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	)	

REPLY COMMENTS OF FUNDS FOR LEARNING, LLC

WCB PUBLIC NOTICE (DA-14-308)
REQUEST FOR FOCUSED COMMENTS ON E-RATE MODERNIZATION

I. America's students are lagging behind. Collectively, our country's institutions are doing them a huge disservice. Fortunately, there are tools and resources available today that are beginning to bridge that gap, chief among them is the use of new Internet-based technologies. Flipped classrooms, online curriculum, anytime and anywhere learning, gamification, and a host of other innovations are empowering teachers and students – bringing new hope into neighborhoods and communities.

The FCC's E-rate program is at the epicenter of this movement. The reform of education in America with the help of technology has already begun. And in almost every case, these enhancements have come about with the support of E-rate discounts. It is hard to overstate the positive impact the E-rate program can have on the lives of students. Nor is it possible to adequately measure the strategic value of this program to our nation's long-term health and viability.

II. Funds For Learning (FFL) is concerned that the FCC's Public Notice does too little to address the underlying factors driving the need for E-rate reform and modernization. Most of the FCC's proposal focuses on changing the Eligible Services List and re-prioritizing the current funding priority system.

We fear that political winds might be propelling efforts to modernize the E-rate program in a direction that will further complicate the program and unnecessarily limit its effectiveness without bringing about substantive improvements. Therefore, with respect to E-rate modernization, we continue to believe strongly as follows:

- Schools and libraries are motivated to connect their students and patrons to the Internet at the highest speeds possible as quickly as possible.

- Schools and libraries do not need pressure from the FCC to understand just how important high-speed connectivity is. They receive plenty of local pressure for faster

and more reliable broadband. No community wants to be left behind. To believe otherwise is demeaning to education and library professionals.

- There is no one size fits all solution to the challenge of achieving high-speed connectivity in schools and libraries. Every school system, every library system, every private school, every charter school, and every individual local library has its own unique set of telecommunications and technology needs, networking challenges, financial issues, integration timelines and budgetary priorities.

- Schools and libraries understand their local telecommunications and technology needs better than the FCC does or ever will.

- Schools and libraries understand the local challenges and obstacles to connecting students and library patrons to the Internet at faster speeds better than the FCC does or ever will.

- The eligible services list (ESL) is **not** the problem, nor should it define reform of the program. The E-rate program's original eligible services framework – connecting students and library patrons – is as strong and applicable today as it was in 1998. New services have come, and old services have gone, all within the current ESL framework. If we diminish efforts to modernize the E-rate program down to updates of the eligible services list, then one could argue that the E-rate program already has been "modernized" 17 times.

- **Given an annual E-rate budget within which to work, schools and libraries will use that money to connect their students and patrons to the Internet in the fastest and most cost-effective way possible, taking into account local conditions and needs.**

- When their annual discounts are capped, applicants will be forced to operate within a budget, as opposed to being handed a "blank check" every year. This will provide **applicants a real and substantial incentive not to waste money**, the government's or their own — especially if the Commission gives applicants the freedom to purchase what they need off of the ESL, including internal connections and maintenance of internal connections.

- While perhaps not perfect, our proposal to place ceilings over and floors under how much E-rate funding an applicant may apply for in a funding year remains the most reasonable, equitable, and effective approach to the dilemma of too many applicants chasing after too little money—a problem that threatens both the program's effectiveness **and** its long-term sustainability. That is why so many school applicants themselves – the real stakeholders in this process – support our proposal.[1]

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[1] *See*, e.g., Comments and Reply Comments of the E-rate Reform Coalition, http://apps.fcc.gov/ecfs/document/view?id=7520943975 and http://apps.fcc.gov/ecfs/document/view?id=7520957067

- The Funds For Learning "budget" proposal guarantees what applicants want most: **a predictable and reasonable amount of E-rate discounts every year that they can count on to help them pay for *anything* eligible that they decide makes the most sense for their school system, library system, school or library.** In any given funding year, depending on local needs, this may or may not include internal connections.

