

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Schools and Libraries	)	CC Docket No. 02-6
Universal Service Program	)	
	)	
Wireline Competition Bureau Seeks Comment	)	DA 13-363
on Revisions to FCC Forms 472, 473 and 474	)	

**REPLY COMMENTS OF EDLINE, LLC**

Edline, LLC (“Edline”), a leading provider of web hosting services for the educational marketplace, and a participant in the Schools and Libraries (“E-rate”) universal service support program, hereby replies to comments filed in response to the March 8<sup>th</sup> Public Notice in which the Wireline Competition Bureau (“Bureau”) proposed revisions to FCC Forms 472, 473, and 474.<sup>1</sup> Edline and its affiliates provide web hosting services to approximately 20,000 schools throughout the country.

Edline supports the Bureau’s efforts to update and modernize E-rate forms and make them more consistent with current practices. However, as other commenters have noted, the Bureau cannot, as part of a “forms revision” process, impose novel, onerous legal requirements on service providers through the introduction of new certifications. Edline is particularly concerned about the certification regarding the “lowest corresponding price” (“LCP”). The new legal requirements underlying the certifications are overly broad, vague, inconsistent with prior Commission orders, and have not been vetted through notice and comment rulemaking as required by the Administrative

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<sup>1</sup> The Bureau proposed the forms revisions pursuant to the Paperwork Reduction Act (“PRA”): *See* Public Notice, *Wireline Competition Bureau Seeks Comment On Revisions To FCC Forms 472, 473, And 474*, 28 FCC Rcd 2210 (March 8, 2013).

Procedures Act (“APA”). In these reply comments, Edline also proposes modifications to the E-rate forms that will simplify the forms and procedures.

**I. THE BUREAU CANNOT, THROUGH “FORMS REVISIONS,” IMPOSE NEW LEGAL REQUIREMENTS ON SERVICE PROVIDERS, PARTICULARLY THE LOWEST CORRESPONDING PRICE CERTIFICATION.**

As other commenters noted, the new certifications proposed by the Bureau are not trivial. The proposed certifications will impose new legal obligations on service providers and should, therefore, be addressed as part of notice and comment rulemaking, not a “forms revision” process. Edline agrees with the United States Telecom Association (“USTelecom”) that the proposed certifications will: (1) fundamentally alter the E-rate program by substantially amending the scope of the certifications that a service provider must make as a condition of participation; (2) force service providers to become enforcement agents of the Commission over schools, a role service providers cannot reasonably fulfill; (3) expand the cost of service provider compliance with program rules in ways the full Commission has never contemplated or has arguably rejected in previous proceedings; and (4) expose service providers to enormous potential liability.<sup>2</sup> Because the proposed revisions substantially amend service providers’ substantive, legal obligations, the revisions are rule changes that must be subject to APA notice and comment rulemaking.<sup>3</sup>

Edline also agrees with USTelecom that the underlying obligations associated with the new proposed certifications are overly broad and vague.<sup>4</sup> A service provider cannot possibly attest, under penalty of perjury, to a school’s compliance with E-rate regulations. This is an excessive and virtually impossible obligation to meet. As the Schultz Group noted, “Without further clarity as to

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<sup>2</sup> See comments submitted by the United States Telecom Association (“USTelecom”) dated March 27, 2013 (“USTelecom comments”) at pp. 1-2.

<sup>3</sup> See *id.* at pp. 2-5.

<sup>4</sup> See *id.* at pp. 8-9.

the underlying obligations, few service provider general counsels could comfortably permit their companies to sign [the new certifications].”<sup>5</sup>

Edline is particularly concerned about the LCP certification that is proposed in revisions to Form 473, the Service Provider Annual Certification. The Bureau must not move forward to require LCP certifications until the rule is clarified by the Commission, to both: (1) define the service providers to whom the certifications apply; and (2) address significant, open questions that surround the vague LCP requirement,<sup>6</sup> including providing meaningful guidance about the scope and operation of the LCP rule.<sup>7</sup>

First, as commenters have accurately pointed out, it is not clear that the Bureau can require all service providers to make LCP certifications.<sup>8</sup> Commission orders indicate that the rule applies to “telecommunications carriers” or “common carriers” that participate in the E-rate program, not providers of Internet access and internal connections.<sup>9</sup> To expand the scope of the rule requires notice and comment rulemaking under the APA.

