidding process or reduce vendor responses. In addition, the Form 470 as shown should have SELF CERTIFICATION for competitive bidding compliance, and adherence to bidding practices.

CDE comments that the Commission should NOT list specific activities that would be considered violations of the codified 'fair and open competitive bidding' rule because of the very real possibility of inherent or established relationships between many vendors and the community of schools and libraries they serve. An example of the kind of involvement that occurs would be vendors' sponsorship of technology fairs for K-12, etc., as this has become a commonly accepted practice and occurs almost weekly throughout the country. CDE comments that this activity alone would in no way unduly influence the award of a project, but if the Commission adopts a specified list, this kind of activity would be prohibited. CDE further comments that MOST applicants have some sort of "Conflict of Interest" policy within their adopted policies and as long as an applicant self certifies attesting to their compliance, there should be not need for further 'policing' by the Commission unless or until a specific situation is brought to light. At that time, the pertinent facts could be evaluated on a case by case basis for compliance determination. The Commission is urged to remember that there are already multiple protections in place. Not only has the district self-certified the Form 470/Form 471, it also undergoes annual independent audits, and receives oversight from elected boards. All of these controls are designed to ensure that fair and open bidding is the standard operating procedure, and that unfair business practices do not occur. For the area of Form 471 simplification, suggested changes, etc., we support the suggestions and details that SECA will be submitting as recommendations for this form simplification and reform.

Electronic Filing of Forms

As part of the streamlining initiatives, the FCC recommends that all E-rate forms should be available for online submission, and applicants should be able to upload requested information electronically. Applicants should also be able to save, retrieve, and edit previously filed applications and use these forms as the basis for future funding requests, thereby improving the efficiency of submission and processing of applications. The FCC also proposes that all applicants be required to file electronically, and asks whether these initiatives will save USAC administrative costs.

The submission of all forms electronically is strongly supported and recommended. In addition, the idea of pre-filling applicant information with verification of data being required will significantly simplify and streamline the program. However, it is important to recognize that there are some features that do not work correctly for large applicants, i.e. state consortia's block 4 upload. In order for all forms and applications to be filed and certified electronically, it will be important to simplify all forms and ensure that all technical features work. The means of accomplishing these two conditions are used in private industry, and we encourage the FCC to utilize a similar approach to ensure lower costs, lessen confusion, and ensure an implementation that is effective. Specifically, form a focus group of 6-8 school and library applicants (utilize the NPRM response listing to help with forming this group); task this group with making recommendations to simplify forms; and request of the FCC the essential factors they need to collect. After 30 to 45 days, this group will issue their recommendations to the FCC. Once the FCC has worked with USAC for implementation and the final system changes have been completed and tested by USAC, we encourage testing by a pilot group to ensure that the (40,000+) annual applications will be submitted successfully. This industry approach of focus group and

end user testing will provide USAC with significant assistance given the tremendous amount of system changes that may or will need to be implemented.

Historical NPRM comments have offered the suggestion of a PORTAL system for applicants. This single entity interface with access to all forms, application information, and applicant time-sensitive warnings would be ideal for applicants. This system would ensure applicants have all of the information to manage their funds, and help them ensure they receive all of the funds they are entitled to. In addition, this system could help in the efficiency of application reviews to allow applicants to upload information (i.e. Item 21), and other forms, etc. that are needed for the distribution of funds.

Discount Matrix Streamlining

The CDE supports the Commission's suggestion of using a simple average for discount calculations. There is an assumption that with this change, Block 4 of Form 471 would not need to list each school site for a district wide application. The block 4 would simply list the applicant's entity number and cumulative demographic data. If site level information is needed by the Commission for statistical purposes, we would recommend collecting that data outside of Block 4, perhaps on a separate database or document submitted with the application much like an Item 21 attachment is currently submitted. A separate database of the site level detail associated with an applicant could be an editable database, allowing fluidity throughout the funding year since schools close and/or consolidate, particularly in the current economic environment. Another important factor to consider is that if Block 4 site level information is needed there must be a system in place to allow the upload of Block 4 information for large applicants and consortiums. The current system only allows block 4 uploads for applicants with only Worksheet

A calculations. Most large state networks, such as California, also require a Worksheet C calculation and we are currently not able to automatically upload our Block 4 due to significant system limitations.

