

**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 for Our Future)	GN Docket No. 09-51
)	

REPLY COMMENTS OF NEVESEM, INC.

Henry M. Rivera
Edgar Class
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

Attorneys for Nevesem, Inc.

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Summary

Nevesem, Inc. submits that the Commission should retain the Technology Plan requirement for all E-Rate eligible services because the requirement ensures that applicants make appropriate decisions regarding goods and services purchased using E-Rate discounts. Technology funds serve a critical purpose – without a plan, applicants may apply for E-Rate funds they do not need and, if they get the funds, applicants may not be prepared to use them effectively.

Elimination of the Technology Plan requirement because the applicant is subject to a state or local technology plan is not viable because state/local plans may or may not address all of the issues the E-Rate Technology Plan requirement addresses. Moreover, USAC will have to determine, on a case-by-case basis, if every applicant has satisfied all the requirements of any state or local plan to which the applicant is subject and whether the state or local plan comports with the E-Rate Program's Technology Plan requirement. Far from simplifying the Program, this paradigm will inject uncertainty and place additional burdens on USAC.

The Technology Plan requirement is already applicable only to a select group of applicants – those requesting funds for other than basic local, cellular, PCS, and/or long distance service or voice mail and those applicants who have not submitted a technology plan approved by another federal agency and, therefore, there is no need to pare the requirement further.

The Commission should retain the third-party approval process for technology plans. Third-party approvers will remove the burden from USAC reviewers of having to ensure that technology plans are based on reasonable needs and resources of the applicant

and are compatible with the goals of the E-Rate Program. Third-party reviewers are much more likely to be familiar with the education and library systems in their communities and have a better understanding of the issues facing the applicants than a USAC reviewer.

The Commission should retain the Form 470 posting requirement because it promotes competition among service providers and helps to ensure that applicants obtain services and products at competitive prices. Elimination of this requirement will make it difficult for service providers to submit proposals to applicants because it is less likely that providers will know who the applicants are. Moreover, processing time will lengthen and added burdens will be placed on USAC's limited resources because USAC will have to determine if applicants need not post the Form 470 because the applicant is subject to a public procurement requirement. Disputes and confusion will ensue about whether an applicant is subject to a public procurement requirement and appeals of denials on this ground will follow.

The Commission should adopt a streamlined PIA review process for applicants who have successfully gone through the process in the past two funding years, who are not requesting more than a 5% increase in funding and about whom USAC does not have identifiable concerns about fraud, waste or abuse. This will shorten the PIA review process and make it less burdensome on applicants because it will avoid duplicative and repetitive requests for information.

The Commission should provide E-Rate funds for wireless Internet access services provided off-premises by schools and libraries. Schools and libraries can provide off-premises wireless access 24/7/365. Learning does not stop at the school or

library doors and the community needs access not just when on school and library grounds.

The Commission should continue to fund basic maintenance of internal connections because this will lengthen the useful life of equipment purchased by schools and libraries and thus enable the E-Rate program to make better use of its resources. Nevesem encourages the Commission not to limit basic maintenance payments to requests based on actual repair and maintenance costs. The most cost-effective way for schools and libraries, particularly those in remote, rural areas, to obtain basic maintenance services is to have service contracts whereby service providers repair and service internal connections equipment for a flat fee.

The Commission should continue to provide funding for Web hosting services. It should also provide funding for anti-spam/anti-virus software. These services and software are not luxuries but are vital to the educational mission of schools and libraries.

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REPLY COMMENTS OF NEVESEM, INC.

A New Vision in Educational Services & Materials, Inc. (“Nevesem”), through its undersigned counsel, hereby respectfully submits its reply comments on the proposals included in the Commission’s (i) Notice of Proposed Rulemaking seeking to implement the National Broadband Plan’s vision of improving and modernizing the E-Rate Program in order to increase the availability and use of broadband by our communities, in general, and by our children, in particular;¹ and (ii) the Further Notice of Proposed Rulemaking seeking comment on the E-Rate Eligible Services List (“ESL”) for Funding Year 2011.²

Founded in 1993, Nevesem is a Puerto Rico-based company that specializes in the use of technology to improve education and transform Puerto Rico’s schools and libraries into 21st Century learning institutions by helping students and educators take advantage of the vast resources of the Internet and the power of distance learning. Its president and

¹ *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket 02-6 and GN Docket No. 09-51, FCC 10-83, Notice of Proposed Rulemaking, 25 FCC Rcd 6872 (2010) (hereinafter referred to as the “*E-Rate Broadband NPRM*”).

