

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

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

**COMMENTS OF  
MIAMI-DADE COUNTY PUBLIC SCHOOLS  
REGARDING THE  
NOTICE OF PROPOSED RULEMAKING**

**FCC 10-83**

**Adopted and Released**

**May 20, 2010**

## I. Summary and INTRODUCTION

Miami-Dade County Public Schools (M-DCPS) submits these reply comments in response to the Notice of Proposed Rulemaking (NPRM), released May 20, 2010.<sup>1</sup> In this Notice, the Federal Communications Commission (FCC) has initiated one in a series of rulemaking proceedings to implement the National Broadband Plan's (NBP) vision of improving and modernizing the universal service programs.<sup>2</sup> As well, the Commission has identified comprehensive universal service fund (USF) reform and seeks to upgrade the E-rate program (more formally known as the schools and libraries universal service support mechanism). This NPRM also seeks comment on several potential reforms that would cut red tape by eliminating rules that have not effectively served their intended purpose, while continuing to protect against waste, fraud, and abuse.

M-DCPS welcomes the opportunity to file these comments to address issues relating to the Schools and Libraries, E-rate program. As noted in the NPRM,<sup>3</sup> "Since its inception 12 years ago, the E-rate program has been extremely successful in enabling virtually all schools and libraries to provide telecommunications services and Internet access to students and communities across America." But we believe the time has come to allow our staff, students, and parents, the availability and use of broadband through the support of the E-rate program. To do so, effectively, the overhaul of the E-rate program must seriously take into consideration a considerable increase in its funding cap, or we will effectively establish the first step in its ineffective continuation. Commissioner Mignon L. Clyburn notes that, "we also may want to index the E-rate funding cap to inflation..."<sup>4</sup> However, M-DCPS, while agreeing with this initiative, believes we must go further. While we understand Commissioner Michael J. Copps counsel that, "we must always be cognizant that this is a capped program..."<sup>5</sup>, M-DCPS respectfully reminds the Commission that throughout its initial 12 years, the E-rate program has never even been adjusted to inflation. As well, the Commission is again respectfully reminded that the E-rate program, while successfully meeting the needs and challenges of priority one telecommunications services of districts nationwide, has consistently fallen short of meeting the requirements of the priority two internal connections needs.

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<sup>1</sup> See Notice of Proposed Rulemaking released on May 20, 2010, FCC 10-83.

<sup>2</sup> Federal Communications Commission, Connecting America: The National Broadband Plan, (rel. Mar. 16, 2010) and available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-296935A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf)

<sup>3</sup> See NPRM, FCC 10-83, page 2 [INTRODUCTION, 3.].

<sup>4</sup> See NPRM, FCC 10-83, page 80, Statement of Commissioner Mignon L. Clyburn.

<sup>5</sup> See NPRM, FCC 10-83, page 78, Statement of Commissioner Michael J. Copps.

In sum, this NPRM seeks comments on a package of potential reforms to the E-rate program, likely to be implemented in Funding Year 2011-2012.

**NPRM, ¶9** - The following are the proposed reforms:<sup>6</sup>

- streamlining the application and competitive bidding processes for telecommunications and internet access in an effort to further reduce the administrative burden on applicants, while at the same time maintaining appropriate safeguards to mitigate potential waste, fraud, and abuse;
- codifying the requirement developed in Commission precedent that competitive bidding processes be “fair and open” to enhance the Commission’s ability to enforce its rules in cases involving waste, fraud and abuse;
- simplifying the way schools calculate their discounts and conforming the E-rate definition of “rural” to the Department of Education’s definition;
- supporting 24/7 online learning by eliminating the current rule that requires schools to allocate the cost of wireless Internet access service between funded, in-school use and non-funded uses away from school premises;
- providing greater flexibility to recipients to choose the most cost-effective bandwidth solutions for their connectivity needs by allowing the leasing of low-cost fiber from municipalities and other entities that are not telecommunications carriers;
- expanding the reach of broadband in residential schools that serve populations facing unique challenges, such as Tribal schools or schools for children with physical, cognitive, or behavioral disabilities;
- creating a new, predictable funding mechanism for internal connections so that more schools and libraries have the ability to use the most technologically advanced applications, including video streaming to the classroom, to provide superior learning opportunities;
- indexing the current \$2.25 billion cap on E-rate disbursements to inflation to maintain the purchasing power of the current program and enable continued support for high speed broadband and internal connections in the future; and
- creating a process for schools and libraries to dispose of obsolete equipment without running afoul of the prohibition on reselling equipment and services purchased using E-rate funds.

