

**Before the
Federal Communications Commission
Washington, DC**

In the Matter of)	
)	
Petition of Funds For Learning, LLC)	CC Docket No. 02-6
)	
Schools and Libraries)	
Universal Service Support Mechanism)	

**PETITION TO REJECT THE ADMINISTRATOR’S DISCOUNT THRESHOLD
RECOMMENDATION FOR FUNDING YEAR 2010**

At its quarterly meeting On January 24, 2011, the USAC Schools and Libraries Committee (“USAC”) recommended to the Commission that the Funding Year 2010 (“FY2010”) Priority Two discount threshold be set at 81%. USAC made this recommendation even though: (1) demand at 80% for FY2010 Priority Two funds stands at approximately \$279.43 million,¹ yet \$400 million in unused funds is available now to fund additional requests;² and (2) unused E-rate funding earmarked specifically for FY2010 will almost certainly become available soon to fund all of the requests in the 80% discount band and more. We submit, therefore, that USAC’s decision not to fund any requests at 80% and below is premature. Accordingly, we respectfully request that the Commission reject USAC’s recommendation to stop funding E-rate requests at 81%.

The E-rate program is designed to help make advanced telecommunications and information services affordable for all of our nations schools and libraries, not just a small fraction of them. By suggesting to the Commission that funding be cut off so early in the application funding cycle and at such a high discount rate, it is evident that USAC is advancing its own administrative objectives at the expense of the Commission’s. As a federal agency, the Commission’s objective is to do everything it reasonably can to help as many schools and libraries as possible. As a federal contractor, USAC’s objective is to process as many E-rate applications as it can as fast as it can.

¹ This amount comes from publicly available data downloaded from the Internet using E-rate Manager® website services on January 31, 2011.

² *Federal Universal Service Support Mechanisms Fund Size Projections for Second Quarter 2011* (“USAC Second Quarter 2011 Report”) at p. 39 (January 31, 2011) (estimated \$400 million in unused funds available for carryover).

USAC's Objectives Versus The Commission's Objectives

USAC is an administrator. The basis for USAC's decision to cut off funding at 81% is administrative convenience. It wants closure. But at what price? The schools and libraries that populate the 80% discount band serve some of the country's most impoverished communities. The 90% discount band does not have a monopoly on poverty. In 80% discount communities, half to almost three quarters of the school-aged children there are eligible for free or reduced price lunch. Apparently, USAC would prefer to cut off those communities from the E-rate funding that their schools and libraries so desperately need, rather than to have to keep its books open a little while longer. That, we believe, is wrong.

The FY2010 application season started off on a very high note. USAC had over \$3 billion to commit because of the Commission's decision to carry over an extremely large amount of unused funds. For applicants with one or more schools in the 80% discount band, this was wonderful news. Historically, so far as the annual discount rate threshold is concerned, the 80% discount band had always been, unfortunately, a nail-biter place to be located. With all of this new funding available, however, it was a safe bet that FY2010 would be different, even though E-rate funding commitments are never guaranteed, even at 90%. For better or worse, this is how the program has evolved. Applicants know that they have no choice but to look at the odds at the beginning of the funding year and place their bets accordingly.

It is not an exaggeration to say that applicants with one or more 80% discount projects on the drawing board during the FY2010 application window were thrilled and extremely grateful to the Commission for increasing so dramatically the size of the FY2010 fund. Finally, school districts could plan on getting badly needed network infrastructure into their 80% discount schools and possibly into their schools with even lower discount rates. For once, the odds from the outset of lower-discount-rate schools and libraries getting to share an E-rate funding pot with their higher-discount-rate counterparts looked exceptionally good.

Naturally, schools and libraries began to budget and to plan for those 80% projects and, finally, to bid them out. E-rate budgeting, planning and procurement, it should be noted, involve time consuming and expensive professional services. Regardless of whether E-rate

funds for the projects those services support ever materialize, those costs are sunk, gone forever. When funding is committed, sunk costs are not a problem, as they are simply the cost of doing business, but when funding is not committed, it means time and money down the drain. This year, because of USAC's recommendation to the Commission to stop funding at 81%, that is exactly the direction those costs are headed. More frustrating and worse yet, many applicants reasonably believed that this was going to be the E-rate opportunity they had been waiting for to improve old, outdated infrastructure in their 80% schools, so today many of the projects they had been planning for them are already well underway or even completed. If the Commission rubber stamps USAC's recommendation to stop funding at 81%, the E-rate reimbursements that applicants were reasonably counting on to support those projects are not going to materialize and the financial shock to already battered school and library budgets is going to be crushing. That is a very high price to pay for administrative convenience.