² *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, FCC 09-105, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 6562 (2009) (hereinafter referred to as the “*Eligible Services List FNPRM*”).

founder, Dr. Richard Dreyfous, holds four patents for educational products, which have been used successfully in Puerto Rico and other parts of the United States, South America, Europe and the Caribbean. In addition to designing and creating patented educational software in subjects such as math, science and languages, Nevesem has been an Internet service provider for private and parochial schools as well as public libraries in Puerto Rico that have participated in the E-Rate program since its inception.

As an E-Rate service provider for over a decade, Nevesem has gained valuable insight into the E-Rate program. Nevesem applauds the Commission's continuing efforts to address administrative and procedural problems with the program and to implement reforms that would "cut red tape by eliminating rules that have not effectively served their intended purpose."³ However, the Commission must temper its zeal to reform the program to insure that any rule changes do not negatively impact the Commission's and the Universal Service Administrative Company's ("USAC") ability to detect and deter waste, fraud and abuse.

I. The Commission Should Retain The Technology Plan Requirement for All E-Rate Eligible Services Because It Ensures that Applicants Make Appropriate Decisions Regarding Goods and Services for Which They Seek Discounts.

The *E-Rate Broadband NPRM* proposes to amend section 54.508 of the Commission's rules to eliminate E-Rate technology plan requirements for priority one applicants that are subject to state and local technology planning requirements.⁴ The rationale for this proposal is twofold. First, the provision of priority one services (*i.e.*, telecommunications services and Internet access) is "fairly straightforward for many

³ *E-Rate Broadband NPRM*, 25 FCC Rcd at 6873 ¶ 1.

⁴ *Id.* at 6879-80 ¶ 18.

applicants and, therefore, a technology plan for these services may represent an unnecessarily complex and burdensome program requirement.”⁵ Second, “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.”⁶

A. Technology Plans Serve a Critical Function. While elimination of the technology plan requirement would certainly reduce paperwork and the administrative effort associated with the application process, it serves a critical function by ensuring that applicants make appropriate and verifiable decisions regarding the services for which they seek a discount.⁷ Specifically, the technology plan requirement prescribes that applicants: (a) establish goals and a realistic strategy for using telecommunications and information technology; (b) establish a professional development strategy to ensure that staff know how to use these new technologies to improve education or library services; (c) assess the telecommunication services, hardware, software, and other services that will be needed to improve education or library services; (d) provide a sufficient budget to acquire and support the non-discounted elements of the plan; and (e) develop an evaluation process that enables applicants to monitor progress toward the specified goals and make mid-course corrections in response to new developments and opportunities and

⁵ *Id.* at 6879-80 ¶ 18.

⁶ *Id.* (citing comments by the State E-rate Coordinators Alliance).

⁷ *See Federal-State Joint Board on Universal Service, FCC 97-157, Report and Order, 12 FCC Rcd 8776, 9078 ¶ 574 (1997) (“Universal Service First Report and Order”)* (subsequent history omitted); *see also Comments of the California Department of Education* at p. 4 (“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”); *Comments of CSM, Inc.* at pp. 4-5 (“Combining the technology planning requirement in conjunction with the posting of the Form 470 would ... encourage an applicant to apply some measure of critical thought to its needs”).

they arise.⁸ Without a technology plan requirement, future applicants may apply for E-Rate funds they do not need and, if they get the E-Rate funds to purchase goods and services, they may not be prepared to use them effectively.

