

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

In the Matter of)	
)	
USAC's Priority 2 Discount Threshold)	CC Docket No. 02-6
Recommendation for the Schools and)	
Libraries Program for FY 2010)	

**E-RATE CENTRAL COMMENTS IN RESPONSE
TO THE FEBRUARY 18, 2011 REQUEST FOR COMMENTS
(DA 11-331)**

Tel/Logic Inc., d.b.a. E-Rate Central, submits these Comments in response to the FCC's Public Notice released February 18, 2011, designated DA 11-331, seeking comment on a petition by Funds For Learning, Inc. to reject the Universal Service Administrative Company's Priority Two discount threshold recommendation for the Schools and Libraries Program for FY 2010.

E-Rate Central is an independent firm providing E-rate application and consulting services to schools and libraries nationwide. It also provides E-rate support services for several states and is an active member of the State E-Rate Coordinators' Alliance ("SECA") and the E-Rate Management Professionals Association, Inc. ("E-mpa").

The 80% Funding Threshold Controversy:

Last December, USAC lowered the interim funding threshold for Priority 2 funding for FY 2010 to 81%. At a meeting of the USAC Board's Schools and Libraries Committee on January 24, 2011, the Committee decided to recommend to the FCC that the final Priority 2 funding threshold for FY 2010 be set at 81%, and that funding at 80% (and below) be denied. This decision was based on USAC's estimate that the effective demand at the 80% level would be about \$204 million, but that there would be less than \$33 million to fund it.

It should be noted that both the \$204 million and \$33 million figures were based on projections of final funding decisions on FY 2010 applications still pending — not all of which are expected to be funded — plus set-asides for administrative expenses and appeal reserves. As an example,

we calculate that, as of the end of February, there were over 1,800 applications pending that included over \$275 million in Priority 2 requests at 80% — well above the \$204 million that USAC estimates would actually be required to fund that level.

The recommendation to cut-off funding at 81% came as a disappointment — and a bit of a shock — to observers who had been expecting a funding threshold below 80%, similar to the final 77% level achieved for FY 2009. Indeed, the broad indicators for FY 2010 were slightly more favorable than for FY 2009. In particular:

1. The original estimate of total FY 2010 demand, released early last March, was \$3.92 billion, slightly below the equivalent \$3.99 billion demand figure for FY 2009; and
2. The supply of funds for FY 2010 was over \$20 million dollars higher than FY 2009 because of a 0.9% positive inflation factor.

Taken together, the two factors might reasonably have been expected to improve the funding prospects for FY 2010 by an increment of about \$90 million. Instead, USAC's recent estimates would suggest that funding for FY 2010 will fall \$200 million or more short of FY 2009's Priority 2 funding level.

On February 11th, Funds For Learning (“FFL”) filed a petition with the FCC arguing that additional monies are or will become available, and that a decision to cut-off Priority 2 funding at 81% now is premature.

E-Rate Central agrees in part, and disagrees in part, with FFL's position. As we see it, the key issues involved in this controversy are as follows:

1. Priority 2 funding at 80% is a critical level for individual schools and libraries. Such applicants never have access to funding based on mid-matrix average threshold percentages (most specifically 81-89%). Based on ever-increasing demand for Priority 1 funding and the unlikelihood of annual roll-over funding in excess of \$900 million (a number so far achieved only in FY 2009 and FY 2010), this may be the last year that 80% Priority 2 funding remains a possibility.
2. Final demand numbers are historically difficult to project, particularly without access to detailed USAC data. Here are two indications of the problem:
 - a. As of this point in the FY 2010 funding cycle, USAC has committed \$2.28 billion and probably has about \$500 million more to go. Yet, funding requests still pending (including Priority 2 at 80%) potentially total \$1.38 billion (including \$365 million in remaining Priority 1 requests). Clearly, USAC expects that a number of the remaining requests will be canceled or denied.
 - b. For FY 2009, the final funding total appears to be leveling off at about \$2.79 billion, which is just under 70% of the originally reported preliminary demand (referenced above). The comparable percentages for FY 2006-2008 were 55%, 65%, and 58%, respectively. USAC itself is best positioned to estimate the percentage for FY 2010.