M-DCPS offers the following core principles for consideration as responses for USF reform, specific to the E-rate program.

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<sup>6</sup> See NPRM, FCC 10-83, page 4

## II. STREAMLINING THE APPLICATION PROCESS

### 1. Technology Plans

**NPRM, ¶18** - M-DCPS supports the Commission’s proposal to amend section 54.508 of the rules to eliminate E-rate technology plan requirements for priority one applicants that otherwise are subject to state and local technology planning requirements.<sup>7</sup> M-DCPS agrees with the notion that states already require technology planning, and therefore E-rate program requirements are nothing more than duplicative efforts. **NPRM, ¶19** - However, this proposal, if approved should be implemented equitably to all E-rate program participants, regardless of participant’s size in terms of student population, or amount of funding for priority one services. Such verifications can, and should, be a part of any audits to ensure waste, fraud, and abuse. Those guidelines are already in place.

The FCC seeks comments on “whether the current third-party approval process should be retained to the extent that we continue to require technology plans. **NPRM, ¶20 (iii)** - M-DCPS, again, firmly believes that such verifications can, and should, be a part of any audits to ensure waste, fraud, and abuse. Those guidelines are already in place. Thus, we believe the requirement for third-party verification is nothing less than an unnecessary nuisance, in fact, the states are already subject to strict Auditor General guidelines that would successfully pick up any such internal deviations.

### 2. Competitive Bidding Process

**NPRM, ¶21** - M-DCPS supports adding section 54.510 to the rules<sup>8</sup> thus eliminating 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. M-DCPS recognizes that, in our case, our own local Procurement practices, as outlined in our website<sup>9</sup>, are far more stringent and therefore would suffice, thus making this E-rate requirement a duplication of effort, at best. **NPRM, ¶22** - However, this proposal, if approved should be implemented equitably to all E-rate program participants, regardless of participant’s size in terms of student population, or amount of funding for priority one services. The use of the term “*for most priority one applicants*” can be perceived as discriminatory and may lead to

<sup>7</sup> See Appendix, A, 47 C.F.R. 54.508; ALA NBP Public Notice #15 Comments at 16-17 (stating that the Commission should not be involved in shaping the process of technology planning on a local, regional, or state level).

<sup>8</sup> See Appendix A, 47 C.F.R. 54.510; see also AASA & AESA NPB Public Notice #15 Comments at 7; SECA NBP Public Notice #15 Comments at 25-27; TETN NBP Public Notice #15 Comments at 4; WV DOE NBP Public Notice #15 Comments at 13-14.

<sup>9</sup> See <http://procurement.dadeschools.net>

questions and energetic discussions on *who / why / or how many* is a reasonable cutoff level to include/exclude as a result of this requirement. M-DCPS further attests that any changes in practices should be well thought out to become all-inclusive of all program participants.

As it relates to **NPRM, ¶26 and NPRM, ¶27**, M-DCPS completely supports the notion/rule of Fair and Open Competitive Bidding. As well, M-DCPS supports the need to comply with all the requirements as noted in **NPRM, ¶30**, to include describing the desired products and services with sufficient specificity; to identify the correct category of service (telecommunications, Internet access; internal connections; or Maintenance of internal connections, as applicable); to allow only the applicant or authorized representative to prepare, sign and submit the FCC Form 470; not being able to list a service provider on the form / or help in the preparation of the form; but allow a service provider to provide information to an applicant about products or services.

### **3. Application Process Streamlining**

**NPRM, ¶32** – M-DCPS welcomes the arrival of advanced technology to USAC and, specifically, to the Schools and Libraries, of the E-rate program. Thus, we strongly support the notion that all forms be available for online submission. As well, ensuring that USAC can improve its online systems to allow for retrieval of prior information – both to support the applicant and the Program Integrity (PIA) reviewers – is a welcomed relief to the E-rate program. M-DCPS suggests that, as a result of improved computer systems reforms, the PIA Reviewer could analyze, specifically, the priority one applications from the perspective of the one filed and approved in the previous year... if both are deemed the same, in terms of contract information, etc., then as a result, the PIA Reviewer should be able to expedite approval of the current year's application for same services under the same contract.