- 17 years of historical funding request information is sufficient for the FCC to make a data-driven decision and increase the funding cap. **A significant increase to the E-rate funding cap is the type of modernization that one would expect from a highly visible and lengthy reform effort, especially given President Obama's high-profile commitment to the cause.** More funding is absolutely necessary, and whatever amount the Commission decides to infuse into the E-rate program will be welcomed and appreciated. [2]

- Comments to the Public Notice make clear that applicants desperately need funding for Priority 2 WLAN and other infrastructure. This is why **restoring technology decision making to the local level by eliminating the priority system should be a priority**.[3] Placing reasonable ceilings over and floors under annual funding is the only realistic way to accomplish this. And, what's more, budgets, caps and floors, ceilings and floors – whatever you choose to call the system we are proposing – brings numerous programmatic benefits along with it, all of which we have detailed and discussed at length before in our comments and *ex parte* filings.

- **Unlike any other proposal on the table, the Funds For Learning proposal is supported by a wealth of data**. It is a permanent and scalable solution designed to accommodate: (1) however much E-rate funding is available at any given time, and (2) whatever services the Commission decides should be eligible, today, and in the future.

- **Unlike any other proposal on the table, the Funds For Learning proposal will <u>not</u> upset the E-rate program's basic nuts and bolts.** Applicants, service providers, and the Commission will not have to hold their collective breath waiting to see how well it works. From the outset, everyone will know that it will work because it retains every aspect of the E-rate program that worked before and with which everyone is already familiar. The only difference between the "old" and the "new" will be the disappearance of gambling when it comes to internal connections funding, a new-found certainty as to whether and how much funding an applicant can count on, and, more likely than not, a significantly faster application review process.

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[2] A "budget" system is scalable, giving the Commission the ability to increase or decrease individual budgets depending on the amount of funding available for any given funding year.

[3] The terms "Priority One" and "Priority Two" did not enter the E-rate lexicon until the demand for funding outstripped the supply. It was a bad "fix" for many reasons, not the least of which was that the richest schools in the country wound up getting discounts on Priority One services while schools in countless poor schools received nothing for critical, Priority Two infrastructure.

- **Unlike any other proposal on the table, the Funds For Learning proposal provides specific protection for small and rural applicants**. We are not aware of any other proposal that attempts to specifically, and proactively, watch out for the needs of small and rural applicants. While some express concern that the FFL proposal may hurt small and rural applicants, the only alternatives proposed offer either (A) unlimited funding for all applicants as a solution, or (B) suggest lowering discount rates and removing items from the eligible services list. The first scenario, unlimited funding, does not require any reform to the E-rate program, other than a funding cap that is tied to demand. The second scenario, reducing discounts and services, hardly seems like protection for these applicants. **We are not aware of a remote rural school that favors discount rate reduction as the solution to their E-rate needs.**

- The Funds For Learning proposal is not a "band-aide" solution or an experiment. It is not intended to be a placeholder for something else that may come down the pike. It does **not** attempt to fix what is not broken. And most importantly, it does **NOT** alter the fundamental and unique discount nature of the program. Contrary to what some have incorrectly argued, the FFL proposal maintains the discount nature of the program and "grants" money to no one, and we challenge anyone who believes otherwise to show us how it does.

- The Funds For Learning proposal ties budget caps to applicant discount rates and location. This ensures access to the most money for the neediest schools.

    - The highest discount rate applicants will receive the highest budget caps.

    - Rural remote schools will have a cap that is twice that of other applicants.[4]

III. The Commission needs to tackle the E-rate program's "high-cost" problem head on.

- **The Commission needs to do whatever it can to ensure that the schools and libraries in our nation's high-cost areas, especially those in its most remote rural parts of it, receive the support they need to connect to the Internet at broadband speeds that are fast enough to facilitate 21st century learning.** The only way to do that is to guarantee those schools and libraries enough E-rate funding every year to subsidize 90%, 80%, 70% or whatever percentage of the cost of that service (and the LAN infrastructure necessary to support it) that the Commission deems appropriate. Transferring funds from the USF High-Cost fund specifically for this purpose would certainly make sense.