Rural/Urban Designation

The CDE supports the suggestion that the method of determining Urban/Rural classification should continue to rely on the definition of rural area as “an area that is not located in a county within a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget (OMB), or if it is specifically identified as rural in the Goldsmith Modification to Census data.” The CDE recommends that the Goldsmith Modification to Census data be updated to reflect the 2000 Census data and then 2010 Census data as soon as it becomes available from the Department of Commerce. Once this is done, clear guidance should be part of USAC Fall E-rate trainings to encourage applicants to reevaluate their urban/rural status. (Once an applicant determines this status, it is not typical for them to conduct additional verification or review of their classification).

ESL Revisions

The CDE is assuming that the Commission’s recommendations for revision of eligible services are based upon a limitation of available funds. This limitation of funds, as illustrated via national statistics provided by the firm Funds for Learning, indicates that within 2 years, the Priority One service category alone will outstrip the entire available fund of \$2.25 billion. Given this, the CDE’s Eligible Service List (ESL) recommendations stated below are based upon the premise that the current funding structure will cease to support the demand for eligible services

in the very near future, and must be modified to accommodate the anticipated demand and the objectives of the program for Universal Service.

Priority One: The elimination of Web Services is noted below. The other area that is mentioned in the NPRM is the elimination of basic voice services. CDE observes that, over time, there will be widespread adoption of Broadband-based voice services, such as managed VoIP. However, in California, we have estimated that approximately \$84 million of the current telecommunications funding requests are for basic voice services. Given the cost and time necessary for the transition from basic voice services to Broadband-based advanced telecommunications services, and the current economic devastation of public entity budgets, we urge the FCC to delay the elimination of basic voice supported services. If any reduction in funding for Basic Voice Services should occur, the CDE recommends that a 5-7 year minimum delay to allow for adoption of new technologies.

Priority Two: The CDE recognizes that the Schools and Libraries funds are limited, and their usage needs to be more narrowly defined, in order to help preserve the high need for Priority One services. The CDE recommends that the FCC revisit the eligible services list and eliminate items that do not primarily facilitate the transfer of data to the classroom. Technically, this would be limited to cabling, switches, and routers and other items with the specific functionality of transferring packets of data. (Note: do not allow bundling of CPU cards in chassis, etc. Newer technologies have placed server-type features into routers and switches; we do not support these functions). All other areas of eligible services will be eliminated, even though it is recognized that some have significant classroom benefits (i.e. video conferencing). That being said, should the Commission eliminate support for Basic Voice Services in the

Priority One category of service, the CDE urges the FCC to retain the eligibility for voice systems and equipment that are currently eligible under program rules.

Elimination of Web Hosting

The CDE recognizes that there are great educational benefits to web hosting services and systems. However, with the assumption that there will be limited funds for even the P1 category potentially in the future, we support the elimination of web hosting. We do acknowledge the issues surrounding the cost of some of these services, and the challenge of ensuring only those items that are truly eligible receive funds.

Dark Fiber

To increase flexibility in selecting cost effective broadband solutions, the FCC is seeking comment “on permitting participants to receive support for the lease of fiber, even if unlit, from third parties that are not telecommunications carriers...” The Commission also proposes to make leased dark fiber from any source eligible for funding as a priority one service. Furthermore, the Commission proposes to add leased dark fiber to the ESL again – similar to its categorization prior to 2004 – *“under such an approach applicants, would, for instance be able to lease dark fiber that may be owned by state, regional, or local governmental entities, when that is the most cost effective solution to their connectivity needs.”*

The CDE supports the eligibility of dark and lit fiber services and flexibility in the provision of these services. Specifically, evidence and current examples exist that by codifying this service, there will be more cost effective or new service provided to areas that are hard to serve. Providers that should be eligible to provide this service under E-rate include, but are not

limited to, State, Regional, and local government or municipal agencies, education and research networks, utility companies, and non-profits, etc.

