



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

In the Matter of)
Modernizing the E-rate) WC Docket No. 13-184
Program for Schools and Libraries)

**COMMENTS BY THE PENNSYLVANIA ASSOCIATION OF INTERMEDIATE UNITS (PAIU)
RELATED TO THE E-RATE 2.0 PUBLIC NOTICE**

The Pennsylvania Association of Intermediate Units (PAIU) is a non-profit organization comprised of Pennsylvania's 29 intermediate units ("IU"). Pennsylvania's IUs were created by the General Assembly to provide cost-effective instructional and operational support services to school districts, charter schools, and over 2,400 non-public and private schools, as well as provide direct instruction to more than 50,000 Pennsylvania students.

Additionally, Pennsylvania's IUs are the consortia leaders of 26 regional wide area networks, providing cost effective broadband and Internet connectivity through aggregation of demand. The 26 regional broadband networks are connected together through the statewide PAIUnet backbone, thus creating a statewide, high-speed educational network.

There are three significant broadband/infrastructure-related topics that PAIU would like to address prior to providing comment on the specific topics in the Public Notice.

1) Change E-rate Rules to Permit and Fund Internet Bandwidth Increases Mid-Funding Year

PAIU would like to bring special attention to an E-rate issue that greatly impacts broadband expansion which has not been discussed in the FCC NPRM or Public Notice but that was raised by the Scranton Public Library in their initial Public Notice Comments. Under current rules, applicants are not permitted to upgrade Internet bandwidth mid-funding year – a situation that hundreds of schools and

libraries are faced with on a daily basis. Under the current E-rate rules, applicants post a Form 470 at least 29 days before signing a contract and submitting a Form 471. But after the 471 is submitted, E-rate rules do not contain options to increase bandwidth mid-year and to increase financial support to schools and libraries that are faced with the very real and immediate need to upgrade their Internet bandwidth mid funding year.

We realize there needs to be black and white rules to ensure applicants conduct all of their procurements prior to the Form 471 filing, but with the rapid pace of technology expansion in classrooms, our member schools are finding the need to make significant increases to their amount of Internet access – sometimes even doubling it -- just a few months into the school year due to circumstances that could not have been foreseen a few months before when the E-rate applications were finalized. Currently, their only option is to sign an amendment to their existing contract or sign an entirely new contract for the additional Internet where the additional cost is not E-rate eligible.

At a very minimum, we request the FCC to allow affected applicants to renegotiate their current contracts to allow for additional bandwidth at the same cost without posting a new Form 470, regardless of what bandwidth amounts were listed on the original Form 470 or the upgrade terms of the original contract. No additional funding would be needed from USAC.

In cases where such terms cannot be renegotiated, we ask the FCC to set aside \$300 million/year for applicants that need to upgrade their Internet access mid-year. The request could be made directly to USAC if the contract permitted such bandwidth upgrades and the upgrade was consistent with the Form 470 posting. In the alternative, the applicant could be required to post a new Form 470 to procure the additional bandwidth before seeking the funding augmentation from USAC. Requests for additional Internet funding would be considered on a first-come first-serve basis; after the \$300 million was used, no additional funding would be available.

This proposal is not a demonstration project, but rather would be a permanent rule change that would support the rapid expansion of broadband and Internet in our schools and libraries. E-rate deadlines must be rigid, but at the same time we cannot let E-rate be a hindrance to broadband expansion. We ask the Commission to create a reformed E-rate program that contains this additional fund in order to make the new broadband initiative nimble and supportive of broadband – not competing against its own goals.

2) Clarify that Load Balancing Procurements are E-rate Eligible (Macomb Decision)

In Funding Year 2014, it came to our attention during the USAC fall training that a 2007 FCC appeal decision entitled ‘Macomb’ is being interpreted to prohibit schools and libraries from selecting more than one service provider for the same service during the same procurement. The explanation was that it was a competitive bidding violation because services obtained from more than one provider could not all be the “most cost-effective.”

With the great importance on network reliability, we urge the Commission to clarify that load-balancing procurements and ‘network diversity’ are not prohibited and that applicants are permitted to select multiple service providers to provide the same service – as long as both services are needed and are not being

purchased as 'back-up,' and as long as both services are considered cost effective. All state and federal governments – as well as all medium and large sized corporations and organizations -- have load balanced or multi-homed networks and or Internet access services. We ask that E-rate not penalize schools and libraries for obtaining the same network benefits.