- **If** the Commission is **not** prepared to guarantee this funding, then, quite frankly, with all due respect, and for the good of the program as a whole, it needs to stop allowing the tail to wag the dog. Relatively speaking, schools in high-cost areas represent only

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[4] *See* Argeris Ex Parte, http://apps.fcc.gov/ecfs/document/view?id=7521093177, and *FY2013 E-rate Funding Requests Telecommunications and Internet Access by Schools and School Districts* http://apps.fcc.gov/ecfs/document/view?id=7520927795

a very small fraction of the total pool of applicants and the annual demand for funding. For example, in funding year 2013, the total P1 funding requested by rural remote applicants was $129.46 million. Remarkably, 37% of this amount, $48.40 million was submitted by only 38 rural remote applicants in the state of Alaska. (See attached graph). *The vast majority of applicants are NOT in rural remote areas – and only several dozen appear to meet the extreme conditions often cited as examples of why budget caps will not work.*

- Rural remote applicants generally oppose a budget system because they fear that it will shortchange them relative to applicants in lower-cost areas. That, however, is an extremely broad generalization, which certainly may be true in some cases, but subject to debate in many, many others. Thus the Commission has a choice to make.

    - It could structure the entire program based on the unique needs of a relatively small group of applicants, who certainly do have legitimate concerns, by adopting a patchwork quilt of policies that is unlikely to address every imaginable scenario but *is likely* to create an entirely new set of problems.

    or

    - The Commission could focus all of its attention on an equitable and effective budget system. As previously demonstrated, such an approach would positively impact all applicants by giving them the option to select internal connections discounts, while maintaining the current E-rate discount matrix. The vast majority of applicants, with the exception of "big spenders", could request as much or more than they did in FY2013 even under the existing E-rate funding cap.[5] This is the **only** viable option that the Commission has. The Commission should embrace it and, from here on out, dedicate its resources to hammering out the most equitable and effective budget system that it possibly can – one that raises all "ships," including schools and libraries in remote rural and other high-cost areas.

    <u>How to Address E-rate Budget Inequities</u>.
    No budget policy, or any other policy for that matter, will ever be perfect. Because of the tremendously high costs associated with bringing broadband to certain parts of the country, some applicants located in those areas may be able to legitimately claim that in order to put their share of the cost for the eligible services on par with E-rate applicants elsewhere, they will need more funding in their annual E-rate budgets.

    Fortunately, there is a relatively simple solution to this problem, and SECA suggested it. SECA proposed it in connection with a budget system for internal connections only, but it applies equally to an overall budget system too. This is what SECA proposed:

[5] *See* Exhibit D of the Reform Coalition Comments http://apps.fcc.gov/ecfs/document/view?id=7520943975

- "The cap should contain a rebuttable presumption that should the applicant experience extenuating circumstances that justified more funding than the capped amount, the administrator would be permitted to increase the amount of approved funding for the applicant after a more fact-based intensive PIA review, or, alternatively, the applicant could seek a waiver from the FCC for the higher amount." (SECA Comments, p.17).

IV. The E-rate program's funding problem is a systemic issue, which is why trying to tackle it in a piecemeal fashion simply will not work.