Second, in order to provide clarity about the service provider requirements underlying the LCP certification, the Commission must complete action on the pending Petition for Declaratory

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<sup>5</sup> See comments submitted by the Schultz Group, PLLC dated March 27, 2013 (“Schultz Group comments”) at p. 5.

<sup>6</sup> See USTelecom comments at 8, stating that the Public Notice does not define what the Bureau views as “reasonable steps” to implement the LCP rule nor does any regulation or order provide such guidance. As a result, service providers lack adequate notice as to the scope of their obligation under the LCP certification requirement.

<sup>7</sup> See Schultz Group comments, pp. 4-9.

<sup>8</sup> See *id.* at p. 2.

<sup>9</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC97-157, 12 FCC Rcd 8776 (1997) at ¶ 484 (“Universal Service Order”)(subsequent history omitted); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Declaratory Ruling, FCC99-10, 14 FCC Rcd 3040 (1999) at ¶ 8 and n.18.

Ruling filed in 2010 by USTelecom and CTIA – The Wireless Association.<sup>10</sup> That Petition identified at least six clarifications that are needed with the respect to the LCP rule:

- (1) Clarify that the LCP obligation applies only to competitive bids submitted by a service provider in response to a Form 470;
- (2) Clarify that the LCP obligation is not a continuing obligation that entitles schools to continuously assert a right to lower pricing during the term of a contract;
- (3) Clarify that there are no specific procedures that a service provider must use to ensure compliance with the LCP obligation;
- (4) Clarify that, in determining whether a service bundle complies with the LCP obligation, discrete elements in the bundle need not be individually compared and priced;
- (5) Clarify that if a service provider’s bid is challenged for an alleged failure to satisfy the LCP obligation, the initial burden falls on the challenger (i.e., a school or library) to demonstrate a prima facie case that the bid did not satisfy the LCP; and
- (6) Clarify that Commission or Bureau interpretations of the LCP requirements will be applied prospectively only.

Edline notes that the Commission or Bureau also should clarify what is meant by the lowest “corresponding” price. Assuming this refers to the lowest price offered to any “similarly situated” customers, the Commission should define what is meant by “similarly situated.” Moreover, the Commission should confirm that even among similarly situated customers, pricing can legitimately vary “to reflect any factors that clearly and significantly affect the cost of service . . .” to a particular school or library.<sup>11</sup>

## **II. THE BUREAU SHOULD CONSIDER ADOPTION OF THE FOLLOWING ADDITIONAL FORM CHANGES.**

### **A. Remittance Information for Form 472 (BEAR).**

Edline agrees with the comments of the State E-rate Coordinators’ Alliance (“SECA”) and CSM Consulting, Inc. that specific applicant remittance information should be required by the

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<sup>10</sup> See Petition of United States Telecom Association and CTIA-The Wireless Association® for Declaratory Ruling Clarifying Certain Aspects of the “Lowest Corresponding Price” Obligation of the Schools and Libraries Universal Service Program, *Schools and Libraries Universal Service Support Mechanism*, CC Dkt. No. 02-6 (filed March 19, 2010).

<sup>11</sup> See *Universal Service Order* at ¶ 488.

forms, or provided in other ways, so that service providers know where to send an applicant's reimbursement.<sup>12</sup> This information can be collected by including additional fields on the Form 472, Billed Entity Applicant Reimbursement ("BEAR") form, or by other methods.<sup>13</sup> This simple change to the form will improve efficiency and result in fewer misrouted payments.