3) Repeal Queen of Peace to Allow for Consortium Procurements and Contracts

Bulk buying can lower costs, but equally as important, it can reduce administrative paperwork and contracting procedures for schools. In Pennsylvania, for the last 25+ years, schools have made the vast majority of their technology purchases from the state-wide master contract known as PEPPM. PEPPM is administered by the Central Susquehanna Intermediate Unit on behalf of the Pennsylvania Department of Education through a signed agreement with the Department, and may be used by both public and nonpublic schools and public libraries. There are more than 250 individual product lines on the PEPPM contract and each have been competitively bid with a single winner being determined based on a certain percentage discount from manufacturer list price. Because the contract has been competitively bid under PA procurement law, no further local bidding is required. Schools issue a purchase order and do not negotiate or sign a separate contract because the contract containing terms and conditions between PEPPM and the vendor are considered the establishing contract. The PEPPM contract is nationally known as the gold-standard in state-wide competitive bidding because of the large number of manufacturer lines represented, the low prices that are offered, and how administratively easy it is for schools to use. It is the very type of bulk-buying contract that the FCC should seek to have created under the E-rate reform rules.

However, due to the FCC's Queen of Peace decision and the restrictions imposed on all applicants as a result of that decision, the PEPPM contract is no longer E-rate eligible. PAIU feels strongly that the Commission should immediately repeal the Queen of Peace restrictions for internal connections purchases. When this decision was issued in October 2012, it required all Form 470s/RFPs to use the words "or equivalent" which nullified all master contracts for commodity products because such contracts bid dozens or hundreds of product lines and therefore cannot use the term "or equivalent" in its bidding documents. We do not believe the Commission originally intended for Queen of Peace to invalidate all master contracts, but this has been the result. The intent of Queen of Peace was to ensure that schools had the opportunity to purchase equivalent products that may be less expensive and not restrict themselves to a single vendor responding to an RFP. In our opinion, master contracts that contain dozens or hundreds of equivalent manufacturer's product lines provide this opportunity and therefore meet this test.

With the Commission's upcoming reforms and additional access to internal connections equipment funding, more and more schools and libraries will be able to make such purchases. PEPPM and other state or other similar master bulk-buying master contracts that have been deemed ineligible by Queen of Peace need to have relief from these restrictions so that they can make their internal connections procurements in an efficient, cost effective manner, using a competitively bid contract that places price as the most heavily weighted factor.

Broadband Deployment WITHIN Schools and Libraries (¶ 8)

PAIU believes strongly that internal connections funding must be available to *all* applicants – not just the poorest schools and libraries – on a regular, predictable basis. To meet this goal, we support a comprehensive reform plan that includes the following three elements.

1) Refine eligible internal connections so that only hubs, routers, switches, WAPs, and internal wiring for data networks are eligible. Only equipment and supporting software that is essential to getting high-capacity broadband from the building's front door to the computer, tablet, or other learning devices in schools and libraries would be eligible for internal connections support. Other technology that improves the efficiency of the broadband networks such as caching through content servers or other software or equipment would not be eligible for support. Additionally, internal connections used for voice and video services should no longer be eligible. We recognize the importance of these technologies but considering the limited funds, we want to focus more directly on the components of wireless access and ensure that internal connections funding is available to all applicants.)

Further, although maintenance plans on any equipment are a necessity in today's wired world, we believe that such maintenance should be part of the local effort of a school. Therefore, separate basic maintenance contracts for these components also should no longer be eligible for support except to the extent that the product comes with a manufacturer-standard bundled warranty that does not have a separate cost. The current rules allow for a 3-year bundled warranty but apparently do not permit life-time warranties that are offered by several national technology vendors. We ask the FCC to change this rule to permit lifetime warranties if they are manufacturer standard.

2) Change to discount matrix for Priority 2 so the maximum discount is 70 percent and all other discount rates would be adjusted downward by 20%. Further, while we strongly support the 10% rural additive for Priority 1 broadband and Internet requests and associated build-out costs, we do not believe there should be a 10% additive for internal connections equipment funding.

3) The three possible broadband equipment funding mechanisms proposed in the Public Notice each have their benefits and drawbacks. The 1 in 5 proposal certainly best supports applicants' local procurement scheduling decisions, but only if the funding is actually available in the year in which they apply. The rotating eligibility approach guarantees internal connections funding, but also creates uncertainty in the planning and funding process and reduces local control over procurement budgeting decisions. We are skeptical about the proposed annual per student funding formula because funding would not be based on actual need and would likely be too small to cover an entire project, and enrollment figures could be easily manipulated in order to inflate annual allocations. However, we do support including a per-building or per-student cap with either the 1 in 5 proposal or the rotating band proposal so that no applicant receives a disproportionate amount of funding. If such a cap should be imposed, there should be a rebuttable presumption that an applicant may overcome through a more intensive PIA review for extraordinary circumstances to request additional funding over the cap. For example, it might typically cost \$50,000 to wire a rural or suburban, 1-floor elementary school, but might cost \$750,000+ to wire an urban 70 year old, 3-story building. In such cases, if the cap is

less than \$500,000 the district should have the option to seek relief from the FCC to obtain funding over the cap.