- Because of the problem's holistic nature, changing the way one category of service is funded will not only fail to solve the current, overall funding problem, it will create new and different funding problems to go along with it. Under the "two category" approach:
  - The FCC would be, in effect, creating two programs out of the existing single fund. Instead of having just one funding cap to worry about "getting right", the FCC would then have two funding caps to set each year. No matter how well researched or carefully tuned, it will be impossible to optimize those two caps because of the varying needs of each school and library building. One school's needs may lean towards a new wide area network, while another school may be lagging behind in wireless access points.
  - The existing Priority System is the program's primary structural problem. By maintaining a two-tier system, the existing flaws of the priority system would be amplified and extended across all applicants. This will lead to further gaming of the P1/P2 system, unnecessary allocation rules, burdensome eligibility tests, inconsistent technical definitions, and a host of bureaucratic complexities and non-value adding steps, such as the 2-in-5 rule, Tennessee decision tests, and regulations against redundant equipment and services.
  - In contrast, eliminating the priority system and adopting a budget system would reduce these complexities and eliminate many others, such as amortization rules, the Macomb decision, and so on.
- SECA's struggle to cobble together a solution to the Priority Two funding problem is a perfect illustration of the pitfalls associated with the "patchwork" kind of approach.
  - "**SECA does not believe that any single Priority 2 proposal will succeed** in guaranteeing access to all applicants. **Instead, the FCC must adopt several measures** that, taken together, will provide the greatest measure of predictable funding to schools and libraries." (Emphasis added). SECA Comments, p.9).
  - Thus, to address the Priority Two funding problem, **SECA recommends combining three approaches, none of which it is particularly enamored with separately.**

- "While SECA recommended the 'rotating bands' approach in our NPRM initial comments and we continue to believe this is a viable option, we would be remiss if we did not point out some concerns that would need to be addressed should the FCC decide to proceed with this option. Similarly, we have identified other concerns and issues with the one-in-five rule and the per-pupil or per building annual budget approach. (SECA Comments, p.14).

- It is important to interject here that, if adopted, the proposed one-in-five rule would be the successor to the existing two-in-five rule, which never worked as planned, is universally disliked, and is a nightmare to administer. Adopting a rotating eligibility rule would, among other extremely troublesome things, turn an applicant's "turn" for internal connections funding into an impossibly frustrating guessing game.

- **SECA's Proposed Solution**: "While SECA does not support a per-student or per-building annual funding allocation as the sole method of Priority 2 funding distribution, we do recognize that some applicants have received a highly disproportionate share of E-rate funding on a regular basis. ... **But coupled with either the 1/5 approach or the rotating band approach, a funding floor and cap makes sense** – both for the Fund, the vast majority of applicants, and the goal of providing broadband equipment to all schools within the next five years." (Emphasis added.) (SECA Comments, pp.16-17).

- **The Problem With SECA's Proposed Solution**

  - While we cannot say this with certainty, SECA's position seems to be that if you examine each proposed measure separately, its unique flaws outweigh its potential efficacy or at least raise some very serious concerns in that regard; **but**, if you combine a limited, Priority 2-Only budget approach with one of the other two less than perfect options on the table, then the problems associated with the two approaches somehow either go away or cancel each other out or should simply be overlooked.

  - Apparently, SECA believes that the whole is somehow greater than the sum of its relatively weak parts, and that the "whole" *just might* work in these circumstances.

  - That is a leap of faith that we are not prepared to take, especially when we know that an overall budget solution would solve the funding crisis on day one, would provide certainty and flexibility of funding from day one on, would be much, much simpler to administer from day one on, and comes with none of the excess baggage – uncertainty, frustration, disappointment, angst, complex moving parts – that we know a "combined" solution, such as the one SECA has proposed, will bring along with it.

V. With respect to the proposal to place ceilings over and floors under how much E-rate funding an applicant may apply for annually, SECA asks some good questions related to implementation.

- We welcome these questions because the devil is in the details, and the more details that can be squared away prior to implementation, the better the system will ultimately work. In previous filings, we or the E-rate Reform Coalition have already answered many if not all of them. The E-rate Reform Coalition has even provided draft rules to cover the changes. If we missed a question or a concern that the Commission would like us to address, we would be pleased to do so.

- In our comments here, we intend to focus only on one misstatement made about our methodology. SECA states that the Funds For Learning proposed budget formula "just doesn't work". (SECA Comments, p.19). Quite simply, this is wrong. Without being privy to SECA's methodology, it is impossible to reproduce their computational errors or to determine the source of their mistaken calculation.