3. Establishing a final threshold for Priority 2 funding in February of a funding year, as USAC proposed, would have been unusually early. The following table compares the timing and particulars of USAC’s funding threshold recommendation for FY 2010 with those of the previous five years. Note that for FY 2005, the last year USAC stretched to reach 80%, the final decision was not made until January of the following funding year — eleven months later than this year’s recommendation.

Funding Year	Discount Rate Threshold	Additional Funding Available	Threshold Set		
			Wave	Date	
2010	81%	\$900M roll-over + \$20M inflation	36	Feb-11	Recommended
2009	77%	\$900M roll-over	64	Aug-10	
2008	87%	\$600M roll-over	74	Dec-09	
2007	81%	\$650M roll-over	46	Apr-08	
2006	86%	None	47	Apr-07	
2005	80%	None	66	Jan-07	

Several observers have postulated that one reason for USAC’s recommendation to set the threshold early this year is as an administrative convenience. It would eliminate USAC’s need to review the approximately 1,800 FY 2010 Priority 2 applications at 80%, permitting USAC to focus more resources on FY 2011 applications.

4. Three sources of additional funding are at least theoretically available for FY 2010, any one of which could eliminate USAC’s projected gap for 80% funding. In particular:
 - a. The longer a final decision is deferred, the more funds are likely to be released by applicants filing Form 500s after finding that they will not be using already committed awards. A strong argument can be made for waiting until at least November, following the October 28th invoicing deadline for recurring services, when funded applicants have a better grasp of actual need.
 - b. Although it has not done so in recent years, USAC could take advantage of its annually-renewed exemption from the Anti-Deficiency Act (“ADA”). Recognizing that awarded funds have never been fully utilized, the ADA exemption would permit USAC to safely over-commit available FY 2010 funds.
 - c. FFL’s petition noted that USAC has already identified \$400 million in unused funds from previous years. Although such funds have traditionally been rolled over into the next funding year, FFL argues that the FCC has the flexibility to add such roll-over funds into the current year. While such an action would reduce funding available for FY 2011, FFL argues that the ability to fund at 80% for FY 2010 makes this a worthwhile trade-off — taking us back to the first issue discussed above.

Conclusions:

E-Rate Central agrees with FFL that Priority 2 funding at 80% for FY 2010 is important. Without a new source of funding and/or a change of rules, FY 2010 is likely to be the last year in which 80% funding is feasible. Funding at this level is particularly important for libraries and non-public schools which are limited to matrix level discounts.

E-Rate Central does not agree with FFL that funds currently available for roll-over, traditionally used to supplement next year's funding, should be diverted as additional funds for FY 2010. To do so would reduce the availability of roll-over funding for FY 2011 to a level that might even jeopardize Priority 2 funding at 90% next year.

Instead, E-Rate Central believes that funds currently available for FY 2010 are, or will be, sufficient to lower the Priority 2 threshold to 80%. Regardless of the final amount of funds initially awarded for Priority 1 and for Priority 2 at 81% and above, a significant percentage of those funds — 25% or more — have historically never been utilized. Applying even a conservative 10% to the roughly \$2.7 billion that might be awarded this year would be more than enough to cover USAC's estimated shortfall for Priority 2 funding at 80%.

There are two ways to take advantage the realities of unused FY 2010 awards. One is to simply wait, while periodically reminding applicants to file Form 500s to reduce commitments for unnecessary funding awards. Given the importance of 80% funding, we could even justify waiting until the end of calendar 2011, well past the invoice deadline for recurring FY 2010 services.

E-Rate Central's recommended alternative — one that would permit immediate commitments to 80% applicants — is to take advantage of USAC's statutorily granted exemption from the Anti-Deficiency Act ("ADA") so as to commit a modest amount of funds in excess of this year's nominal funding cap.

Above all, E-Rate Central urges the Commission not to rush to judgment by approving USAC's recommendation to cutoff Priority 2 funding at 81% at this time. This is too important a decision to be made at this time without fully exploring reasonable alternatives.

Respectfully submitted by:



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March 7, 2011