However, with a 1/5 rule must come a forensic data analysis at the end of Year 2 to ensure that everyone will have access to internal connections funding within 5 years. If it is found this won't happen, then the fund must be increased. Whatever system is chosen to allocate broadband equipment funding, it must guarantee funding to every school at least every 4 – 5 years.

Broadband Deployment TO Schools and Libraries (§ 24)

1. Scope of Services to Be Funded (§ 26):

a. There Should A Special High-Cost Fund For Extraordinary Build-Out Costs; Not Overall Higher Discounts

The Commission asks if there should be a higher discount for special construction charges to enable schools to take advantage of high-capacity broadband. While this sounds appealing, the reality is that vendors will simply front-load their non-recurring/construction charges because those charges will receive a higher discount – something we know well from our experience with Pennsylvania's eFund grant. In reality, there is no way to police whether the NRCs are justified. As an alternative, PAIU suggests a special fund be created to which schools can apply to help offset high build-out costs, similar to special education high cost aid programs that many state departments of education operate where schools can apply for added funding when individual special education costs exceeded a certain dollar threshold per student.

Currently, vendors can apply to the Connect America Fund to fund broadband in underserved areas, but many providers do not take advantage of the money because their profit margins are higher in cities and more densely populated areas. We believe a portion of the Connect America Fund money should be set aside for school and library broadband build-out which could be used if costs for a single site are above a certain dollar amount. This would not only help achieve broadband build-out to educational institutions but also would provide a greater need for the currently under-used Connect America Fund.

b. Reduced Support for Voice Services (§ 40)

We appreciate the Commission's recognition that schools and libraries need time to adjust their local budgets to account for the changes to currently subsidized E-rate eligible services. But we respectfully oppose the proposal to phase-out voice services by a certain percentage each year and support the proposal, with modifications, by the State E-rate Coordinators' Alliance to revise the eligible services list by services and not percentage eligibility. Instead of ramp-down phase-out there should be a phase-out of voice/webhosting/cell/e-mail services over 3 years as follows:

FY 2015 – Cellular/mobile broadband and data service, and email service would not be eligible. Most of these services are procured on a 1-year or month-to-month basis which can be terminated more quickly. Also, many school districts have opted to provide a stipend to employees for them to use their own cellular devices as a way to save both the district and E-rate money. If cellular services are eliminated from eligibility, we believe most districts would quickly move in this direction.

FY 2016 – No changes to eligibility list this year.

FY 2017 – Webhosting and all other voices services would not be eligible. Many applicants are in 3-year webhosting contracts so it makes sense to provide them with time to allow their existing contracts to expire during which time E-rate subsidies would continue. Please note that this phase-out schedule is slightly different than the SECA proposal as it requests that webhosting continue to be eligible until FY 2017 and not be eliminated in FY 2015.

The important aspect of this schedule is that each service becomes entirely ineligible in a single year and is not phased-out. We believe that a ramp down of eligibility percentage by year would be extremely difficult for USAC to administer and would be quite confusing for schools and libraries to track. With reform must come simplification and the avoidance of any reform measure that would add complexity to the existing program. The PAIU proposed eligible services elimination schedule would give applicants three years to prepare their budgets for the changes to webhosting and traditional land-line and other voice services. It would also coincide nicely with the end of the \$2 billion infusion of funds that are expected to be injected into the program during FY 2015 and FY 2016.

2. Ways to Encourage Cost-Effective Purchasing

a. Consortium broadband purchasing (§ 35):

Pennsylvania has significant experience with consortia purchasing and demand aggregation. In 2004, Pennsylvania established the state eFund to provide a framework and a financing mechanism for upgrading broadband infrastructure in Pennsylvania's K-12 schools. It allocated \$60 million over six years for telecommunications, equipment, distance education initiatives and technical support. The E-Fund was an experiment in "demand aggregation" whereby schools were encouraged to buy technology services together in order to get a better deal. The experiment worked. The E-Fund helped 678 schools across Pennsylvania increase their broadband capacity by an average of 534%. Old, expensive T1 circuits were replaced by new, affordable Ethernet access, and the number of schools using fiber optic cables more than doubled.

Despite the six-fold increase in service, the E-Fund helped keep costs under control. Overall broadband price increases were limited to 1.9% annually after inflation while the price per unit of bandwidth declined 92%. These developments encouraged a culture of collaboration as schools worked together across regional boundaries to employ their new technology resources in the classroom. Because consortia

applications were given the highest priority in the competitive review process, nearly every application submitted was that of a consortia.