While, as the *E-Rate Broadband NPRM* states, the provision of priority one services may be “...fairly straightforward for many applicants...,”⁹ the benefits of a technology plan requirement are equally applicable to both priority one and two services.¹⁰ In fact, in the *2004 Schools and Libraries Fifth Report and Order*, the Commission considered and rejected a proposal to eliminate the technology plan requirement for those applicants seeking E-Rate funds for Internet access, stating that certified plans are important to ensuring that applicants have carefully considered how to employ the service.¹¹ Despite the increased use and familiarity with Internet access that may have taken place since 2004, it has been and continues to be sound policy to require applicants to carefully consider how to employ priority one services most effectively.

B. Reliance on State/Local Technology Plans is Problematic. The Commission’s proposal to eliminate the technology plan requirement for priority one applicants that “otherwise are subject to state and local technology planning requirements” is problematic. The fact that a priority one applicant is subject to state and local technology planning requirements is not a substitute for the E-Rate technology plan

⁸ 47 C.F.R. § 54.508; see also *Schools and Libraries Universal Service Support Mechanism*, FCC 04-190, Fifth Report and Order, 19 FCC Rcd 15808 ¶ 60 (2004) (“*Schools and Libraries Fifth Report and Order*”).

⁹ *E-Rate Broadband NPRM*, 25 FCC Rcd at 6879-80 ¶ 18.

¹⁰ See *Comments of Funds for Learning, LLC* at p. 2 (“Technology plans are no less important for priority one services than other services, and the elimination of technology plans for some applicants but not others will only create confusion”).

¹¹ *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15829 ¶ 62.

requirement. As previously noted, the E-Rate technology plan requirement ensures that applicants have: goals and strategies for using technology; personnel adequately trained to use the new technology; a sufficient budget to acquire and support the non-eligible goods and services; and a mechanism to monitor progress. State and local technology plan requirements may or may not address all of these issues. Furthermore, as other commenters have pointed out, providing an exemption for applicants that are subject to “state and local technology planning requirements” places USAC in the position of having to determine – on a case by case basis – if the applicant was indeed subject to state and local technology planning requirements, whether the applicant successfully met those requirements and whether the applicant has successfully demonstrated that the individual state technology plan comports with USAC’s technology plan requirements. Rather than simplifying the application process, this carve out would bring uncertainty to the program and make it more burdensome on USAC reviewers.

C. Technology Plan Requirement is Minimal. As the Commission and the Joint Board have concluded, it is not unduly burdensome to require schools and libraries to “do their homework” by requiring they “prepare specific plans for using these technologies, both over the near term and into the future, and how they plan to integrate the use of these technologies into their curriculum.”¹² In fact, the Commission’s rules requiring a technology plan are already minimal. A technology plan is not required if the applicant requests funding solely for basic local, cellular, PCS, and/or long distance telephone service and/or voicemail.¹³ In addition, a school or school district that submits

¹² *Universal Service First Report and Order*, 12 FCC Rcd at 9077 ¶ 573.

¹³ *See* 47 C.F.R. §§ 54.504(b)(2)(iii)(c) and (iv).

a technology plan approved under another federal program (such as the Enhancing Education Through Technology initiative), when accompanied by a current year operating budget, need not submit a separate technology plan for the E-Rate program.¹⁴ Therefore, further pruning of the technology plan requirement is not required.

D. Third-Party Approval Process Must Be Retained. Lastly, if the Commission continues to require technology plans, it should also retain the current third-party approval process. The *E-Rate Broadband NPRM* does not indicate who, if not third parties, would assume this responsibility. However, approval by an independent third party approver ensures that an objective third party, other than USAC, evaluates whether technology plans are based on the reasonable needs and resources of the applicant and are compatible with the goals of the E-Rate program. Approval by an independent third party also removes the approval burden from USAC reviewers. Finally, independent third-party approvers are more likely to be familiar with the education and library systems in their respective jurisdictions and have a better understanding of the unique issues facing each applicant than would a USAC reviewer. Therefore, independent third-party approvers are better suited for accomplishing this task than USAC.

II. The FCC Form 470 and the Posting Requirement Promotes Competition Among Service Providers and Helps Ensure that Applicants Will Obtain Products and Services at Competitive Prices.