Eighty Percent and Lower Discount Schools Need E-rate Funding Too

More of the Same is Not Good Policy. USAC has made its recommendation. Now, of course, it is up to the Commission to decide how to proceed. If the Commission adopts USAC's recommendation and puts a hard hold on funding at 81%, the result will be more of the same. The same high-discount-rate schools and libraries that always receive E-rate funding will be the only schools and libraries that get to take advantage of the extraordinary amount of E-rate support that the Commission made available this year. If that happens, the remainder of America's deserving schools and libraries are going to be forced into the role of spectators once again with nothing to do but watch from the sidelines as the highest-discount-rate organizations come in and scoop up every last Priority Two dollar for FY2010.

If the Commission allows that to happen in a special year like this one, where USAC has more money than usual to commit, the Commission is going to miss an easy opportunity to distribute E-rate funds more equitably. If, on the other hand, the Commission is committed, as we believe it is, to helping the schools and libraries that are stuck on the next highest rung of the discount ladder reap some E-rate benefits for their internal connections projects and basic maintenance needs too, then rejecting USAC's discount threshold recommendation would be a very simple way to demonstrate that commitment.

Public and Private. Urban and Rural. Rich and Poor. The E-rate program was designed to provide at least some universal support for internal connections to every eligible public and private school and public library that applied for funding, no matter how wealthy or poor the community that surrounded that school or library might be or where it was located. That is why there are discount bands ranging from 20% to 90%. But from the program's beginning, demand for funding quickly outpaced the supply, making it impossible for the Commission to achieve that goal. So the Commission was forced to make compromises. First it created Priority One and Two services and then the two out of five rule. It has even considered modifying the discount rate matrix and has asked the E-rate community for other suggestions. Despite those efforts, the situation has not improved much, if at all. It has become an E-rate fact of life that there will never be enough E-rate funding to go around. Consequently, many of the lower-discount schools and libraries have simply quit applying. For them, the amount of time and resources they have had to invest year after year to apply for E-rate funds that never materialize has made this an easy decision to make.

A Game of Chance. Applying for E-rate discounts on Priority Two services has become, in essence, a craps game, especially for any school or library at 80%. Every year it is the same thing. Will or won't 80% school projects receive funding? Should school administrators invest time and money in developing projects for those schools, if the funding they will need to fund those projects might never arrive? On the other hand, can they afford not to invest the time and money? Is it fair to the students who attend lower discount schools not to take the chance? For school districts with 80% schools and individual schools and libraries at 80%, this is what the E-rate program has become – a game of chance. Predicting whether 80% requests will receive funding in any given year is now as much of a gamble as predicting who will win the Super Bowl.

Because of this, applicants have been forced to become odds makers, and the size of the E-rate fund has become the single most important prognosticator of how far funding will go. If USAC is allowed to artificially influence the size of the fund by cutting off funding before it is truly exhausted, then the Commission is giving USAC permission, in effect, to rig the game. Fortunately, the Commission can do something right now to prevent this: it can reject USAC's recommendation to stop funding FY2010 requests at 81%.

A Discount Threshold Decision Can Wait. There is no reason to rush this important decision. Especially considering how long it takes USAC to process applications and the fact that numerous applications routinely do not receive funding until years after they are submitted, the Commission should not feel pressure to decide now where to cut off funding. Note that the process of administering FY2010 funding requests has a very long way to go. As of December 31, 2010, 91.05% of the FY2010 funding that USAC had committed remained to be paid out, and there are thousands more requests still in line waiting to be processed.³ In addition, history shows that more and more unused funds will become available from this and previous funding years as the year and time goes on, and, this year, with \$3.15 billion to commit, that amount is sure to be much higher than normal.

The Commission established its policy of carrying over unused funds from prior funding years to help ensure that a much wider swath of schools and libraries would receive their fair share of E-rate funding. If the Commission were to allow USAC to slam on its E-rate brakes only half way through this funding year at a discount rate as high as 81%, when USAC knows that there are so many important projects in line for funding at 80%, it would thoroughly undermine the Commission's decision to recycle unused E-rate funds so that more lower-discount-rate projects could be funded.

Funding is Available Now to Support Every 80% Funding Request (And More)

Because of the uncommonly large size of the fund this year, USAC's premature decision to cut off funding a mere hair's breath away from 80% is particularly painful. It does not, however, have to be that way. USAC has already estimated that it has \$400 million in unused funds from previous years available for carryover. Almost assuredly, that amount will continue to grow, and we know from experience that this year's large pool of money is likely to generate, conservatively speaking, at least another \$300 million in unused funds too.⁴ Either amount is more than enough, by itself, to cover every one of this year's 80%

³ *USAC Second Quarter 2011 Report* at p.37.