Increased Access to P2

In order to expand access to broadband services at the classroom level, the NPRM proposes methods to ensure that more schools and libraries receive priority two funding for internal connections. The FCC offers two goals: *(1) providing funding for internal connections to more schools and libraries than in the past; and (2) ensuring a predictable amount of funding available to schools and libraries for internal connections each year.* In the NPRM, the FCC proposes several methods to address Priority 2 funding challenges. One option would be to allocate funding for internal connections based on a per student cap per school district, to which the applicant's discount rate would be applied, *“To ensure that a predictable amount of funding is available for internal connections, a defined amount of funding could be reserved for priority 2 funding.”* The NPRM asserts that the 2-in-5 rule has not had the desired impact and other strategies should be considered to ensure more applicants receive priority 2 funds.

The FCC goals in this area are definitely applauded by applicants throughout the country and fully supported by the CDE. The biggest challenge in the E-rate program is ensuring that enough funds are available to meet the demand. Providing predictable priority 2 funding for all applicants is a worthy goal. With the exception of Year Two of the program (1999), demand for priority two funding has greatly outpaced available funds. Current demand figures for priority two are conservative since applicants with a relatively low percentage of NSLP-eligible students often do not even bother to apply for the funds. While extremely high discount schools (90% discount band) may consider priority 2 funding to be “predictable,” priority 2 funding is not

predictable for the vast majority of applicants (unless it is considered that most applicants can safely predict that they will not receive any priority 2 funding).

The CDE supports the goals outlined above by the FCC, however, there are some specific suggestions made by the Commission that would not be supported by the CDE; specifically, the concept of a cap per student. One of the most commendable elements of E-rate is that it is NEEDS driven. However, a cap per student would diminish the effectiveness of this goal. It is the opinion of CDE that a ‘per student cap’ would unfairly disadvantage some population(s) throughout the country by not allowing a commensurate share based on need and would arbitrarily limit smaller applicants’ ability to deploy broadband technologies because their allocation of funds would be, for all intents and purposes, negligible.

As the Commission has noted, another area that has not been as successful as intended, is the 2 in 5 rule. The 2 in 5 rule has been confusing for some applicants to understand, and difficult to administer for larger applicants. Additionally, it has made it impossible for state networks or statewide consortium to receive funding for eligible items that benefit all applicants (eliminates the economies of scale approach) since individual network members lose one of their 2 in 5 years of eligibility for their entire district if the state network applies for E-rate discounts on internal connections.

CDE comments that we are unable to support the suggestion of a “set-aside of P2 funding” each year without specific information regarding how much set aside would be available and without reassurance that the availability of P1 dollars will not be adversely affected. CDE feels that factors (such as what the elimination of web hosting services means in dollars and cents and other financial impacts) must be known before any position can be supported by the CDE.

CDE does however recommend that the current P2 discount matrix be changed to have a cap of 70% for even the highest free and reduced lunch level applicant. Again, the CDE prefaces this with the assumption that the E-Rate program is under severe financial constraints, and some areas require change to help conserve precious financial resources. Other identified benefits of a lower maximum discount are that the school or library will have more “Skin in the Game”, and will ostensibly make more efficient, cost saving and effective purchasing decisions, and everyone benefits.

Continuing the discussion, CDE recommends there will be a need to ensure the distribution of funds down to all discount levels. Once an applicant has been funded in their priority 2 ‘cycle’, the applicant cannot receive priority 2 funding until all other applicants receive funding. In essence, once a discount level is funded, then USAC will fund down the discount grid to the next level, until all levels are funded (i.e. 70% level funded 1st year; 65-69% the second year, etc.) In order to avoid having applicants apply for funding in a year in which there is no chance the funds will reach them, the FCC should be able to determine the bands it can fund prior to the application cycle using historical data. The FCC will announce before each fall application cycle the anticipated P2 funding levels for the coming application year. In order to effectively budget and plan, applicants will be allowed two years from the date of their FCDL to purchase and install priority 2 goods and services. With use of the already-established invoice extension process, an applicant may request additional time beyond two years to complete priority 2 installation.