We encourage the FCC to implement similar incentives for E-rate consortia funding. Currently there are disincentives for schools to join or create consortia, such as extreme delays in funding commitments, increased scrutiny due to large dollar applications, additional forms that need to be collected and most importantly the personnel cost of administering a consortia. We believe that all of these disincentives can be changed and instead recommend the following:

1. Statewide and regional consortia applications should be given an additional 10% E-rate discount for broadband and Internet Access services. It's important that parameters are established to clearly define an eligible consortia so that single organizations that currently apply as a consortium-type applicant would not be eligible for the increased discount.
2. Allow Form 479s to be collected on a multi-year basis that coincides with the Letter of Agency. Currently, Form 479s must be collected from consortium members on an annual basis, thus placing one additional administrative burden on consortia leaders. By allowing 479s to be collected at the same time that multi-year Letters of Agency are collected would greatly streamline the E-rate application process for consortia and their members. Alternatively, the certifications required on the Form 479 could simply be allowed to be embedded on the Letter of Agency, thus eliminating one required consortia form entirely.

3. Streamlining the Administrative Process (§ 38)/Easing Administrative Burdens:

PAIU continues to be supportive of the streamlining and administrative efficiencies that will be achieved by the SL IT Modernization Project and we very much look forward to seeing a beta for that project so that schools and libraries can provide meaningful input before the project is set in stone. The other major proposals that we hope the Commission will consider in the Reform Order include:

- Allow Priority 2 equipment installation to begin June 1 before funding year begins to maximize summer months for installation and grant an automatic extension through September 30 of the following year to purchase and install equipment. Also, school districts often have previously budgeted funds that must be spent by June 30 and this revised timeline would give them a chance to spend them on necessary technology upgrades. This year we have seen Form 471 applications processed by PIA faster than ever before, and should this trend continue, we can see a day when Priority 2 funding commitments are issued before June 1. This revised installation timeline would give applicants a full 28-months to complete their internal connection projects.
- Allow Form 479s to be collected on a multi-year basis that coincides with the Letter of Agency or remove Form 479 requirement entirely and make this a certification on the Form 486 or Form 471.

- Allow the Form 486 functions to be embedded on the Form 471. Currently, the Form 486 is used to certify technology plan compliance (for P2 applicants), certify CIPA compliance, and to let USAC know that service has begun or will begin prior to July 30. If the Form 486 is submitted after 120 days from the service start date or funding commitment letter date (whichever is later), USAC deducts 1/365th worth of funding for each day the Form 486 is late. In most cases, school districts could certify all of these requirements when the Form 471 is submitted and not run the risk of forgetting to submit this form and be penalized by having their E-rate funding commitments rescinded.
- Send BEAR payments directly to applicants which also would be a significant cost-savings to service providers.

4. Technology planning (§ 36):

PAIU opposes any plan to reinstate technology plans for Priority 1 services, and strongly encourages the Commission to fully rescind the technology plan requirement as a pre-requisite for any E-rate purchase. Expansion of the current technology plan requirement would impose yet another burden on applicants, and greatly imposition state departments of education who are required to approve such plans. However, removing the technology plan requirement altogether would further streamline the application process and be one less burden that applicants must endure to comply with the myriad of E-rate requirements.

The law that established technology planning at the federal level, EETT, has been rescinded and most states lack the resources to administer the review and approval process. Also, many states, like Pennsylvania, have evolved from the old separate technology plan process in lieu of a comprehensive strategic planning process that already encompasses technology. The E-rate technology plan requirement has too often become an audit finding during a Form 486 review or PQA audit because it's difficult for applicants to prove that their plan was not 'written' before the Form 470 was posted. We ask the FCC to remove this requirement entirely and rely on the other certifications currently included in the application forms to ensure that schools and libraries are adequately prepared.

D. Demonstration Projects (§ 55):

PAIU shares the President's and Chairman's vision of having 1 Gbps broadband to each school building within the next five years. In Pennsylvania, from 2005 – 2010 the State's eFund initiative was very successful in bringing broadband to each district's head-end, but there are still some school buildings, particularly those in remote, mountainous areas of north central and western areas of the state, that only have 10 mbps or less connectivity. Should the Commission establish a demonstration project program, PAIU anticipates submitting a proposal that would enable PAIU to provide technical and procurement assistance to those districts, and to pay for the costs of the one-time construction costs to lay fiber or microwave services to those remote school buildings. The exact number of affected schools are unknown at this time; the identification of those entities would be the first step in the scope of the project.

Thank you for your consideration of our comments.

Respectfully submitted,



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