

March 25, 2013

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6

Dear Ms. Dortch:

On March 19, 2013, Dr. Anthony D. Machado, Director II/E-Rate Management, Miami-Dade County Public Schools, Orin Heend, our firm's outside counsel, and I met with Commissioner Jessica Rosenworcel and her Confidential Assistant/Special Advisor, Valery Galasso, to discuss the funding crisis that is threatening the E-rate program and the framework for a solution to it. More specifically, we discussed the following:

- how the absence of Priority Two funding is encouraging applicants to make certain Priority One purchasing decisions that make little or no sense, economically or otherwise;
- the logical disconnect between the goal of ubiquitous 100 Mbps, let alone Gigabit, connectivity for schools and libraries and the absence of E-rate funding for the LAN infrastructure and upgrades that schools and libraries will need to use that kind of high-speed connectivity effectively or even at all;
- the unique and much-too-easily-abused "blank check" character of the E-rate program, which, a decade ago, the USAC Task Force on the Prevention of Waste, Fraud and Abuse ("Task Force") recommended be eliminated; and
- a framework, based on the Task Force's 2003 recommendation, to address the E-rate funding crisis.

During the meeting, I shared the attached presentation with Commissioner Rosenworcel and Ms. Galasso and pointed out some of its highlights. The presentation illustrates how E-rate funding is currently being distributed. In addition, it shows how, without altering the E-rate program in any material respect, *except for* the imposition of funding ceilings, every school and library could benefit in a meaningful fashion, every year, from E-rate support. It also shows how, by increasing the size of

the fund, every school and library will be positioned to benefit proportionally from such a badly needed increase, if and when it comes. With respect to funding ceilings, it suggests that they be tailored to each applicant's needs and characteristics, taking into account community poverty level, number of students or library populations being served, and geographic location, with minimum ceilings being set for small and remote schools and libraries. Implementing this solution, the presentation shows, would obviate the need to alter the existing discount matrix.

I made it clear that the solution we are advocating is not a block grant program, and, moreover, that it does not resemble one in any way, shape or form, contrary to what some people, who either have not read it carefully or have only heard about it, might be suggesting. In crafting our proposal, I explained, we were mindful of the E-rate program's success and why it has been so successful. That is why we were careful to retain virtually every aspect of it completely intact, except for the ability of applicants to request an unlimited amount of funding every year. That simplicity, I emphasized, is what makes it such a viable solution to the crisis at hand.

Like the Task Force before us, we stressed the need to place E-rate applicants on an annual budget. Giving applicants blank-check access to E-rate funds, we argued, is fundamentally poor public policy as it throws the door wide open to irresponsible behavior -- and much worse. That is precisely why the Commission ought to place a sensible limit on how much funding school and library applicants can receive each year. I explained that a fair and equitable "budget" solution would:

- enable the Commission to distribute a finite amount of highly valuable E-rate funds more equitably;
- ensure that every school and library has the opportunity to receive a meaningful amount of funding annually;
- maintain a discount system that provides higher levels of support for more economically disadvantaged schools and libraries;
- restore to school and library systems the ability to decide for themselves how best to distribute funding among the schools and libraries in their respective systems and on what categories of service to spend that money on;
- force applicants to drive harder bargains with their service providers and to think much more carefully about how to allocate and spend both their Priority One and Priority Two dollars;
- enable USAC to review and process applications much more quickly, which would lead, in turn, to timely funding decisions and thus much higher E-rate utilization rates; and
- encourage applicants to develop realistic, multi-year project plans, since the annual amount of funding that they could receive, IF they needed it all, would be predictable. There would be no penalty for going "under budget" and indeed the Commission may even want to consider rewarding applicants who do so by permitting them to roll over all or part of their unused annual budgets.

We also discussed, albeit very briefly, other possible remedies such as changes to the discount matrix and eliminating some eligible services. Those remedies and ours, I explained, are by no means mutually exclusive. Unlike the others, ours involves a fundamental change to the funding distribution system that will operate equitably and effectively *no matter how much funding is available*. None of the other remedies address the program's persistent inequities or fundamental problems, which should no longer be ignored. Reducing discount rates, for example, will do relatively little to help fund Internal Connections requests filed by applicants who reside just a few rungs down the discount ladder from the 90%-discount-rate applicants who have routinely received funding. That is because a discount rate reduction, unless it is radical, will not inject nearly enough additional money into the system. Which means that, before too long, annual demand for funding would once again far outstrip the annual supply, bringing us right back to where we started.

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On March 20th, the day after our meeting, I sent an email to Commissioner Rosenworcel. In it, I summed up and elaborated on what we had discussed the day before. I have copied that email below:

From: John Harrington
Sent: Wednesday, March 20, 2013
To: Commissioner Jessica Rosenworcel
Cc: Valery Galasso
Subject: Thank you and E-rate Follow-up

Commissioner Rosenworcel:

Thank you for making the time to meet today. I appreciate all of your questions and feedback. Here is a recap of my understanding/perception of the situation facing the E-rate program:

- Demand for telecomm and internet access is exceeding the annual program cap. The status quo will not sustain itself much longer.
- Internal connections funding is important for all applicants, not just a small subset. As highlighted via the FCC's Funds For Learning Order, 80%-discount applicants should receive internal connections support, too!
- Applicants would benefit if they could set their own funding priorities (in conjunction with the eligible services list, of course).
- The E-rate does not need a massive renovation to continue fulfilling its function. It has a fundamentally healthy structure (e.g. discounts, application process, eligible services list, USAC management, etc.) but it could benefit from a few important tweaks.

- More money, alone, is not the fix.

As I see it, there are six primary approaches for the FCC to address this situation. The FCC could:

- 1) Set a maximum discount amount (ceiling) that an applicant can receive
- 2) Adjust the discount matrix to a level that accommodates current and/or future demand (i.e. cut discounts in half)
- 3) Create a new system to prioritize telecomm and Internet requests (similar to the discount threshold system used for internal connections.)
- 4) Eliminate funding for certain services
- 5) Increase the E-rate cap
- 6) Do nothing

For the most part, these approaches are not mutually exclusive of one another; however, of the six, I think the ceiling/budget system would be the most effective. It would:

- Restore funding for all service categories, allowing schools to set local priorities
- Increase accountability and encourage cost-effective decisions
- Eliminate the need to revise the discount matrix
- Decrease the opportunity for waste, fraud, and abuse
- Establish a system that can easily accommodate fluxes in the amount of available E-rate funding

These thoughts are further discussed in this [open letter](#) to Senator Rockefeller.

My colleagues and I will continue to meet with and discuss this matter with various constituents groups and lawmakers. In the meantime, if there is any additional information that I can provide to you, please let me know.

Sincerely,

John

P.S. Today, I mentioned the example of the school in California using Priority 1 funds to connect their laptops. Here is the story:

http://www.sgvtribune.com/news/ci_22699587/students-montebello-receive-wireless-laptops-part-7-million

This school district has requested an average of \$244/student per year -- for cell phone

service alone. This is one example of a trend that has led to a 40% increase in cellular expense by schools. Of course, the answer to this problem is not to eliminate cell phone usage from the E-rate program. Nor should Montebello USD be penalized for exploring creative ways to get their students connected within the confines of the FCC's funding priority system. I think a more effective approach to circumstances like this one would be to eliminate "the blank check" while at the same time allowing applicants the choice to request discounts from any of the eligible services, including internal connections.

Sincerely,

/s/ John D. Harrington

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