The *E-Rate Broadband NPRM* seeks comment on a proposal to eliminate the requirement that applicants for priority one services file an FCC Form 470 and wait 28

¹⁴ See 47 C.F.R. § 54.504(b); *Universal Service First Report and Order*, 12 FCC Rcd at 9078 ¶ 574; *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15828-15829 ¶ 59.

days before signing a contract with their selected service provider, as long as those applicants are subject to public procurement requirements.¹⁵ Like many other commenters in this proceeding, Nevesem believes that elimination of this requirement will do more harm than good.¹⁶

The filing of Form 470 and its posting on the USAC website provides service providers with a centralized and readily accessible place to locate E-Rate service requests. The Form's posting helps applicants comply with the competitive bidding requirements by marking the beginning of the 28-day waiting period. This process is fair to service providers because it provides them with access to the same information at the same time. The process is also beneficial to applicants because they are more likely to obtain a greater number of proposals if their Forms 470 are posted on the USAC Website for 28 days. A greater number of proposals should translate into a wider range of options

¹⁵ *E-Rate Broadband NPRM*, 25 FCC Rcd at 6880-81 ¶ 21.

¹⁶ See e.g., *Comments of the Utah Education Network* at p. 4 (“At first, the proposal seems like welcome relief from a process that has often led to inappropriate and excessive denials and appeals. We applaud the FCC’s desire to simplify the process but after careful consideration we cannot see how this proposal will support that goal”); *Comments of the California Department of Education* at p. 5 (“...we urge the FCC to implement simplification without doing harm to competitive bidding ... It is recommended that a streamlined and simplified form 470 be used for both P1 and P2”); *Comments of Funds for Learning, LLC* at p.3 (“Although streamlining is a laudable goal, retention of Form 470 serves the more important goal of ensuring integrity, consistency, and transparency in the competitive bidding process”); *Comments of the E-Rate Management Professionals Association, Inc.* at p. 5 (“Loss of the Form 470 for P1 services could seriously hinder the competitive bidding process”); New and complex application review procedures would most likely need to be developed to ensure local and state procurement policies are followed...”); *Comments of eChalk, Inc.* at p. 2 (“...this proposal may inadvertently increase the complexity of the rules surrounding the application process and therefore disagrees with this proposal...”); *Comments of Verizon and Verizon Wireless* at p. 14 (“Eliminating the Form 470 ... would not be an improvement”); *Comments of AT&T, Inc.* at p. 3 (“... eliminating the Form 470, even for a segment of E-rate applicants, could (and likely would) decrease the number of offers that applicants receive for E-rate services, reducing competition and increasing the cost of E-rate supported services”); *Comments of Qwest Communications International, Inc.* at p. 3 (“On balance, the proposed change ... is likely to create more confusion for applicants and service providers and not be successful in streamlining the process”).

(and prices), which allows applicants to select the service provider that best meets their needs at the most competitive prices. The Commission also benefits by maintaining this requirement, as it makes it much easier for the Commission to determine if applicants have complied with the fair and open competitive bidding requirement. All of these benefits are equally applicable to priority one and priority two services and thus, the requirement should be retained for both.

Rather than simplify the application process, elimination of the Form 470 for priority one services would likely add a level of complexity. Service providers would have a difficult time submitting proposals to applicants who might be interested in their goods and services because providers will not know who they are since they are not required to post a Form 470. Moreover, USAC would have to verify, on a case by case basis, that an applicant is in fact subject to public procurement requirements and, therefore, exempt from the filing requirement. This would lead to longer application review processing times and create an additional burden on USAC's scarce resources. Denial of funding decided on the basis that an applicant was required to file a Form 470 will undoubtedly generate appeals, which will add another administrative burden on both USAC and the Commission and impose additional costs on all parties involved. In addition, it is very likely there will be instances where an applicant's state and local procurement rules do not comport, or are in direct conflict with the E-Rate program rules, which will confuse applicants, lead to application denials and even more appeals. Therefore, the Commission should retain the requirement that applicants for *all* services file an FCC Form 470 and wait 28 days before signing a contract with their selected service provider.