### **4. Discount Matrix Streamlining**

**NPRM, ¶34** – M-DCPS **strongly opposes** the proposal to revise the discount calculation methodology and the discount rules so that schools will calculate discounts on supported services by using the average discount rate for the entire school district. Each year, M-DCPS engages in a campaign district-wide to ensure all eligible students who can participate in the National School Lunch Program (NSLP) are registered and counted. Under this proposal, M-DCPS would never qualify for discounts greater than the 80% E-rate funding level. The incentive to support our schools

at the highest level possible would be mitigated and only serve to squelch the individual school's ability to seek the best technology possible for its students. Thus, M-DCPS firmly believes this proposal would run squarely counter to the E-rate program's initial intentions to support the neediest students first.

### **III. PROVIDING GREATER FLEXIBILITY TO SELECT BROADBAND SERVICES**

#### **1. Wireless Services Outside of School**

**NPRM, ¶42** – M-DCPS supports the notion, as adopted by the Commission, of presumption [...] that reasonable requests are to be deemed eligible for discounts, even off school property and would also be integral, immediate, and proximate to the education of students [...] and thus, would be considered as an “educational purpose.” **NPRM, ¶43 and NPRM, ¶45** - Thus, it would only make sense, and M-DCPS **strongly supports** the recommendation that the Commission review the eligibility of some services to improve the efficiency of the E-rate program. In particular, M-DCPS **strongly espouses** the proposal by the National Broadband Plan (NBP) that “the E-rate program support online learning by providing wireless connectivity to portable devices so students can engage in learning while NOT at school.”<sup>10</sup> As well, based on **NPRM, ¶46**, M-DCPS also firmly believes and supports the idea, as stated in this proposal that, “rules be modified so that the digital divide be lessened between those who are fortunate enough to subscribe to broadband at home and those who do not.” Concertedly, **NPRM, ¶48**, M-DCPS also strongly supports the expansion of E-rate funding for Internet access services to be used to facilitate learning both on and off [school] premises. Further, we recognize and agree that, **NPRM, ¶49**, “the requirements of the Children’s Internet Protection Act and the Protecting Children in the 21<sup>st</sup> Century Act still would apply to services being used off-premises.”<sup>11</sup>

#### **4. Targeting Support for Broadband Services**

**NPRM, ¶58** – M-DCPS supports and suggests the establishing of targeted studies to assess the costs associated with support for Broadband services through the use of E-rate funds. While M-DCPS strongly supports the funding of this service with E-rate dollars, we are also cognizant

<sup>10</sup> Id. at 239 (NBP Recommendation 11.23).

<sup>11</sup> This would require that laptops being used off-premises would need to be CIPA-compliant.

of the added burden to a program that is currently capped and not generally meeting all its applicant requests for currently eligible services. It is for this reason that a realistic approach be taken to identify and incorporate additional funds to the E-rate program, as a result of the Broadband-eligibility inclusion. We can't expect to resolve the digital divide by depending on funds that may not necessarily be there, or available currently through the E-rate program. Conversely, NPRM, ¶59 – M-DCPS is hesitant, and generally does not support the idea that, current ESL services/equipment should receive a lower priority in E-rate funding to target funding toward higher bandwidth connectivity. To do so could suggest a failure to recognize the need to support infrastructure equipment/services that are already a part of the ESL, and agreed-upon as essential to the effective use of the E-rate program.

#### IV. EXPANDING THE REACH OF BROADBAND TO THE CLASSROOM

##### A. Background

NPRM, ¶60 and NPRM, ¶61 – M-DCPS is pleased to see that the Commission recognizes the funding limitations outlined in this section of the NPRM. As noted, historically, the program has not had sufficient funds to meet the demands nationwide to support funding requests, even for essential services/equipment deemed eligible by the E-rate program. As indicated as well, The Joint Board initially had recommended that an annual cap be set [at program inception 13 years ago...] at \$2.25 billion, based on third-party estimates of the cost of services eligible for discounts.<sup>12</sup> In fact, “the Commission adopted the Joint Board’s recommendation, but noted that the \$2.25 billion figure was only an estimate because of the lack of real data...”<sup>13</sup> Conclusively, M-DCPS respectfully suggests that it is time to revisit this initial decision. “Real data” is now available – and it demonstrates a lack of sufficient funds.

##### 1. Predictable Internal Connections Funding for More Schools and Libraries

NPRM, ¶71 - *Flat per pupil caps* is not the answer. Thus, M-DCPS does not support this idea. Instead, we inquire as to *who* would benefit from “a more predictable funding mechanism for priority two services” – certainly not the students for which the E-rate program was created and intended to support. As well, this rule, in the end would likely have the same failed effect as the 2/5 Rule, which

<sup>12</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9054-55, paras. 530–531 (extrapolating from data provided by the McKinsey Report, Rothstein Thesis, and NCLIS Report).