There have been statistics compiled by various groups (i.e. SECA) in an attempt to predict the amount of time an applicant would have to wait to receive funding. It is estimated that an applicant should get funded once every 5-6 years with this method. Given our other suggestion

for P2 eligibility, elimination of web hosting, and other cost savings measures, it does seem that this is an obtainable goal.

The CDE would also like to re-confirm that the P1 discount matrix should stay as it currently is for various reasons. The primary reason is that various applicants are in multi year contracts, and the certainties of these discounts are essential. In addition, the spirit of E-rate was to assist with broadband connectivity for on-line resources. The current matrix with the 90% highest discount level helps achieve that for applicants with the highest poverty levels. In addition, with all of the various potential changes to the program, we recommend there be some consistency for applicants to assure them that the least amount of financial harm will come to them in these challenging budget times. P1 discounts are an area that applicants rely upon during budget development.

Increased Access to P2 – Eliminate Basic Maintenance of Internal Connections

As one option for expanding access to P2 funds to more applicants, the Commission proposes modifications to basic maintenance of internal connections including potential elimination of discount support for this service altogether or capping the funding and reimbursement of requests based on actual costs incurred.

The CDE again makes the following recommendations given the limitation of E-rate funds and the concerns and issues that have been raised with waste, fraud and abuse that basic maintenance has seen over the life of the program. The basic maintenance category should be eliminated to help facilitate the availability of additional funds for P1 and for P2 internal connections. If there were enough funds, we encourage continuation of funding availability for

basic maintenance, only with the condition that fixed rate contracts for labor need to be eliminated, and contracts need to be based on time and materials and can include manufactures warranties.

A clarification; if Basic Maintenance of Internal Connections is eliminated as a ‘category of service’, the FCC should allow manufacturer’s warranties to be bundled into the original purchase, for up to a 3 year period as part of the purchase of the equipment. Please see our comment under ESL for other P2 recommendations.

Indexing Cap to Inflation & Contribution Equity

The CDE strongly agrees and encourages the FCC to adjust the CAP upwards to help with the increase demand on the fund, and the limitation that the fund will experience in the coming years. The inflation adjustment that needs to be made to the fund should be based upon a 10 year rolling average of inflation due to the unusual lowering of interest rates by the Federal government during the current recession. This 10 year rolling average needs to be based upon CPI (consumer price index) rate. This has been historically more accurate than a federal rate of inflation, because CPI represents “real purchasing power”. There have been calculations that show the inflation adjustment to be approximately \$676 million, which would raise the cap of E-rate funds to \$2.93 billion. This inflation adjustment should be applied to the fall application cycle request, year 2011-2012.

Although not outlined in the NPRM, CDE urges review of the contribution rate by providers. Given the needs of the 21st Century anytime, anywhere learner and the National Broadband Plan’s directive to implement widespread wireless internet access, it is suggested that wireless providers be required to contribute to the fund at the same rate as traditional

telecommunications providers. CDE feels it is reasonable to expect that providers in this fast growing industry be subject to an equitable contribution factor as their land line based counterparts.

Disposal of Equipment

The Commission proposes to allow schools and libraries to dispose of equipment for payment or other consideration under the following conditions: (1) the equipment has exhausted its useful life, but no sooner than five years after the equipment is installed; (2) the equipment is formally declared to be surplus by the school board, information technology officer, or other authorized body or individual; (3) the school or library notifies USAC within 90 days of disposal and keeps a record of the disposal for a period of five years following the disposal; and (4) the disposal process fully complies with state and local laws, where applicable. The Commission proposes to revise the Form 500 to serve as a notification to USAC of the disposal.

The CDE agrees with the Commission's proposal to permit the disposal of obsolete equipment whether or not such disposal involves payment or other consideration. The CDE has received input from applicants that there should not be the need to return any equipment to USAC that has been used for a minimum of 5 years, even if there is some level of "salvage value". The industry has shown this salvage value to be minimal, and there would be a higher cost for this return approach. We would also recommend that the applicant can self certify on the Form 500 that it has adhered to local disposal policies.