III. The Commission Should Seek Ways to Improve the PIA Review Process to Avoid Duplicative and Repetitive Requests for Information.

The *E-Rate Broadband NPRM* seeks comment on other proposals to streamline the application process.¹⁷ Nevesem submits that the Commission can make the E-Rate program significantly more efficient and user-friendly by modifying the Program Integrity Assurance (“PIA”) review process. Nevesem commends the Wireline Competition Bureau for conducting a review of the PIA process,¹⁸ and hopes that such effort will lead to specific proposals to improve this aspect of the program.

Nevesem acknowledges that the PIA review process is an important mechanism in the prevention of waste, fraud and abuse. However, many applicants are subjected to very similar and sometimes identical requests for information during the same funding year. These requests can be overwhelming for applicants, especially small ones who cannot afford to have staff dedicated to the E-Rate program. Nevesem is aware of applicants who were so frustrated by the constant and repetitive requests for information that they decided to suspend their participation in the program. A review of the PIA procedures will result in greater participation by schools and libraries in the E-Rate program.

One way to improve the application process is to establish a “streamlined” PIA review process, which certain applicants would be entitled to use if they meet certain objective criteria. For example, an applicant would be entitled to a “streamlined” PIA review process if: (a) the applicant has successfully gone through the PIA review process

¹⁷ *E-Rate Broadband NPRM*, 25 FCC Rcd at 6879 ¶ 17.

¹⁸ The *E-Rate Broadband NPRM* indicates that, “The Bureau is also reviewing USAC’s program integrity procedures to ensure that requests for information are targeted and not duplicative.” *Id.* at 6875 ¶ 8.

during either of the previous two funding years; (b) the applicant's dollar amount in requested E-Rate funds has not increased by more than 5% from the prior funding year; and (c) USAC does not have specific and identifiable concerns regarding waste, fraud and abuse by this applicant. This streamlined PIA review process would permit applicants that apply year after year for the same types of services and generally seek the same amount of E-Rate funds to have their applications processed more expeditiously, thus saving resources for both the applicant and USAC. As the Wireline Competition Bureau moves forward with its review of the PIA procedures, it should consider the streamlined PIA review process (and other alternatives) to simplify the process.

IV. The Proposal to Allow Schools to Calculate Discounts by Using the Average Discount Rate for the Entire School District, if Implemented Correctly, Would Simplify and Streamline the Application Process.

The *E-Rate Broadband NPRM* seeks comment on the proposal that schools calculate discounts on supported services by using the average discount rate for the entire school district rather than the weighted average for each school building.¹⁹ The Commission notes that calculating discounts by individual school adds a significant level of complexity to the application process, because the discounts must be calculated separately for each school and checked by USAC.

Nevesem agrees that the proposed discount percentage rate calculation could streamline the application process by simplifying the way in which schools compute their discount percentage rate. However, the Commission should also amend the Block 4 worksheets of Form 471 so that applicants need only provide the name of the individual school or school district, the total number of students enrolled in the district, and the total

¹⁹ *Id.* at 6887 ¶ 34.

number of students in the district that are eligible for the National School Lunch Program (“NLSP”). Block 4 of Form 471 should not require applicants to provide information for each individual school building in the entire school district. Likewise, USAC should not review an entire school district’s data to verify that the discount rate for a project at one school in the district is correct. Instead, the Commission should enable USAC to rely on the applicant’s certification that the total number of students enrolled in the district and the number of students eligible for the NLSP is accurate. Otherwise, any streamlining gains made by adoption of the “average discount rate” proposal and the corresponding simplification of Form 471 will not be realized.

V. The Commission Should Allow E-Rate Support for Schools and Libraries Wireless Internet Access Services Off Premises.

The *E-Rate Broadband NPRM* seeks comment on the proposal to adopt the National Broadband Plan recommendation to provide full E-Rate support for wireless Internet access service used with a portable learning devices off premises.²⁰

Nevesem strongly endorses this proposal. Wireless technology has transformed the way Americans study, work, and live. Learning no longer stops at the classroom or library door as technological advances provide educational opportunities for students anywhere there is a broadband connection. While some students have broadband service at home, others do not. As the *E-Rate Broadband NPRM* states, supporting wireless Internet access off school grounds will have a positive impact on the digital divide.²¹

²⁰ *Id.* at 6891 ¶ 45. The National Broadband Plan found that, “E-Rate should support online learning by providing wireless connectivity to portable learning devices so students can engage in learning while not at school.” Federal Communications Commission, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN at 3 (2010), available at www.broadband.gov/plan/ (last visited Jul. 26, 2010).