### **B. Improving USAC's Invoice Review Process.**

Edline suggests inclusion of a common sense certification on the Service Provider Invoice ("SPI") form and BEAR form (FCC Forms 474 and 472, respectively) to eliminate certain unnecessary and onerous processes currently employed by USAC. For the SPI form, USAC often requires that service providers undertake any of three burdensome sets of procedures before an invoice will be paid, as follows:

1. **Copies of Invoices and Contracts.** While responding to USAC requests for invoices and contracts is reasonably straightforward, it requires service providers in many cases to duplicate efforts by providing a copy of the contract which often has already been provided in an earlier review or Program Integrity Assurance ("PIA") process. Such requests implicate untold thousands of additional and potentially unnecessary steps.
2. **Customer Certification.** USAC will often request that the service provider obtain a certification from the customer that services have been provided. This requires Edline and other service providers to contact thousands of customers outside of normal processes, in a circuitous path from USAC to service provider to applicant back to service provider and then back to USAC. Edline believes USAC's request in routine cases is unnecessary given

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<sup>12</sup> See comments submitted by SECA dated March 27, 2013; see also comments submitted by CSM Consulting, Inc. dated March 27, 2013.

<sup>13</sup> This information could be made available to service providers in other ways that would not require repeating the same information on every Form 472, such as an online tool accessible by applicants and their chosen service providers.

that the applicant has already indicated to USAC that invoices can be paid by completing the FCC Form 486.

3. **Copies of Cancelled Checks.** The third type of USAC request adds a requirement that a copy of the applicant's cancelled check be provided. This requires the following steps from Edline and other service providers: (a) the service provider must contact the applicant with this request, (b) the applicant must then contact their bank to request a copy of the cancelled check, (c) the applicant then must forward the copy of the cancelled check to the service provider, and (d) the service provider can then provide the copy to USAC. This is an enormously burdensome and time consuming process, and can significantly slow down invoice payments and increase USAC, service provider, and applicant administrative costs.

Edline believes that the above processes are beyond what is necessary in routine cases and should be employed, if at all, only if there is substantial indication of criminal activity or fraud. Additionally, we understand that applicants have similar processes that must be undertaken in the case of the BEAR form. Edline's suggestion is that common sense certifications on the BEAR and SPI forms -- that service has been provided, and service has been paid for by the applicant -- could significantly improve the efficiency of USAC processes and eliminate unnecessary burdens on applicants and service providers. Edline supports the addition of such certifications if it results in the elimination of burdensome processes as described above. Edline also suggests that USAC only request copies of contracts and invoices in such instances where a copy has not already been provided or when special circumstances warrant an additional copy to be requested.

### **C. Requiring Original Signatures for Certain FCC Documents.**

In view of the Electronic Signatures in Global and National Commerce Act, USAC and the FCC should permit the use of electronic signatures for every E-rate requirement possible.<sup>14</sup> For

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<sup>14</sup> Pub. L. No. 106-229, 114 Stat. 464 (2000) (codified at 15 U.S.C. § 7001 *et seq.*).

example, E-rate forms can generally be signed electronically, but E-rate contracts require original signatures. Affidavits in response to a Form 470 RFP also may require original signatures, but it is not clear. If a service provider and school use DocuSign to execute E-rate contracts, for example, then this method of electronic authentication should meet the requirements of the program, without the requirement to submit “wet” signatures. Permitting the use of electronic signatures will improve the efficiency of service providers and applicants in the program, and will simplify the Commission’s regulatory requirements in conformance with the Electronic Signatures Act.

### **III. CONCLUSION.**

Edline is very concerned that the forms revisions suggested by the Bureau will have the effect of imposing new legal requirements on service providers which are, in some respects, overly broad and vague, inconsistent with prior Commission orders, and not properly vetted through notice and comment rulemaking. Edline urges the Bureau to carefully assess the proposed revisions and to only move forward with those revisions that will not impose new legal obligations. More onerous certifications and legal requirements, such as the LCP certification and the service provider certification regarding customer compliance with the program, should be held until proper notice and comment rulemaking is undertaken. To the extent the Bureau moves forward with certain forms revisions, then Edline encourages the Bureau to consider the changes it suggests in Section II of these reply comments.

Respectfully submitted,

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/s/

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