CALIFORNIA
DEPARTMENT OF
EDUCATION

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

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

Initial Comments from
The California Department of Education (CDE)
Related to the E-rate Further Notice of Proposed Rulemaking

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I. Introduction and Summary

The California Department of Education (CDE) respectfully submits these comments in response to the Federal Communication Commission's (FCC) Further Notice of Proposed Rulemaking (FNPM). The CDE appreciates the opportunity to comment on the measures addressed in this order to make improvements to the E-rate program.

The CDE encourages the FCC to look closely at increasing the funding cap. Specifically, funding should be commensurate with the adopted broadband goals put forth by the FCC. Looking at the period when the program was established in 1997, the technology that was available and used for broadband (typically T1 technology) was significantly lower than is needed in the 21st century adaptive learning environment of today. This can readily be seen by the increased demand for priority one services over the course of the program, especially in recent years, to the extent that priority one requests in both Funding Years 2013 and 2014 exceeded the established cap and required the authorization of carry-forward funds leaving no funding available for priority two. For example, California's unfunded priority two requests were over $578 million. Based on this background, it is apparent that the E-rate fund has been oversubscribed since its' inception.

The adoption of robust broadband goals for schools without commensurate adjustments in available funding has resulted in the increased uncertainty of access to funding which is an impediment to the technology planning process in K-12 schools. In addition, through this proposal applicants are giving up a reliable funding source that they have received for 17 years (i.e. voice services), which has often been used to supplement school technology budgets, with no guarantee of any certainty of access to reliable and sufficient funding under the new program model. This puts schools in a difficult position, and warrants further examination.

While CDE supports changes to the E-rate program that will ensure its ongoing support and growth for applicants to develop and maintain a 21st century classroom environment, the FCC must ensure that funding is adequate to meet the needs of applicants nationwide. We encourage that these changes be specific, have a pre-determined measureable result, and that only a few elements are changed at once, especially those that affect the application process.

II. Increase Funding Cap

As schools and libraries continue to move toward online assessments the demand for category one funding, formally known as priority one funding, continues to grow. To meet this demand equitably the funding cap should be increased to $4 to $5 billion, with applicable indexing for annual inflation added, to ensure that the program is capable of funding networks adequately. This estimated range is based upon the total funding

requested for Funding Year 2012. Utilizing the Data Retrieval Tool on the Universal Service Administrative Company's (USAC) Web site, there were approximately $4 billion in requests for Funding Year 2012. The implementation of computer adaptive testing in K-12 education alone will result in significant growth for California in broadband connectivity needs, which is a likely scenario in many other states as well. In the coming years, even with the changes resulting from E-rate 2.0, the category one funding will have demands that far exceeding the $2.3 billion funding cap in the coming years.

Category two funding currently has $1 billion annually set aside for two years for internal connections, dedicated to enabling new Wi-Fi technology. While the FCC has reallocated $2 billion in existing funding for the first two years, CDE has concerns about the FCC's plan and ability to fund years three through five without a permanent increase in the funding cap.

CDE acknowledges the FCC's expectation that savings may be realized by eliminating legacy services and implementing additional efficiencies. However, it is unclear whether the anticipated savings from cuts to legacy services will add up to an additional $1 to $2 billion annually given the anticipated growth in category one over the next two to five years. In addition, it seems uncertain whether the expected $1 billion a year set aside for category two is sufficient to meet the pent-up demand for internal connections funding requests due to the total non-funding of priority two services for the past two years and the chronic underfunding of these services over the history of the program.

Without a permanent raise in the cap, there is a danger that category one funds will also be used to support Wi-Fi connection applications. Beneficiaries that depend on those category one funds to help meet their ongoing monthly costs for broadband could face additional hardships due to the shift in funds.

Given that in the current funding year 2014 there were over $2.7 billion in requests for priority one alone (with a current CAP of $2.41 billion), there is an obvious need to raise the cap. As pointed out in the current FNPR, if inflation had been properly adjusted for the program from its inception, there would have been another $800 to $900 million in the funding cap. Given the described overall program demand above, it is encouraged that the cap be increased to a minimum of $3.5 billion (in addition to the dedicated $1 billion for category 2). After a two year period, the FCC should then analyze the effects of changes (i.e. elimination of voice, etc.) and then determine if the cap should be additionally increased.

III. Terms of Multi-Term Contracts

Multi-year contracts, specifically five year terms or more, should be looked at favorably. They can offer the same advantages as shorter term contracts. Falling prices can still be taken advantage of in a five year term or greater if a provision of the contract states that the selected vendor must make changes to their pricing terms to keep up with market trends (as outlined in the NPRM). In terms of applicant work, this can be done with proper RFP (Request for Proposal) language. In addition, some of this work could be done by the FCC to ensure the lowest corresponding price (LCP) is followed by service providers. This is an expectation that LCP is followed by providers, and could be something that the FCC, in conjunction with USAC, begins to oversee by auditing these service providers. The pricing transparency and management is not just a responsibility of the applicant, but is something that the FCC could also do.