²¹ See *E-Rate Broadband NPRM*, 25 FCC Rcd at 6891 ¶ 46.

Nevesem submits that in order to fully realize the benefits of E-Rate support for the off premises use of wireless Internet access service, applicants must be permitted to make use of the service seven days a week, twenty-four hours a day. Limiting off-premises wireless Internet access service to business hours defeats the purpose of making this service available off premises – in most situations, students do not need access to off-premises wireless Internet access during business hours because they can get that access on-premises.

One issue of concern is that the *E-Rate Broadband NPRM* appears to exclude libraries from this proposal. Libraries have begun to make mobile devices available for use by their patrons beyond the library's property²² and, therefore, library patrons have a need to access their library's wireless Internet access service beyond the library's premises, whether it is to search for a job, take on-line courses, obtain medical information or access government services, all of which are increasingly requiring a broadband connection. The Commission should clarify that libraries too will be able to obtain E-Rate funding for wireless Internet access service off premises.

VI. The Commission Should Maintain Funding of Basic Maintenance of Internal Connections.

Currently, support for internal connections includes basic maintenance

²² For example, the Madisonville Public Library in Hopkins County, Kentucky, lends laptops to library cardholders over the age of 18 with a library account in good standing. See <http://www.publiclibrary.org/laptoplendingscheme.htm> (last visited July 23, 2010).

services that are “necessary to the operation of the internal connections network.”²³

Basic maintenance includes repair and upkeep of previously purchased eligible hardware, wire and cable maintenance, and basic technical support. The *E-Rate Broadband NPRM* expresses concern that the current rules inadvertently result in basic maintenance effectively taking precedence over funding the internal connections that are necessary to deliver higher bandwidth applications, that funding for basic maintenance is used to pay for “warranties” on equipment or to support significant information technology departments, and that, under the current allocation method, the same schools and school districts receive large amounts of funding year after year for basic maintenance, while others receive nothing.²⁴ Therefore, the *E-Rate Broadband NPRM* seeks comment on a proposal to eliminate E-Rate funding for basic maintenance of internal connections or, alternatively, cap basic maintenance payments and reimburse requests that are based on actual repair and maintenance costs only.

Nevesem believes that the Commission should not eliminate or place a cap on E-Rate funding for basic maintenance of internal connections. These services are critical to ensuring that E-Rate funded equipment stays in good operating condition and meets the needs of the applicants. Funding basic maintenance encourages applicants to extend the

²³ *Universal Service First Report and Order*, 12 FCC Rcd at 9021-9022 ¶ 460; *see also* Eligible Services List, Schools and Libraries Support Mechanism for Funding Year 2010, at pp. 5, 9, 20-21, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-105A2.pdf (last visited Jul. 21, 2010). The Commission has clarified that, “Basic maintenance services are ‘necessary’ if, but for the maintenance at issue, the connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services without e-rate discounts. *Schools and Libraries Universal Service Support Mechanism*, FCC 03-323, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26921-22 ¶ 23 (2003).

