Before the
Federal Communications Commission
Washington, DC

In the Matter of	)	
	)	
Petition of Funds For Learning, LLC	)	CC Docket No. 02-6
	)	
Schools and Libraries	)	
Universal Service Support Mechanism	)	

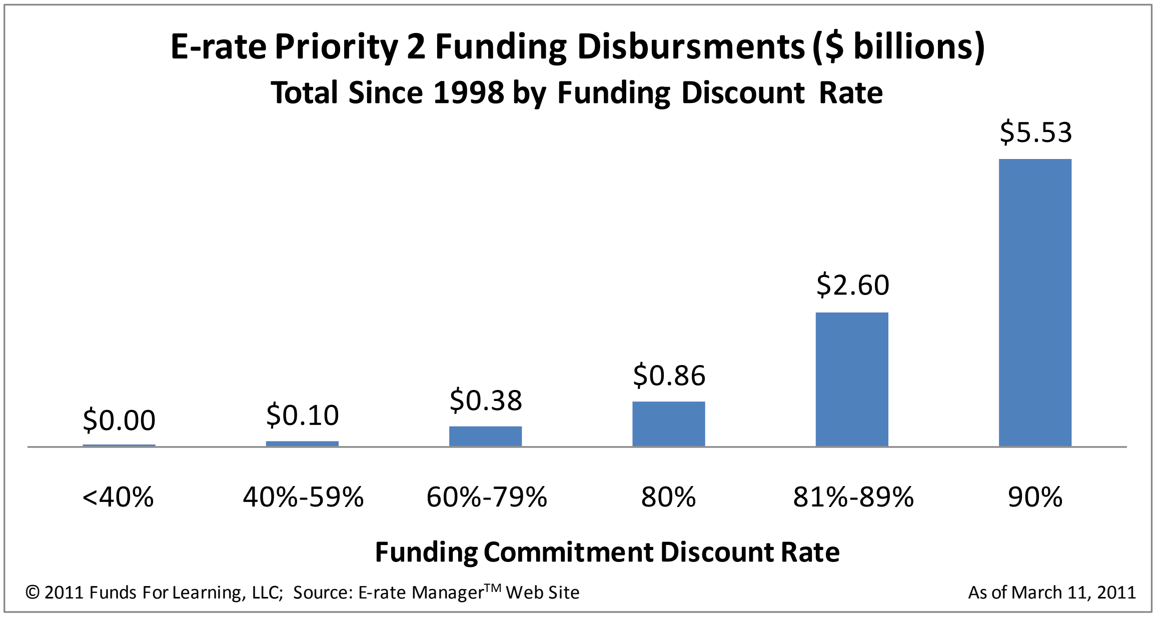
REPLY COMMENTS OF FUNDS FOR LEARNING, LLC

The USAC Schools and Libraries Committee ("USAC") recommended to the Commission that the FY2010 Priority Two discount threshold be set at 81%. USAC made this recommendation only slightly more than halfway into the 2010 Funding Year ("FY2010"). In response, FUNDS FOR LEARNING filed a *Petition to Reject the Administrator's Discount Threshold Recommendation for Funding Year 2010.*

The Time For Important Change Has Arrived

We believed and continue to believe strongly that, rather than helping to make the distribution of Priority Two funds more equitable and economically sensible, USAC's premature recommendation, if accepted, would perpetuate the imbalance in the way Priority Two funds have come to be distributed. It is evident that this imbalance freezes out from funding large numbers of schools and libraries that serve economically disadvantaged communities. Those schools and libraries desperately need Priority Two funding too – more so in many cases than their 90%-discount counterparts that have already received plenty of E-rate support for their LAN infrastructure and basic maintenance. Not one commenter disputes this. Instead, the mantra in support of the status quo continues to be, as it has been for years, that the 90%-discount schools simply "need" the money the most and are entitled to it. We disagree.

After 13 years of funding, this argument no longer holds up. Year after year, 90% discount-sites have received discounts. The same, of course, cannot be said for 80%-discount sites. As the chart below shows, the 90% schools and libraries have received an incredibly disproportionate amount of Priority Two funding over the years.[1]



In many instances, the difference between Priority Two funding at 90% or no funding at all at 80% could be nothing more than the failure of a few students to return their NSLP forms or a school administrator pulling student population data prematurely – i.e., before it had been updated completely in the school system's database for the new school year. On the fine and extremely valuable line between a 90% and an 80% discount rate, the New York City Department of Education had this to say: "more than 300 [NYC] schools are classified as 80% discount eligible. Many of them are only a few percentage points away from tipping into the 90% discount category yet they will be denied any Priority Two funding." The NYC Department of Education went on to note:

[1] Some commenters appear to be contending that the 90% discount band does not have a stranglehold on internal connections funding because USAC has funded those kinds of requests down to 81% this year. Purchases at intermediate discount rates cannot be for individual school sites. Internal connections purchased to serve a single school receive that school's discount rate – 90%, 80%, 70% and so on. The same services purchased to serve multiple schools, like a router serving an entire school district, for example, receive the school district's shared discount rate. Thus the internal connections funding requests between 90% and 80% are not or at least should not be for individual schools.

"It may be many years, if ever," before another opportunity arises to fund 80% schools. Every effort should be made to advance the funding threshold to schools at the significant 80% level."

EdLiNC, on the other hand, while sympathetic, clearly does not share our or other commenters' concerns about the legitimate interests that 80% applicants have in also sharing a piece of the Priority Two, E-rate pie:

> Specifically, EdLiNC disagrees with the implication of FFL's filing that $400 million in unused E-Rate funds should be added to Funding Year 2010's annual cap, thereby likely permitting USAC to fund all Priority Two applicants eligible for 80% and higher discounts to receive their full discounts. While EdLiNC is sympathetic to FFL's desire to drive Priority Two funding down to lower discount percentage brackets this year, we are extremely concerned that applying unused funding now will inevitably lead to the very lowest income eligible applicants receiving no or pro-rated discounts for their Priority Two discount requests in the next funding year.