- Funds For Learning has been forthcoming and extremely transparent with its budget proposal calculations. We have demonstrated on numerous occasions that **the math behind the Funds For Learning proposal works.** [6]

Respectfully submitted,

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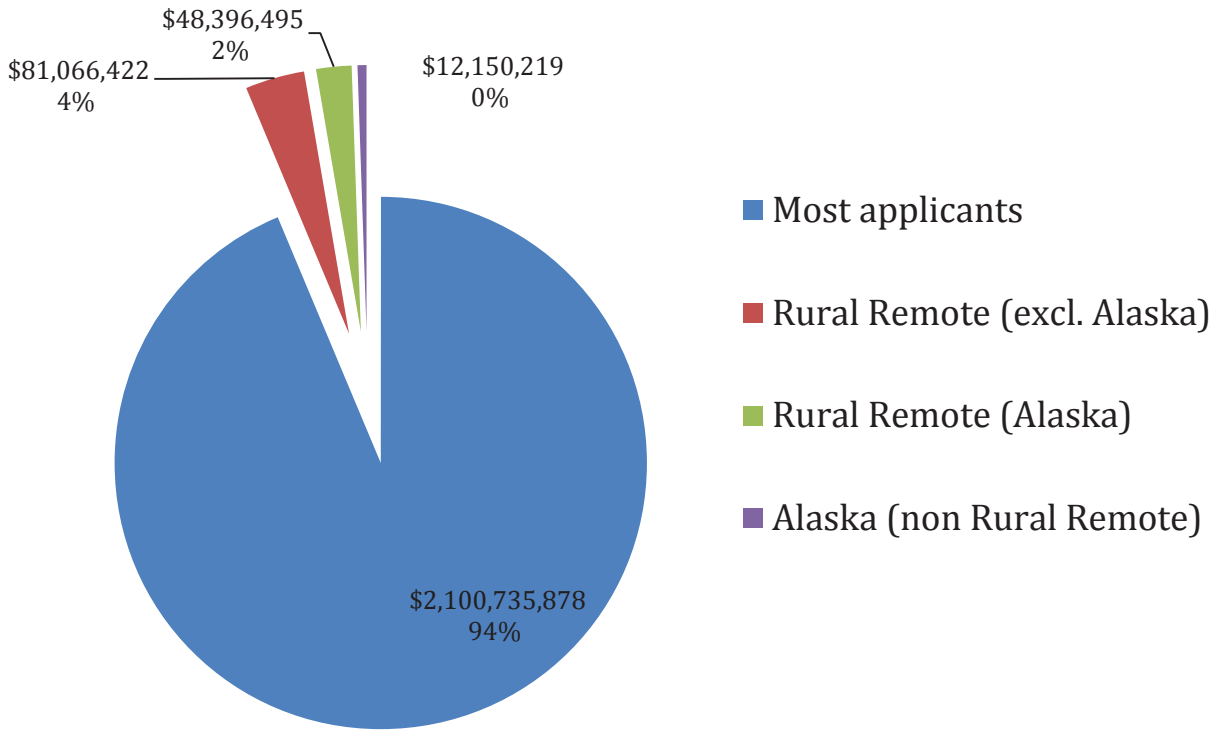
[6] *See*, e.g., "Estimated Impact of FFL Proposal", Notice of Ex Parte Communication (April 2, 2014) http://apps.fcc.gov/ecfs/document/view?id=7521096910 (last page)

EXHIBIT A

Distribution of Priority One Funding Requests
FY2013 School Applications

Based on applicant rural remote status and location (Alaska or other)

	Rural Remote Applicants		Other Applicants		TOTAL	
State	**Applicant Count**	**P1 Requested**	**Applicant Count**	**P1 Requested**	**Applicant Count**	**P1 Requested**
Alaska	38	$48,396,495	17	$12,150,219	55	$60,546,714
Other states and territories	2,336	$81,066,422	19,015	$2,100,735,878	21,351	$2,181,802,300
Total	2,374	$129,462,917	19,032	$2,112,886,097	21,406	$2,242,349,014