<sup>13</sup> *Id.* at 9055, para. 530.

by the way, M-DCPS strongly supports its elimination **NPRM, ¶77** . Clearly, it has never served the purpose for which it was first intended **NPRM, ¶78**.

**NPRM, ¶74** - To *Set Aside for Internal Connections* prior to meeting the requirements of priority one funding is not the answer. Thus, M-DCPS opposes this recommendation. In fact, the need to support Broadband services has led the Commission to publish this current NPRM. This is an additional service to be funded from priority one funds... Does this not in fact deplete the \$2.25 billion currently available – and capped? As such then, if funds were set aside to cover Internal Connections first, the E-rate program would not have sufficient funds to cover the totality of priority one requests. Clearly then, again, the program has sufficient data to elevate the cry for additional help in funding support.

**NPRM, ¶76** - *Revising the E-rate discount matrix* is not the answer. Thus, M-DCPS opposes this recommendation. At a time when school districts nationwide are scrapping for every available dollar to sustain its payroll and daily business necessities required to educate our future leaders, adding a 10% or even a 5% to its neediest schools, in order to gain access to E-rate funding is certainly unreasonable. Thus, M-DCPS firmly believes this proposal would run squarely counter to the E-rate program’s initial intentions to support the neediest students first, while effectively trying to squeeze out funds to support lower E-rate bands. In fact, predictably, many school districts nationwide may find themselves having to drop out from the priority two support of this beneficial program, as a result of this added burden.

**NPRM, ¶79** - *Application by School District*. Single discount level by school district is not the answer. In fact, M-DCPS **strongly opposes** this recommendation as a mandatory single option. This goes counter to the ideals of the E-rate program as initially set forth. As well, it will certainly have the same negative effect as noted above in **NPRM, ¶76**.

**NPRM, ¶80** - *Eliminate Funding for Basic Maintenance for Internal Connections* is not the answer. Eliminating or capping **NPRM, ¶82** the support for maintenance services required to support existing eligible services would again create the same additional burden on school districts as the previous **NPRM, ¶76** and **NPRM, ¶79** above. Thus, M-DCPS opposes these recommendations.

## 2. Indexing the Annual Funding Cap to Inflation

**NPRM, ¶80** - M-DCPS supports the Commission’s proposal to amend section 54.507 to index the E-rate program funding cap to the rate of inflation and that ... during periods of

deflation, the funding cap will remain at the level from the previous funding year. However, while the Commission entertains this increase to the E-rate program based on the rate of inflation, M-DCPS would encourage that such decision be made retroactive to the start of the program (1998), recognizing that over the last 12 years of the program's existence, the rate of inflation has never been taken into account.

Finally, on the subject of the current E-rate funding cap, M-DCPS suggests that we must recognize that we now have 12 years of data to reach an opinion, with much certainty, that the current cap of \$2.25 billion does not meet the funding expectations of the E-rate program. In fact, we must also recognize that, over the years, many equipment/services additions to the ESL have been implemented and these have further burdened the E-rate program, without any further influx of funds. In fact, a number of program requirements have been added through the years requiring participants to fund them at 100% of cost, and without any monetary support to the program participants. It is time we look for Congressional support to properly fund a very successful and necessary program to meet the ever-increasing technical needs of teaching the children of our nation.

## **V. CREATING A PROCESS FOR DISPOSAL OF OBSOLETE EQUIPMENT**

**NPRM, ¶91 - *Process for Disposal of Obsolete Equipment.*** M-DCPS supports all four proposed conditions to establish uniform rules on equipment disposal. Thus, M-DCPS also supports the proposals as noted in **NPRM, ¶95 and NPRM, ¶96** to revise FCC Form 500 to effectively report obsolete equipment disposals.

## **CONCLUSION**

Dissemination of knowledge has always been closely tied to the delivery form used. In turn, discoveries in science have directly affected this process. The availability of Broadband best exemplifies this notion. Thus, M-DCPS takes pride in supporting the inclusion of this service as an eligible component of the E-rate program. Its funding will only serve to better today's millennial generation to cope with modern technology and learning opportunities. In fact, we strongly believe that not to have a more equitable access to "the electronic classroom" – while at the classroom or away from it – is totally unacceptable if we are serious in breaking the digital divide. Conclusively, therefore, M-DCPS commends the Commission for taking a first step in the right direction in ensuring equitable and funded delivery of Broadband services.