First, EdLiNC misstated what we proposed. We never suggested to the Commission that it add the full $400 million in unused funds from prior funding years to the FY2010 cap. What we actually said was this:

> To remedy the funding inequity that cutting off funding at 81% would create, the Commission has two options: (1) direct USAC to wait to fund the 80% FY2010 requests until enough unused FY2010 funds appear back on its books to cover them; or **(2) direct USAC to fund those 80% requests right away by tapping into <u>part of the $400 million in unused funds</u> from previous funding years.** Of the two choices, the latter is clearly superior, as it will eliminate uncertainty immediately and get badly needed funding into the hands of those who need it far more quickly. Moreover and equally important from an administrative perspective, this approach will neither disrupt, burden nor interfere in any way with USAC's operations. Accordingly, we urge the Commission to select this option. [Emphasis added].

Elsewhere in our petition, we suggested to the Commission that it divide up the $400 million between funding years, just as it had done previously with unused funds from other years, designating enough of those funds (approximately $279.43 million) to FY2010 to cover the demand for Priority Two funding requests at 80%. That would leave $120.57 million for FY2011, plus any other unused funding (e.g., from FY2010) that the Commission could decide either now or in the future to apply to that year's cap.

EdLiNC expressed great concern that funding down to the 80% discount bracket this year might result in the "the very lowest income eligible applicants receiving no or pro-rated discounts for their Priority Two discount requests in the next funding year." In short, EdLiNC's argues, the Commission should keep the second poorest group of E-rate applicants from receiving any Priority Two funding commitments in FY2010, if there is any chance whatsoever that making those commitments might keep the "lowest income level applicants" from receiving all or even some of the Priority Two dollars that those applicants might be applying for in their next year's applications. That is why EdLiNC adamantly opposes designating even a portion of the carryover funds to FY2010.

EdLiNC's unyielding, unsympathetic position pits the speculative, future needs of one deserving group of schools and libraries against the very real and concrete current needs of another deserving group of schools and libraries. Furthermore, it asks the Commission to favor the former group over the latter group on the basis of nothing more than a hypothetical funding scenario that might affect the 90% group adversely or, hypothetically, might not.

Finally, EdLiNC contends that it would be better for every 80% funding request to go unfunded this year than to risk having to pro-rate 90% funding requests next year. In our opinion, EdLiNC's position as a whole is indefensible. It is based on speculation and demonstrates extreme bias toward one group of applicants that once may have been supportable, but which, after thirteen years of funding and experience, no longer is. The rules state that schools and libraries eligible for 90% E-rate discounts are to receive "priority" when it comes to Priority Two funding. The rules do not, however, grant them a monopoly over it.

We argued in our petition – and many if not the majority of commenters agree – that USAC's recommendation to cut off funding at 81% was premature.[2] Large amounts

[2] Miami-Dade County Public Schools was one commenter that disagreed. It supported USAC's recommendation to cut off funding at 81%. It should be noted, however, that this school district had no

of FY2010 funding are likely be "restored" to the fund within an administratively reasonable period of time (either through the Form 500 process, rejected funding requests, or rejected invoices). This, we pointed out, would make it possible to fund every FY2010 80% request and possibly more. Moreover, it is a solution with which the Government Accountability Office ("GAO") would likely agree. In its March 2009 Report entitled, *Long-Term Strategic Vision Would Help Ensure Targeting of E-rate Funds to Highest-Priority Uses,*[3] the GAO observed, in pertinent part and in two separate sections, as follows:

> Funding that is not disbursed in the year for which it was committed is carried over to the next funding year and made available for new commitments, but undisbursed funding is still problematic because it prevents some applicants from receiving funding in a given year. (*GAO Report* at p. 13)
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> In the current E-rate environment, where requests for funding consistently exceed the annual funding cap, many applicants seeking support for Priority 2 services are denied funding, yet a significant amount of funding committed to applicants is not disbursed. (*GAO Report* at p. 49)

A Compromise Solution

Several commenters state that they do not want the Commission to add any more carryover funds to FY2010 because they fear the impact that might have on USAC's ability next year to fund requests for Priority Two services and even, some say, Priority One services. While we do not agree that those concerns are compelling enough, under the circumstances, to win the day, there is, we believe, a relatively simple compromise solution.

For all the reasons we stated in our petition, we continue to believe that rolling over a portion of the funds slated originally for FY2011 to FY2010 remains both the simplest and best solution for handling this extremely important matter. Nevertheless, the compromise solution we propose is this: As we proposed originally, first the

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FY2010 internal connections requests, and all of its basic maintenance requests had a discount rate of 81% attached to them.

[3] http://permanent.access.gpo.gov/LPS114065/LPS114065/www.gao.gov/new.items/d09253.pdf

Commission could order that just enough unused funds to support all of the FY2010 Priority Two requests currently pending at 80% be carried over. For this solution to work, the likelihood of FY2010 generating at least if not <u>more</u> than that amount in unused funds must be extremely high. Considering that more than 20% of the total funding committed in any given year has always gone unused, that likelihood <u>is</u> extremely high. Next, the Commission could order that an amount of unused funds from FY2010 equal to the additional amount carried over to FY2010 be earmarked specifically for carryover to FY2011. As this carryover is virtually guaranteed, the transaction is essentially a wash. For those commenters who said that they need to know exactly how much funding will be available in order to plan ahead, this solution will give them the comfort level they need.

Respectfully submitted

/s/ John D. Harington

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