IV. Use of the National School Lunch Program

The CDE supports the use of meeting the income eligibility requirements for free and reduced price meal (FRPM) as the standard for establishing discounts. Note that our emphasis is on income eligible students, and not on schools participating in the National School Lunch Program (NSLP) given that some schools do not operate their own food service program or participate in the NSLP. Specifically, some schools send their students to a neighboring or co-located school for meals. California allows schools (regardless of whether or not they participate in NSLP) to collect and submit data on students that meet the income eligibility requirements for NSLP. For these reasons, we do not believe that FCC's proposal for the mandatory use of NSLP data for schools that participate in the NSLP (as proposed in 284) is practical. Moreover, it would seem to treat NSLP participating schools differently than schools that do not participate.

We are concerned about differences in how states handle reporting of eligibility data for schools that are on Provision 2 (P2), Provision 3 (P3) or Community Eligibility Program (CEP). It is our understanding that some states allow these schools to report 100 percent of their students as eligible for FRPM. This practice may give these states a competitive advantage over those states that do not allow P2 or P3 or CEP schools to claim 100 percent as eligible. We suggest that the FCC review the eligibility data to determine whether some states have an unusually high number of schools that have reported 100 percent of their students eligible for FRPM. One possible solution to eliminate this issue might be to base eligibility on the percentage of students that are "directly certified" as eligible for FRPM. The U.S. Department of Agriculture already requires that local educational agencies (LEAs) use "direct certification" to identify students who would be eligible.

For the last two years, FRPM student eligibility data for California has not been available until June. These data are of good quality and are based on the combined results of the state administered direct certification process, categorical eligibility, and alternative data. There are no other ways that districts could provide more up to date information that is subject to the same level of review. **These data are not the same data that LEAs report to CDE's Nutrition Services Division, which administers meal programs.** The FCC proposal would use the November NSLP data reported by LEAs report. As previously described, this would make schools who do not participate in NSLP ineligible, which is why the CDE supports the use of FRPM eligibility data as a measure.

We support the proposed change to use district-level rates rather than school level rates. Although we do not currently report the data as a district-level rate, we have the ability to do so with minimal effort so long as the data is FRPM eligibility data.

Regarding the weighted district average for consortiums, so that we can gauge potential workload for our agency in this area, please clarify what role you see the state taking, if any, in this area.

It should be noted that California treats direct funded charter schools as LEAs, which may pose a challenge. If the FCC were to use the district-level rates, would the discounts for these charter schools that are treated as LEAs be determined as part of the district or county that authorized the charter or stand-alone for the charter? If discounts for charters operating as LEAs were to be determined independent of the charter's authorizing district, basing the discount on a district wide rate may create an incentive for districts to create a small charter with a high poverty rate in order to get a large discount. One idea the FCC may want to weigh is whether there is a need to set a minimum based on the number of students enrolled in an LEA.
Regarding the use of "alternative data", we agree that it should be based on actual responses to the survey.

The FCC states that it intends to move away from relying on the data from the National Center for Education Statistics (NCES) to determine whether a district is urban or rural and instead, rely on the U.S. Census Bureau data. It should be noted that the NCES, when issuing a school code, imposes a rigorous set of rules to ensure that the entity is a bona fide school or LEA. We do not know whether the U.S. Census Bureau imposes rigorous rules on the entities.

V. Consortium Discounts

In order to encourage state network consortia, incentives for this work should be considered and further steps should be taken to promote cost-effective purchasing. Adopting an additional five percent discount for consortia applications and priority application processing would assist the FCC in encouraging schools and libraries to join consortiums. This would encourage an increased participation in consortia and maximize its purchasing power.

Consortia applications represent a fiscally responsible approach to utilizing E-rate funds and can help enable a level of scalability that more effectively advances digital learning opportunities. There are many reasons why the FCC should continue to encourage consortia:

- Consortia can help facilitate better discounts with their buying power.
- Consortia typically have the ability to motivate service providers to connect to hard-to-reach locations with lower profit margins for the service providers.
- Consortia reduce the requirement for expertise within each school district and concentrates efforts at the higher technical levels.
- Consortia allow for aggregation of entities to more cost-effectively connect to the Internet.

Consortium purchasing at the statewide level has successfully inspired competition, not diminished it. By including large numbers of school and library sites within a single RFP cycle, bidders are able to achieve a more efficient bid response by not having to replicate their legal terms and conditions and respond to multiple, locally driven RFPs.

Another successful RFP technique that has been used by state consortium groups and state networks is to have potential providers bid "one, some or all” of the number of sites and also allow the potential providers to select from multiple network aggregation points to accommodate their fiber topography. In this instance, the state network backbone performs the interconnections, once the network participant has reached the state backbone. This technique has the potential to stimulate additional competition and lower prices, particularly in rural areas.

VI. Urban verses Rural Definitions

CDE supports changing the definition of rural for E-rate purposes using the U.S Department of Education's NCES definition's to ensure greater funding to rural areas. Currently the definition of rural area is the same used by the U.S. Department of Health and Human service's Office of Rural Health Care Policy which is outdated.

Since rural areas typically have higher broadband and infrastructure costs, this change should help those areas with these financial challenges. It is also encouraged that the additional discount for rural areas be maintained.

By modernizing the definition or rural area additional schools and libraries would be able to reach the desired amount of broadband connectivity by having the financial resources available to them.