²⁴ *E-Rate Broadband NPRM*, 25 FCC Rcd at 6906-07 ¶¶ 81-82.

effective life of purchased equipment and ensures the maximum return on the investment that applicants (with their own money) and the Commission (with the money of consumers who pay into the Universal Service Fund) have made in such equipment over the last 12 years of the E-Rate program. Eliminating funding for basic maintenance, in and of itself, will not solve the lack of funding for internal connections, but it will surely shorten the life of E-Rate funded equipment, which will force applicants to seek funds for new equipment sooner than they otherwise would, which will further strain the E-Rate program's limited resources. As one commenter noted, "If the Internet connectivity in the schools, be it equipment or wires, cannot be sufficiently maintained, then the intent of the E-Rate program to bring connectivity to students in schools will fail when schools no longer can afford its full maintenance costs."²⁵

Nevesem is also opposed to the proposal to limit basic maintenance payments to requests that are based on actual repair and maintenance costs. The most cost effective way for schools and libraries to obtain basic maintenance services is to enter into service agreements whereby service providers agree to repair and service internal connections equipment for a flat fee. Basic maintenance contracts ensure that schools and libraries can afford these services. If schools and libraries were required to pay service providers on a per-visit basis each time the equipment breaks down or needs to be serviced, the cost of maintaining the equipment would be substantially higher. Regular maintenance service visits ensure that the equipment lasts longer, thus avoiding more costly repairs. Also, for many schools and libraries located in Puerto Rico's Cordillera Central Mountain Range, the costs of paying for contractors to travel from the nearest city each

²⁵ *Comments of the New York City Department of Education* at p. 6.

time a service call is necessary would make the service cost prohibitive. Service agreements factor in these travel expenses and allow for a higher rate of affordability.

VII. E-Rate Support Should Not Only be Retained for Web Hosting Services But Also Extended to Anti-Spam/Anti-Virus Software Because They Are Essential to the Educational Purposes of Schools and Libraries.

The *Eligible Services List FNPRM* seeks comment on the proposal to eliminate funding for Web hosting services because “we do not believe it is essential to the educational purposes of schools and libraries.”²⁶ Alternatively, the *Eligible Services List FNPRM* states that if the Commission decides to retain Web hosting on the ESL, it should be reclassified as a priority two service.²⁷ It also seeks comment on the tentative conclusion that anti-virus and anti-spam software should not be eligible because “this software does not fit into the categories of software that are currently on the ESL” and their addition to the ESL “may have an adverse affect on the funds available for other services.”²⁸

The Commission should neither eliminate funding for Web hosting services, nor reclassify them as priority two services. As the record in this proceeding reflects, and as Nevesem’s own experience reflects, hundreds of educators and libraries across the country believe that Web hosting services are *essential* to accomplishing their missions and not just “a useful way to post information,” as the *Eligible Services List FNPRM* suggests.²⁹ Communication via the Web has virtually replaced other forms of communication. Web hosting allows schools and libraries to communicate with their

²⁶ *Eligible Services List FNPRM*, 25 FCC Rcd at 6580 ¶ 37.

²⁷ *Id.* at 6580 ¶ 38.

²⁸ *Id.* at 6579 ¶ 35.

²⁹ *Id.* at 6580 ¶ 37.

constituents 24 hours a day, seven days a week, 365 days a year. It permits teachers to post homework assignments and related educational materials for access by students thus making the time in the classroom more productive. It also allows teachers to communicate critical information to parents such as grades and progress reports. Educators, students, parents, libraries and library patrons have relied on Web hosting services since 2004 and its potential elimination or reclassification as a priority two service would represent a step backward to the detriment of school systems, students, libraries and library patrons.

The Commission should also provide for funding anti-virus and anti-spam software. These products provide schools and libraries with protection for their Internet services and equipment, and are deployed ubiquitously across the consumer and business Internet marketplace. Such software is cheaper than repairing or replacing equipment that has been damaged by a virus. With more and more people online, there is greater risk that networks will be susceptible to viruses and bogged down with spam. Because these products play a critical role in safeguarding reliable data delivery and protecting the equipment and network operating systems over which Internet access is provided, the Commission should find that they are “integral, immediate, and proximate” to the education of students and to the provision of library Web-based services.³⁰

³⁰ See 47 C.F.R. § 54.500(b) (defining “educational purposes”).

Respectfully submitted,

**A NEW VISION IN EDUCATIONAL
SERVICES & MATERIALS, INC.**

By: /s/ Henry M. Rivera

Henry M. Rivera
Edgar Class
Wiley Rein, LLP
1776 K Street NW
Washington, DC 20006
Tel: (202) 719-7504

Its Attorneys

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