

December 21, 2012

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6

Dear Ms. Dortch:

On December 11, 2012, the undersigned, on behalf of Funds For Learning, LLC (FFL) and our firm's outside counsel, Orin Heend, met personally with Lisa Hone, Regina Brown, James Bachtell, Mark Nadel, Rebekah Bina, and Bryan Boyle of the Wireline Competition Bureau and by phone with Adrian Wright and Anita Patankar-Stoll, also of the Wireline Competition Bureau. We discussed structural flaws in how the E-rate Program allocates funding and the outline of a proposal, still in its formative stage, to address this very serious issue.

A hallmark of the E-rate program as it was envisioned originally, we noted, was that it fostered intelligent planning and purchasing at the local level by allowing schools and libraries to decide for themselves whether to apply for discounts on telecommunications services, Internet access and/or internal connections and how much of their respective budgets to allocate to the non-discounted portion of the cost of those services in each category. Today, schools and libraries no longer have that option because, we pointed out, the E-rate Program no longer supports all funding categories equally. The advent of a Priority One and Two funding system combined with skyrocketing demand for Priority One E-rate funds has succeeded in transforming a groundbreaking program, which was designed to support the connections necessary to transport information all the way into our children's classrooms and the quiet nooks and crannies of our public libraries, into a program that is today incapable of moving that information past the doors to all but an incredibly small fraction of our nation's schools and libraries. The demand for Priority One funds shows absolutely no sign of abating. Therefore, we warned, the transformation of the E-rate program into an underfunded, Priority One-only support program will soon be complete -- unless big and important changes come down the pike quickly.

Two forces are behind this seismic shift in how the program operates, and we discussed both of them: (1) the steadily increasing demand for E-rate funds; and (2) the failure of the program to provide individual budgets to applicants within which they must operate. We stressed that no public or private organization that we know of operates without a budget or receives a blank check every year to go out and purchase as much as it wants. But that, we emphasized, is exactly how the E-rate program operates, and that is what we believe has had a tendency to lead, in far too many instances, to inadequate planning, poor purchasing decisions, and waste. We shared our opinion that cost-effectiveness reviews, which operate after purchasing decisions have already been made, are a stopgap measure against waste that

do little to actually encourage cost-effective decisions, and that technology planning has nothing but a very limited prophylactic effect in this regard, especially since it no longer even applies to Priority One services.

Our objective, we explained, was to propose the broad framework for a radical yet entirely sensible solution, one with which the Commission and the E-rate community could tinker to make work. We made very sure to note that this solution and the various proposals being discussed to inject badly needed funding into the E-rate program are neither mutually exclusive nor even slightly at odds, that additional funding would easily “plug into” our proposed framework, which we actually designed with that good news in mind.

What we proposed is this: (1) continue to provide discounts based on the current discount matrix and eligible service framework; (2) create a graduated budget matrix that will yield equitable, per student and per patron (or other variable) funding amounts for schools and libraries at different discount levels, which, we underscored, will be easier to accomplish than might appear at first blush; (3) develop the new matrix by taking into account a variety of factors, such as urban, rural, or remote location, the poverty level of the local community, and anything else that will help to foster the equitable distribution of a finite amount of funds; (4) ensure that every applicant, regardless of size, receives a meaningful, minimum amount of E-rate funding in their annual E-rate budget; (5) every year, well before the window application period opens, set the per school student and per library patron (or other variable) budget amount for the next funding year; (6) assure applicants that their E-rate budgets will remain relatively constant from one year to the next, subject only to fluctuations in the size of the populations they serve and any additional funding that might become available; and (7) permit applicants to allocate their annual E-rate budget, entirely as they see fit, among eligible services in any category and also among the eligible buildings in their respective school districts and library systems.

Finally, we highlighted the results of FFL’s recent survey of E-rate applicants nationwide, which showed just how strongly applicants feel about change. What was particularly noteworthy, we emphasized, was that the applicants who participated in our survey ranked the “predictability” of funding (“*knowing exactly how much E-rate funding your organization can count on receiving each year*”) even higher in terms of importance than how much funding their organizations might actually receive.

Sincerely,

/s/ John D. Harrington

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