⁴ Since the E-rate program began, the amount of unused funds each year has been remarkably consistent, averaging 24.23% per year from 1998-2007, according to data included in the *USAC Second Quarter 2011 Report*. If only 10% of the \$3.15 billion available goes unused this year, that would generate another \$315 million in unused funds.

requests, which, as mentioned before, is about \$279.43 million.⁵

To remedy the funding inequity that cutting off funding at 81% would create, the Commission has two options: (1) direct USAC to wait to fund the 80% FY2010 requests until enough unused FY2010 funds appear back on its books to cover them; or (2) direct USAC to fund those 80% requests right away by tapping into part of the \$400 million in unused funds from previous funding years. Of the two choices, the latter is clearly superior, as it will eliminate uncertainty immediately and get badly needed funding into the hands of those who need it far more quickly. Moreover and equally important from an administrative perspective, this approach will neither disrupt, burden nor interfere in any way with USAC's operations. Accordingly, we urge the Commission to select this option.

The Commission May Allocate a Portion of Unused Funds to FY2010

The Commission has made it clear that it has reserved for itself the flexibility it needs to distribute unused funds in a manner that will best serve the public interest and thus the needs of the program as a whole.⁶ That is why the Commission decided in its July 2009 carryover *Order* that, instead of carrying forward the full amount of unused funds to the next full funding year, it would allocate part of it to that year and the remainder to the one after that. In this important regard, the Commission found as follows:⁷

Although the Universal Service Administrative Company (USAC) has projected that \$1 billion in unused funds is available, we find that it is in the public interest to carry forward \$900 million and to reserve \$100 million for use in E-rate funding year 2010.

On its own motion, the Commission may therefore decide that it is in the public interest to allocate to FY2010 a portion of the \$400 million in unused funds that are now

⁵ USAC has already stopped funding requests below 79%, another wrong decision in our opinion. For argument's sake, let's assume that USAC recaptures at least \$315 million in unused FY2010 funds in the not too distant future. To run the table on FY2010 requests through 80% and all the way down to 20% using *only* FY2010 funds, it is interesting to note, all USAC has to do is find another \$31.52 million (demand from 79% through 20% per USAC's data). Coincidentally, at its last Board meeting, USAC reported that it would have \$35 million in FY2010 funding left over after cutting off funding at 81%.

⁶ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 24 FCC Rcd 10164, 10165, para. 5 (Wireline Comp. Bur. 2009) (Commission may carryover unused funding to a funding year different from the next full one if it concludes that it is in the public interest to do so).

⁷ *Ibid.*

available. This will enable USAC to fund all of the requests in the 80% discount band. For the reasons already discussed, we believe strongly that making this kind of allocation at this time and in these circumstances is unquestionably in the public interest.

Therefore, we urge the Commission to exercise its discretionary authority and to allocate enough of the carryover funds now to FY2010 to cover all of the 80% requests, to reject USAC's discount rate threshold recommendation, and to direct USAC to finish up processing and funding those requests.

Summary and Conclusion

The Commission's and USAC's goals and objectives normally align, but not always. When it comes to discount threshold decisions, they do not. USAC's primary concern there is accounting and administration, while the Commission's is making sure that E-rate funding reaches as many schools and libraries as possible. That may help to explain why USAC's decision to cut off funding half-way through the FY2010 funding year at 81% is not in the best interest of E-rate stakeholders and actually, so far as important Commission policies are concerned, counterproductive.

USAC may have concluded, for its own accounting purposes, that insufficient funds remain to fund requests lower than 81%, but the reality is that there is more than enough carryover money available now to fund them, and the Commission has the authority to direct USAC to use those funds for that purpose. Moreover, in not too long, unused FY2010 funds will start becoming available, either for the same purpose or for carryover.

If USAC's 81% discount rate threshold recommendation stands, the nation's highest-discount-rate schools and libraries will find themselves enjoying the fruits of the E-rate program alone, once again, at the Priority Two table. That is neither fair nor equitable, this year in particular. Schools and libraries in the 80% discount band are not located in wealthy communities either, and they have internal connections projects that they desperately need to get off the ground too. More and more, those schools are finding themselves on the wrong side of the digital divide. This year, they reasonably expected to have a seat at the internal connections table too, so they budgeted, planned and contracted accordingly. USAC's

decision to leave them out in the cold, especially this year, cannot possibly be in the public interest.

Therefore, for all of the above reasons, we respectfully petition the Commission to reject USAC's recommendation to stop funding FY2010 requests at 81% and to direct USAC to use carryover funds to support all of this year's requests in the 80% discount band or to fund them in any other manner that the Commission considers appropriate.

Respectfully submitted

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